INTERLOCUTORY INJUNCTION

(State Judicial Academy on January 15, 2009)

Anton Piller – 2005 (1) CHN 106

This is extraordinary form of an ex parte order permitting an application to enter premises for purpose of inspection etc. The name of such injunction is again derived from the name of the plaintiff in *Anton Piller KG v. Manufacturing Processes Ltd.* reported at (1976) 1 All ER 779. It was passed an action for infringement of copyright. A foreign manufacturer who was the owner of the copyright in the design of a machine came to know that their English agent were planing to make over to a rival manufacturer the information that could have led the rival to produce a similar machine. The plaintiff sought an ex parte order restraining the defendant to pass on such confidential information and in aid of the injunction sought an order to inspect, remove all confidential documents belonging to the plaintiff available with the defendant. In that case the plaintiff was permitted to inspect and remove the documents, but ordinarily a receiver is appointed for such purpose.

Mareva

Such injunction is a form of security which has become available to a creditor who has filed an action or commenced arbitrary proceedings for recovery of his debt before judgment. The order is in the form of an injunction restraining the defendant from removing his assets outside jurisdiction pending the hearing of the action or the reference so that it would enable the plaintiff to obtain satisfaction of the decree or award that may be passed in the action or the reference. Such form of injunction is of recent origin (1975) and gets its name from the name of the plaintiff in

Mareva Compania Naviera SA v. International Bulk Carriers SA reported at (1980) 1 All ER 213.

The principle is not unknown in India and is recognised as a nature of attachment before judgment under Order XXXVIII Rule 5 of the Code of Civil Procedure.

The test to be applied is whether there is a good case of debt due made out and there is even in danger that the debtor may dispose of his assets to defeat the judgment. The features of the *Mareva* injunction are:

> "(a) The injunction generally takes the form of an order restraining the defendant from selling, disposing of or otherwise dealing with money or other moveables or from removing them from the jurisdiction of the court;
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> (b) the plaintiff must show a good arguable claim on the merits of his claim;
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> (c) there must be ground for believing that the defendant has assets within the jurisdiction and there is a risk of the assets being removed before the decree is satisfied;
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> (d) an injunction may be made ex parte where there are grounds for believing that if the defendant is given surrendering by notice the asset will be removed;
>
> (e) the plaintiff must give an undertaking for damages, supported if necessary by a bond of security in case the claim turns out to be baseless;
>
> (f) the injunction may be invoked whether or not the defendant is domiciled resident or person within the jurisdiction;
>
> (g) the plaintiff does not acquire the position of a secured creditors as regards the assets frozen by the injunction;
>
> (h) the jurisdiction may be invoked to restrain the removal of a ship even in a case where the ship cannot be arrested."

This extract is taken from ***Mohit Bhargava v. Bharat Bhushan Bhargava***, (2007) 4 SCC 795, at page 801:

These two orders are certainly within the jurisdiction of the court which passed the decree since they are only orders of restraint being issued to a person from handing over a property in his possession to the judgment-debtor along with the documents concerned and keeping the documents in safe custody. They are in the nature of a "freezing order" or a "Mareva injunction" and an order akin to an Anton Piller order, orders that can be issued even if the property or the person concerned is outside the jurisdiction of the court.

Freezing Orders

This extract is taken from ***Gerrit F. Merkel*** (2006) 3 SCC (Jour) 9

1. Functions of provisional and protective relief

Despite various attempts to define the scope of "provisional and protective relief", at present this phrase remains "without settled boundaries".

Two principal functions of provisional and protective relief in the context of civil and commercial litigation have been identified by the International Law Association's *Principles on Provisional and Protective Measures in International Litigation*—

1. maintenance of status quo pending determination of the merits at trial; and

2. the preservation of assets out of which an ultimate judgment can be satisfied.

Further important functions of provisional and protective relief include—

3. identification of assets through disclosure;

4. preservation of evidence;

5. provision of interim payments;

6. the "shepherding of assets";

7. personal restraint; and

8. the provision of security for costs.

The following discussion focuses on what has been described as the most important form of "without notice" protective relief (formerly denoted as *ex parte* relief), namely, orders for the preservation of assets and ancillary disclosure orders for the identification of such assets.

2. The English freezing injunction

This extract is taken from ***Gerrit F. Merkel*** (2006) 3 SCC (Jour) 9

In English law the preservation of assets is the province of an interim injunction originally known as *Mareva* injunction, after the second case in which such an order was granted, but has recently been renamed "freezing injunction". Freezing injunctions are essentially designed to protect the effectiveness of the ultimate judgment by preventing the defendant from removing his assets from the jurisdiction and from otherwise dissipating his assets pending the final ruling. The injunction operates by freezing the defendant's assets (commonly funds in a bank account) in order to make such assets available for satisfaction of a future judgment, provided of course the applicant succeeds in the substantive proceedings.

The practice has been adopted by the legal systems of Canada, Australia and New Zealand, but has not been adopted by the Federal Courts of the United States of America, which employ a writ of attachment instead.

In England, freezing injunctions are now almost invariably supported by an ancillary disclosure order, which compels the respondent to produce

detailed information about his assets, so as to ensure that the injunction can operate effectively.

This extract is taken from ***Gerrit F. Merkel*** (2006) 3 SCC (Jour) 9

In the exceptional case of *Republic of Haiti* v. *Duvalier* the Court of Appeal granted a worldwide freezing injunction and ancillary disclosure order so as to compel the firm of English solicitors, which had been employed by the defendant, to disclose the location of their client's worldwide assets.

What is remarkable about this case is that the order was granted notwithstanding the fact that the case had only very weak connections with England, that is, the location of the relevant information controlled by Duvalier's solicitors in London. All the relevant assets were situated outside the court's jurisdiction and the defendant was neither domiciled nor resident in England. The very weak connections with England were clearly recognised by Staughton, L.J., who emphasised that the case under consideration was "most unusual". His Lordship stated that the determinative element of the case was "the plain and admitted intention of the defendants to move their assets out of the reach of the courts of law", linked with the sophisticated asset concealment scheme and the vast amount of money involved. The exceptional nature of this case has also been noted in *Motorola Credit Corpn.* v. *Uzan (No. 2)*, where the Court of Appeal stated that "albeit the fraud alleged [in *Motorola case*] ... was, if correct, fraud on a massive scale, we do not think it stands relevant comparison with *Duvalier* case".

Although the decision in *Duvalier* case can be justified on the basis "that England was *the only place which had any known connection* with the asset concealment scheme and was therefore the place where information was most likely to be obtainable", Collins is certainly right to note that the decision "goes to the very edge of what is permissible", and is probably best explained on, and should be confined to its exceptional facts.

AIR 2003 Bombay 417

A Mareva injunction is an order of a court to a party or other persons over whom the Court has jurisdiction, directing the way-in which the property is to be retained or dealt with so as to ensure that the property will be available to satisfy any judgment in the action. It may be noted that to obtain a Mareva injunction there must first be an action properly commenced within jurisdiction of the Court. Courts have extended their jurisdiction also to action *in rem* to restrain the property from leaving jurisdiction. (Para 5)

The doctrine is however, evolving, permitting retaining security obtained until such time to satisfy the decree that may be obtained in proceedings commenced in other jurisdiction also. There can be therefore, no difficulty in maintaining an action for security. Even therefore, if the action is merely for security pending final action in the arbitral proceedings none-the-less it can read to mean security for satisfaction of the claim in respect of action which may be pending also in some other jurisdiction.

Negative covenant and interlocutory injunction

This extract is taken from ***Gujarat Bottling Co. Ltd. v. Coca Cola Co.***, (1995) 5 SCC 545, at page 573:

> "**42.** In the matter of grant of injunction, the practice in England is that where a contract is negative in nature, or contains an express negative stipulation, breach of it may be restrained by injunction and injunction is normally granted as a matter of course, even though the remedy is equitable and thus in principle a discretionary one and a defendant cannot resist an injunction simply on the ground that observance of the contract is burdensome to him and its breach would cause little or no prejudice to the plaintiff and that breach of an express negative stipulation can be restrained even though the plaintiff cannot show that the breach will cause him any loss. [See: *Chitty on Contracts*, 27th Edn., Vol. I, General Principles, paragraph 27-040 at p. 1310; *Halsbury's Laws of England*, 4th Edn., Vol. 24, paragraph 992.] In India Section 42 of the Specific Relief Act, 1963

prescribes that notwithstanding anything contained in clause (*e*) of Section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement. This is subject to the proviso that the plaintiff has not failed to perform the contract so far as it is binding on him. The Court is, however, not bound to grant an injunction in every case and an injunction to enforce a negative covenant would be refused if it would indirectly compel the employee either to idleness or to serve the employer. [See: *Ehrman* v. *Bartholomew*; *N.S. Golikari* at p.389.]

"**43.** The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests — (*i*) whether the plaintiff has a prima facie case; (*ii*) whether the balance of convenience is in favour of the plaintiff; and (*iii*) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies. [See: *Wander Ltd.* v. *Antox India (P) Ltd.*, (SCC at pp. 731-32.] In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial."

Wander v Antox

This extract is taken from **Wander Ltd. v. Antox India (P) Ltd.,** 1990 (Supp) SCC 727, at page 731:

"9. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well-settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated

> "...is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies."

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted."

Quia timet actions

In a quia timet action, although the plaintiff must establish his right, he may be entitled to an injunction even though an infringement has not taken place but is merely feared or threatened. It is based on the maxim, "preventing justice excelleth punishing justice". The plaintiff must aver and demonstrate that there is imminent danger of very substantial damage or further damage. A quia timet injunction may be granted to restrain an anticipated breach of statutory duty.

This extract is taken from ***Kuldip Singh v. Subhash Chander Jain,*** (2000) 4 SCC 50, at page 55:

"**6.** A *quia timet* action is a bill in equity. It is an action preventive in nature and a specie of precautionary justice intended to prevent apprehended wrong or anticipated mischief and not to undo a wrong or mischief when it has already been done. In such an action the court, if convinced, may interfere by appointment of receiver or by directing security to be furnished or by issuing an injunction or any other remedial process. In *Fletcher* v. *Bealey*, Mr. Justice Pearson explained the law as to actions *quia timet* as follows:

> "There are at least two necessary ingredients for a *quia timet* action. There must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended damage will, if it comes, be very substantial. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that, if the remedy is delayed the damage will be suffered, I think it must be shown that, if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a *quia timet* action".

"**7.** *Kerr on Injunctions* (6th Edn., 1999) states the law on "threatened injury" as under:

> "The court will not in general interfere until an actual nuisance has been committed; but it may, by virtue of its jurisdiction to restrain acts which, when completed, will result in a ground of action, interfere before any actual nuisance has been committed, where it is satisfied that the act complained of will inevitably result in a nuisance. The plaintiff, however, must show a strong case of probability that the apprehended mischief will in fact arise in order to induce the court to interfere. If there is no reason for supposing that there is any danger of mischief of a serious character being done before the interference of the court can be invoked, an injunction will not be granted".

Injunction in personam restraining legal proceedings

This extract is taken from **Manohar Lal Chopra v. Seth Hiralal**, 1962 Supp (1) SCR 450

"4. On 18-8-1948, the appellant instituted Suit MS No. 39 of 1948 in the Court of the Subordinate Judge at Asansol against the respondent for the recovery of Rs 1,00,000 on account of his share in the capital

and assets of the partnership firm "Diamond Industries" and Rs 18,000 as interest for detention of the money or as damages or compensation for wrongful withholding of the payment. In the plaint he mentioned about the respondent's notice and his reply and to a second letter on behalf of the respondent and his own reply thereto. A copy of the deed of dissolution, according to the statement in para 13 of the plaint, was filed along with it.

"5. On 27-10-1948, the respondent filed a petition under Section 34 of the Arbitration Act in the Asansol Court praying for the stay of the suit in view of the arbitration agreement in the original deed of partnership. This application was rejected on 20-8-1949.

"6. Meanwhile, on 3-1-1949, the respondent filed Civil Original Suit No. 71 of 1949 in the Court of the District Judge, Indore, against the appellant, and prayed for a decree for Rs 1,90,519-0-6 against the appellant and further interest on the footing of settled accounts and in the alternative for a direction to the appellant to render true and full accounts of the partnership."

"18. There is difference of opinion between the High Courts on this point. One view is that a Court cannot issue an order of temporary injunction if the circumstances do not fall within the provisions of Order 39 of the Code: *Varadacharlu v. Narsimha Charlu*; *Govindarajulu v. Imperial Bank of India*; *Karuppayya v. Ponnuswami*; *Murugesa Mudali v. Angamuthu Mudali and Subramanian v. Seetarama.* The other view is that a Court can issue an interim injunction under circumstances which are not covered by Order 39 of the Code, if the Court is of opinion that the interests of justice require the issue of such interim injunction: *Dhaneshwar Nath v. Ghanshyam Dhar; Firm Bichchha Ram v. Firm Baldeo Sahai*; *Bhagat Singh v. Jagbir Sawhney* and *Chinese Tannery Owners' Association v. Makhan Lal.* We are of opinion that the latter view is correct and that the Courts have inherent jurisdiction to issue temporary injunctions in circumstances which are not covered by the provisions of Order 39 CPC. There is no such expression in Section 94 which expressly prohibits the issue of a temporary injunction in circumstances not covered by Order 39 or by any rules made under the Code. It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. The effect of the expression "if it is so prescribed" is only this that when the rules prescribe the circumstances in which the temporary injunction can be issued, ordinarily the Court is not to use its inherent powers to make the necessary orders in the interests of justice, but is merely to see whether the circumstances of the case bring it within the prescribed rule. If the provisions of Section 94 were

not there in the Code, the Court could still issue temporary injunctions, but it could do that in the exercise of its inherent jurisdiction. No party has a right to insist on the Court's exercising that jurisdiction and the Court exercises its inherent jurisdiction only when it considers it absolutely necessary for the ends of justice to do so. It is in the incidence of the exercise of the power of the Court to issue temporary injunction that the provisions of Section 94 of the Code have their effect and not in taking away the right of the Court to exercise its inherent power.

"19. There is nothing in Order 39 Rules 1 and 2 which provide specifically that a temporary injunction is not to be issued in cases which are not mentioned in those rules. The rules only provide that in circumstances mentioned in them the Court may grant a temporary injunction."

AIR 1983 SC 1272

This extract is taken from **Cotton Corpn. of India Ltd. v. United Industrial Bank Ltd.**, (1983) 4 SCC 625, at page 631:

"**5.** A very narrow question which we propose to examine in this appeal is: Whether in view of the provision contained in Section 41(*b*) of the Specific Relief Act, 1963 ('Act' for short), the court will have jurisdiction to grant an injunction restraining any person from instituting any proceeding in a court not subordinate to that from which the injunction is sought? The contention may be elaborated thus: Can a person be restrained by an injunction of the court from instituting any proceeding which such person is otherwise entitled to institute in a court not subordinate to that from which the injunction is sought? In the facts of the present case, the narrow question is whether the Corporation can be restrained by an injunction of the Court from presenting a winding up petition against the Bank? The High Court seems to hold that the court has such powers in view of the provisions contained in Order 39 of the Code of Civil Procedure read with Section 37 of the Specific Relief Act, 1963 or in exercise of the inherent powers of the court under Section 151 of the Code of Civil Procedure. This position is seriously contested by the appellant in this appeal."

"**9.** Viewed from a slightly different angle, it would appear that the legal system in our country envisages obtaining of redressal of wrong or relief against unjust denial thereof by approaching the court set up for the purpose and invested with power both substantive and

procedural to do justice that is to grant relief against invasion or violation of legally protected interest which are jurisprudentially called rights. If a person complaining of invasion or violation of his rights is injuncted from approaching the court set up to grant relief by an action brought by the opposite side against whom he has a claim and which he wanted to enforce through court, he would have first to defend the action establishing that he has a just claim and he cannot be restrained from approaching the court to obtain relief. A person having a legal right and complains of its violation or infringement, can approach the court and seek relief. When such person is injuncted from approaching the court, he has to vindicate the right and then when injunction is vacated, he has to approach the court for relief. In other words, he would have to go through the gamut over again: when defending against a claim of injunction the person vindicates the claim and right to enforce the same. If successful he does not get relief but a door to court which was bolted in his face is opened. Why should he be exposed to multiplicity of proceedings? In order to avoid such a situation the legislature enacted Section 41(*b*) and statutorily provided that an injunction cannot be granted to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought. Ordinarily a preventive relief by way of prohibitory injunction cannot be granted by a court with a view to restraining any person from instituting or prosecuting any proceeding and this is subject to one exception enacted in larger public interest, namely, a superior court can injunct a person from instituting or prosecuting an action in a subordinate court with a view to regulating the proceeding before the subordinate courts. At any rate the court is precluded by a statutory provision from granting an injunction restraining a person from instituting or prosecuting a proceeding in a Court of coordinate jurisdiction or superior jurisdiction. There is an unresolved controversy whether a court can grant an injunction against a person from instituting or prosecuting a proceeding before itself but that is not relevant in the present circumstances and we do not propose to enlarge the area of controversy.

Ex-parte ad interim order

This extract is taken from ***Morgan Stanley Mutual Fund v. Kartick Das,*** (1994) 4 SCC 225, at page 241:

"**36.** As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are—

(*a*) whether irreparable or serious mischief will ensue to the plaintiff;

(*b*) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(*c*) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

(*d*) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;

(*e*) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.

(f) even if granted, the ex parte injunction would be for a limited period of time.

(g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court."

This extract is taken from ***Shiv Kumar Chadha v. Municipal Corpn. of Delhi***, (1993) 3 SCC 161, at page 177:

"**34.** The imperative nature of the proviso has to be judged in the context of Rule 3 of Order 39 of the Code. Before the proviso aforesaid was introduced, Rule 3 said "the court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite-party". The proviso was introduced to provide a condition, where court proposes to grant an injunction without giving notice of the application to the opposite-party, being of the opinion that the object of granting injunction itself shall be defeated by delay. The condition so introduced is that the court "shall record the reasons" why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The

party which invokes the jurisdiction of the court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex parte order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the court or the authority concerned to record reasons before exercising power vested in them. In respect of some of such provisions it has been held that they are required to be complied with but non-compliance therewith will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex parte orders have far-reaching effect, as such a condition has been imposed that court must record reasons before passing such order. If it is held that the compliance with the proviso aforesaid is optional and not obligatory, then the introduction of the proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplusage for all practical purposes. Proviso to Rule 3 of Order 39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not all. This principle was approved and accepted in well-known cases of *Taylor* v. *Taylor* and *Nazir Ahmed* v. *Emperor*. This Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of *Ramchandra Keshav Adke* v. *Govind Joti Chavare*.

"**35.** As such whenever a court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed. But any such ex parte order should be in force up to a particular date before which the plaintiff should be required to serve the notice on the defendant concerned. In the *Supreme Court Practice* 1993, Vol. 1, at page 514, reference has been made to the views of the English Courts saying:

> "Ex parte injunctions are for cases of real urgency where there has been a true impossibility of giving notice of motion....
>
> An ex parte injunction should generally be until a certain day, usually the next motion day...."

"**36.** Accordingly we direct that the application for interim injunction should be considered and disposed of in the following manner:

(*i*) The court should first direct the plaintiff to serve a copy of the application with a copy of the plaint along with relevant documents on the counsel for the Corporation or any competent authority of the Corporation and the order should be passed only after hearing the parties.

(*ii*) If the circumstances of a case so warrant and where the court is of the opinion, that the object of granting the injunction would be defeated by delay, the court should record reasons for its opinion as required by proviso to Rule 3 of Order 39 of the Code, before passing an order for injunction. The court must direct that such order shall operate only for a period of two weeks, during which notice along with copy of the application, plaint and relevant documents should be served on the competent authority or the counsel for the Corporation. Affidavit of service of notice should be filed as provided by proviso to Rule 3 of Order 39 aforesaid. If the Corporation has entered appearance, any such ex parte order of injunction should be extended only after hearing the counsel for the Corporation.

(*iii*) While passing an ex parte order of injunction the court shall direct the plaintiff to give an undertaking that he will not make any further construction upon the premises till the application for injunction is finally heard and disposed of."

Anti-suit injunctions

This extract is taken from ***Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd.,*** (2003) 4 SCC 341, at page 360:

"**24.** From the above discussion the following principles emerge:

"(1) In exercising discretion to grant an anti-suit injunction the court must be satisfied of the following aspects:

(*a*) the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court;

(*b*) if the injunction is declined, the ends of justice will be defeated and injustice will be perpetuated; and

(*c*) the principle of comity — respect for the court in which the commencement or continuance of action/proceeding is sought to be restrained — must be borne in mind.

(2) In a case where more forums than one are available, the court in exercise of its discretion to grant anti-suit injunction will examine as to which is the appropriate forum (forum conveniens) having regard to the convenience of the parties and may grant anti-suit injunction in regard to proceedings which are oppressive or vexatious or in a forum non-conveniens.

(3) Where jurisdiction of a court is invoked on the basis of jurisdiction clause in a contract, the recitals therein in regard to exclusive or non-exclusive jurisdiction of the court of choice of the parties are not determinative but are relevant factors and when a question arises as to the nature of jurisdiction agreed to between the parties the court has to decide the same on a true interpretation of the contract on the facts and in the circumstances of each case.

(4) A court of natural jurisdiction will not normally grant anti-suit injunction against a defendant before it where parties have agreed to submit to the exclusive jurisdiction of a court including a foreign court, a forum of their choice in regard to the commencement or continuance of proceedings in the court of choice, save in an exceptional case for good and sufficient reasons, with a view to prevent injustice in circumstances such as which permit a contracting party to be relieved of the burden of the contract; or since the date of the contract the circumstances or subsequent events have made it impossible for the party seeking injunction to prosecute the case in the court of choice because the essence of the jurisdiction of the court does not exist or because of a *vis major* or force majeure and the like.

(5) Where parties have agreed, under a non-exclusive jurisdiction clause, to approach a neutral foreign forum and be governed by the law applicable to it for the resolution of their disputes arising under the contract, ordinarily no anti-suit injunction will be granted in regard to proceedings in such a forum conveniens and favoured forum as it shall be presumed that the parties have thought over their convenience and all other relevant factors before submitting to the non-exclusive jurisdiction of the court of their choice which cannot be treated just as an alternative forum.

(6) A party to the contract containing jurisdiction clause cannot normally be prevented from approaching the court of choice of the parties as it would amount to aiding breach of the contract; yet when one of the parties to the jurisdiction clause approaches the court of choice in which exclusive or non-exclusive jurisdiction is created, the proceedings in that court cannot *per se* be treated as vexatious or oppressive nor can the court be said to be forum non-conveniens.

(7) The burden of establishing that the forum of choice is a forum non-conveniens or the proceedings therein are oppressive or vexatious would be on the party so contending to aver and prove the same."

1st Patent judgment SC – 1978 Read
2nd – Drugs in 1913 - Novartis