**How to draft an application for a grant of temporary injunction**

Temporary Injunction is one of the most common remedies provided to prevent mischief from being committed, by a party to the suit. Injunctions, as stated under section 37 of the Specific Relief Act, are of two types: Temporary and perpetual injunctions.

Temporary injunctions are granted for a specific period of time and can be revoked either by a subsequent order of the court or the final judgement in the suit. Order 39 of CPC (procedural law) prescribes rules and procedures to be followed while considering a grant of this relief.

It becomes of utmost importance to draft a good application that puts forward a strong set of facts in favour of the applicant for this relief to be granted.

Along with discussing the temporary injunction, in brief, this article will help the reader gain an insight into drafting a good application for a temporary injunction.

**Temporary injunction**

A temporary injunction, in simple terms, is a remedy provided to counter an actual threat posed by one party to the other, in terms of damaging the property or harming the party in person. There are certain grounds on the merits of which an application is judged and it is decided if the injunction should be provided or not. The Rules mentioned under Order 39 lay down procedures for the courts to follow in order to grant this relief to a party to the suit and are discussed in brief:

**Rule 1: Cases where the temporary injunction is granted**

When there is a prima facie case in favour of a party and the following points can be easily drawn from the application:

The disputed property is under the risk of being damaged, alienated or sold.

There is a threat or an intention on the part of the defendant to dispose of the property to defraud his creditors.

The plaintiff has been threatened of being dispossessed (of the disputed property) or of being physically injured by the defendant.

The court may grant a temporary injunction to restrict or to prevent the party from threatening to cause damage or causing damage. Temporary Injunction can be granted during any stage of the proceeding i.e. even before the judgement in the suit is delivered.

**Rule 2: Restraining a breach**

This rule deals with restrainment of an act already in action. Where a defendant has breached a contract or caused harm (any kind) to the plaintiff, irrespective of the fact that compensation is claimed in the suit, the plaintiff can file an application for a temporary injunction. Such an application can be filed before or after the delivery of the judgement. The duration has to be decided by the court.

**Rule 2A: Punishment for breaching the injunction**

By disobeying the order or breaching any of the terms (in relation to rule 1 and rule 2) of the injunction, a person can land in civil jail for 3 months (maximum). The property of such a person can also be ordered to be attached to the suit for a maximum period of 1 year and if the breach continues, then the court is entitled to sell the property and pay the aggrieved party compensation out of the sale return.

**Rule 3: Notice to the opposite party**

The court is bound to send a notice to the opposite party regarding the filing of an application of injunction against it. The court is not bound when the delay caused in sending such a notice would defeat the purpose behind granting the injunction. Provided in such a case i.e. where no notice is sent, the Court shall record reasons behind taking such an action. The applicant also needs to deliver the copy of the application, affidavit, plaint and the documents after such order has been made. An affidavit has to be filed stating that the copies have been delivered to the opposite party on the day of the passing of the injunction order itself or a day after.

**Rule 3A: Time period prescribed to dispose of the application**

Where the notice hasn’t been delivered to the opposite party the court should try to dispose of the application within 30 days and where it isn’t able to do so, it should record the reasons behind such inability.

**Rule 4**

If a party files an application expressing its dissatisfaction with the injunction order, the order can be set aside, modified or discharged on a perusal of the application. Where a false or misleading claim was made in the application that resulted in the grant of the injunction and it was granted without a notice being sent to the other party, the injunction order is to vacate unless it would harm the interest of justice. The reasons have to be recorded for not vacating the injunction order in such a scenario. Where the other party has been given a chance to be heard, unless there are some changes in the circumstances or unnecessary hardship has been caused to the other party, the injunction order shall not be discharged, modified or set aside.

**Rule 5: Injunction against a corporation**

Where an injunction order has been imposed against a corporation, it is not only binding on the corporation but also on all the members and officers of the corporation.

Further, Rules 6-10 discuss various provisions related to interlocutory orders.

**Principles to be followed as per the judgements**

Granting of a temporary injunction is a discretionary power in the hands of the court. However, the court has come up with some guidelines in some past cases to help it decide whether in a case the injunction should be provided or not. In Nawab Mir Barkat Ali vs. Nawab Zulfiqar, certain principles were laid to be observed while granting the temporary injunction. These principles include:

That the applicant has a prima facie case: A prima facie case is one where if the evidence that has led to the suit were believed, it would render the outcome as the only outcome in the case and it is not necessarily a case that can’t be proved otherwise.

The balance of convenience: There should be a balance between the convenience caused to the applicant and the inconvenience caused to the defendant if the injunction is granted. While comparing the balance, if in the scenario of not granting the injunction, the inconvenience caused to the plaintiff turns out to be more only then will an injunction be considered. So the balance of convenience should be in favour of the applicant.

Irreparable loss or injury to be caused if the injunction is not granted: An irreparable injury if caused, would imply that no amount of monetary compensation can restore the party to its position before the suit was filed. A temporary injunction is used as a preventive measure against an irreparable loss.

Where a permanent injunction can’t be granted based on the merits of the case, a temporary injunction shouldn’t be granted too.

Necessary contents in the application for a temporary injunction

The Court’s place of sitting or jurisdiction and the name of the judge.

Civil suit number and the year in the prescribed manner.

The names of the parties to the suit should be properly mentioned as plaintiffs and defendants.

A clear mention of the provision under which the suit has been filed.

A clear mention of the purpose or the cause that has led to the filing of the suit.

A proper description of the disputed property i.e. mapping the ancestry of the property etc.

The chain of events that led to the filing of the suit.

The facts or the reasons that bring out a prima facie case pertaining to grant of an injunction.

Why the ‘balance of convenience’ is in your favour. Balance of convenience means comparative mischief for the inconvenience to the parties. The inconvenience to the petitioner, if temporary Injunction is refused, would be balanced and compared with that of the opposite party, if it is granted.

Mention an irreparable injury that would be caused if the injunction isn’t allowed.

A brief prayer mentioning the course of action the plaintiff desires or is prescribed in the procedural code.

A Schedule containing all the required documents to substantiate the facts mentioned in the application.

An affidavit duly signed by the plaintiff.

Common mistakes while drafting

Negligence in mentioning the names of the parties and the court.

Wrong usage of words, punctuations and faulty grammar.

Not substantiating the facts with enough documents or proofs.

Using legalese instead of simple English.

Not clearly establishing or fulfilling the three basic principles(prima facie case, the balance of inconvenience and irreparable damage) through proper reasoning.

Usage of unclear language in prayer.

Faulty drafting of the affidavit.

Improper attachment of the schedule.

Tips to draft a good application

Make sure that you don’t commit any of the common mistakes. Drafting a good application with correct English grammar and judicious usage of the terms always leaves a good impression on the judge. The claims as mentioned in the application should be well substantiated with facts and documents. Always make sure of using simple terms or avoid using legalese and flowery language. Familiarity with the legal elements is like having in possession a map of an unexplored island. The language of your affidavit should be sharply directed towards the other party. If it has been put forward by the plaintiff then it should be exhaustive and attack the defendant. On the other hand, if you are the defending party then make sure you answer to each and every point made out in the plaintiff’s affidavit and counter it with well-substantiated facts.

**Sample Application**

Here is a specimen depicting how an application structure should be framed based on the facts of the case:

**IN THE COURT OF(District Court)**

**THE CIVIL JUDGE(Name of the judge)**

**Civil Suit No.    /20\_\_\_\_**

…Plaintiff

Vs.

…Defendants

An application for an interim injunction under Order XXXIX Rule 1 and 2 of the Civil Procedure Code

The Plaintiff has filed the suit for (mention the purpose for eg recovery of possession of the disputed property).

That the disputed property (Proper description of the suit property with facts ascertaining unquestionable legal authority of the plaintiff) has been unlawfully kept out of the possession of the plaintiff (or any other reason as per the case).

Start with the chain of events that has led to the filing of the present suit. (This should be divided into subsequent sub paras to enable a clear understanding of the events).

Mention the fact that the chain of events establish a prima facie case and further investigation or action is needed.

A reason that clearly states the balance of favour in plaintiff’s side eg. The disputed property is the only means of income that the plaintiff’s family earns income from and dispossession would lead to unparallel hardships.

Irreparable damage will be caused which wouldn’t be compensated in monetary terms. (The reason might include mental trauma and emotional hurt).

**PRAYER:**

 The plaintiff, therefore, prays that your Honour finds it fit to deliver a show-cause notice to the opposite party putting forward the reasons why the injunction shouldn’t be granted. Pending hearing of such injunction petition, it is prayed that an interim injunction order is passed to restrain the defendants from causing any harm to the disputed property.

**PLAINTIFF(Signature):**

**PLACE:**

**DATE:**

**ADVOCATE FOR PLAINTIFF:**

**SCHEDULE**

Attach a Schedule including all the documents containing the documents related to the property and to substantiate other facts mentioned in the application.

**AFFIDAVIT**

An affidavit is an oath of truthfulness for the facts that have been mentioned in the plaint in a written form. No penal action arises in case of non-inclusion of a fact that wasn’t a part of the plaintiff’s knowledge.