

*Judicial Discretion and
Interim Orders in Indian
Law*

Session - 5

JUSTICE ARAVIND KUMAR



TOPICS THAT WILL BE DISCUSSED

- + I. Exercise of Judicial Discretion
- + II. Judicial Discretion and Prima Facie Evaluation of Cases
- + III. The Life of an Interim Order
- + IV. Supreme Court's Judgment on Asian Resurfacing Case and its Impact on Indian Courts
- + V. Impact of Blanket Stay Orders
- + VI. Stay on Execution of Decree
- + VII. Interim Orders in Arbitration
- + VIII. Interim Orders in Other Matters

I. Exercise of Judicial Discretion

- + • Interim matters require vigilance and alertness from judges to ensure findings at the prima facie stage are sustained at the final stage.
- + • Interim relief can only be granted in aid of final relief.
- + • Interim relief cannot be granted if it would have the effect of granting the final relief.
- + • Exceptions exist where withholding such relief would render the petition infructuous.
- + • If no relief is granted at the final stage or the litigant seeks to withdraw the petition after the grant of interim relief, the Court should pass orders neutralizing the effect of any interim order passed at the interlocutory stage.
- + • If the petition is withdrawn, the court should not continue the interim order. However, if the matter has been heard out and is then withdrawn, the High Court may continue the interim order for a limited period.
- + • A court would not pass an order that would make one party to the lis violate a lawful order passed by another court.
- + • The Court must not give any concrete findings on the merits of the matter at the interim stage

II. Judicial Discretion and Prima Facie Evaluation of Cases

- + • The concept of interim/interlocutory order in the Indian context can be traced to the provisions of Order 39 Rules 1 to 3 CPC.
- + • Before a court grants a temporary injunction, it needs to be satisfied that a person seeking an injunction has a prima facie case in their favour and that the balance of convenience and possibility of irreparable injury being caused also lies in their favour.
- + • The powers of the High Courts to grant interim orders can be traced to the Constitution of India.
- + • Interim orders are temporary in nature usually till the pendency of the writ petition or the final order/judgement is passed.
- + • The Supreme Court in *Zenit Mataplast (P) Ltd. v. State of Maharashtra* held that interim orders are passed on the basis of prima facie findings, which are tentative.

Courts Granting Interim Orders: Three Tests

+ 1. Prima Facie Test

- + Defined as "at first sight," "based on first impression," or "on the face of it."
- + • Refers to evidence that would plausibly support the petitioner's desired conclusion.
- + • The court should be satisfied that there is a serious question to be tried at the hearing and there is a probability of Plaintiff obtaining relief at the conclusion of the trial.
- + • The burden of proof lies with the party seeking for the interim relief to prove the case for an interim relief.

Balance of Convenience Test

- + • A necessary test for any party to seek an interim relief.
- + • The party seeking for an interim relief needs to prove that the balance is tilted towards their favour when both sides are assessed carefully.
- + • The court must weigh the parties' relative merits and determine whether the potential consequences of granting the interim relief outweigh the costs of not granting it.
- + • The balance of convenience must be in favor of granting injunction.

Irreparable Injury Test

- + • Denotes a serious injury that is beyond possible repair and for which damages could never provide a suitable compensation.
- + • It suggests a significant and ongoing harm for which there is no accepted benchmark for estimating the precise amount of harm that will probably occur.
- + • The court has taken a very strict stance in this regard, wherein the irreparable injury is one of the most important ingredient while granting an interim order.

III. The Life of an Interim Order

- + The grant of interim relief in a proceeding is dependent on various factors and can be limited by the court.
- + • The court may restrict the extent and duration of interim orders, including:
 - + - "in the meantime ... during the pendency of the matter"
 - + - "till the next date of hearing of the matter"
 - + - "till the next date of listing"
 - + - "list on (date) ... till then interim order (as specified) to operate"
 - + - "parties are directed to maintain status quo (or any other similar interim order) till further orders of this Court"
- + • The Supreme Court has not provided many judgments on the issue of duration and existence of interlocutory orders.

+ **Arjan Singh v. Punit Ahluwalia: A Case Study**

- + • The case involved an interim order preventing Dr Bawa from transferring the property, which was not extended or vacated.
- + • The Supreme Court held that if the order of injunction was operative up to a particular date, technically the order of injunction shall not remain operative thereafter.
- + • The High Court disagreed with the trial Judge's finding, holding that no order of injunction was operative and any transaction carried out in violation of the order of the court is void.

+ **Ashok Kumar v. State of Haryana**

- + This case involved landowners who acquired lands in 1993 and raised construction issues.
- + • The State of Haryana issued a notification for the acquisition of the lands in 1996, leading to a suit filed by the landowners.
- + • An interim injunction was granted on 30-8-1997, which was extended periodically.
- + • The case was adjourned to 9-9-1998 but the injunction was not extended.
- + • The suit was dismissed for default on 19-8-2000.
- + • The Supreme Court ruled that the interim order was only extended from time to time, and the contention that the injunction order would continue till it was vacated cannot be accepted.
- + • The court emphasized that the exact language of the interim order is crucial.
- + • If the interim order is intended to have a limited effect for a definite time, it cannot be held to have an operation beyond its reach by presumptions.

IV. Interim Orders in Light of Asian Resurfacing:

- + The Supreme Court in the landmark case of Asian Resurfacing of Road Agency Pvt. Ltd. and Ors. v. Central Bureau of Investigation directed that all pending cases where stay against proceedings of a civil or criminal trial is operating will come to an end on expiry of six months unless in an exceptional case such stay is extended by the Court through a speaking order.
- + • The court ruled that any challenge to an order framing charge should be entertained in the rarest of the rare cases only to correct an obvious error of jurisdiction and not to hear the matter again.
- + • The matter should be heard daily to prevent the stay from operating for an undue length.

Asian Resurfacing Case and its Impact on Indian Courts

- + • The Supreme Court's judgment is binding on all Indian courts and applies to all civil and criminal cases.
- + • The Supreme Court's directions have been relied upon by different High Courts when making an order of stay.
- + • The law in the Asian Resurfacing case is not applicable to interim orders passed by the Supreme Court.
- + • The court clarified that if an interim order is passed and is not vacated by reason of pendency of appeal, it should not be assumed that the order will automatically cease to have its effect after six months.

V. Impact of Blanket Stay Orders

- + • Many blanket orders are passed by High Courts granting relief to a party by staying investigations and preventing arrests.
- + • The phrase "no coercive measure to be adopted/taken" is used by many High Court judges while passing interim orders.
- + • The Supreme Court stated in *Neeharika Infrastructure Pvt. Ltd vs the State of Maharashtra* that passing such interim orders affects the right of investigating agencies to investigate.
- + • The court should consider the prima facie case, balance of convenience, and irreparable injury before passing an interim order.

VI. Stay on Execution of Decree

- + • Interference is permissible only if there is gross or palpable perversity in exercise of discretion.
- + • There is no automatic stay of the decree of the trial court upon filing a first appeal.
- + • The Supreme Court issued directions in *Rahul S. Shah v. Jinendra Kumar Gandhi*, (2021) 6 SCC 418, which have the force of law under Article 141.
- + • The executing court is not required to dispose an execution proceeding within 6 months from the date of filing.
- + • In matters concerning dispossession, the High Court can stay the decree on terms and impose reasonable conditions.

VII. Interim Orders in Arbitration:

- + • Arbitral tribunals can grant interim orders, with Section 17 being as effective as Section 9(1) of the Arbitration and Conciliation Act, 1996.
- + • The Supreme Court has stated that the Court should not continue to take up applications for interim relief once the Arbitral Tribunal is constituted and proceedings are pending before it.
- + • The power of the Court under Section 9 is not strictly circumscribed by the provisions of the CPC and the technical requirements of pleadings under Order 38 Rule 5 cannot be imported into Section 9.
- + • The earlier rule of automatic stay of the arbitral award upon filing of the petition under Section 34 has been done away.
- + • The amended Section 36 now makes it mandatory for the Court to pass a reasoned order granting stay.
- + • An unconditional stay cannot be granted in an arbitral award for payment of money, even if the appellant is the government.

VIII. Interim Orders in Other Matters:

- + • In revenue matters and tax recoveries, blanket interim orders are not to be passed unless a clear case of illegality is made out.
- + • In contractual matters, writ petitions are generally not entertained and the court should not generally grant interim orders as it would impact public interest.
- + • In election matters, interim orders staying the election should ordinarily not be granted and writ petitions are generally not to be entertained as alternative remedies are usually available.
- + • In intra court appeals, the court exercises the power of a court of error and is called a court of correction.
- + • An interim order cannot be granted in an appeal filed with delay without condoning the delay.
- + • Article 226(3) states that interim orders which is not decided within 14 days it is vacated.
- + • In cases when a case is dismissed for default and is later revived, the interim order also is revived with the revival of the case unless the order of restoration expressly or by implication excludes the operation of the interim order.
- + • Non-grant of the interim relief in some cases would amount to dismissal of the case itself, and judges should be vigilant to ensure the cause is not defeated by the grant or non-grant of the interim relief.

CONCLUDING REMARKS