**APPLICATION UNDER ORDER 39 RULES 1 AND 2 READ WITH SECTION 151 CPC FOR GRANT OF AD-INTERIM EX-PARTE INJUNCTION**

IN THE COURT OF

Suit No..................... of 200

**In the Matter of:**

AB.............................................................. Plaintiff

versus

*CD*.............................................................. Defendants

APPLICATION UNDER ORDER 39 RULES 1 AND 2 READ WITH SECTION 151 CPC ON BEHALF OF THE PLAINTIFF FOR GRANT OF AD-INTERIM *EX-PARTE* INJUNCTION

**Respectfully Showeth:**

1. That the plaintiff has filed the accompanying suit for permanent injunction against the defendants which is pending disposal before this Hon’ble Court.,

2. That the plaintiff craves leave of this Hon’ble Court and prays that the contents of the accompanying plaint/suit may kindly be read as part and parcel of this application as those are not being repeated herein for the sake of brevity.

3. That the defendants particularly Nos. 1 and 2 are influential people who believe in taking the law in their own hands and also believe on using muscle powers.

4. That the defendants Nos. 2 and 3 are bent upon grabbing the room and kitchen built by plaintiff with his own hard earned money and are threatening to forcibly evict the plaintiff and his family through collusion with goondas and of official machinery functioning.

5. That in case the defendants succeed in achieving their illegal designs of forcibly evicting the plaintiff then the plaintiff will suffer an irreparable loss and injury which cannot be compensated in terms of money.

6. That the plaintiff has a good *prima facie* case in his favour and against the defendant and is likely to succeed therein.

7. That the balance of convenience also lies in favour of the plaintiff and against the defendant.

It is therefore respectfully prayed that during the pendency of the accompanying suit the defendants Nos. 1 to 3, their agents, servants, relatives etc. may kindly be restrained from selling, parting with, alienating, creating third party interest, interferring with the peaceful possession, occupation, enjoyment and use of the demised premises in and adjacent to House No..................... by passing an ad-interim injunction in favour of the plaintiff.

Plaintiff

Through Advocate

Place:....................

Dated:....................

**AFFIDAVIT IN SUPPORT OF APPLICATION**

IN THE COURT OF....................

Suit No..................... of 200

In the Matter of: -

AB.................................................................... Plaintiff

*versus*

CD.............................................................. Defendants

**AFFIDAVIT**

I,........................................................................................................................ .................... do hereby solemnly affirm and declare as under: -

1. That I am the plaintiff in the above noted case and am well versed with the facts of the case, and as such, am competent to depose to the same.

2. That the accompanying application under Order 39 Rules 1 & 2 read with section 151 CPC has been drafted under my instructions. The contents stated therein are true and correct to my knowledge, and the same may be read as part and parcel of this affidavit.

Deponent

**VERIFICATION**

Verified at.................... on this.................... day of.................... that the contents of the above affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therefrom.

Deponent.

**case law**

**WHEN RELIEF TO BE GRANTED.**

The relief should be awarded only in clear cases, reasonably free from doubt, and, when necessary, to prevent great and irreparable injury1.

**BURDEN OF PROOF**

Burden of proof rests upon the complainant to establish the material allegations entitling him to relief2.

**POWER TO BE EXERCISED WITH EXTREME CAUTION.**

To be applied in very clear cases — Guidelines for exercise of discretionary powers3.

**CIRCUMSTANCES NOT COVERED BY ORDER 39 CPC — INHERENT JURISDICTION.**

There being 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, the Courts have inherent jurisdiction to issue temporary injunction in circumstances which are not covered by the provisions of Order 39, if the Court is of opinion that the interests of justice require the issue of such interim injunction4.

**INJUNCTION WHEN ONLY AN INTERIM ORDER.**

The matter ought to have been concluded by a final hearing as to whether temporary injunction will continue, if so on what terms until the disposal of the suit5.

**OBSERVATIONS MADE IN INTERLOCUTORY PROCEEDINGS — FINAL ORDER.**

The trial court in deciding the suit itself will not allow its mind to be affected in any manner by the observations which are made in the interlocutory proceedings. It should be clearly understood that at the final stage the suit is to be decided on the evidence which is led by the parties and any observations made during the proceedings in respect of the prayer for a temporary injunction whether made in the Courts below or by the High Court have no relevance whatsoever in passing the final verdict after the trial of the suit6.

**REJOINDER TO THE REPLY BY THE DEFENDANT AGAINST TEMPORARY INJUNCTION.**

The contingency of filing a rejoinder does not arise in every case, because it would arise only in such cases where some new plea or fact is introduced by the defendant in reply7.

**INTERLOCUTORY ORDER IN THE COURSE OF A PROCEEDING WHEN WILL LAPSE.**

With the final decision of the suit itself, unless of course the suit is one for permanent injunction and the interim injunction is made permanent as part of the decreed order by the Court8.

**FINDING ARRIVED AT IN DEALING WITH TEMPORARY INJUNCTION.**

The findings arrived at in dealing with applications for temporary injunction pending disposal of the suit, even if they relate to any material question involved in the suit cannot take the place of findings in the final decision of the suit9.

**PRINCIPLES THAT GOVERN GRANT OR REFUSAL OF AN INTERIM INJUNCTION.**

They depend upon a variety of circumstances. It is impossible to lay down, any rigid general rule on the subject by which the discretion of the Court ought in all cases be regulated.

It is true, that at the interlocutory stage, the court should not embark upon a detailed investigation on the relative merits of the contentions of the parties and it is enough if the plaintiff raises questions of a substantial character calling for decision after an examination of the facts and the law arising in the case.

The court should avoid expressing any opinion on the merits which would partake the character of a decision of the main issues in the case10.

**JURISDICTION OF THE COURT TO ENTERTAIN THE SUIT.**

It is incumbent upon the Court to determine that question as preliminary issue before making the order of injunction absolute11.

**REJECTION OF PLAINT — TEMPORARY INJUNCTION ISSUED BY**

**TRIAL COURT DOES NOT AUTOMATICALLY STAND REVIVED.**

Orders granting temporary injunction do not aid and supplement the ultimate decision of the suits12.

**CAUTION TO BE EXERCISED**

(a) Fair *prima facie* case;

(b) Actual or threatened violation of the right;

(c) Productive or irreparable or atleast serious injury.

(d) Conduct;

(e) Acquiescence or delay;

(f) Greater convenience and

(g) No efficacious relief.

**THE PHRASES *"PRIMA FACIE* CASE", "BALANCE OF CONVENIENCE" AND "IRREPARABLE LOSS".**

Are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations, presented by mans ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. It is very neigh impossible to find from facts *prima facie* case and balance of convenience. The respondent can be adequately compensated on their success13.

**INGREDIENT TO BE ESTABLISHED TO OBTAIN AN INTERLOCUTORY INJUNCTION.**

(i) In the event of withholding the relief of temporary injunction he will suffer an irreparable injury;

(ii) In the event of his success in the suit in establishing his alleged legal right encroachment whereof is "complained against, he will not have the proper remedy in being awarded adequate damages.

(iii) The plaintiff must show a clear necessity for affording immediate protection to his legal right, if any and

(iv) Lastly the Court has to take into consideration the comparative mischief or inconvenience to the parties14.

**TEMPORARY INJUNCTION UNDER SECTION 151 HAVING SAME IMPORT AS THAT OF THE ORDER PASSED UNDER ORDER 39 RULES 1 AND 2.**

The appeal before the appellate court against such interim order was maintainable15.

**APPELLATE COURT HAS ALL THE POWERS WHICH ARE VESTED IN THE TRIAL COURT.**

But when the Court is considering the legality of the order of grant or refusal of temporary injunction in writ jurisdiction unless there is a fundamental wrong committed by the court below, it is not possible for the High Court to interfere with the orders of the court below which do not suffer from any error of law or infirmity.

***EX PARTE* AD INTERIM INJUNCTION — COURT DECLINING TO PASS ORDER — ORDER NOT APPEALABLE.**

Where court is not satisfied that it should consider an application for temporary injunction under Order 39 Rules 1 and 2 before notice to the Opposite party, it does not pass an order under these provisions, rather postpones the consideration of such application to a later date after notice to the opposite party and against such order no appeal lies16.

**JURISDICTION OF APPELLATE COURT — INJUNCTION PETITION CANNOT BE DECIDED ON MERITS.**

The powers is only to grant interim relief either in the nature of granting ad interim injunction or modify such an order for the purpose of preventing a possible injury or to preserve the subject matter of the suit for the time being. To enable the appellate court to consider the petition for injunction on merits for the first time will be virtually conferring jurisdiction on the appellate court which it otherwise does not have17.

**CONCURRENT FINDING ON THE QUESTION OF BALANCE OF CONVENIENCE.**

Courts having arrived at such conclusion did not commit any error of law or approach in that conclusion. No interference under revisional jurisdiction18.

**GRANT OR REFUSAL OF TEMPORARY INJUNCTION RESTS ON SOUND EXERCISE OF DISCRETION.**

It cannot be lightly interfered with unless it is shown that such exercise of discretion is unreasonable or capricious19.

**COURT TO SCRUTINISE WHETHER THE APPLICATION FOR INJUNCTION IS UNDER ORDER 39 OR SECTION 151 OF THE CODE.**

Where the court proceeded to discuss the requirements of *prima facie* case, balance of convenience and irreparable injury, inference will be justified that the Court acted under order 39 rather than under section 151 CPC. On the other hand, if the court observed that no injunction was justified under order 39 rules 1 and 2 but for the ends of justice, under the circumstances of the case, an order was passed then it would be reasonable to hold that the impugned order was passed under section 151 of the Code. This may be taken only as a guideline and not as a cut and dried formula20.

**CONSIDERATIONS WHETHER AN INJUNCTION SHOULD OR SHOULD NOT ISSUE THREE REQUIREMENTS.**

Whether an order of injunction should not issue on the facts of the case, the Court must also consider apart from *prima facie* case, the question of irreparable or serious injury and balance of convenience.

(a) *Prima facie* case21.

(b) Balance of convenience22.

(c) Irreparable loss and injury23

***Order 39 Rules 1 & 2***

**BANK GUARANTEE — CONTRACT NOT VITIATED BY ANY FRAUD — NO IRRETRIEVABLE INJURY — INJUNCTION NOT TO BE GRANTED.**

In law relating to bank guarantees, a party seeking injunction from encashing of bank guarantee by the suppliers has to show *prima facie* case of established fraud and an irretrievable injury. Irretrievable injury is of the nature as noticed in the case of *Itek Corporation* (566 Federal Supplement 1210), that is plaintiff has no adequate remedy in law and the allegations of irreparable harm are not speculative but genuine and immediate, the plaintiff will suffer irreparable harm if the requested relief is not granted.

Here there is no such problem. Once the plaintiff is able to establish fraud against the suppliers or suppliers-cum-lenders and obtains any decree for damages or diminution in price, there is no problem for affecting recoveries in a friendly country where the bankers and the suppliers are located. Nothing has been pointed out to show that the decree passed by the Indian Courts could not be executable in Sweden24.

**PHRASES *"PRIMA FACIE* CASE", "BALANCE OF CONVENIENCE" AND "IRREPARABLE LOSS".**

The phrases *"Prima Facie* Case" "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation but words of width and elasticity, to meet myriad situations presented by man’s ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice25.

***Order 39 Rule 24.***

**WHETHER AGENT OF DEFENDANT CAN BE PROCEEDED AGAINST?— (YES).**

The expression "person" occurring in sub-rule (1) of the old provision of Rule 2, corresponding to Rule 2A of the Amended Code has been employed merely compendiously to designate every one in a group, defendant, his agent, servants and workmen and not for excluding any defendant against whom the order of injunction has primarily been pressed26.

***Order 39 Rules 1 and 2***

The injunction restraining transfer for property during pendency of the suit can be granted27.

It is now a settled position in law that an appeal lies against the order granting as well as refusing an injunction. There was a difference of opinion on this issue but now by catena of case law the position is settled that an appeal would lie not only against an order granting injunction but also against an order refusing the same as even that order could be described as an order passed under Order XXXIX, Rule 1 or 2 as the case may be.

Where an application for *ex-parte* injunction is made and the court refused to grant such an injunction and instead issues notice of the application to the opposite party. The order of refusal would be an order under Rule 1 or Rule 2 as the case may be and not under Rule 3 and hence it would be appealable under Order XLIII Rule l(r)28.

**BREACH OF INJUNCTION ORDER**

***Order 39, Rule 2(A)(1)***

Where no order of injunction was passed against persons not impleaded in the suit they cannot be held guilty for breach of any order pased in such proceedings.29

**ORDER IN CONTEMPT APPLICATION PASSED BY TRIAL COURT CANNOT BE KEPT IN ABEYANCE BY HIGH COURT WITHOUT DECIDING APPEAL ON MERITS.**

***Order 39, Rule 2A***

Order passed by trial Court in contempt application under Order 39 Rule 2A CPC cannot be kept in abeyance by High Court in appeal without deciding appeal on merits.30

***EX-PARTE* INTERIM INJUNCTION**

***Order 39 Rule 3***

If a Court which passed the order granting interim *ex-parte* injunction did not record reasons thereof or did not require the applicant to perform the duties enumerated in clauses (a) and (b) of Rule 3 of Order 39, such an order can be deemed to contain such requirements at least by implication even if they are not stated in so many words.31

***EX-PARTE* INTERIM INJUNCTION**

***Order 39 Rule 3-A***

Rule 3-A does not say that the period of the injunction order should be restricted by the Court to thirty days at the first instance, but the Court should pass final order on it within thirty days from the day on which the injunction was granted. Hence, the order does not *ipso facto* become illegal merely because it was not restricted to a period of thirty days or less.32

1. A. I. R. 1965 Mys. 310.

2. A. I. R. 1965 Mys. 310.

3. A. I. R. 1965 Mys. 310.

4. A. I. R. 1985 MP 252.

5. A. I. R. 1968 Patna. 47.

6. A. I. R. 1977 All. 145.

7. A. I. R. 1987 Raj. 19.

8. A. I. R. 1987 Mad. 173.

9. (1955) 59 C. W. N. 692: A. l. R. 1988 Cal. 25.

10. A. l. R. 1969 Mad. 42.

11. A. l. R. 1974 Bom. 288.

12. A. I. R. 1991 Raj. 94.

13. A. I. R. 1993 S. C. 276.

14. A. I. R. 1993 All. 117: A. I. R. 1992 Raj. 29.

15. A. I. R. 1992 All. 215.

16. A. I. R. 1993 Orissa78.

17. A. I. R. 1993 Kerala 33.

18. A. I. R. 1974 Patna 376.

19. A. I. R. 1977 Orissa 58.

20. A. I. R. 1987 Gau. 16.

21. A. I. R. 1992 MP 286.

22. A. I. R. 1992 All. 254.

23. A. I. R. 1992 P&H 86.

24. Svenska Handelsbanken v. M/s. Indian Charge Chrome, A. I. R. 1994 S. C. 626.

25. Daipat Kumar v. Prahlad Singh A. I. R. 1993 S. C. 276: 1992 (1) S. C. C. 719: 1991 (6) J. T. 502: 1992 (1) C. C. C. 73: 1991 (2) Scale 1431: 1992 (1) U. J. 501.

26. Ram Prasad Singh v. Subodh Prasad Singh, A. l. R. 1983 Pat. 278.

27. Smt Sunita Jain v. Chander Kanta, 1996(2) C. C. C. 368 (P&H).

28. Tilak Singh v. Pyaroo Khan, 1996 (3) C. C. I. 141 (Bom. ).

29. Mohiddin Basha Abdul Razak v. Municipal Corporation of Gr. Bombay, AIR 2001 Bom. 18

30. G. Kamala Rao v. K. Jawahar Reddy, 2001 (2) CCC 220 (SC).

31. A Venkatasubbiah Naidu v. S. Chellappan, AIR 2000 SC 3032.

32. A. Venkatasubbiah Naidu v. S. Chellappan, AIR 2000 SC 3032.