

9 . Removal of attachment when security furnished or suit dismissed— Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the cost of the attachment, or when the suit is dismissed.

10 . Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale— Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

11 . Property attached before judgment not to be re-attached in execution of decree— Where property is under attachment by virtue of the provisions of this order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon a application for execution of such decree to apply for a re-attachment of the property.

[384][11A . Provisions applicable to attachment— (1) The provisions of this Code applicable to an attachment made in execution of a decree shall so far as may be, apply to an attachment made before judgment which continues after the judgment by virtue of the provisions of rule 11.

(2) An attachment made before judgment in a suit which is dismissed for default shall not become revived merely by reason of the fact that the order for the dismissal of the suit for default has been set aside and the suit has been restored.]

12 . Agricultural produce not attachable before judgment— Nothing in this Order shall be deemed to authorize the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

13 . Small Cause Court not to attach immovable property— Nothing in this Order shall be deemed to empower any Court of Small Causes to make order for the attachment of immovable property.

## **ORDER XXXIX-TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS**

### Temporary injunctions

1 . Cases in which temporary injunction may be granted— Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in a execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [385][defrauding] his creditors,

[386] [(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [387][or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

2 . Injunction to restrain repetition or continuance of breach— (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained, of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may be order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

[388][\* \* \* \* ]

STATE AMENDMENTS

Madhya Pradesh.— In Order 39, rule 2, in sub-rule (2), insert the following proviso:—

"Provided that no such injunction shall be granted—

(a) where no perpetual injunction could be granted in view of the provisions of section 38 and section 41 of the Specific Relief Act, 1963 (47 of 1963); or

(b) to stay, the operation of an order for transfer, suspension, reduction in rank, compulsory retirement, dismissal, removal or otherwise termination of service of, or taking charge from, any person appointed to public service and post in connection with the affairs of the State including any employee of any company or Corporation owned or controlled by the State Government; or

(c) to stay, any disciplinary proceeding, pending or intended

or, the effect of any adverse entry against any, person appointed to public service and post in connection with the affairs of the State including any employee of the company owned or controlled by the State Government; or

(d) to restrain any election; or

(e) to restrain any auction intended to be made or, to restrain the effect of any auction made by the Government; or to stay the proceedings for the recovery of any dues recoverable as land revenue unless adequate security is furnished; and any order for injunction granted in contravention of these provisions shall be void."

[M.P. Act 29 of 1984].

Uttar Pradesh.— In rule 2, sub-rule (2), insert the following proviso:—

"Provided that no such injunction shall be granted—

(a) where no perpetual injunction could be granted in view of the provisions of section 38 and section 41 of the Specific Relief Act, 1963 (47 of 1963), or

(b) to stay the operation of an order for transfer, suspension, reduction in rank, compulsory retirement, dismissal, removal or otherwise termination of service of, or taking charge from, any employee including any employee of the Government, or

(c) to stay any disciplinary proceeding pending or intended, or, the effect of any adverse entry, against any employee of the Government, or

(d) to affect the internal management or affairs of any educational institution including a University, or a Society, or

(e) to restrain any election, or

(f) to restrain, any auction intended to be made or, the effect of any auction made, by the Government unless adequate security is furnished, or

(g) to stay the proceedings of the recovery of any dues recoverable as land revenue unless adequate security is furnished, or

(h) in any matter where a reference can be made to the Chancellor of a University under any enactment for the time being in force;

and any order for injunction granted in contravention of these provisions shall be void".

[U.P. Act 57 of 1976 amended by Notification dated 3.10.1981].

[389][2A . Consequence of disobedience or breach of injunction— (1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.]

3 . Before granting injunction, Court to direct notice to opposite party— The Court shall in all case, 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:

[390] [Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant—

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with—

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.]

[391][3A . Court to dispose of application for injunction within thirty days.— Where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty day from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.]

4 . Order for injunction may be discharged, varied or set aside— Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:

[392] [Provided that if in an application for temporary injunction or in any affidavit support such application a part has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused under hardship to that party.]

#### STATE AMENDMENTS

Madhya Pradesh.— In Rule 4:—

(i) after the words "by the Court", inserted the words "for reasons to be recorded, either on its own motion or"; and

(ii) at the end, add the following proviso:—

"Provided also that if at any stage of the suit it appears to the Court that the party in whose favour the order of injunction exists is delaying the proceedings or is otherwise abusing the process of Court, it shall set aside the order of injunction."

[M.P. Act 29 of 1984].

Uttar Pradesh.— Same as that of Madhya Pradesh except for the word "delaying" substitute "dilating" in the proviso.

[U.P. Act 57 of 1976].

5 . Injunction to corporation binding on its officer— An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

Interlocutory orders

6 . Power to order interim sale— The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property being the subject-matter of such suit or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

7 . Detention, preservation, inspection, etc., of subject-matter of suit — (1) the Court may, on the application of any party to a suit, and on such terms as it thinks fit,—

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit or, as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and

(c) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, mutatis mutandis, to person authorized to enter under this rule.

8 . Application for such orders to be after notice— (1) An application by the plaintiff for an order under rule 6 or rule may be made[393]\*\*\*\*at any time after institution of the suit.

(2) An application by the defendant for a like order may be made[394]\*\*\*\*at any time after appearance.

[395] [(3) Before making an order under rule 6 or rule 7 on an application made for the purpose, the Court shall except where it appears that the object of making such order would be defeated by the delay, direct notice thereof to be given to the opposite party.]

9 . When party may be put in immediate possession of land the subject-matter of suit— Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

10 . Deposit of money, etc. in Court— Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

## **ORDER XL- APPOINTMENT OF RECEIVERS**

1 . Appointment of receivers— (1) Where it appears to the Court to be just and convenient, the Court may by order—

(a) appointment a receiver of any property, whether before or after decree;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver; and