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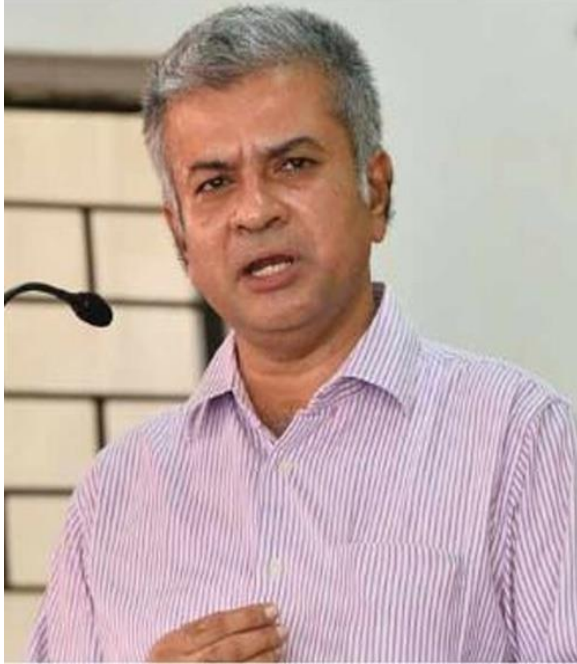
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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

INJUNCTION TO PERFORM NEGATIVE AGREEMENT

By - Lakshay Dhariwal
Amity Law School, Noida

In situations where a contract has both positive and negative obligations, meaning that one requires someone to do something while the other requires them to refrain from doing it, the court may be unable to compel specific performance of the positive obligation, but it is still possible to enforce the negative obligation through an injunction. For instance, in India, Section 41(e) of the Specific Relief Act, 1963, generally forbids the issue of injunctions when specific execution is feasible. However, even in situations where particular performance of the positive obligation is not feasible, the law permits the use of an injunction to enforce a negative obligation.

10.1 Section 40: Damages in lieu of or in addition to injunction:

In a lawsuit seeking an obligatory injunction under Section 39 or a permanent injunction under Section 38, the plaintiff may pursue damages either in lieu of or in addition to the injunction of, or in place of, such an order, and the Court may grant such damages if it deems appropriate. In the event that there is no claim, the issue of damages will not come up for discussion, although the plaintiff may change the plaint in that regard at any point during the legal process.

10.2 Limitation Governing to seek injunctive relief:

The statute of limitations governing the pursuit of injunctive remedy is three years from the date on which the right to sue accrues, as stated in Article 113 of The Limitation Act lawsuit for an injunction Three years, as stated in Article 113 of the Limitation Act of 1963 (from the date on which the right to sue accrues).

11.1 SYNOPSIS

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1. Consequential Relief.

In a suit for declaration to the effect that defendants are neither owners nor have any right of redemption, there was omission to seek declaration against statutory order of Collector granting redemption of mortgage and firming possession of defendant therefore, suit was barred .

2. Contract in restraint of trade

The question whether an agreement is void under Section 27 of the Contract Act, 1872 must be decided upon the wording of that section. There is nothing in the wording of Section 27 to suggest that the principle stated therein does not apply when the restraint is for a limited period only or is confined to a particular area. Such matters of partial restriction have effect only when the facts fall within the exception to the section.

3. Discretion of Court.-

There is no doubt that the Courts have a wide discretion to enforce by injunction a negative covenant. Both the Courts below have concurrently found that the apprehension of the respondent-Company that information regarding the special process and the special machinery imparted to and acquired by the appellant during the period of training and thereafter might be divulged was justified; that the information and knowledge disclosed to him during this period was different from the general knowledge and experience that he might have gained while in the service of the respondent-company and that it was against his disclosing the former to the rival Company which required protection. It was argued, however, that the terms of clause 17 were too wide and that the Court cannot sever the good from the bad and issue an injunction to the extent that was good. But the rule against severance applies to cases where the covenant is bad in

law and it is in such cases that the Court is precluded from severing the good from the bad. But there is nothing to prevent the Court from granting a limited injunction to the extent that is necessary to protect the employer's interests where the negative stipulation is not void.

There is also nothing to show that if the negative covenant is enforced the appellant would be driven to idleness or would be compelled to go back to the respondent-Company. It may be that if he is not permitted to get himself employed in another similar employment he might perhaps get a lesser remuneration than the one agreed to by Rajasthan Rayon. But that is not consideration against enforcing the covenant.

The evidence is clear that the appellant has torn the agreement to pieces only because he was offered a higher remuneration. Obviously, he cannot be heard to say that no injunction should be granted against him to enforce the negative covenant which is not opposed to public policy. The injunction issued against him is restricted as to time, the nature of employment and as to area and cannot therefore, be said to be too area wide or unreasonable or unnecessary for the protection of the interests of the respondent-Company.

4. Enforcement of negative covenant.

Where the Court is unable to perform the covenant, it shall not bind the Court from granting the restraining order to perform the covenant, but the Court is not required to do so in every case.

5. Industrial matters and industrial disputes.

The definitions of "an industrial matter and an industrial dispute in Sections 3 (17) and 3 (18) of the Bombay Industrial Relations Act, 1947, the Industrial Court was given the power to decide disputes as to the mode of employment and that contravened the fundamental right guaranteed under Article 19 (1) (g), for it enabled an Industrial Court to adjudicate on the mode of employment and thus, interfere with the right of an employer to carry on his trade as he liked subject to reasonable restrictions. The Supreme Court observed that assuming that the mode of employment used in Section 3(18) included such questions as abolition of contract labour, the question would still be whether a provision which enabled an industrial Court to adjudicate on the question whether contract labour should or should not be abolished, was an unreasonable restriction on the employer's right to carry on his trade. The Supreme Court observed that it was not possible to see how the fact that power was given to the Industrial Court, which was a quasi-judicial Tribunal to decide whether contract labour should be abolished or not would make the definition of 'an industrial matter' insofar as it referred to the mode of employment an unreasonable restriction on the fundamental right of the employer to carry on trade. The

Supreme Court further held that the matter being entrusted to a quasi-judicial Tribunal it would be decided after giving both parties full opportunity of presenting their case and after considering whether in the circumstances of a particular case the restriction on the mode of employment was a reasonable restriction or not. The Tribunal would always go into the reasonableness of the matter and if it came to the conclusion that the mode of employment desired by labour was not reasonable, it would not allow it; it is only when it came to the conclusion that the mode of employment desired by labour was a reasonable restriction that it would insist on that particular mode of employment being used. The Supreme Court also held that the decision whether the mode of employment in a particular case was a reasonable restriction or unreasonable one was in the hands of a quasi-judicial Tribunal and, in the circumstances, it could not be said that by providing in Section 3 (18) that an industrial matter' included also the mode of employment, there was any contravention of the fundamental right of the employer to carry on trade. The Supreme Court observed that if the argument on behalf of the appellant were to be accepted it would mean that judicial and quasi-judicial decisions could be unreasonable restrictions of fundamental rights and that such a thing was not envisaged at all, by the Constitution.

This reasoning would apply more forcibly to Courts of law

6. Injunction to enforce negative stipulation.-Injunction to enforce negative stipulation can be refused, unlike under common law.

7. Interlocutory injunction.-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 lies the 'balance of convenience'.

In the instant case, G.B.C. had approached the High Court for the injunction order granted earlier, to be vacated. Since the relief is wholly equitable in nature; the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was no unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. Thus there is not any infirmity in the impugned order of the High

Court dated 31.3.1995 granting an interim injunction.

7. Negative covenant in service contract.

A negative covenant in a service contract for a certain period specified in the contract cannot be treated as one in restraint of trade.

8. Plea of bar.

Merely because the plaint says in the prayer such other relief be granted to the plaintiff it does not mean that without a specific plea for possession and disregarding bar under Section 42 (proviso) of the Specific Relief Act, the suit could be decreed even with reference to the portions of which the plaintiff has been in possession.

9. Relief of injunction

In order to succeed in the suit, it was sufficient for the plaintiffs to show that the land was in possession of the plaintiff or any of them and as the defendants had erected fencing of thorny bushes in the portions on the eastern side, as indicated by letters EFMNOE in the map attached to the plaint, they had made an encroachment on the land. The question whether plaintiff No. 1 or plaintiff ric again he datin the on indie s at al rama so fara in by the Courts below that the defendant was not in possession of the land and had no justification to make the encroachment complained of. It is true that the Courts below found as a fact that plaintiff No. 1 was in possession of the land but in view of the amendment sought, for the High Court could have treated the statement of the plaintiffs to mean that the land in dispute could be treated as being in possession of any of the plaintiffs — whether it was plaintiff Nos. 1, 2 or 3 — because in the present suit, the inter se title of plaintiff Nos. 1, 2 and 3 was not involved at all. Therefore, broadly construing the amendment, there does not appear to be any defect in the frame of the suit so as to negative the relief of injunction prayed for by the plaintiffs.

10. Suit for declaration -Suit filed for mere declaration, without relief of recovery of possession is not maintainable.

Where plaintiff was not in exclusive possession of the disputed property, suit for declaration without seeking the relief of possession was not maintainable.



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