

Report on a reference by the government relating to fixing time-limit of an order of temporary injunction in a suit or other proceeding

This is a reference under section 6 (Ena) of the Law Commission Act, 1996, seeking opinion of the Commission as to whether a time-limit of three months can be fixed for an order of temporary injunction passed in a suit or other proceeding to remain in force and whether provision can be made whereunder an order of temporary injunction shall stand automatically vacated if the party at whose instance such temporary injunction has been granted prays for adjournment of the suit or the proceeding in question.

In the reference the government have stated that if temporary injunction is granted, the disposal of the original suit or proceeding is delayed and justice is hampered.

The object of an order of temporary injunction is to restrain a party to the suit from wasting, damaging or alienating any property in dispute or to prevent the defendant from removing or disposing of his property with a view to defraud his creditors.¹⁶

Another object of an order of temporary injunction is to restrain the defendant from committing a breach of contract or other injury of any kind, either before or after judgment.¹⁷

Naturally, such orders of temporary injunction are supposed to remain in force in most cases until the suit or proceeding is finally disposed of. Otherwise, the very objective of an order of temporary injunction is likely to be defeated, for, if the property in dispute is destroyed, damaged, alienated or removed during the pendency of the suit or proceeding, the very purpose of such suit or proceeding will be foiled.

¹⁶ See rule 1, order 39, Code of Civil Procedure, 1908.

¹⁷ See rule 2, order 39, Code of Civil Procedure, 1908.

On the other hand, in many cases a party at whose instance temporary injunction is granted employs various machinations to delay the disposal of the suit or proceeding. A safeguard against such machinations is very reasonable.

The Law Commission dealt with almost a similar reference made by the Government earlier under memo. No. 226- আইন dated 9-5-2002 and submitted its report and recommendations on 27-11-2002.¹⁸ The said report also covers the present reference. The Commission is of opinion that implementation of this report dated 27-11-2002 will largely solve the problem raised in the present reference.

Accordingly, it is recommended:-

Recommendation

(1) The recommendations made by the Law Commission in its report "relating to fixing of time-limit of temporary/ad-interim injunction granted by the courts" dated 27-11-2002 may be implemented.

(Justice A.K.M. Sadeque)
Member
Law Commission

(Justice Naimuddin Ahmed)
Member
Law Commission

(Justice A.T.M. Afzal)
Chairman
Law Commission

¹⁸ See "Report of the Law Commission relating to fixing of time-limit of temporary/ad-interim injunction granted by the courts" dated 27-11-2002.