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What additional authority does the civil court need to uphold the objectives of temporary injunction? – A case study of Bangladesh

Md. Sekander Zulker Nayeen*, Md. Harun Reza and Sumona Kabir

The civil court in Bangladesh, following some formal procedures, usually protects the subject matter of any suit by issuing an order of temporary injunction. But such orders are sometimes disobeyed and *in toto* preservation of suit property becomes unfeasible. Even the remedial measure for such disobedience seems insufficient to punish or restrain the violators. This study suggests that if the civil court had sufficient legal authority to direct local police to restrain the opposite party from violating its orders, the ultimate objectives of temporary injunction could be upheld properly. The higher courts in India have also found the legality of this concept.

1. Introduction

The court system of any welfare country like Bangladesh has been set up for administering justice between the parties and, therefore, must be deemed to have all such powers as may be necessary to ensure full and complete justice to the parties seeking relief. The main responsibility of a civil court is to determine the rights of the parties. Once a suit is instituted, some time elapses before the court reaches a final decision on the rights of the parties. It may therefore be necessary to preserve the subject matter of the suit from the institution of the suit until its final disposal. The absence of safeguarding provisions in such interim period may cause great hardship or prejudice to a party or cause the suit to have no substance or physical effect. To protect the subject matter from any prejudice, the Code of Civil Procedure¹ has empowered the court to grant of interim reliefs. Temporary injunction is one of such interim reliefs. It is a judicial process whereby a party is required to do, or to refrain from doing any particular act.² The underlying object of granting a temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change until the final determination of the suit. The nature of a protective relief granted in favour of a party is to prevent future possible injury.³ But sometimes, there are some litigants who disobey the order of temporary injunction and thereby make the suit a vain effort. The CPC provides some legal remedies, such as punishment of those persons who disobey the court's order. This remedy

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¹The Code of Civil Procedure herein after referred to as CPC.

²Takwani, Justice C.K. Thakker, *Civil Procedure* (4th edn, Eastern Book Company, Lucknow, India 1997) 197.

³*I.T.O v. Mohd. Kunhi*, AIR [1969] SC 430.

however sometimes seems insufficient since the ultimate object of the temporary injunction order was to preserve the subject matter of the suit, not to punish the parties.

This study was undertaken with a view to exploring the real objectives and the existing provisions of temporary injunction by carrying out an empirical study on some cases of different district level courts in order to assess the effectiveness of existing provisions and the prospective authority of the civil court for upholding the objectives of temporary injunctions.

2. Justification and methodology

The authors have gone through the existing legal provisions relating to temporary injunction in Bangladesh. So far as our search goes, there is no legal study on the subject matter. Various books on this subject have only laid down legal provisions and not a single analysis of the problem exists.

This study is an empirical research along with some analyses of relevant provisions and case laws. As a part of the empirical study, observations have been taken on some cases which are or were under trial in different district level courts. From these observations, The authors have found out the research questions and endeavored to resolve those by analysing both primary and secondary data. Primary data has been collected by way of case observations and questionnaire survey. The provisions as laid down in the CPC have been used as primary data as well. On the other hand, law reports and foreign legal provisions have been analysed as the secondary data. References to some Indian case laws are used in order to assess the legality of some ideas since the concerned laws and principles in Bangladesh are similar to those of India. It is pertinent to note that a random selection method was used to find the respondents.

3. Discussion and result

3.1. *Objectives of temporary injunction the relevant laws*

The object of an interlocutory or temporary injunction is to preserve matters pending the trial of the dispute. It does not assume finality to dispose of the question of the legal right, and will only impose such restraint as may suffice to stop the mischief complained of, or where the object is to stay further injury, to keep things as they are at the moment.⁴ In other words, temporary injunction is a provisional remedy that is invoked to preserve the subject matter in its existing condition. Temporary injunction is not conclusive as to the right of the parties, and it does not determine the merits of a case or decide issues in controversy. It seeks to prevent threatened wrong, further injury and irreparable harm or injustice until such time as the rights of the parties can be ultimately settled. The purpose of a temporary injunction is to maintain the status quo and prevent irreparable damage or change before the legal questions are determined. The main objective of using a temporary injunction is to get immediate relief.

⁴*Plimpton v Spiller* [1876] 4 ChD 286 at 289, *Preston v Luck* [1884] 27 ChD 497 at 506 cited in *Halsbury's Laws of England*, vol 24 (4th edn, Reissue, Butterworth Law Publishers Ltd, London, UK 1991) 418.

Rule 1 of Order XXXIX of the CPC deals with cases in which temporary injunction may be granted and read as follows:

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 execution of a decree or
- (b) That the defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors.

The court may by 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 as the court thinks fit, until the disposal of the suit or until further order.

An order of temporary injunction is an equitable relief. It has been already settled that in order to obtain an order of temporary injunction, the applicant has to prove that he has a prima facie and arguable case; the balance of convenience or inconvenience is in his favour and he will sustain irreparable loss if no such injunction is issued.⁵ For example, the basic objectives of an order of temporary injunction may be to preserve the land that is the object of a lawsuit from being wasted, damaged, alienated, wrongfully sold, removed fraudulently, or disposed of to the prejudice of any party.

3.1.1. *Basic guidelines for granting a temporary injunction*

There cannot be any hard and fast rule as to which facts are sufficient to establish a prima facie case. It depends upon the facts and circumstances of each case. For example, in a suit for declaration of title to land, the plaintiff may make an application for a temporary injunction against the defendants to restrain them from disturbing his possession. In such a case, if he claims his title on the basis of purchase, he must submit his sale deed or if he claims title by the right of inheritance, he must put forward the *khatian* (record of right prepared by government on the basis of possession in the land) and rent receipts to show that the land belonged to his predecessor in interest. If he fails to do so, it may be said that he failed to make out a prima facie case in his favour.⁶ To obtain an order for temporary injunction in a suit for perpetual injunction, only the exclusive possession of the plaintiff is to be taken into consideration by the court.⁷ While presiding over the civil court, the first and second authors remarked that in a suit for perpetual injunction, plaintiffs seeking a temporary injunction had to prove their prima facie case by adducing mutation record, duplicate carbon copy (DCR) and rent receipts in addition to the registered deed and *khatian*. These

⁵*Uttara Bank v Macneill and Kilburn* [1981] 33 DLR (AD) 298 at para 6.

⁶Haque, Justice Mohammad Hamidul, *Trial of Civil Suits and Criminal Cases* (2nd edn, Dhaka, April, 2011) 121.

⁷6 MLR (AD) 206.

documents need to be taken into consideration to justify the case of prima facie possession. The applicant must show that he has some sort of right and the defendant is going to infringe or disturb that right.⁸ It is therefore mandatory to establish a prima facie case.

Another basic principle is that the plaintiff must show that an injunction is necessary to protect him from irreparable injury: mere inconvenience is not enough. The term 'irreparable injury' is understood to mean an injury which is substantial and could never be remedied or adequately remedied or atoned for by damages.⁹ The loss which cannot be remedied may be considered as irreparable loss. The loss measurable in terms of money is not considered as irreparable loss except some rare cases. Therefore, if monetary compensation seems adequate, temporary injunction should not be granted. In this regard, the Supreme Court of Bangladesh observed that in order to get temporary injunction, a party must claim, *inter alia*, a legal right and allege an injury which is not ordinarily reparable by monetary compensation.¹⁰ Irreparable injury does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages.¹¹ So, there should be a likelihood of injury which, in any way, could not be assessed or compensated in terms of money.

The third notion is that the court, in granting a temporary injunction, has to take into consideration the issue of balance of convenience or inconvenience of the respective parties. If refusing to grant the injunction causes more inconvenience to the petitioner, it should be granted. On the other hand, if granting the injunction would cause more inconvenience to the opposite party, it should not be granted. As the impact of temporary injunction is not permanent and it remains in force until further order of the court or until the final disposal of the case, no final measures weigh out here. The court is to see the better position of the parties, i.e. the possibility of greater harm entitles one to have the order of temporary injunction in contrast to one who is likely to suffer lesser harm. In this regard, the highest court of Bangladesh held that the court must weigh one need against another and determine where the balance of convenience lies.¹² Moreover, before granting temporary injunction, the court needs to apply its mind properly as the object of granting temporary injunction is to protect the subject matter of the suit and in some cases to keep it as it is. The court needs to be satisfied that the property or matter has all possibility of being damaged if the injunction is not granted. In fact, the court is to go through the test of handiness and hassle of the respective parties. In order to do so, the court may resort to the test of balance of convenience or inconvenience. Necessity of the parties is the optimum test for granting temporary injunction. The court needs to see the real

⁸*Gloland (Far East) pvt limited v Government of the peoples of Bangladesh*; 4 BLC 480, at para 8, *Pran Ballave Pal v Santi Ranjan Saha*; 7 BLD (AD) 187 at Para 8.

⁹*Civil Station Sub-Committee v Govindarao*, AIR [1937] Nag 137–138.

¹⁰*Sarhind Garments Ltd v Glory Truth Industries Ltd*, 49 DLR 260 para 12.

¹¹*Dalpatkumar v Prahlad Sing*, 1 SCC [1992] 719–721.

¹²See supra note 5 para 11.

necessity of the parties who seek the same. If it is seen that the petitioner applied only to harass the opposite party, the court should not grant the injunction.

3.1.2. *Effect of violation of an injunction order*

If an order of temporary injunction is passed against a person, after service of the order upon him, he is bound to obey the order so long as it remains in force. He/she cannot disobey the order on the ground that the order was not legal.¹³ If such an order is disobeyed or violated, the aggrieved party is required to file a miscellaneous case.¹⁴ Like other civil suits, this miscellaneous case will follow the usual civil court proceedings. Such a case is considered to be a quasi-criminal proceeding, and like a criminal case, the allegation of disobedience must be proved strictly and satisfactorily.¹⁵ In the application, the time, place, and manner of disobedience are to be stated clearly. If the applicant proves so in word, the court 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 six months.¹⁶ The aim of the punishment should be primarily to uphold the dignity of the court and maintain due respect for the administration of justice. There should be no element of vindictiveness in it, and it should not be allowed to be used for feeding a private grudge or as an offensive weapon to satisfy private vendetta.¹⁷ The basic distinctions between the objectives of the temporary injunction and the violation misc. case are related to the questions of maintaining the usual state of the property involved in the suit as well as punishing the violators. The former is issued to keep the general status of the suit property intact whereas the latter is issued as a punitive measure against the violators. The first one is related to the suit property, and the second is related to the persons concerned with the property and the dignity of the court. Punishing the persons who disobey the court order is not for protecting the suit property from being damaged or wasted; it aims to punish the violators after the damage has occurred.

3.2. *The prevailing scenario observed through case studies*

The CPC provides numerous provisions with a view to preserving the disputed subject matter's status quo. Are all these provisions sufficient? Some cases will be analysed below in order to answer this question.

¹³Haque, Justice Mohammad Hamidul, *Trial of Civil Suits and Criminal Cases* (2nd edn, Judicial Administration Training Institute, Dhaka, Bangladesh, April 2011) 132.

¹⁴In practice, it is called as Misc. Case under section 141 of the CPC which runs as, 'The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction'.

¹⁵*Rafiqul Hossain @ Ranaesh and Another v Lal Mohan Saha and others*, 45 DLR (HCD) 718 at para 8; *Sultan Ahmed Hawlader and others v Habibur Rahman Munshi*, 39 DLR HCD 260 at para 7.

¹⁶Rule 2(3) of Order XXXIX of the Code of Civil Procedure 1908.

¹⁷AIR [1955] Cal 351 at 353 cited in Manohar & Chitaley, *Commentary on The Code of Civil Procedure*, vol 5 (11th Revised & Enlarged edn, All India Reporter Pvt. Ltd. Nagpur, Maharashtra, India, 2012) 1125.

Case 1: A violation misc. case is instituted before the Assistant Judge 2nd Court, Dhaka, arising out of civil suit No. 4 of 2007, seeking remedy for violation of the order of temporary injunction granted by the court. The short facts of the case reveal that the petitioner was the owner and possessor of the alleged property. While the defendant was trying to evict the petitioner, he lodged a General Dairy (GD) before local police station and afterward instituted the present suit seeking a permanent injunction. In the meantime, the petitioner sought a temporary injunction, which was granted by the court on 28 November 2007. However, the defendants continued their illegal disturbance, and the petitioner resorted to filing a GD at the local police station. Police were reluctant to take action. The defendant, thereafter, violating the order of the court, evicted the petitioner from the property, a factory office, and caused damage to the apparatus valued at half a million Taka (approximately 4000 British pounds). As a result, the petitioner filed a violation misc. case before the civil court. In this case, since the defendant had violated the order of temporary injunction, the ultimate purpose of granting temporary injunction became frustrated, and thus, justice was overthrown. No subsequent remedial measures, such as filing a misc. case before the civil court or a criminal case before the magistrate court could compensate for the injury.

Case 2: A misc. case was filed before the Senior Assistant Judge 6th Court, Dhaka, alleging violation of a temporary injunction granted by the same court. In that case, the petitioner filed a civil suit No. 11 of 2012 to obtain a permanent injunction. The plaintiff also asked for temporary injunction and the court upon hearing granted the same. But the defendant, violating the order of temporary injunction, took possession of the suit property and disfigured it. The petitioner sought assistance to local police who replied that civil procedure gives them no authority to restrain the defendant. Consequently, the petitioner filed a misc. case.

Case 3: The plaintiff filed a civil suit No. 162 of 2006 before the Senior Assistant Judge Court, Muktagacha, Mymensingh, alleging adverse possession and eviction of the defendant. The plaintiff also applied for temporary injunction so that the defendant could not alienate the property in any way or construct a house there. The court upon hearing of the case granted temporary injunction in favour of the plaintiff. The defendant, at earlier stage, obeyed the order of the court but subsequently constructed building on suit land, thereby violating the order. The petitioner, afterward, filed a misc. violation case¹⁸ against the defendant for granting civil custody of the defendant.

Case 4: The plaintiff instituted a civil suit No. 252 of 2011 before the Senior Assistant Judge Court, Noakhali, urging possession of some land property. During the suit, the plaintiff applied for temporary injunction and the learned court upon hearing both parties granted the same in favour of the plaintiff. Subsequently, the defendant, violating the order, constructed a building on the land. As a result, the plaintiff applied for the advocate commissioner to conduct a local inspection regarding the violation, which was granted by the court. The commissioner, after completion of his investigation in the presence of local people, submitted his

¹⁸The second author of the present effort as the presiding judge of the court observed the case fact.

report to the court. Thereafter, the plaintiff brought this misc. violation case for the civil custody of the defendant.

Case 5: A misc. violation case was filed before the Assistant Judge Court, Dhubaura, Mymensingh, alleging a violation of the temporary injunction granted by the court. In that case, the petitioner had filed a civil suit No. 09 of 2009 for a permanent injunction directing the defendant not to set up any deep tube well within 2500 feet of the existing one. The plaintiff also sought a temporary injunction, which was granted by the court. The defendant, disobeying the order of temporary injunction, set up a deep tube well. The petitioner went to local police station for assistance, but the police replied that they have no authority to restrain the defendant since there is a suit before the civil court. The petitioner, finding no other alternative, instituted a misc. violation case which, along with the original suit, proceeded for years and lastly saw the light of hope. The court pronounced judgment and order in the suit and misc. case, respectively.¹⁹ Thus, the petitioner obtained his legal remedy under the existing provisions of the CPC despite a lengthy delay of a number of years.

Case 6: Mrinal Bondhu Bhattacharjee is an RS recorded owner of a land in Manikganj town. Power Grid Company Ltd., Manikganj, started to erect three electric pillars on the land. Mrinal Bondhu instituted a suit for permanent injunction before the court of Senior Assistant Judge, Manikganj Sadar,²⁰ (No. 129 of 2009) and sought an order of temporary injunction so that the defendant, Power Grid Company Ltd, could not deform his land by constructing the said pillars. The court issued an order of ad interim injunction restraining the defendant from constructing the pillars until the date of the hearing on the injunction petition. The defendant, defying the order, attempted to continue construction work. The plaintiff rushed to the local police station and convinced the officer-in-charge of the station to assist him in keeping the defendant from violating the court order. The police officer provided the petitioner with such assistance and orally directed the defendant not to continue his disobedience of the court order until further direction. As a result, the disputed property remained un-destroyed and unchanged for the duration of the court order.

In most cases, it has been observed that after filing a civil suit, the plaintiff usually applied for a temporary injunction which was granted by the court to maintain the status quo in respect of concerned property. Particularly, temporary injunction is granted for protecting the land or property from being damaged or alienated in any way. It is also observed that in some cases, the defendant violated the injunction order and ultimately the purposes of granting temporary injunction were frustrated. Extracts of the case studies may be summed up as follows:

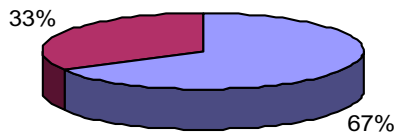
- i) In all the above-mentioned cases, one party to the suit requested a temporary injunction which was granted by the court.
- ii) The party against whom the order was passed disobeyed or tried to disobey the order of temporary injunction recklessly.

¹⁹The second author as a presiding judge of the court observed the fact of the case and decided it finally.

²⁰The first author as a presiding judge of the same court observed the fact of this case.

- iii) In most cases, the affected parties sought remedy by filing violation misc. cases following the prescribed legal provisions of CPC. Some affected parties also requested assistance from the police to prevent the opposite party from defying the temporary injunction order.

First Initiatives by the affected parties



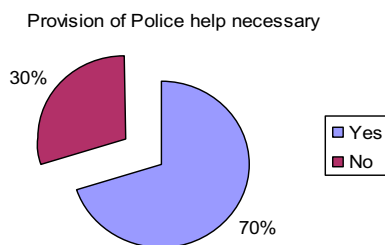
- iv) In some cases, the police responded to the aggrieved party and protected the concerned property by compelling the defendant to obey the order of the court, while in other cases, they were reluctant to interfere with civil court's affairs as they felt they did not have sufficient authority.
- v) In most of the cases, the subject matters of the suit have been damaged or wasted and the ultimate objectives of the temporary injunction have been frustrated. Thereafter, the affected parties in those cases sought punitive remedies by instituting violation misc. cases against the violators. But in one case, where the party got police help for upholding the civil court's order, the subject matter of the suit became protected from being damaged or wasted. In terms of efficacy, the latter initiative succeeded over the prescribed legal provisions from the view point of upholding the objectives of temporary injunction.
- vi) In some cases, it has been observed that the affected parties had to wait for years before obtaining punitive remedies against the violators and the ultimate objective of the temporary injunction was frustrated.

3.3. The prospective authority of the civil court to uphold the objectives of temporary injunction

In order to verify the attempted hypothesis, we have collected data by questionnaire method besides the case studies. We interviewed 10 respondents and asked 11 questions to each of them separately. In reply to the question as to whether the order of temporary injunction served its purposes, 60% of them replied in negative, mainly because the opposite parties violating the court's order dispossessed them from the land in dispute. Sixty percent of respondents thought that mere order of temporary injunction could not protect their suit property from being damaged. Again, in response to the question as to what steps did they take when the opposite parties violated the court order, 30% of them replied that they resorted to local police, while 40% replied that they resorted to the court. After that, 50% of the respondents disclosed that they received no support from the police when they sought it. They also revealed that in some cases, the police said

that they had no power to interfere in the execution of civil courts' orders. However, some of the litigants said that the local police helped them to protect the suit property as it was. But 60% of them disclosed that the police demanded monetary compensation from them for this assistance. Our interviews reveal that 60% of the litigants offered bribes to the police to obtain protection of the property involved in the lawsuit. As mentioned earlier, 40% of the respondents returned before the court when the opposite parties violated the temporary injunction. However, 60% of them mentioned that they could not successfully prove the misc. case filed. Moreover, 50% of the litigants had to wait for the disposal of the misc. cases for more than a year. Finally, in response to the question as to whether it would be better for preserving the suit property if there was scope for the police to help uphold the temporary injunction order, 70% of the litigants interviewed responded positively. They commented that it would be very easy to protect the suit property as well ensuring respect of the temporary injunction if the court could direct the local police to safeguard its order.

The pie chart below shows the percentage of respondents supporting the scope of police help for upholding temporary injunction order.



In fact, examination of the case studies and interviews of the respondents demonstrates the necessity of police intervention in upholding the order of temporary injunction. In this context, a question may arise: Could the civil court be lawfully empowered to direct the police to follow its order, like a criminal court could? It is worth mentioning that in some special cases, i.e. execution of decrees of the family court,²¹ the judge of the family court, being a judge of a court of civil nature, is empowered to exercise the power of a first class magistrate. Unlike regular cases, the issue of temporary injunction is a sensitive matter. On the one hand, it causes delay in the early disposal of the suit but on the other hand, it is needed to preserve and protect the suit property. So due care and legal steps could be taken to improve the enforcement of temporary injunctions, which may mean empowering civil courts with the authority to direct the local police.

In practice, it was observed during this research that plaintiffs, although having obtained an order of temporary injunction in their favor, could not protect their

²¹Section 16 (3B) of the family courts Ordinance, 1985 runs as 'For the purpose of execution of a decree under sub-section (3)(b), the Judge of the family court shall be deemed to be a Magistrate of the first class and shall have all the powers of such Magistrate under the Code of Criminal Procedure 1898 (Act V of 1898), and he may issue a warrant for levying the decretal amount due in the manner provided in that Code for levying fines, and may sentence the judgment debtor, for the whole or any part of the decretal amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to three months or until payment if sooner made'.

property. Moreover, they become dispossessed and helpless before arm power of the party violating the order. When the aggrieved party files a misc. case against the violation of injunction, the original suit and the misc. case then proceed simultaneously in same order sheet. It usually takes a long time to dispose the original suit as well as misc. case. Both suits have to go through all formal stages (i.e. institution of complaint/petition, summons to defendant/opposite party, return of summons, filing of the written statement/written objection by the defendant, resorting to alternative dispute resolution, framing of the issues/charges, steps under section 30 of the CPC, peremptory hearing, further hearing, argument, and judgment) of civil procedure. During that time, the defendant, though being in violation of the law, enjoys illegally the subject matter and remains beyond the reach of law. Because an application to commit for a violation of an order for an injunction is a matter of the strictest law²² and therefore where a defendant has been restrained from causing a particular injury by a particular act he will not be treated as contumacious unless it is clearly proved that the injury complained of has been caused by his committing that particular act.²³ Since the violation misc. case is quasi-criminal in nature, in most of the cases, we observed that it is dismissed due to lack of evidence as to exact time, place, and manner.²⁴ The wrongdoer does not therefore face any consequences. Thus, proper protection of disputed property cannot be maintained, which, in the long run, frustrates the goal of justice.

It has been found that in some cases, the plaintiff, after having been dispossessed, requested the local police to give the suit property proper protection. But in a civil justice system, the police cannot enforce the temporary injunction order of a civil court. Nonetheless, the police have in many cases been successful in protecting the disputed property through calling upon the defendant to maintain courts' order as well as peace in the society. In Bangladesh, neither the court nor the police have such legal authority to enforce temporary injunction orders. In India, it has been settled that for disobedience of order of injunction, courts are competent to issue appropriate direction to district administration and police authorities to ensure compliance with injunction orders.²⁵ In *Saudamini Roy Chowdury v Satyendra Nath Sarkar*,²⁶

Plaintiff instituted a suit for title as T.S. No. 267 of 1980 in the Court of 3rd Munsif Howrah and an application for temporary injunction against the opposite party for restraining the defendant from interfering with the peaceful possession of

²²*Taylor v Roe* [1893] 68 LT 213; *Kent County Council v Batchelor* [1977] 33 P&CR 185 CA cited in *Halsbury's Laws of England*, vol 24 (4th edn, Reissue, Butterworth Law Publishers Ltd, London, UK 1991) 537.

²³*Dawson v Paver* [1847] 5 Hare 415 at 424 per Wigram V-C; *PA Thomas & Co v Mould* [1968] 2 QB 913 cited in *Halsbury's Laws of England*, vol 24 (4th edn, Reissue, Butterworth Law Publishers Ltd, London, UK 1991) 537.

²⁴To prove a criminal case against any accused, the prosecution side has to prove three matters – time, place, and manner of the occurrence. If the prosecution fails to prove these three matters, the accused will be acquitted.

²⁵AIR [2011] All 72; [2011] (2) ALJ 187 (188) (DB) ** [2009] (5) Andh LD 638 (641) cited in Manohar and Chitale, *Commentary on The Code of Civil Procedure*, vol 5 (11th Revised & Enlarged edn, All India Reporter Pvt. Ltd, Nagpur, Maharashtra, India, 2012), 1126.

²⁶Ex FILE Plus (FR) 3 (2008), published by Ex File Plus, Court Hill, Chittagong.

the plaintiff in respect of suit land and trial court passed an order of temporary injunction restraining the defendant. But the defendant disobeyed the order of the trial court and started construction work. The plaintiff filed an application under section 151 for passing an order to the police for legal aid and see the matter that the order of injunction passed earlier by the court not to be violated by the defendant. The application was rejected by the trial court upon the view that the court had no jurisdiction to make such an order. The plaintiff preferred appeal before the High Court and the High Court of Calcutta, India make its rule absolute and directed the court below to pass appropriate directions upon the police as prayed for.

A similar decision was held in *Mohd. Hamja v Additional Civil Judge (S.D.) and others*²⁷ where the Allahabad High Court of India observed that a temporary injunction was granted in a regular suit No. 356 of 2004 by the trial court, directing the parties to maintain status quo. It was alleged that the defendant respondent, in violation of the order passed by the court, was raising construction and also removing the trees standing over the land in question. Feeling aggrieved with the noncompliance of the order passed by the trial court, the petitioner made an application requesting that the defendant respondent be restrained from changing the nature of the land, cutting the trees, and raising construction over the land in question. The Additional Civil Judge, Senior Division, rejected the plaintiff petitioner's request, stating that the petitioner should make an application for contempt of court under Order 39 Rule 2A of the CPC. Devi Prasad Singh, Justice, opined that the court has got ample power to direct the police to ensure that no construction should be raised and parties may not remove any structure standing over the disputed land in terms of injunction granted by the court. It should be paramount consideration of the court to ensure that rule of law should be maintained and orders of the court must be complied with in their letter and spirit. Power to punish under the contempt procedure does not fulfill the requirement, and in a case where the court remains moot spectator and permits the parties or authorities to violate its order, damage may be caused and parties may suffer from irreparable loss and injury. Accordingly, trial courts should issue appropriate direction or order to the local authorities and administration to ensure compliance with the injunction in pursuance to the inherent power conferred by Section 151 of the CPC, and it shall be obligatory for the state authorities to comply with such order. Accordingly, as an interim measure, Senior Superintendent of Police/DIG Lucknow was directed to ensure that in terms of interim injunction granted by the trial court, parties shall maintain status quo and no construction shall be raised over the disputed land and trees are not to be removed and nature of land should also not be changed unless the injunction order is modified by the court itself.

In a subsequent case, it was held that the court may pass appropriate order in the ends of justice, meaning thereby that the courts are not only expected to issue appropriate orders to safeguard the interest of the parties but also to ensure that the orders are enforced and implemented in letter and spirit.²⁸

²⁷2010 (81) ALR 217; MANU/UP/0738/210.

²⁸See *Ram v State of Uttar Pradesh & others*, AIR [2011] All 72; [2012] (91) ALR 414; MANU/UP/2952/2010.

These decisions of Indian courts show that there is no illegality in exercising the inherent power of the court for instructing the local police with a view to upholding the temporary injunction order. Nevertheless, if there were a provision in the CPC or case decisions in Bangladesh enabling the civil court to order the local police to execute the order of maintaining the temporary injunction or status quo given by the court, it would be more convenient for proper protection of the disputed property and for achieving the objectives of the temporary injunction order. The vibrating point of the above findings is that the civil courts need enough authority in this regard.

As an academic output, it should be inscribed as advantages of the instant effort that

- If the civil court had the scope to direct the local police to safeguard its order, no doubt, property may be protected from being damaged or disfigured or in any way alienated.
- As a disciplinary force, the police have accountability before the court. Once the court directs them to uphold its order, it becomes the official duty of the police to carry out the order. People might not dare to violate the order of the court in fear of local police.
- In Bangladesh, most of the criminal cases arise out of land disputes. The civil court's authority to direct the local police to uphold its order would pave the way to maintaining the law and order situation in the society. The rate of crime arising out and relating to land disputes would reduce.
- It would help the court to preserve the subject matter of the suit and as such uphold the spirit of temporary injunction order. It would also reduce the rate of misc. case which in turn would decrease the long delays and backlog of cases in civil courts and extinguish the plight of the parties.

Above all, the very purpose of granting a temporary injunction would be secured. Necessary authoritative provisions should therefore be inserted in the CPC so that the court may direct the local police to help the parties in maintaining the status quo of the subject matter of any suit before it.

4. Conclusion

The function of adjective law is to facilitate justice and further its ends. The rules of procedure are intended to be a handmaid to the administration of justice, and they must, therefore, be construed liberally and in such manner as to render the enforcement of substantive rights effective. Nonetheless, there is no scope to ride beyond ambit to give remedy to the litigants. The CPC is a procedural law which speaks of temporary injunction in details. As per existing legal provision regarding violation of temporary injunction, the penalty is either arrest of the opponent or attachment of his property or both. Does punishment or attachment of property really serve the very purpose of granting temporary injunction? Our present endeavor goes to encourage the legislature to frame laws dealing with temporary injunction, as the present provisions do not render due service to the very litigants *vis-a-vis* the people of the country. Data collected and observations done suggest that police involvement may be resorted to in order to get rid of

the threat to disputed property, despite this creating a chance of corruption on the part of the local police. In India, the legality of police involvement in enforcing a civil court's order has been supported by the higher courts. It is high time for the Supreme Court of Bangladesh to reflect on this issue. A definite law may also be introduced to deal with the matter. For attaining a better outcome, lesser nuisance should be overlooked. On the basis of our study, although limited, it could be concluded that civil courts, by legal provisions or precedents, should be empowered to direct the police to maintain the real objectives of temporary injunctions, which would increase trust in the justice system on the part of litigants and the population of Bangladesh.

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Disclosure statement

No potential conflict of interest was reported by the authors.