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Comparative Analysis of Interlocutory Proceedings in India

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To reach the ends of justice and to attain said justice in a timely manner, the process of filing interlocutory applications is indispensable, to an extent, within civil proceedings. An interlocutory application is an application to the Court with respect to any suit, appeal or proceeding which has already been instituted within the said Court, not including a proceeding for execution of a decree or an order. The orders passed consequently with respect to these applications are known as interlocutory orders, and the proceedings which take place are known as interlocutory proceedings. An interlocutory order may be defined as any order other than a final decision with respect to the same matter. Once a proceeding has begun, all consequent applications with respect to the said action are referred to as interlocutory applications. The Court's objective when dealing with an interlocutory application is not to concern itself with serious questions of law which require extensive arguments and considerations, thus the Court does not delve into those aspects of the case which may lead to a determination with respect to the original suit. The provision which deals with such proceedings in India is contained under Part III of the Code of Civil Procedure, however, such applications are moved under a number of provisions of the Code of Civil Procedure, including temporary injunctions, receivers, payment into court, security for cause etc. The Hon'ble Supreme Court's website states that there is a total of 382 different nomenclatures for interlocutory applications. Section 141 of the Code of Civil Procedure provides that the procedure provided in the Code, in regard to the suit shall be followed as far as it can be made applicable in all proceedings in any court of civil jurisdiction, therefore the procedure with regard to such applications is the same as that of the original suit.[1]They form an integral part of the legal system, in the sense that they are important in a society which has a long and deliberate legal process and interim reliefs in such cases are always a boon. This paper attempts to cover the various aspects of interlocutory applications and the orders which are passed pursuant to such applications, while

[1] Code of Civil Procedure, 1908

discussing various provisions under the Code of Civil Procedure and carrying out a comparative analysis of interlocutory proceedings which are carried out in civil courts in countries other than India.

Before coming to India's interlocutory proceedings, we look first at the United States of America. Within the United States' legal system, an appeal qualifies as an interlocutory appeal when it's made before all the claims of the original suit are resolved with respect to the concerned parties. For example, if a suit includes three different claims with three defendants, then until all these claims are resolved with respect to all the three defendants, any appeal by any of the parties would be regarded as interlocutory. The American courts do not favour such appeals, encouraging all the concerned parties to wait until all the existing claims with respect to all the parties have been resolved before any new appeal can be brought in to challenge any of the existing judgements given out by the judge during the tenure of the case. Interlocutory appeals are allowed only when barring one to do so would be prejudicial to his or her rights, for instance, an appeal for challenging the court's jurisdiction would be allowed as waiting for the decision would infringe upon the concerned party's rights.The Federal Rules of Civil Procedure do not define interlocutory orders but only make a distinction between the final judgement and other orders.[2]

The Supreme Court of the United States marked a test for the situation which would allow an interlocutory appeal to be filed, called the doctrine of collateral order, through the case of *Lauro Lines s.r.l v Chasser*. The doctrine stated that an interlocutory appeal would only be permitted if the outcome of the case at hand would depend upon the matter that is to be appealed, the matter was collateral to the merits or if the matter would become unreviewable if the appeal was not allowed.[3] The test was created in the case of *Cohen v Beneficial Industrial Loan Corp*. wherein it was applied to an appeal that would have made the deterrent effect of the statute obsolete if not immediately allowed.[4] A restriction was added to the doctrine in the case *of Digital Equipment Corp. v Desktop Direct Inc*. which included an important criterion to the test, stating that only

[2]Reilly, C. (1996). Interlocutory Orders: Getting It Right the Second Time. *Litigation, 22*(2), 43-72. Retrieved from http://www.jstor.org/stable/29759835

[3]Lauro Lines v. Chasser, 490 U.S. 495 (1989)

[4] Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949).

the matters originating from the Constitution or statutes were of sufficient importance to allow an interlocutory appeal to be filed.Several statutes of the United States confer the right to interlocutory appeals.[5]

In California, interlocutory appeals are filed through petitions for writs of mandates with the Court of Appeal, which upon being granted direct the superior courts to vacate the concerned order, making them a discretionary remedy. In New York, various provisions for interlocutory appeals can be found under the Civil Practice Law and Rules. In Louisiana, the parties to both civil and criminal cases are allowed to file for supervisory writs within any one of the state's Circuit Courts of Appeal, seeking to review an existing ruling if the district court. The Court of Appeal's power is discretionary and the appellate court may also issue an action which may either grant or deny the writ or may even decline to acknowledge the application altogether. In practice, these writs are filed more frequently in criminal matters and mostly include objections to pre-trial rulings to suppress evidence. A supervisory write is also the procedure for seeking a review of a court's decision with respect to a petition for post-conviction relief.

Next, we look at interlocutory applications within the Nigerian legal system. The Hon'ble Justice Chinwe Iyizoba, in his paper on interlocutory proceedings lays out a brief overview of how the legal system works with respect to interim applications. According to his paper, the interlocutory applications within Nigeria are made to the courts during the pendency of the proceedings and include all steps taken for the aim to assist either party in the prosecution of his or her case, whether before or after the final judgement; or of protecting or dealing with the subject matter of the action before the rights of the parties involved are adjudicated upon. An interlocutory application can either be filed in open court or within chambers. The Rules of the various High Courts make provisions which determine which kind of applications can be taken into account. These applications are usually made through motions, which are aided by an affidavit deposing to the facts, or it may also be ex-parte. One of the conditions for an interlocutory relief to be granted or the application to be accepted is that the applicant must have given an undertaking to guarantee to pay damages if it turns out that the interim relief would not be granted. A party in a court who is not satisfied with the decision made on an interlocutory

[5] Digital Equipment Corp. v. Desktop Direct Inc., 511 U.S. 863 (1994).

point may appeal against the said decision and then apply for a stay of proceedings pending the determination of the appeal. [6]

Coming finally to India, starting with interlocutory orders, these orders are passed by Courts to prevent any irreparable damage from happening to a party or a property during the pendency of suit or proceeding. Rules 6 to 10 of Order 39 of the Code of Civil Procedure mention certain interlocutory orders, which encapsulate the court's power to order the interim sale of movable property, order detention, inspection or preservation of any property with respect to the subject matter of the suit at hand, etc.

The doctrine of res judicata is applied to interlocutory applications as well. The interlocutory order with respect to an issue like an injunction or an order of attachment before the final judgement cannot be viewed as a matter having an effect on the trial of the suit, thus, when the question of adding a defendant to suit by amending the pleadings arose and whether doing so was a matter affecting the trial of the suit, the Hon'ble Rajasthan High Court held that such an order could not be part of the suit. Whether a party should or should not be impleaded did not demerit the controversy between parties. The nature of the matter is fornal and could not in any way decide upon their respective rights. The plea of principles of res judicata has no application until and unless the matter at hand is not decided on merits. The Supreme Court, in the case of *Erach Boman Khavar v Tukaram Sridhar Bhat & Ors* held that to attract the application of the doctrine of res judicata it must be proved that there was a conscious decision made upon an issue. A plea of res judicata cannot be taken the aid of unless there is an expression of an opinion on the merits. The interlocutory applications don't decide any matter arising in the suit and neither do they put an end to the litigation at hand. The interlocutory orders don't decide the legal rights of the parties to the suit and the doctrine of res judicata doesn't apply to the findings on which these orders are based upon.[7]

With respect to appeals against interlocutory orders, no appeal lies against an interlocutory order, however certain orders can be challenged in appeal against a decree on the grounds that such orders would have an effect on the decision of the court.With respect toSection 105 of the Code of Civil Procedure, *first part of the section indicates that no such appeal would lie against any order unless they fall into the categories contained in Section 104 and Order 43 and the second part provides that*

[6] PROCEEDINGS IN INTERLOCUTORY APPLICATIONS: INJUNCTIONS, STAY OF PROCEEDINGS AND EXECUTION

[7]Erach Boman Khavar v. Tukaram Sridhar Bhat & Ors AIR 2014 SC 544

objections may be raised against the interlocutory order against the decree in the suit for which the interlocutory application was filed.

There is also the question of interlocutory applications being an inbuilt mechanism to cause delay in the court's proceedings. Delay in dispensing justice has been a constant pain in the heart of the citizens of the country and it can be said that the stay of proceedings is one of the delay mechanisms which have been inbuilt into the civil proceedings.The delay is often caused due to prolonged arguments during the interlocutory proceedings, which often ends up having an effect on the original suit and thus, it makes the speedy nature of the disposal ends up being done away with as the courts keep inviting endless arguments over the petitions for interim relief. The filing of interlocutory applications has become a regular practice for lawyers and many resort to this to evade or thwart the compliance of any order passed against the concerned party, thus taking undue advantage of the mechanism of interlocutory applications, making it tough for courts to give out quick justice. To counter this, the Law Commission of India suggested an amendment to the Code of Civil Procedure to curb this malpractice by imposing heavy costs on such applications, thus doing away with this form of obstructive litigation.

In conclusion, after analysing the interlocutory proceedings from the United States of America, Nigeria and India, one may simply see that the mechanism of interlocutory proceedings is one that is essential to deliver justice and ensure that no party to the suit has their rights being infringed upon by the proceedings of the said suit, however, to ensure this, a certain amount of leeway must be given to the filing and proceedings for the interim reliefs to be granted. This leeway then leads to a form of obstructive litigation which uses this mechanism to delay and evade justice. Taking the Law Commission's suggestion into account may be more harmful than beneficial as it may deter those who genuinely seek justice from making an effort to do so by looking at the costs. However, a mechanism discouraging this and only allowing those applications which are essential to preserve rights, like the one in USA, may prove to be beneficial for the country.

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