INTERLOCUTORY APPLICATIONS

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Sub-Topics:-

1. Checking and Registration of Interlocutory Applications

2. Enquiries and Orders in Interlocutory Applications:

Temporary injunctions, Attachment before Judgments, Appointment of Commissioners and Receivers

3. Examination of Witnesses and Recording of evidence in Interlocutory Applications

4. Impleading third parties vis-à-vis Doctrine of Dominus Litus

INTRODUCTION:

The meaning of 'Interlocutory application's given in the Rule 2 (j) of A.P.Civil Rules of Practice and Circular Orders, 1980. It reads: 'Interlocutory application' means an application to the court in any suit, appeal or proceeding already instituted in such court, other than a proceeding for execution of a decree or order. There is no specific definition in Civil Procedure Code, 1908 to this phrase 'Interlocutory application'.

Rules 53 to 60 deal with Interlocutory Proceedings-

Further, the word "application" is defined in Rule 2 (c) that includes execution application, execution petition and interlocutory application, both written and oral. A comprehensive reading of the definition as above would unveil that interlocutory application is one species of a broader term of 'application', but the execution application is not an interlocutory application. For the purpose of applications in the execution, the definitions are given in the Civil Rules of Practice. They read:

Rule 2(e) "Execution Petition" means a petition to the court for the execution of any decree or order;

Rule 2(f) "Execution Application" means an application to the court made in a pending execution petition, and includes an application of transfer, of a decree.

These definitions would denote that the term “interlocutory application” will be generally used in Suits and proceedings similar to suits. The other relevant provision in the Civil Procedure Code relating to the interlocutory applications is Section 141 CPC.

Sec. 141 is also relevant in this context. – It says about ‘Miscellaneous proceedings’ : The procedure provided in this Code in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Explanation: In this section, the expression “proceedings” includes proceedings under Or IX, but does not include any proceeding under Art.226 of the Constitution

In this context, some key points that are to be kept in mind are succinctly explained with fulcrum of some important rulings in this paper for better interaction on this topic.

Key underlying factors:

1. The Hon’ble Supreme Court, **in Ramachandra Agarwal vs. State of U. P and another** AIR 1966 SC 1888, held “though there is no discussion, this Court has acted upon the view that the expression `Civil Proceedings` used in Sec.141 CPC is not necessarily confined to an original proceeding like a suit or an application for appointment of guardian etc., but it applies also to a proceedings which is not an original proceeding.” From this view it would follow that the procedure contemplated in the Code with regard to suits shall be followed in all proceedings in any court of civil jurisdiction, not only in original proceedings but also in other proceedings.

2. As seen from ratio laid down in **Manthrala Chandrakala vs. Mandan Janakiram Singh** (2004) 5 ALD 156) (**Gunnam Venkateswara Rao vs. Vanaja Kumari** (2004) 4 ALD 786, it is held that the principles underlying Or 22 Rule 4 CPC cannot be limited to the judgments in suits only. They apply to the disposal of applications with equal force, as is evident from section 141 CPC.

3. As was held in **Gunnam Venkateswara Rao vs. Vanaja Kumari** (2004) 4 ALD 786, when an application to bring on record the Legal Representatives of a deceased party is pending, an application under Or 1 Rule 10 CPC to add party to the miscellaneous petition is maintainable in the light of section 141 CPC.

1. CHECKING AND REGISTRATION OF INTERLOCUTORY APPLICATIONS:

As to checking and registration of interlocutory applications, the following provisions are most relevant.

a) Form of Interlocutory Application as in Form No.13:- If we go through Rule 53 of the Civil Rules of Practice, it is known that interlocutory applications shall be made as in Form No.13. This rule reads as infra:

Form of Interlocutory Application:- Interlocutory applications shall be headed with the cause title of the plaint, original petition, or appeal, as in Form No. 13.

b) What An Interlocutory Application shall state:- If we go through Rule 54 of the Civil Rules of Practice, what an Interlocutory application shall state is known to us. This rule reads as infra:

Contents of :- Except where otherwise provided by these rules or by any law for the time being in force, an Interlocutory Application shall state the provision of law under which it is made and the order prayed for or relief sought in clear and precise terms. The application shall be signed by the applicant or his Advocate, who shall enter the date on which such signature is made every application in contravention of this rule, shall be returned for amendment or rejected.

c) There shall be separate application in respect of each distinct relief:–

As seen from Rule 55, there shall be separate application in respect of each distinct relief prayed for. Further, when one interlocutory application is filed combining several reliefs, the court may direct the applicant to confine the application only to one of such relief's unless the reliefs are consequential and to file a separate application in respect of each of the others. This rule reads as follows:-

Contents of:- There shall be separate application in respect of each distinct relief prayed for. When several reliefs are combined in one application, the court may direct the applicant to confine the application only to one of such relief's unless

the reliefs are consequential and to file a separate application in respect of each of the others.

It is held **Supriya Cold Storage, Warangal vs. K. Sambasiva Rao and others** (2006) 3 ALD 659 a single petition with multiple prayers is not maintainable and there should be separate application in respect of each distinct relief prayed for. A petition to condone the delay in setting aside the exparte decree being interconnected with main relief, namely, setting aside exparte decree, squarely falls under category of consequential reliefs, which are exempt from requirement of Rule 55 of CRP,

See**: Kavali Narayana and others vs. Kavali Chennamma** (2005) 1 ALD 672 . and so, it was held that a single petition can be maintained. These two judgments were found not inconsistent to each other as seen from another ruling.

See. **Massarath Yasmeen vs. Mohammed Azeemuddin** (2011) 6 ALT 202. As per this ruling, if the relief is separate and distinct as per Rule 55 of CRP, two separate applications have to be filed. When one relief is ancillary to the main relief or inter-connected to the main relief two prayers can be asked for in one petition and those prayers can be granted. Even otherwise, as per Rule 55, if two separate applications are necessary, the court may direct the party making the application to file two separate applications. However, when once the party is entitled to the relief, the Court is not supposed to dismiss the petition on the technical ground, as observed in this ruling.

d) Court has power to reject or dismiss an application under rule 56:-

Court may reject interlocutory application if substantive order is not asked for. Rule 56 reads as follows:-

May rejected if substantive order is not asked for :- Every application which does not pray for a substantive order but prays merely, that any other application may be dismissed, and every application which prays for an order which ought to be applied for on the day fixed for the hearing of any suit, appeal or matter, may be rejected with costs

e) Out of order petition :- If the applicant intends to move an urgent (out) of order application, copy of such application shall be served to the advocate or the party and it shall contain an urgent application on the day specified in the endorsement. See Rule 57 which reads as follows:-

Out of order petition: - Whenever it is intended to move the application as an urgent (out) of order) application, the copy of the application served on the Advocate or the party appearing ion person shall contain an urgent application on the day specified in the endorsement.

f) Service of Notice shall be given not less than three days:

As seen from Rule 58, unless the court otherwise orders, notice of an interlocutory application shall be given to the other parties to the suit or matter or their Advocate not less than three days before the day appointed for the hearing of the application.

Service of Notice:–

1. Unless the court otherwise orders, notice of an interlocutory application shall be given to the other parties to the suit or matter or their Advocate not less than three days before the day appointed for the hearing of the application.

2. Such notice shall be served on the Advocate whenever the party appears by such Advocate.

3. Notice of the application may be served on a party not appearing by Advocate by registered post “ACKNOWLEDGEMENT DUE, OR BY SPEED POST OR BY AN APPROVED COURIER SERVICE OR BY FAX MASSAGE OR BY ELECTRONIC MALE SERVICE OR BY SUCH MEANS” to the address given in the pleading acknowledgement per-paid and in the event of its non- service on the party by means of summons to be delivered to the party or in the event of the party being absent or refusing to receive the same, affixture at his address. 4. Unless the court, otherwise orders, notice of Interlocutory application need not be given to a party, who having been served with the notice in the main suit, appeal or other proceedings, has not entered appearance or to a party to whom notice in the appeal has been dispensed with under the provisions of Rule 14 of Order XLI of the Code.

g) Supply of Copies to opposite party:-

Rule 59 tells us to supply every interlocutory application shall be supported by an affidavit and true copies of the application. Those copies shall be supplied to the opposite party or his advocate. This rule reads as follows:

Copies to opposite party:- Every interlocutory application shall be supported by an affidavit and true copies of the application, affidavit and the documents, if any which the applicant intends to use or on which he intends to rely, shall be furnished to the opposite party or his advocate, unless otherwise ordered, not less than three clear days before the hearing date.

2. ENQUIRIES AND ORDERS IN INTERLOCUTORY APPLICATIONS:

TEMPORARY INJUNCTIONS, ATTACHMENT BEFORE JUDGMENTS, APPOINTMENT OF COMMISSIONERS AND RECEIVERS

An interlocutory order is an order that does not finally determine the rights, duties and obligations of the parties to a proceeding. Interlocutory orders may take various shapes depending upon the requirement of the respective parties during the pendency of the suit. Applications for appointment of Commissioner, Temporary Injunctions, Receivers, payment into court, security for cause, and etc. According to Stroud, interlocutory order means an order other than a final judgment Section 94 summarises general powers of a civil court in regard to different types of Interlocutory orders. The detailed procedure has been set out in the I Schedule of the C.P.C which deals with Orders and Rules.

(A) Sec.94 CPC – Supplementary Proceedings: In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed-

(a) Issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

(b) Direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the court or order the attachment of any property;

(c) Grant a temporary injunction and in case of disobedience, commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(d) Appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(e) Make such other interlocutory order as may appear to the court to be just and convenient.

(B) Is there any difference between supplementary proceedings and incidental proceedings?

A supplementary proceeding is initiated with a view to prevent the ends of justice from being defeated. The supplemental proceedings may not be taken recourse to as a routine matter but only when an exigency arises therefor. The orders passed in the supplemental proceedings may sometimes cause hardship to the other side and, thus, are required to be taken recourse to, when a situation arises therefor and not otherwise. There are well-defined parameters laid down by the Courts from time to time as regards the applicability of the supplemental proceedings.

Incidental proceedings are, however, taken recourse to in aid of the ultimate decision of the suit which would mean that any order passed in terms thereof, subject to the rules prescribed therefor, would have a bearing on the merit of the matter. Any order passed in aid of the suit is in exercise of ancillary powers. Whenever an order is passed by the Court in exercise of its ancillary power or in the incidental proceedings, the same may revive on revival of the suit. But so far as supplemental proceedings are concerned, the Court may have to pass a fresh order for their revival.

(C). Temporary Injunctions:

1. The grant of injunction is in the nature of equitable relief and the court has undoubtedly power to impose such terms and conditions as it thinks fit. ("**DALPATKUMAR AND OTHERS VS. PRAHALAD SINGH AND OTHERS**" reported in 1992 (1) SCC 719").

2. The circumstances under which Interlocutory mandatory injunction could be granted has been dealt with in "**Dorab Cawasji Warden VS. Coomi Sorab Warden and Ors,** 1990 (2) SCC 117. Also see: "**Glaxo Smithkline Consumer Healthcare Limited, Registered Office, Gurgaon through its Managing Director and Others vs. All Stores through its Proprietor S.M.Abdul Gani,** 2009 (8) MLJ 845.

3. "**Martin Burn Ltd. vs. R.N.Banerjee**, AIR 1958 SC 79". Once the existence of prima facie case is made out the court should analyse the 2nd condition viz., the irreparable injury. Only if the applicant would suffer irreparable injury if interim injunction is not granted then the injunction can be granted. The court must be satisfied that the refusal of injunction would result in irreparable injury to the party seeking injunction. See:- "**Assistant Collector of Cerntral Excise, Chandan Nagar, West Bengal vs. Dunlop India Ltd. and Others**, AIR 1985 SC 330".

4. The third condition for granting Interim Injunction is the balance of convenience must be in favour of the applicant. The balance of convenience test must be clearly in favour of the applicant for granting an Interim Injunction order. See:- "**Assistant Collector of Central Excise, Chandan Nagar, West Bengal vs. Dunlop India Ltd. and Others**, AIR 1985 SC 330".

5. The principles while dealing with temporary injunctrions are enunciated in "**Shiv Kumar Chadha vs. Municipal Corporation of Delhi**, 1993 (3) SCC 161". Grant of injunction is "exdebito Justitiae", i.e. to meet the ends of justice.

6. If injunction is granted on insufficient ground then ultimately if suit fails, the plaintiff can be directed to pay such amount not exceeding Rs.50,000/- as damages to the defendant. This is made clear in Section 95 of C.P.C. Recently the Apex Court had an occasion to deal with imposition of costs in vexatious, frivolous, malicious or speculative litigation. This decision is reported in "**Vinod Seth vs. Devinder Bajaj & Another** , 2010 (8) SCC Page 1". This ruling deals with the nature of order that can be passed at the Interlocutory stage and what sort of conditions can be imposed.

(D). Appointment of advocate commissioners:-

The object of Order 26 Rule 9 of Civil Procedure Code is not to assist a party to collect evidence where the party can procure the same. An Advocate Commissioner can be appointed under Order XXVI Rule 9 of the Code of Civil Procedure 1908 inter alia for elucidating any matter in dispute.

(To know more, see To know more visit: https://articlesonlaw.wordpress.com/2016/07/12/the-law-on-appointment-of-advocate-commissioner-in-suits/.)

Appointment of Commissioner in terms of part III i.e. matter "Incidental proceedings" of CPC is a provided by section 75 of the Code. Inasmuch as this article is concerned with the appointment of Commissioner Section 75 of CPC being the provision relevant, empowering the court, it would be apposite to refer the provisions.

" **75. Power of court to issue commissions. –** Subject to such conditions and limitations as may be prescribed, the court may issue a commission –

(a) to examine any person;

(b) to make a local investigation;

(c) to examine or adjust accounts; or

(d) to make a partition;

(e) to hold la scientific, technical, or expert investigation;

(f) to conduct sale of property which is subject to speedy and natural decay

and which is in the custody of the Court pending the determination of the

suit;

(g) to perform any ministerial act."

When an application for appointment of advocate commissioner is filed, such application must be decided without any delay. As was held in **P. Pedda Saidaiah And Ors. vs T. Padmavathi,**1997 (5) ALT 818, it is the duty of the Court to dispose of the interlocutory applications filed by the parties during the pendency of the

suit within a reasonable time. Where in a suit for possession, the purpose of appointment of a Commissioner was to collect evidence the rejection for appointment of Commissioner is a proper one, as opined by the Hon'ble Madras High Court in **Raja vs Narashimamurthy** (2011), C.R.P.PD.No.3163 of 2009, dt.01.08.2011. It is well-settled that if the oral and documentary evidence are found enough to resolve the controversies in the suit, the rejection of application for appointment of a Commissioner is a valid one. It is provided under Order XXVI Rule 9 of CPC that in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.

(E). Appointment of Receivers:-

Chapter XVII, Rules 286 to 293 of A.P.Civl Rules of Practice and Circular Orders,1980 deal with 'Receivers'.

"Panch sadachar' for appoinment of receivers:-

In Krishnaswamy Chetty v. C. Thangavelu Chetty, AIR 1955 MAD 430, it was held that "The five principles which can he described as the "panch sadachar' of our Courts exercising equity jurisdiction in appointing receivers are as follows

(see: https://articlesonlaw.wordpress.com/2010/12/10/guiding-principles-for-appointment-of-a-receiver/) :

(1) The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute: it is a sound and judicial discretion, taking into account all the circumstances of the case, exercised-for the purpose of permitting the ends of justice, and protecting the rights of all parties interested in the controversy and the subject-matter and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding. (See: '**Mathusri v. Mathusri**, 19 Mad 120 (PC) (Z5); — '**Sivagnanathammal v. Arunachallam Pillai'**, 21 Mad LJ 821 (Z6); –'**Habibullah v. Abtiakallah'**, AIR 1918 Cal 882 (27); — '**Tirath Singh v. Shromani Gurudwara Prabandhak Committee'**, AIR 1931 Lah 688 (28); –'**Ghanasham v. Moraba'**, 18 Bom 474 (7.9); **–'Jagat Tarini Dasi v.**

Nabagopal Chaki', 34 Cal 305 (Z10); — '**Sivaji Raja Sahib v. Aiswariyanandaji'**, AIR 1915 Mad 926 (Z11); — '**Prasanno Moyi Devi v. Beni Madbab Rai'**, 5 All 556 (Z12); — '**Sidheswari Dabi v. Abhayeswari** Dahi', 15 Cal 818 (213); — '**Shromani Gurudwara Prabandhak Committee, Amritsar v. Dharam Das**', AIR 1925 Lah 349 (Z14); — '**Bhupendra Nath v. Manohar Mukerjee'**, AIR 1024 Cal 456 (Z15).) : —

(2) The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has very excellent chance of succeeding in the suit .(See: **'Dhumi v. Nawab Sajjad All** Khan', AIR 192.3 Uh 623 (Z16); — '**Firm of Raghubir Singh' Jaswant v. Narinjan Singh**', AIR 1923 Lah 48 (217); — '**Siaram Das v. Mohabir Das'**, 27 Cal 279 (Z18); — '**Mahammad Kasim v. Nagaraja Moopanar'**, AIR 1928-Mad 813 (Z19); — '**Banwarilal Chowdhury v. Motilal'**, AIR 1922 Pat 493 (220).) –

(3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss demanding immediate action and of his own right, he must be reasonably clear and free from doubt. The element of danger is an important consideration. A Court will not act on possible danger only; the danger must be great and imminent demanding immediate relief. It has been truly said that a Court will never appoint a receiver merely on the ground that it will do no harm. (See: "**Manghanmal Tarachand v. .Mikanbai'**, AIR 1933 Sind 231 (221); — '**Bidurramji v. Keshoramji**', AIR 1939 Oudh 31 (Z22); — 'Sheoambar Ban v. Mohan Ban', AIR 1941 Oudh 328 (223)) –

(4) An order appointing a receiver will not be. Made where it has the effect of depriving a defendant of a 'de facto' possession since that might cause irreparable wrong. If the dispute is as to title only, the Court very reluctantly disturbs possession by receiver, but if the property is exposed to danger and loss and the person in possession has obtained it through, fraud or force the Court will interpose by receiver for the security of the property.

It would be different where the property is shown to be 'in medio', that is to say, in the enjoyment of no one, as the Court can hardly do wrong in taking

possession: it will then be the common interest of all the parties that the Court should prevent a scramble as no one seems to be in actual lawful enjoyment of the property and no harm can be done to anyone by taking it and preserving it for the benefit of the legitimate who may prove successful.

Therefore, even if there is no allegation of waste and mismanagement the fact that the property is more or less 'in medio' is sufficient to vest a Court with jurisdiction to appoint a receiver .(See: '**Nilambar Das v. Mabal Behari**', AIR 1927 Pat 220 (Z24); — '**Alkama Bibi v. Syed Istak Hussain'**, AIR 1925 Cal 970 (Z25~.); — 'Mathuria Debya v. Shibdayal Singh', 14 Cal WN 252 (Z26); — 'Bhubaneswar Prasad v. Rajeshwar Prasad', AIR 1948 Pat 195 (Z27). Otherwise a receiver should not be appointed in supersession of a bone fide possessor of property in controversy and bona fides have to be presumed until the contrary is established or can be indubitably inferred.) —

(5) The Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame. He must come to Court with clean hands and should not have disentitled himself to the equitable relief by laches, delay, acquiescence etc."

(F). Attachment before Judgment:-

'An attachment before judgment is to enable the plaintiff to realize the amount of the decree, supposing a decree eventually made, from the defendant property'. This is the object of the Order 38 rule 5 of The Civil Procedure Code,1908 (herein after referred as CPC). See. Ganu Singh Vs Jangi Lal, 26 C 531. The scope and object of Order 38 rule 5 of CPC and the rules followed thereon merely to protect a plaintiff against loss arising from the defendant making away with his property pending suit. An attachment before judgment is in the nature of an interlocutory order. (See: Some important judgments of the Hon'ble High Court of Andhra Pradesh as to the subject matter of 'Attachment before Judgment' :-

1) **Katari Ratna Rani vs Velagapudi Rama Rao And Ors**, 2003 (6) ALT 79.

2) **Mamidala Suresh Babu And Ors. vs Tirumalasetti Krishnamurthy**, 2006 (3) ALT 250

3) **State Of A.P. vs Prakash**, 2007 (1) ALD 133, 2007 (1) ALT 383

4) **Sri Laxmi Cloth Stores, … vs Ratna And Co., Machilipatnam**, 1999 (6) ALT 681

5) **Rama Murthy And Ors. vs Srinivas Corporation General** , AIR 1989 AP 58

6) **S.P. V. Babu v. Varalakshmi Finance Corporation**, 1996 (4) ALD 453,

7) **Union Bank Of India, Visakapatnam's case**, AIR 1982 AP 408

8) **Duvvuru Siva Kumar Reddy vs Malli Srinivasulu**, 2006 (1) ALT 570

9) **Allu Appa Rao vs Siriki Bapu Naidu And Ors**, 2006 (5) ALD 240

10) **Gosu Venkata Sesha Reddy And Anr. vs Valluru Krishnaiah**, 2005 (4) ALT 238

11) **Ananthula Buchiramulu vs Sakinala Janaki Ramaiah,** 2004 (2) ALD 730

12) **Pasupulati Seshanna vs Epparala Balaiah (Died) Per Lrs**, 2006 (3) ALD 511).

Settled principles for granting attachment before judgment:-

In the case of **Premraj Mundra vs Md. Maneck Gazi And Ors**.: AIR 1951 Cal 156, the following principles are given in para 10 as to attachment before judgment . (Visit: . https://articlesonlaw.wordpress.com/2015/10/18/attachment-before-judgment/) :

– (1) That an order under Order 38, Rules 5 & 6, can only be issued, if circumstances exist as are stated therein.

– (2) Whether such circumstances exist is a question of fact that must be proved to the satisfaction of the Court.

– (3) That the Court would not be justified in issuing an order for attachment before judgment, or for security, merely because it thinks that no harm would be done thereby or that the deft. Would not be prejudiced.

– (4) That the affidavits in support of the contentions of the applicant, must not be vague, & must be properly verified. Where it is affirmed true to knowledge or information or belief, it must be stated as to which portion is true to knowledge, the source of information should be disclosed, & the grounds for belief should be stated.

-(5) That a mere allegation that the deft. was selling off & his properties is not sufficient. Particulars must be stated.

– (6) There is no rule that transactions before suit cannot be taken into consideration, but the object of attachment before judgment must be to prevent future transfer or alienation.

– (7) Where only a small portion of the property belonging to the deft. is being disposed of, no inference can be drawn in the absence of other circumstances that the alienation is necessarily to defraud or delay the pltf's claim.

– (8) That the mere fact of transfer is not enough, since nobody can be prevented from dealing with his properties simply because a suit has been filed: There must be additional circumstances to show that the transfer is with an intention to delay or defeat the pltf.'s claim. It is open to the Court to look to the conduct of the parties immediately before suit, & to examine the surrounding circumstances, & to draw an inference as to whether the deft. is about to dispose of the property, & if so, with what intention. The Court is entitled to consider the nature of the claim & the defence put forward.

– (9) The fact that the deft. is in insolvent circumstances or in acute financial embarrassment, is a relevant circumstance, but not by itself sufficient.

– (10) That in the case of running businesses, the strictest caution is necessary & the mere fact that a business has been closed, or that its turnover has diminished, is not enough.

– (11) Where however the deft. starts disposing of his properties one by one, immediately upon getting a notice of the pltf.'s claim, &/or where he had transferred the major portion of his properties shortly prior to the institution of the suit & was in an embarrassed financial condition, these were grounds from which an inference could be legitimately drawn that the object of the deft. Was to delay and defeat the pltfs'. Claim.

– (12) Mere removal of properties outside jurisdiction, is not enough, but where the deft. with notice of the pltfs'. claim, suddenly begins removal of his properties outside the jurisdiction of the appropriate Court, & without any other satisfactory reason, an adverse inference may be drawn against the deft. Where the removal is to a foreign country, the inference is greatly strengthened.

– (13) The deft. in a suit is under no liabilty to take any special care in administering his affairs, simply because there is a claim pending against him. Mere negect, or suffering execution by other creditors, is not a sufficient reason for an order under Order 38 of the Code.

– (14) The sale of properties at a gross undervalue, or benami transfers, are always good indications of an intention to defeat the pltf's. claim. The Court must however be very cautious about the evidence on these points & not rely on vague allegations.

3. EXAMINATION OF WITNESSES AND RECORDING OF EVIDENCE IN INTERLOCUTORY APPLICATIONS.

a). Sec. 141 CPC: In fact, confining the evidence to the form of affidavits at the interlocutory stages is adopted mostly as a measure of convenience. With the recent amendments to the Code, the evidence through affidavits also stands equated to that of oral evidence. The broad principles such as reference to pleadings, evidence, appreciation of the contentions, application of the provision of law, need to be followed even while disposing of interlocutory applications. It is pertinent to note that the Code does not prescribe any special procedure to be observed in regard to interlocutory or miscellaneous proceedings. Sec. 141 mandates that the procedure provided for in the Code in

regard to suit, shall be followed in all the proceedings in any Civil Court as far as possible. See: **Asia Vision Entertainment limited vs. Suresh Productions** (2004) 3 ALD 874.

b). Proof of facts by affidavit: Chapter-V, Rule 60 of the Civil Rules of Practice makes it clear that the facts that are necessary for adjudication of the interlocutory applications are to be proved by affidavits. This rule reads as follows:-

Proof of facts by affidavit:- Any fact required to be proved upon an interlocutory proceeding shall unless otherwise provided by these, rules, or ordered by the court, be provided by affidavit but the Judge may, in any case, direct evidence to be given orally, and thereupon the 11 evidence shall be recorded, and exhibits marked, in the same manner as in a suit and lists of the witnesses and exhibits shall be prepared and annexed to the judgment.

As was observed in **S. Ravinder vs G. Dasarath**, 2004 (4) ALD 851, 2004 (5) ALT 217, , the facts that are necessary for adjudication of the applications are to be proved by affidavits, as provided for under Rule 60 of the Civil Rules of Practice. It is true that depending on the circumstances of the case, the Court may record oral and documentary evidence at that stage also.

c). Recording of evidence and examination of witnesses in interlocutory stage – Some relevant provisions and case-law:-

1. In **Kanbi Mavji Khimji And Anr. vs Kanbi Manjibhai Abjibhai And Ors.** AIR 1968 Guj 198, (1968) 0 GLR 907, See Para 5, wherein it was observed that when the Court has been given special power to decide certain interlocutory matters by affidavit, that power is unfettered. It is not subject limitations and conditions prescribed.

2. As is discuseed above, under Rule 60 of the Civil Rules of Practice makes it clear that the facts that are necessary for adjudication of the interlocutory applications are to be proved by affidavits.

3. The language mentioned in Order 39 rule 1 ‘ Where in any Suit it is proved by affidavit or otherwise—‘ has some meaning. From this, it can be understood that

a fact as to interlocutory application filed under O rder 39 Rule 1 CPC can be proved by an affidavit.

4. Here, it is most relevant to consider Order 19, Rule 1 of CPC. It says as follows:- ORDER XIX- AFFIDAVITS 1 . Power to order any point to be proved by affidavit— Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable : Provided that where it appears to the Court that either party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

5. Order 18 rule 4 of CPC says that witnesses to be examined in open Court— The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the judge. As seen from this provision, it is applicable to hearing suits. Of course, even in suits, party is permitted to submit Examination-In-Chief affidavits.

6. Section 30 (c) of CPC says that order any fact to be proved by affidavit. According to Indian Evidence Act, 1873, ” Evidence” means and includes- , (1) . all stat81nents which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence: (2) all documents produced for the inspection of the Court; . Such documents are called documentary evidence.

7. In **Shamsunder Rajkumar, a firm v. Bharat Oil Mills, Nagpur**, AIR 1964 Bom 38, it was held as follows: 11. What evidence means and includes, is described in section 3 of the Indian Evidence Act, but affidavits are not included within that description. On the contrary, affidavits have been expressly excluded by section 1 of the Indian Evidence Act from the applicability of that Act, That means that affidavits cannot be used as evidence under any of the provisions of the Indian Evidence Act. Affidavits can however, be used as evidence, only under Order 19, of the Civil Procedure Code.

In accordance with Order 19, Rule 1, of the Civil Procedure Code, the Court has, for sufficient reasons, to pass an order that any particular fact or facts may be proved by affidavit. That would mean that affidavit evidence: cannot be entertained unless the Court passes an order, for sufficient reasons, that any particular fact or facts may be proved by affidavits. While passing an order under

Order 19, Rule 1, to call for evidence on affidavits, it is necessary to consider compliance with the proviso to Rule 1 and with the requirements of Rule 2, under Order 19, as the circumstances of each case may require.

8. **B. N. Munibasappa v. G. D. Swamigal**, AIR 1959 Mys 139. In Para 17 of the judgment, it was held as follows: 17. In my opinion, while it would not be correct to say that an affidavit cannot be regarded as evidence even through it is properly produced under Rule 1 or 2 of Order 19 of the C. P. C., it is clear that an affidavit can never take the place of evidence recorded in the ordinary way unless the case is one to which the provisions of those rules apply or the affidavit relates to a matter like an application for an attachment or an injunction in regard to which the Code itself has made express provision.

9. Also see, AIR 1954 AG 260, **Kanhaiyalal S. Dadlani v. Meghraj Ramkaranji** and in AIR 1942 Oudh 350**, Shib Sahai v. Tika; S. Ravinder vs G. Dasarath**, 2004 (4) ALD 851, 2004 (5) ALT 217, **MOHANLAL JUGARAJ KHABIYA VERSUS KAMLABAI W,O MADHAVRAO, LAWS(**BOM)-1981-2-37 and **GURSHARAN KAUR VS H.B.Singh,** LAWS(DLH)-1999-2-67

10. In interlocutory stage, when the Courts are concerned about prima facie case, the Court tries interlocutory applications on affidavits. Similarly, in a winding up petition, claims are adjudicated on the basis of the affidavits by the Company Court. But when Court feels the claims should be adjudicated upon in trial in those cases, Court directs and relegates the claims to a suit. See: The Howrah Motor Company Limited vs Exide Industries Limited, (2005) 3 CALLT 573 HC

11. **Sakalabhaktula Vykunta Rao v. Made Appalaswamy**, A.I.R. 1978 Andhra Pradesh 103, in respect of disposal of the application under Order 39, Rule I on the ground that the scope of inquiries is quite limited and the rights of the parties was not being decided Finally.

4. IMPLEADMENT OF THIRD PARTIES VIS-À-VIS DOCTRINE OF DOMINUS LITUS

The term 'Dominus Litus' is Latin phrase which means 'the master of the suit'. To say aptly, the person who was really and directly interested in the suit as a party, as distinguished from his attorney or advocate. (See: (http://thelawdictionary.org/dominus-litis/). As was held in **Mohannakumaran Nair vs Vijayakumaran Nair** (CASE NO.: Appeal (civil) 4811 of 2007, DATE OF JUDGMENT: 11/10/2007) , application of doctrine of dominus litus is confined only to the cause of action which would fall within Sections 15 to 18 of the Code of Civil Procedure. It will have no application in a case where the provision of Section 20 thereof is sought to be invoked.

Impleading third parties:-

Basically, it is for the plaintiff in a suit, to identify the parties against whom he has any grievance and to implead them as defendants in the suit filed for necessary relief. He cannot be compelled to face litigation with the Persons against whom he has no grievance. Where, however, any third party is likely to suffer any grievance, on account of the outcome of the suit, he shall be entitled to get himself impleaded. The question as to whether an individual is a proper or necessary party to a suit, would depend upon the nature of relief claimed in the suit and the right or interest projected by the persons, who propose to get themselves impleaded. No hard and fast rule can be weighed, that would cover a possible situation in this regard.

(See: **Pallapu Mohanarao (died) by LRs. v. Thammisetty Subba Rao and Others**, 2011 (6) ALD 324, and **Mitta Sanjeeva reddy and another v. Shaik fakruddin and another**, 2011 (6) ALT 176, **and Darji Krishna Murthy and 2 others vs. M.Shankar Reddy and 3 others**, CRP No.3046/2012,date of judgment: 01-10-2013). Also see:- **SURAJ LAMP AND INDUSTRIES PRIVATE LIMITED (THROUGH DIRECTOR) v. STATE OF HARYANA AND ANOTHER**, (2012) 1 SCC 656; and **RAMESH CHANDRA PATTNAIK v. PUSHPENDRA KUMARI AND OTHERS**, (2008) 10 SCC 708.

CONCLUSION:-

The meaning of the word 'Interlocutory application' can be understood that an application to the court in any suit, appeal or proceeding already instituted in such court, other than a proceeding for execution of a decree or order. Section 141 of CPC deals with miscellaneous proceedings. Every Interlocutory Application need not be tried as a suit under the guise of Sec. 141 CPC. Sec.94

CPC deals with Supplementary Proceedings. As has been discussed above, Chapter-V, Rule 60 of the Civil Rules of Practice makes it clear that the facts that are necessary for adjudication of the interlocutory applications are to be proved by affidavits.

As can seen from dicta observed in S. Ravinder's case, depending on the circumstances of the case, the Court may record oral and documentary evidence at that stage also. It is only when the Court decides to record oral evidence instead of deciding the matter on affidavits that the procedure for marking documents, as in the case of recording of the evidence in the suit, needs to be followed. Whenever an order is passed by the Court in exercise of its ancillary power or in the incidental proceedings, the same may revive on revival of the suit. But so far as supplemental proceedings are concerned, the Court may have to pass a fresh order for their revival.

Application of doctrine of dominus litus is confined only to the cause of action which would fall within Sections 15 to 18 of the Code of Civil Procedure. The question as to whether an individuals a proper or necessary party to a suit, would depend upon the nature of relief claimed in the suit and the right or interest projected by the persons, who propose to get themselves impleaded. No hard and fast rule can be weighed.

An interlocutory order is an order that does not finally determine the rights, duties and obligations of the parties to a proceeding. Interlocutory orders may take various shapes depending upon the requirement of the respective parties during the pendency of the suit.