

## **MAREVA INJUNCTION**

There being no provision in the law of India equivalent to section 45 of the Supreme Court of Judicature (Consolidation) Act 1925, a Mareva injunction, to the extent that it may be regarded as an alternative, albeit far narrower in concept, form of proceeding to an action in rem in order to make a ship lying within the jurisdiction available as pre-judgment security, it is not yet allowed in the Indian Courts in the exercise of their Admiralty Jurisdiction and it is also not available in their ordinary original civil jurisdiction.

The intention of a Competent Court hearing a dispute between two or more parties is to arrive at a logical and legal conclusion, keeping in mind the business needs and to give credit where it is due. For a variety of reasons, no court worldwide is able to determine a dispute on merits forthwith on reference. In other words, there is a considerable time gap between commencement of litigation and its final conclusion. This interregnum can however provide a party sufficient opportunity to make itself judgment-proof by tampering or destroying evidence or leaving the jurisdiction (and thereby evading the effect of a restraint order). These and other realities, which in the past have enabled, a defendant snapping his fingers at a judgment of a court with impunity" and defeat the effectiveness of a legal system, have fuelled the growth of relief in the interregnum i.e. interim relief.

English Courts, since the mid-seventies have revolutionized the role of interim relief by enlarging the role of judicial discretion and granting two very effective orders The Mareva and the Anton Piller thereby infusing a huge degree of professionalism and expertise, both for the business community and the legal fraternity.

Of even greater relevance has been the exponential growth in their use, the development and branching of other incidental relief, the use of the concept of full and frank disclosure of all material facts, standardization and clarity of the orders actually passed and the speed of their implementation to keep up with technological and business strides which have made movement of funds and persons from one to another jurisdiction easy and quick and to ensure balanced application of the relief in consonance with human rights issues. Prominent among these are the interest of third parties, the acknowledgment of judicial power of courts of other nation states in worldwide relief, granting orders in criminal matters and use of costs undertakings for damages.

In several litigation proceedings, the interim relief, actually meant to support the main claim, can make or break the dispute commercially, if not legally and thus the need for a court is to see, "that the stable door is locked before the horse has gone".

To fully understand and comprehend the history and growth of the Mareva and the Anton Piller, other supplementary orders and writs, like the writ ne exeat regno (arrest of defendant pending provision of security), delivery up of chattels and goods, order for disclosure of information (for the Mareva to bite available assets) or inspection of books, writs of assistance through a receiver or sequestration and Security for costs. Novel developments have taken place for service outside jurisdiction and grant of worldwide orders.

The essential ingredients, which an applicant should satisfy on an ex-parte application to become entitled to a Mareva are

- a. a good arguable claim;
- b. a real risk that the final judgment in its favour would remain unsatisfied;
- c. full and frank disclosure of all material facts;

d. the exercise of discretion by the court

In the Indian legal system, there is no direct equivalent to the Mareva injunction as provided under English law. The Supreme Court of Judicature (Consolidation) Act 1925, which governs the Mareva injunction in England, does not have a corresponding provision in Indian law. As a result, Indian courts, in exercising their Admiralty Jurisdiction, do not grant Mareva injunctions as a form of pre-judgment security for making a ship within the jurisdiction available. This type of relief is also unavailable in the ordinary original civil jurisdiction of Indian courts.

#### Purpose and Evolution of Interim Relief

The primary objective of any competent court adjudicating disputes is to reach a fair and just conclusion, considering the commercial needs and ensuring that credit is given where due. However, due to various reasons, courts worldwide are unable to resolve disputes on merits immediately upon reference. This delay between the commencement and final conclusion of litigation provides opportunities for defendants to evade the effectiveness of legal proceedings by destroying evidence, leaving the jurisdiction, or otherwise rendering themselves judgment-proof.

To address these challenges, courts have developed interim relief mechanisms. English courts, since the mid-1970s, have significantly expanded the role of judicial discretion by introducing two powerful interim orders: the Mareva injunction and the Anton Piller order. These measures have brought a new level of professionalism and effectiveness to both the business and legal communities.

#### Key Features of Mareva Injunction

The Mareva injunction, named after the landmark case *Mareva Compania Naviera SA v. International Bulkcarriers SA* (1975), allows courts to freeze the

assets of a defendant to prevent them from being dissipated before a final judgment. This injunction has become an essential tool in commercial litigation, providing claimants with a means to secure assets that might otherwise be out of reach by the time a judgment is rendered.

#### Essential Ingredients for Granting a Mareva Injunction

**Good Arguable Claim:** The applicant must demonstrate a strong and plausible claim.

**Risk of Dissipation:** There must be a real risk that the defendant's assets will be dissipated, making it difficult or impossible to satisfy a judgment.

**Full and Frank Disclosure:** The applicant must disclose all relevant material facts to the court.

**Judicial Discretion:** The court must exercise its discretion in granting the injunction, balancing the interests of both parties.

#### Impact and Development

The Mareva injunction and related orders, such as the Anton Piller order (which permits the search and seizure of evidence), have undergone significant development and refinement. Courts have introduced various supplementary orders and writs, such as:

**Writ ne exeat regno:** Arrest of a defendant pending provision of security.

**Delivery Up Orders:** Compelling the surrender of chattels and goods.

**Disclosure Orders:** Requiring the disclosure of information to identify assets.

**Writs of Assistance:** Involving the appointment of receivers or sequestrators.

Security for Costs: Ensuring that a party provides security for the potential costs of litigation.

These developments have led to the creation of standardized and clear orders, rapid implementation to match technological and business advancements, and balanced application to respect human rights issues. This includes considering the interests of third parties, acknowledging the judicial authority of courts in other jurisdictions, granting orders in criminal matters, and using cost undertakings for damages.

Interim relief, such as the Mareva injunction, plays a critical role in commercial litigation. It can be decisive in determining the outcome of a dispute by securing assets that might otherwise be dissipated. Although Indian courts do not currently grant Mareva injunctions, understanding their development and application in other jurisdictions provides valuable insights into the potential evolution of interim relief in India.

The Mareva injunction, originating from English law, is a pre-judgment freezing order designed to prevent a defendant from dissipating assets that would otherwise be available to satisfy a judgment. However, under Indian law, there is no direct equivalent to this type of injunction, and the Supreme Court of Judicature (Consolidation) Act 1925, which governs such injunctions in England, does not have a counterpart in India. Indian courts do not currently recognize or grant Mareva injunctions within their Admiralty Jurisdiction or even under their ordinary original civil jurisdiction.

#### Purpose and Evolution of Interim Relief in Admiralty Jurisdiction

The primary function of any competent court adjudicating disputes is to ensure a logical and legally sound resolution, taking into account the commercial realities and business needs of the parties involved. However, due to procedural complexities and the time-consuming nature of litigation, courts worldwide often face significant delays between the initiation and final

resolution of a case. This interim period provides ample opportunity for defendants to frustrate the process by dissipating assets, destroying evidence, or fleeing the jurisdiction. To counter these challenges, interim relief mechanisms have evolved to preserve the status quo and secure the claimant's interests during the pendency of the litigation.

In England, the development of interim relief mechanisms like the Mareva injunction and the Anton Piller order in the 1970s marked a significant expansion of judicial discretion. These tools have become instrumental in commercial litigation, empowering courts to grant effective, swift relief and preserving assets or evidence that could otherwise be lost.

#### Key Features of the Mareva Injunction

The Mareva injunction derives its name from the landmark decision in *Mareva Compania Naviera SA v. International Bulkcarriers SA* (1975). This injunction serves to freeze a defendant's assets to prevent them from being dissipated before a final judgment is rendered. Its primary purpose is to secure the assets within the jurisdiction, ensuring that they remain available to satisfy a potential judgment.

To obtain a Mareva injunction, the applicant must satisfy several essential ingredients:

**Good Arguable Claim:** The claimant must demonstrate that they have a strong and plausible claim against the defendant.

**Risk of Dissipation:** There must be a real and credible risk that the defendant's assets may be dissipated, making it difficult or impossible to enforce a future judgment.

**Full and Frank Disclosure:** The applicant is under an obligation to provide full and frank disclosure of all material facts relevant to the application.

Exercise of Judicial Discretion: The court must exercise its discretion in granting the injunction, weighing the balance of convenience between the parties.

#### Indian Admiralty Law and Interim Relief

Despite the effectiveness of the Mareva injunction in other jurisdictions, Indian admiralty law, as governed by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017") and the Admiralty Rules of the High Courts, does not currently provide for this specific form of relief. The absence of a statutory framework equivalent to the Supreme Court of Judicature (Consolidation) Act 1925 means that Indian courts do not have the authority to grant Mareva injunctions within the context of admiralty cases.

#### Judicial Discretion in Admiralty Courts

Indian courts, including those exercising admiralty jurisdiction, have a well-established practice of granting various forms of interim relief, such as attachment before judgment and injunctions. These interim measures are designed to secure the plaintiff's interest by maintaining the status quo and preventing the defendant from taking actions that could defeat the purpose of the litigation.

Under the Admiralty Act, 2017, courts are empowered to order the arrest of vessels to secure maritime claims. This remedy serves a similar purpose to the Mareva injunction in that it prevents the defendant from removing the vessel from the jurisdiction, thereby securing the plaintiff's claim. The process of arrest under Indian admiralty law is a crucial tool for claimants seeking to enforce maritime claims, as it provides them with security for their claims by preventing the vessel from being sold or transferred out of the jurisdiction.

For example, in *MV Elisabeth v. Harwan Investment & Trading Pvt. Ltd.* (1993), the Supreme Court of India upheld the principle that admiralty courts have inherent powers to provide appropriate relief, even in the absence of specific statutory provisions. This case illustrates the flexibility of admiralty courts in India when it comes to granting interim relief, though the specific remedy of a Mareva injunction remains outside their purview.

#### Supplementary Orders and Developments

In addition to the arrest of vessels, Indian courts have recognized other supplementary orders and writs that serve similar functions to the Mareva injunction. These include:

**Writ ne exeat regno:** An order preventing a defendant from leaving the jurisdiction without providing security.

**Attachment Before Judgment:** A remedy available under Order XXXVIII, Rule 5 of the Code of Civil Procedure, 1908, allowing courts to attach a defendant's property to prevent its dissipation during litigation.

**Injunctions:** Under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908, courts can grant injunctions to restrain parties from performing certain acts that may prejudice the plaintiff's rights.

While these remedies are not direct equivalents of the Mareva injunction, they reflect the broader principle of securing the plaintiff's interest during the pendency of litigation.

The absence of a Mareva injunction under Indian law, particularly in the context of admiralty jurisdiction, highlights a significant difference between the Indian legal system and the legal systems of other jurisdictions, such as England. However, Indian courts possess a range of interim relief mechanisms that serve to protect the interests of plaintiffs during the



litigation process. The Admiralty Act, 2017 and the Admiralty Rules of the High Courts provide a robust framework for the arrest of vessels, securing maritime claims, and preserving assets within the jurisdiction.

While the introduction of a Mareva injunction-like remedy in India would require legislative intervention, the existing mechanisms provide a degree of security to claimants in admiralty cases, ensuring that the assets remain available to satisfy a judgment.