Distinction Between Order 38, Rule 5 and Order 39, Rules 1-2 CPC in the Context of "Maintenance of Status Quo"

News & Updates • December 5, 2025

The High Court of Delhi in a significant interim ruling, "AB SKF vs M/S PARAMOUNT BEARING CO. & ORS.", CS(COMM) 963/2025, dated 19/11/2025 has clarified the conceptual divide between Order 38 Rule 5 (relating to attachment of property before judgement) and Order 39, Rules 1-2 of CPC (relating to temporary injunctions). The Centre of the dispute was to freeze bank accounts of the defendants accused of trademark infringement and counterfeiting of the marks. The defendants argued that such a relief amounts to "an attachment before judgement", attracting the provisions under Order XXXVIII, Rule 5 of the CPC.

Rejecting the contention of the defendants, the Court held that when the purpose was solely to "preserve the status quo" or preserve the property forming the subject-matter of the suit, an order to freeze the bank accounts is squarely covered under an Order 39 injunction and not an attachment to preserve a decree. It was stated that "Preserving Status Quo" operates differently under the two provisions and they must not be conflated with.

Background of the Dispute

The facts relate to allegations of large-scale counterfeiting of branded goods. According to the plaintiff, the proceeds from the sale of counterfeit goods were being channelled into specific bank accounts held by the defendants. Local Commissioner reports and invoices seized during raids had linked the sale of infringing goods to these accounts. Based on this evidence, the plaintiff had sought temporary injunction restraining the defendants from withdrawals and transfer of money from the identified accounts. However, the defendants argue that freezing a bank account amounts to "attachment of property before judgement" hitting the provisions under Order 38, Rule 5 of the CPC and this cannot be granted unless the plaintiff substantiates that "there is a clear intention by the defendant to obstruct or delay execution of the decree".

Legal Issue Before the Court

Whether Freezing of Bank Accounts Constitutes Attachment Before Judgment

The core issue before the Court was to determine if a direction to freeze bank accounts under such circumstances to preserve evidence amounts to "attachment of property before judgement", or is it an interlocutory injunction under Order 39?

The Court began by giving a distinction between the two provisions:

- Order 39 – Protects the property in dispute in the suit, viz. the very subject matter whose preservation is essential for proper adjudication.
- Order 38 – Protects against attempts to defeat the execution of a future decree by preventing the disposal of the defendants' property.

In this case, the money flowing into the bank accounts was the alleged profits made out of the counterfeit sales. Hence, the form prime evidence or such proceeds form part of the property in dispute, bringing the request clearly in the domain of Order 39.

Nature of Freezing Orders and Attachment Before Judgement

The Court also stressed that "not every restraint involving property is an attachment". Attachment before a judgement is a specific, drastic and an exceptional measure that law restricts to prevent misuse. A freezing order is however more temporary in nature. In the present case, the Plaintiff's demanded freezing as there is imminent risk of the property in dispute to be wasted by acts of the defendant. The plaintiff does not demand attachment of the property of the defendants but what they rather demand is maintaining "status quo" with regard to the bank accounts till the defendant files reply and the same is examined based on merits. An attachment can continue even after a decree has been passed. Thus, under present circumstances, interpreting a freezing order as an attachment would fundamentally distort the scheme of the CPC.

Reliance on Judicial Precedent

Vareed Jacob vs Sosamma Geevarghese

The Court heavily relied on *Vareb Jacob vs Sosamma Geevarghese,* which underlined that Order 38 and 39 served different purposes and must not be applied interchangeably. The court emphasized that, "*Order 38 is not to be invoked lightly and requires strong evidence of intent to defeat execution*", and, "*Order 39 has a lower threshold and is designed to maintain the integrity of an ongoing litigation*". By following the precedent, the Court reaffirmed the jurisprudential position that injunctions aimed at preserving disputed property are fundamentally different from attachments

aimed at securing decrees.

Application of Threshold Test Under Order 39 CPC

The Plaintiff had successfully demonstrated that the "Threshold Test" under Order 39 was satisfied as there was a prima facie case of infringement supported by documentary evidence, a clear link between infringing sales and the bank accounts established through seized invoices and commissioner reports, and a likelihood of an irreparable injury if the money was allowed to be withdrawn from the bank accounts of the defendants. The Court held the "Threshold Test" for an interlocutory order under Order 39 was successfully satisfied.

But the Court at the same time adopted "a balanced and a proportionate approach" by recognising that freezing accounts may impair business operations. Hence, the Court ordered filing of bank statements, disclosure of full KYC details and filling of details in sealed cover judicial inspection. This measure allows preservation of the disputed funds without hampering the defendants' lawful operations.

Conclusion and Precedential Value

The Court clearly held that the bank account freeze was an equitable interlocutory injunction under Order 39. This was appropriate for "maintaining status quo" concerning the proceeds in the accounts generated through alleged infringement. Accordingly, the Court granted a freezing order but at the same time directing financial disclosures and allowing further hearing.

This decision reinforces proper use of Order 39, especially in counterfeiting cases, where sale proceeds are often the recoverable evidence and prevent misuse of Order 38, Rule 5 which defendants often use strategically to prevent freezing orders. The distinction made by the Court is important as it serves as a valuable precedent for future courts dealing with similar cases in civil, commercial and IP disputes.

Click here: High court order SKF v Paramount

KEY CONTACT



Pravin Anand

Managing Partner

View Bio of Pravin Anand

RELATED PRACTICES

PATENTS