

## **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