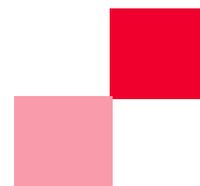


India

Sumeet Kachwaha, Kachwaha & Partners



www.practicallaw.com/3-202-0858

1. Are attachment orders (or an equivalent measure) available in your jurisdiction?

The courts have very wide jurisdiction to pass temporary injunctions and interim orders of various types, including attachment before judgment under the provisions of Orders 38 and 39 of the Code of Civil Procedure 1908 (CPC). A court (among other things) can make an order for the purpose of staying and preventing waste, damage, alienation, sale, removal or disposal of property or dispossession of the claimant or injury to the claimant in relation to any property in dispute in the action as the court may think fit. The court also has powers to restrain a defendant from committing breach of contract or causing any injury of another kind to the claimant.

2. Are they sought frequently in practice?

Attachment orders are frequently sought in practice.

3. Can they be obtained without prior notice to the defendant in urgent cases?

If a court is satisfied that the object of granting the injunction would be defeated by the delay in issuing notice to the defendant, it may grant a without notice order. The court must record the reasons for this order and hear the opposite party within 30 days from the grant of the injunction, unless (for reasons to be recorded) it cannot do so.

4. Are they available on the same day as the application is made in urgent cases?

They are available on the same day as the application is made in urgent cases.

5. What is the substantive test (in particular, is there a need to show a risk of dissipation of the assets)?

Usually courts consider the following:

- The prima facie case of the applicant.
- The balance of convenience between the parties.
- Whether irreparable injury will be caused to the applicant if the interim order is not granted.

The court decides these matters on witness statements and documentary evidence.

6. Is there a need for the main proceedings to be in the same jurisdiction?

An application for an interim injunction or attachment must be in the same jurisdiction as the main proceeding. However, the order can operate outside the court's territorial jurisdiction if the court otherwise has jurisdiction in law.

7. Does attachment create any preferential right or lien in favour of the claimant over the seized assets?

The attachment does not create any preferential right or lien.

8. Is the claimant liable for damages suffered as a result of the attachment?

The claimant is not liable for damages as, in law, no person can be prejudiced by an act of court (including an attachment or other injunction).

9. Is there a need for the claimant to provide security?

Generally, security is not required by the courts.

10. What are the typical costs for straightforward attachment?

There is no court fee. The other costs depend on the complexity of the matter and the seniority of the advocates engaged. Generally, it can cost between GB£1,500 (about US\$2,658) and GB£2,500 (about US\$4,430).