BLOGS

Learn in a Minute: Interlocutory Order under the Civil Procedure Code

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Interlocutory Orders under the Civil Procedure Code

Introduction

An interlocutory order is a temporary order a civil court passes while a suit is still pending, to protect the parties' position until the case is finally decided. It does not settle who wins; it stops one side from causing harm, or the subject matter from being lost, in the meantime.

Interlocutory order: an order passed during the pendency of a suit or proceeding that decides an interim question, such as an injunction or the appointment of a receiver, without finally deciding the rights of the parties. The word comes from the Latin *interloqui*, "to speak between": the order is spoken between the start of the case and its end.

Note: the Code of Civil Procedure, 1908 (CPC) does not define "interlocutory order". It defines an "order" in Section 2(14) as the formal expression of any decision of a civil court that is not a decree.

Civil cases take time. Between the institution of a suit and the final decree, months or years can pass. Without interim protection, a defendant could sell the disputed property, demolish a building or leave the country, and the plaintiff's eventual decree would be worth nothing. Interlocutory orders fill that gap.

What Are Interlocutory Orders?

Interlocutory orders are orders that deal with an issue arising while the suit is pending, rather than with the main dispute. They are ancillary to the suit: they exist to help the court decide it

fairly, not to decide it themselves.

The CPC divides a court's decisions into two kinds. A decree, under Section 2(2), conclusively determines the rights of the parties on the matters in controversy. An order, under Section 2(14), is any other formal decision of a civil court. Interlocutory orders are the orders passed along the way, before the decree.

Three features mark an interlocutory order:

- It is passed while the suit is pending, usually on an interim application.
- It is temporary: it lasts until the suit is decided, or until the court changes or vacates it.
- It does not finally decide the rights of the parties, and its findings are tentative.

Interlocutory vs Final Order

The difference is about finality. An interlocutory order holds the position while the suit continues; a final order or decree ends it.

Basis	Interlocutory order	Final order or decree
Stage	Passed while the suit is pending	Ends the suit or proceeding
Decides rights finally?	No; protects the position until trial	Yes
Purpose	Preserve the subject matter, prevent injustice meanwhile	Adjudicate the dispute
Appeal	Only if listed in s.104 and Order XLIII Rule 1; otherwise revision (s.115) may be considered	Appeal under s.96 / s.100
Examples	Temporary injunction, receiver, attachment before judgment	Decree in a suit for possession

The label on an order is not decisive. Rejection of a plaint under Order VII Rule 11, for example, is passed at the start of a suit, yet the CPC treats it as a decree under Section 2(2), because it ends the suit. It is therefore appealable as a decree, not as an interlocutory order.

Objectives of Interlocutory Orders

Interlocutory orders serve four main purposes.

1. **Prevent irreparable harm.** They stop a party from doing something that cannot be undone, such as demolishing a building or selling unique property, before the court decides the case.
2. **Preserve the subject matter.** They keep the disputed property, money or status quo intact, so the final decree can actually be carried out.
3. **Ensure a fair trial.** Orders such as commissions to examine witnesses or inspect property help the court gather evidence it needs.
4. **Prevent abuse of the process.** Orders such as attachment before judgment stop a defendant from defeating a likely decree by hiding assets or leaving the jurisdiction.

Types of Interlocutory Orders under CPC

The CPC provides for several kinds of interlocutory orders, mostly in Orders XXV to XL. The six below are the ones most often asked about.

Temporary injunction (Order XXXIX)

A temporary injunction restrains a party from doing an act, or requires it to maintain the status quo, until the suit is decided. Under Order XXXIX Rule 1, the court may grant one where the suit property is in danger of being wasted, damaged or alienated, where the defendant threatens to remove or dispose of property to defraud creditors, or where the defendant threatens to dispossess or injure the plaintiff in relation to the property. Rule 2 covers injunctions to restrain a breach of contract or other injury.

Before granting an injunction, the court must give notice to the other side (Rule 3). It can skip notice only if the delay would defeat the purpose, and must then record its reasons. An ex parte injunction should be decided within 30 days (Rule 3A). Disobeying an injunction can lead to attachment of property and civil imprisonment of up to three months (Rule 2A).

Appointment of receiver (Order XL)

Under Order XL Rule 1, where it appears "just and convenient", the court may appoint a receiver to take possession of disputed property, manage it, and collect its rents and profits while the suit is pending. A receiver is an officer of the court, not an agent of either party. It is a drastic remedy,

used where the property is at real risk of being wasted or mismanaged.

Arrest and attachment before judgment (Order XXXVIII)

These orders stop a defendant from defeating a decree before it is passed.

- **Arrest before judgment (Rules 1 to 4):** where the defendant, with intent to delay the plaintiff or avoid the court's process, is about to abscond, leave the court's jurisdiction, or dispose of or remove property from it, the court may call on the defendant to furnish security for appearance.
- **Attachment before judgment (Rules 5 to 13):** where the defendant, with intent to obstruct or delay execution of a decree, is about to dispose of or remove property from the court's jurisdiction, the court may order the defendant to furnish security or face attachment of the property.

In Raman Tech. & Process Engg. Co. v Solanki Traders (2008), the Supreme Court called attachment before judgment a drastic remedy, not to be used as a tool to pressure a defendant into settling.

Security for costs (Order XXV)

Under Order XXV Rule 1, the court may order a plaintiff to give security for the defendant's costs, most commonly where the plaintiff lives outside India and has no sufficient immovable property in India. If the plaintiff does not give the security in time, the court may dismiss the suit (Rule 2).

Commissions (Order XXVI)

The court may issue a commission to a person, often an advocate, to do work it cannot easily do itself: examine witnesses who cannot attend court, make a local investigation, examine accounts, carry out a partition, or hold a scientific investigation. The commissioner's report becomes part of the record.

Interim sale (Order XXXIX Rule 6)

Where the subject matter of a suit is movable property that is subject to speedy and natural decay, such as fruit or vegetables, or that should be sold for some other just and sufficient reason,

the court may order it to be sold while the suit is pending. The sale proceeds stand in place of the goods.

Types of interlocutory orders

Order	Provision	Purpose	Appealable under Order XLIII?
Temporary injunction	Order XXXIX Rules 1–2	Preserve the status quo	Yes, Rule 1(r)
Appointment of a receiver	Order XL Rule 1	Protect and manage disputed property	Yes, Rule 1(s)
Arrest and attachment before judgment	Order XXXVIII	Stop the defendant defeating a decree	Yes, Rule 1(q) (orders under Rules 2, 3 and 6)
Commissions	Order XXVI	Local investigation, examination of witnesses, accounts	Not listed
Interim sale of perishable goods	Order XXXIX Rule 6	Prevent loss of value	Not listed

Principles Governing Interlocutory Orders

Interlocutory relief is discretionary. For temporary injunctions, the Supreme Court in Dalpat Kumar v Prahlad Singh (1992) settled that the applicant must satisfy three tests, and the same reasoning guides most other interim relief.

The three tests for a temporary injunction:

1. **Prima facie case:** the applicant must show a serious question to be tried, with a fair chance of success. This is not the same as proving title; it is enough that the claim is not frivolous.
2. **Balance of convenience:** the court weighs the harm the applicant would suffer if the injunction were refused against the harm the other side would suffer if it were granted, and leans towards the lesser injustice.

3. **Irreparable injury:** the applicant must show that, without the injunction, they would suffer harm that money could not adequately compensate.

Test	Question the court asks
Prima facie case	Is there a serious question to be tried?
Balance of convenience	Who suffers more if the injunction is granted or refused?
Irreparable injury	Would the harm be impossible to compensate in money?

All three must be met. A strong prima facie case alone is not enough if damages would fully compensate the applicant.

Other governing principles

- **Discretion exercised judicially.** The court must give reasons and follow settled principles. In Wander Ltd v Antox India (1990), the Supreme Court held that an appellate court should not interfere with an interlocutory order unless the trial court acted arbitrarily, capriciously or perversely, or ignored settled principles.
- **Hearing both sides.** Notice to the other party is the rule; ex parte orders are the exception and need recorded reasons (Order XXXIX Rule 3).
- **Conduct of the applicant.** Relief may be refused to an applicant who has delayed unreasonably or suppressed material facts.
- **No prejudice to the merits.** Findings at the interlocutory stage are tentative and do not bind the court at trial, which is why they do not operate as res judicata on the merits.
- **Proportionality.** The relief should go no further than needed to protect the applicant, and the court can impose conditions, such as security or an undertaking to pay damages.

Appeal and Revision

An interlocutory order can be appealed only if the CPC specifically says so. If it does not, the aggrieved party must wait and challenge it in the appeal against the final decree, or, in narrow cases, seek revision.

Appeal: Section 104 with Order XLIII

Section 104(1) says an appeal lies from the orders listed in that section and in Order XLIII Rule 1, "and from no other orders". Order XLIII Rule 1 lists the appealable orders, including:

- Rule 1(a): an order returning a plaint under Order VII Rule 10
- Rule 1(q): orders under Order XXXVIII Rules 2, 3 and 6 (arrest and attachment before judgment)
- Rule 1(r): orders under Order XXXIX Rules 1, 2, 2A, 4 and 10 (temporary injunctions)
- Rule 1(s): orders under Order XL Rules 1 and 4 (receivers)

No second appeal lies from an order passed in such an appeal (Section 104(2)). Under Section 105, a non-appealable order that affects the decision of the case can still be challenged in the appeal against the final decree.

Revision: Section 115

The High Court can revise a case decided by a subordinate court, where no appeal lies, if the court exercised a jurisdiction it did not have, failed to exercise one it had, or acted illegally or with material irregularity.

Since 1 July 2002, when the Code of Civil Procedure (Amendment) Act, 1999 came into force, the proviso to Section 115(1) has sharply limited revision against interlocutory orders. The High Court cannot revise an order made in the course of a suit unless the order, had it been made in favour of the party applying for revision, would have finally disposed of the suit or proceeding. A revision also does not stay the suit (Section 115(3)).

In practice, this rules out revision against most interlocutory orders. For example, an order allowing an amendment of pleadings is not revisable, because deciding it the other way would not have ended the suit. The High Court's supervisory jurisdiction under Article 227 of the Constitution remains available in exceptional cases.

Interlocutory Orders in Criminal Cases (short note)

Criminal procedure uses the same term differently. Section 397(2) of the CrPC, now Section 438(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), bars revision against interlocutory orders, to prevent trials from being delayed by challenges to every interim step.

- **Amar Nath v State of Haryana (1977):** a two-judge bench held that "interlocutory order" means an order of a purely interim or temporary nature that does not decide or touch the important rights or liabilities of the parties. An order that substantially affects the rights of the accused is not interlocutory.
- **Madhu Limaye v State of Maharashtra (1977):** a three-judge bench added a middle category of "intermediate" orders: orders that are not final, but are not interlocutory either. An order rejecting the accused's plea on a point that, if accepted, would end the proceeding is such an order. On this reasoning, the Court held that an order framing a charge is not interlocutory, so revision lies. It also held that the High Court's inherent power, now Section 528 BNSS, is not barred, though it must be used sparingly.

The civil and criminal rules differ. In civil cases, the question is whether the order is listed in Order XLIII or would finally dispose of the suit. In criminal cases, the question is whether it touches important rights of the parties.

FAQs

What is an interlocutory order?

An interlocutory order is a temporary order a civil court passes while a suit is pending, to protect the parties or the subject matter until the case is decided. Examples are a temporary injunction, the appointment of a receiver and attachment before judgment. It does not finally decide the rights of the parties.

Is an interlocutory order appealable?

Only if the CPC says so. Section 104 and Order XLIII Rule 1 list the appealable orders, such as orders on temporary injunctions (Rule 1(r)), receivers (Rule 1(s)) and attachment before judgment (Rule 1(q)). Other interlocutory orders can be challenged in the appeal against the final decree under Section 105.

What is the difference between an interlocutory and a final order?

An interlocutory order is passed while the suit is pending and only protects the position until trial. A final order or decree ends the suit and decides the parties' rights. A decree is appealable under

Sections 96 and 100; an interlocutory order only if it is listed in Section 104 or Order XLIII.

Can a revision lie against an interlocutory order?

Rarely. Since 2002, the proviso to Section 115(1) bars revision against an order made in the course of a suit unless the order, had it gone the other way, would have finally disposed of the suit. Most interlocutory orders fail this test. The High Court's power under Article 227 remains for exceptional cases.