

CASE NOTE ON MODI ENTERTAINMENT NETWORK V. W.S.G. CRICKET PVT. LTD., SINGAPORE SUPREME COURT OF INDIA (2003)

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Procedural History

The respondents in the particular case moved the High Court of Justice, Queen's Bench Division seeking remedies for the damages as had been stipulated due to the alleged breach of contract, whereas the appellants first approached the Bombay High Court. The appellants, in an effort to gain an anti-suit injunction against the respondents, in order to restrain the procedures in the English Courts, sought leave for such remedy. The interim relief was then granted to them by the Bombay High Court, but was later vacated by the Division Bench of the Bombay High Court. It is on the backdrop of these procedural nuances that the present case has been brought forth.

Facts

Modi Entertainment Network (The plaintiffs) are an Indian Company that entered into an agreement with W.S.G. Cricket Pte. Ltd., Singapore (The defendants) on September 21st, 2000, granting the defendants exclusive television rights for the ICC Knockout Cricket Tournament in Kenya. These rights were then licensed to other parties, which was unauthorized and therefore contrary to the terms of the agreement as stipulated in the contract.

The defendants were granted an exclusive licence by the defendants to display the Matches during the exhibition period. Within the licenced territory, this licence permitted the transmission of the Matches with approved commentary in specific languages. It was also agreed that there would be no breach of contract if other licenced broadcasters incidentally transmitted into the licenced territory. Additionally, it was strictly prohibited for the plaintiffs to retransmit the exhibitions outside of the licenced territory.¹⁸⁶

Not long after the Agreement was signed on September 21, 2000, the ICC Knockout Cricket

Tournament in Kenya got underway on October 3, 2000. The plaintiffs found the short span of ten days to invite sponsors to advertise during the Matches. The plaintiffs signed a contract with Doordarshan to broadcast the event, and they paid them four crore rupees in telecast fees. This arrangement was required because the defendants knew that Doordarshan had a monopoly on domestic broadcasting in India and that the Agreement called for exclusive exhibition through the channel.

As per the terms of the assignment agreement Doordarshan was permitted to air the feed solely on its terrestrial free-to-air television channel. But due to technical difficulties, the broadcast was also shown in the Middle East, which the respondents considered to be a breach of the terms. Doordarshan was unable to fix the problem despite repeated requests and threats of discontinuation. The appellants asserted that advertisers moved their commitments from Doordarshan to ESPN as a result of the respondent's threats, resulting in a considerable loss of revenue.¹⁸⁷

Clause 12 of this Agreement also provided for the jurisdiction of the dispute:

¹⁸⁶ (2003) 4 SCC 341.

¹⁸⁷ (2002) SCC ONLINE BOM 96

“12. ENGLISH LAW

This Agreement shall be governed by the construed in accordance with English Law and the parties hereby submit to the non exclusive jurisdiction of the English Courts (without reference to English conflict of law rules).¹⁸⁸

In the Supreme Court of India, the appellants are seeking reinstatement of the Anti-suit injunction and damages for loss of advertising revenue, whereas respondents are seeking damages for breach of contract. The plaintiffs contention is that because of this conduct of the defendants, whereby the prospective advertisers ditched the plaintiffs and gave their advertisements to ESPN, the plaintiffs suffered loss of over US \$ 43,00,000/-.¹⁸⁹

Rules

Rules of The Conflict of Laws by Dicey and Morris

31. (5) An English court may restrain a party over whom it has personal jurisdiction from the institution or continuance of proceedings in a foreign court, or the enforcement of foreign judgments, where it is necessary in the interests of justice for it to do so.

32. (4) An English court may restrain a party over whom it has personal jurisdiction from the institution or continuance of proceedings in a foreign court in breach of a contract to refer disputes to an English (or, *semble*, another foreign) court.

Issues

1. Whether the Division Bench of the High Court erred in vacating the anti-suit injunction granted by a learned Single Judge restraining the respondent from proceeding with the action between the same parties pending in the English Court, the forum of their choice.
2. Whether the principles governing grant of an anti-suit injunction by a court of

natural jurisdiction, in a foreign court of choice of the parties were examined.

Contention of the plaintiffs

The plaintiffs contend that their Indian lawsuit was submitted prior to the defendants' English claim. They claim that all pertinent witnesses are located in India and that the entire cause of action originated there as well. They consider the English claim as vexatious and intended to harass them, arguing that allowing it to proceed would result in enormous expenses and hardship for Indian parties. Despite the fact that English law and jurisdiction are specified in the Agreement, the plaintiffs contend that the defendants' actions justify a stay of the English claim because it was launched in an attempt to undermine their case. Despite the Agreement's non-exclusive jurisdiction clause in England, they argue that the Indian court has the authority to provide an injunction against the defendants in the interest of justice.¹⁹⁰

Contention of the Respondents

The defendants place special emphasis on Clause 12 of the Agreement, declaring that they submit to the jurisdiction of the English Court and that English law rules the Agreement, in their affidavit. They contend that in light of the parties' earlier agreement, it is inappropriate for the plaintiffs to now ask for a stay of the complaint that was brought in England, the appropriate forum. Furthermore, the defendants claim that by neglecting to pay the security amount as stipulated in the Schedule on time, the plaintiffs violated the terms of the agreement. They also refute the plaintiffs' claims that they acted maliciously and in bad faith.¹⁹¹

Application

While the High Court held that although the parties had undoubtedly consented to a venue of their choosing, the plaintiffs could not have predicted the defendants' stance. The plaintiffs' argument that the suit in the English court

¹⁸⁸ (2003) 4 SCC 341.

¹⁸⁹ (2003) 4 SCC 341.

¹⁹⁰ (2002) SCC ONLINE BOM 96

¹⁹¹ (2002) SCC ONLINE BOM 96

would be oppressive and vexatious if it were to proceed holds merit. As the plaintiffs have rightfully argued, it would be extremely costly to secure the defendants' presence in England for the trial if the plaintiffs were to prove their case by examining potential advertisers who first expressed interest in promoting their product through Doordarshan but later approached the rival channel due to alleged threats from the defendants.

Despite the prima facie finding that the English courts would be oppressive and vexatious, the court believes that those findings would not bind the same learned judge, nor the appellate court or the parties involved at a later stage of the same proceeding since issue estoppels do not apply here. It cannot be broadly asserted that proceedings in either the court of natural jurisdiction or the chosen court will inherently be oppressive or vexatious; this determination depends on the specific circumstances of each case. Whether proceedings are deemed vexatious or oppressive must be assessed based on the evidence presented.

Herein, with a plain reading of the contracts and suits, the English court proceedings are not found to be at this stage, to be oppressive or vexatious. While anti-suit injunctions can be issued by courts to stop parties from violating their contractual duties related to jurisdiction, this is not the only justification for them. Despite the parties' agreement to English jurisdiction in the contract, the appellants brought the suit in the court of natural jurisdiction to settle contract disputes. Since the English Court lacks any relationship to the parties or the subject matter, through the jurisdiction clause, it can be inferred that the parties intended the dispute to be resolved in accordance with the principles of English law in English courts, and unless good reasons exist for not conforming to the same, it would continue.

"Even when the appellants had filed the suit earlier in point of time in the court of natural forum and the respondent brought action in the English Court which is the agreed forum or

forum of the choice having regard to the expressed intention of the parties, no good and sufficient reason is made out to grant anti-suit injunction to restrain the respondent from prosecuting the English action, as such an order would clearly be in breach of agreement and the court will not, except when proceedings in a foreign court of choice result in perpetuating injustice aid a party to commit breach of the agreement."

As stated in the High Court order as well, Mr. Chagla confirmed that the Court is authorised to provide an injunction of that kind. While stressing that this is an extraordinary discretion and that it should not be used carelessly, for the above stated grounds, Mr. Chagla believes that the Court should exercise its discretion in favour of the plaintiffs in this particular case. The defendants are yet to show any instances of fraudulent behaviour by the plaintiffs.

The court found no valid reasons to grant anti-suit injunction in favour of the appellants, in disregard of the jurisdiction clause, to restrain the respondent from prosecuting the case in the foreign forum of the choice of the parties – the English Court. Simply being a forum non-conveniens due to unforeseen breach of agreement by the respondent, does not grant a substantial reason to ignore the jurisdiction clause. Even if breach was anticipated, foreseeability doesn't extend to turning the chosen forum inconvenient. Factors like comparison of litigation expenses or hardship were likely considered by parties when agreeing to English jurisdiction, thus not valid grounds for interdicting action in English Court. Also, the argument that English Courts lack connection to the parties or the subject matter in itself does not form reason enough for the necessity of an ASI.

The court also went ahead and provided for instances where the grant of ASIs can be considered:

- Wherein (a) the defendant is amenable to the personal jurisdiction of the court; (b) declining of injunction would defeat

the ends of justice ; and (c) the principle of comity.

- Where there exists more than one forum, the court can examine forum conveniens and can grant ASIs in proceedings which are oppressive or vexatious or in a forum non-conveniens.
- Exclusive or non-exclusive jurisdiction also plays a supplementary relevant role in determining jurisdiction
- A court of natural jurisdiction typically refrains from granting anti-suit injunctions when parties have agreed to the exclusive jurisdiction of a foreign court, except in exceptional cases to prevent injustice, such as when circumstances render it impossible for a party to pursue the case in the chosen court due to contractual burden relief or unforeseen events like force majeure.
- Under a non-exclusive jurisdiction clause where parties agree to resolve disputes in a neutral foreign forum, anti-suit injunctions are typically not granted for proceedings in such a favored and convenient forum. There is a presumption that parties considered their convenience and relevant factors before agreeing to the non-exclusive jurisdiction, which shouldn't be treated merely as an alternative forum.
- Preventing a party from approaching a court specified in the jurisdiction clause is not allowed since it aids breach of contract. However, when one party initiates proceedings in the specified court, it shouldn't automatically be considered vexatious or oppressive, nor should the court be deemed forum non-conveniens.
- The burden of proof of forum non-conveniens lies on the party trying to aver such jurisdiction, and the same burden of proof applies to oppressive or vexatious procedures.

Analysis

Anti-suit injunctions are granted to parties within the meaning of interim reliefs in most facets of the law. Under this case, there have been several instances of the use of qualitative tests, in order to ensure there is no unnecessary lapse of time and depravity of any rights that were vested within the contractual parties. The court has taken a proactive stance, in so far as saying that the court does, in fact possess the ability to be able to restrain the rights of parties in the foreign court jurisdiction. While the court has substantiated the reasoning that there does exist the discretion within the power of the court, and that such power should be used in a diligent manner, it has also shown restraint with its powers. I believe that the court has taken a pro-litigation and arbitration stance, especially International dispute resolution, by ensuring that the overstepping taken forth by the Division Bench of the Bombay High Court was set aside and ensured that vested rights continued.¹⁹²

The Court should be mindful of the fact that even an injunction against an individual person, as opposed to a State, interferes with sovereign functioning of another forum. When revoking an individual's rights to sue in a chosen (although non-exclusive) jurisdiction, the court needs to look into the principle of comity much more seriously and ascertain whether such agreement needs to be trumped by a decree of the court to the contrary. Further, the Supreme Court has also observed that anti-suit injunctions should be granted sparingly and not as a matter of routine and that before passing the order of anti-suit injunction, courts should be extremely cautious.¹⁹³ Being a freely consented choice of the parties, I do not believe that the petitioners had any right to claim oppression under the current circumstances.

While convenience may be an argument in their favour, free consent of the parties has not been brought into question at all. Some existence of

¹⁹² Indulia, B. (2022) *Anti-suit injunctions: A brief judicial overview*, SCC Times. Available at: <https://www.sconline.com/blog/post/2022/07/20/anti-suit-injunctions-a-brief-judicial-overview/> (Accessed: June 11, 2024).

¹⁹³ (2018) AIR SC 2094.

mala fide intent by the defendants may be a reason for why the Single judge had granted the interim relief, however, the mere existence of a mala fide element must not render a contracting party's right to sue at a viable and chosen jurisdiction worthless. The Supreme Court has taken the right call by setting aside the decision of the Division Bench of the High Court.

Conclusion

Overall, the court has taken a proactive and favourable approach toward the International Dispute resolution, especially considering the balancing the parties' bargaining powers in the context of the agreement, along with the choices of the parties. Going further, the court has given more primacy to the idea of party autonomy in the facet of choice rather than focus on any other aspect of law. The discussion over forum non-conveniens, jurisdiction, choice of the parties, and the balance of conveniences has driven the entire suit into a conundrum of issues.

