

\* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 28.01.2010  
Judgment delivered on: 04.02.2010

**IA No. 15788/2009 in CS(OS) 2312/2009**

BOARD OF CONTROL FOR CRICKET IN INDIA ..... Plaintiff

Vs

ESSEL SPORTS PVT. LTD. & ORS. .... Defendants

**Advocates who appeared in this case:**

For the Plaintiff : Mr Ashok Desai, Sr. Advocate with Mr Amit Sibal,  
Ms Radha Rangaswamy, Mr Raman Kumar & Mr  
Harsh Kaushik, Advocates  
For the Defendants : Mr C.S. Vaidyanathan, Sr. Advocate with Ms Pratibha  
M. Singh, Ms Surbhi Mehta & Mr Nikhil Mehra,  
Advocates.

**CORAM :-**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether the Reporters of local papers may  
be allowed to see the judgment ? Yes
2. To be referred to Reporters or not ? Yes
3. Whether the judgment should be reported  
in the Digest ? Yes

**RAJIV SHAKDHER, J**

**IA No. 15788/2009 (O. 39 R. 1&2 of CPC by pltf.)**

1. The contours of the captioned application are brief:
  - 1.1 The plaintiff/applicant has sought an anti-suit injunction against defendant no. 1.  
The immediate cause for instituting the present suit is the proposed action sought to be  
instituted by defendant no. 1 in the United Kingdom (hereinafter referred to as the '1<sup>st</sup> U.K.  
Claim') which effectively succeeds a prior suit [being CS(OS) No. 1566/2007] instituted at  
the behest of defendant no. 1 in this court (hereinafter referred to as 'Indian Claim').  
Admittedly, the Indian claim which is pending adjudication is at the stage of evidence. It  
therefore becomes necessary to paraphrase the broad averments on which the Indian claim  
and the 1<sup>st</sup> UK claim are pivoted. For the sake of convenience, I would refer to the

plaintiff, i.e., Board of Control for Cricket in India as the BCCI and similarly, defendant no. 1, i.e., the Essel Sports Pvt. Ltd. as ESPL.

## 1.2 INDIAN CLAIM.

(i) The BCCI has illegally conferred upon itself the role of an administrator and regulator of Indian cricket, both in the country and abroad.

(ii) The BCCI has illegally refused to recognize the Indian Cricket League (in short the 'ICL') which is conceived, promoted, managed and controlled by ESPL as the organizer of 'official cricket'.

(iii) The BCCI has taken a position before courts in India, including the Supreme Court, that it is a private organization which is not controlled by the Government of India.

(iv) The ICL has been conceived to provide impetus to discover talent and consequently develop it, by giving opportunity to a large number of youngsters who do not get selected to the state cricket teams or the cricket teams at the national level. For this purpose, the ESPL, has started new tournaments, training programmes at district, state and national level under the guidance of Indian cricketing legends such as Kapil Dev, Sandeep Patil and Kiran More. Resultantly, there shall be not only opportunities available to a large number of cricketers to showcase their talent but also, a larger pool of budding cricketers would be available to the selectors both at the state and national level.

(v) The BCCI has both "*covertly*" and "*overtly*" taken steps to '*stultify*' and oppose ICL. In furtherance of its strategy to stymie the cause of ICL, the BCCI has made sure that cricket stadiums, which are affiliated to state associations, are not made available for matches organized by ICL.

(vi) Even though the BCCI asserts that it does not enjoy a monopoly, its conduct is such that it has created a de-facto monopoly. Instances of exercise of such monopolistic power are set out in paragraphs 25, 26 and 27.

(vii) There is a specific reference that in response to ESPL's communication dated 03.04.2007, the BCCI vide its communication of 21.06.2007 (which was addressed to the Presidents and Honorary Secretaries of all affiliated units) purportedly intimidated and

threatened such affiliate units with serious consequences in the event any of its stadium or cricket players associated with them participated in tournaments/matches organized by ICL.

(viii) The action of the BCCI in facilitating player participation in matches organized by event management companies as also matches organized by International Cricket Council (hereinafter referred to as 'ICC') is both discriminatory as well as arbitrary. It is alleged that the plaintiff has entered into a "*conspiracy*" with the state affiliated units which has resulted in "*wrongful loss*", "*harm*" and "*damage*" to ESPL.

(ix) The BCCI has, in attempting to achieve its stated goal of causing loss to ESPL, conspired and intimidated not only current players but also retired players by altering the pension scheme to a benevolent fund with a view to convey a message to such players that benefits which may possibly come to them shall be withdrawn if they were to participate in matches organized by ESPL. The BCCI has justified its power and/or authority to prevent cricketers, both past and current, from playing in matches other than those organized by it, based on the provisions contained in the Memorandum, Rules and Regulations and the Players Registration Forms along with Regulations appended thereto. In this regard, specific reference is made to the following provisions: 2(a), 2(g), 2(s), 2(u) & 2(v) of the Memorandum, Sections 1(d), 8(c), 8(d), 8(g), 13(v)(b), 13(v)(c), 13(v)(f), 33-d, 33-3 and 34 of the Rules and Regulations framed by the BCCI and clause 2, 9 & 10 of the Players Registration Form. (See paragraph 34(c) to 34(g) of the plaint). The said aforementioned provisions contained in the Memorandum, Rules and Regulations having not been placed before the Registrar of Societies, Tamil Nadu for approval and hence, are void. In any event, the provisions referred to above are clearly violative of Section 27 of Indian Contract Act, 1872 in as much as they amount to "unlawful restraint" and/or "restraint of trade". Consequently, the Rules and Regulations in so far as they authorize the BCCI to represent its team as the Indian team are neither valid nor legal and hence, are void. These provisions create a '*monopoly in favour of a private body in the game of cricket*'. In any

event, they amount to an abuse of monopolistic position by the plaintiff/BCCI. (See paragraph 34H and 34J of the Indian claim).

(x) The Memorandum, Rules and Regulations and the Players Registration Form along with appended Regulations being illegal and non est in law, cannot confer on the BCCI, the power and the authority to regulate game of cricket in India and frame laws in respect of game of cricket in India and to represent its position as an Indian team. The instances of exercise of monopolistic power by the BCCI are set out in paragraph 34L of the Indian claim.

(xi) The BCCI is guilty of having committed tortious acts in preventing players from entering into lawful contracts with defendant no. 1 and inducing “breach of contract” of those who have already entered into lawful contracts with defendant no. 1.

### 1.3 U.K. CLAIM

(i) ESPL seeks to promote cricket competition by featuring ICL teams comprising of well known professional cricketers all around the world including Indian cricketers.

(ii) ESPL is desirous of staging and, therefore, exploiting the broadcasting rights of ICL cricket competition for the benefit of viewers all around the world including those in U.K.

(iii) The second claimant, that is, the players who are professional cricketers wish to negotiate contracts to play for teams which participate in tournaments organized by ICL.

(iv) ESPL plans to stage ICL tournaments in “*future*” “*outside India*” including the U.K.

(v) ICL tournaments have not attracted pay TV broadcasters serving the U.K. and in order to get over this difficulty, ESPL has recruited a large number of players who are known to the U.K. cricket audience, making it attractive for Pay TV broadcasters serving the U.K.

(vi) The inability of ESPL in attracting large number of players known to U.K. cricket audience obtains on account of the fact that ICL tournaments have been targeted for boycott; which is orchestrated and carried out by the “*BCCI, ICC and ECB*” through their

“*respective regulatory frameworks*”. The object of boycott is to prevent ESPL from staging matches in competition with those which are promoted by BCCI, ECB and ICC.

(vii) The ICC regulations 32 and 33 prior to amendment categorized tournaments as ‘official’, ‘unofficial’ and ‘approved unofficial’ tournaments. Consequently, if the Home Board (in the instant case the BCCI) does not grant approval, then, under Regulation 33 of the ICC Regulations, the ICC is empowered to approve an event as ‘unofficial’ in exercise of its powers under Regulation 32. Post June, 2009, Regulation 32 of the ICC Regulations categorized any tournament as “*disapproved*” if not approved by the Home Board in whose territory the tournament is held. Thus, ICC has the residual power to declare an event “*unapproved*” only if the tournament is played in a country other than that of a Full Member, that is, the Home Board. The Full Member/Home Board have thus become the sole arbiter whether or not a tournament hosted in their country is to be approved.

(viii) Similarly, the regulations governing qualification of cricketers, that is, the ECB Regulations have been so amended by inserting in Regulation 2 of the ECB Regulations, the expression ‘professional cricket’ as against ‘first class cricket’ to achieve the stated end of boycotting the ICL — as registration with ICL by any player would result in breach of ECB Regulations. These amendments have been “*instigated*” by the BCCI and/or *orchestrated* through ICC.

(ix) The BCCI has resorted to methods which are calculated to “*deter*” and prevent prospective players and others connected with the game of cricket from involving themselves with ICC with the stated objective of obstructing the ICL. The particulars of such instances are set out in *paragraphs 38(1) to 38(10)*. The specific instances involving BCCI are set out in *paragraphs 36 to 38 of the plaint* while, those concerning ECB and ICC are set out in paragraph 39 to 49 of the plaint. Only to be noted that in paragraph 48 and 49 there is an assertion that ICC amended its regulation 32 of the ICC Regulations w.e.f. July, 2009 at the behest of the BCCI since BCCI wanted ICC to give up all control over “*domestic leagues*” such as “*ICL*”. In paragraphs 55 and 62 of the claim, it has been asserted that in view of involvement of the BCCI, the implementation of the boycott of

ICL as set out in paragraph 36 to 49 of the claim constitutes an agreement or a concerted practice as amongst the defendants, which is, prohibited within the meaning of Chapter I of the U.K. Competition Act, 1998 (in short the 'U.K. Act') and an abuse within the meaning of Chapter II of the U.K. Act, in particular, the provisions of Section 18(2)(b) and 18(2)(c) of the said Act.

2. In the background of the aforesaid broad assertions made in the Indian claim and the U.K. claim by the ESPL, Mr Ashok Desai, learned senior counsel, appearing for the BCCI made the following submissions:

2.1 That the test which has been laid down for grant of an anti-suit injunction is not whether the parties are identical or the claims and relief sought in the two proceedings, that is, the Indian claim and the U.K. claim are identical but that, there is a sufficient overlap in the subject matter.

2.2 The commonality of the subject matter is indicative from the fact that the representative capacity of BCCI as the Home Board is sought to be challenged both in the Indian claim as well as the U.K. claim. Because of the integrated structure of international cricket BCCI, as the Home Board for India and similarly other cricketing boards, have the right to 'approve' or 'disapprove' tournaments organized by the private entities based on their Rules and Regulations. In the instant case, BCCI, based on its Rules and Regulations, being the sole representative of the Indian cricket in ICC, would have the ability to 'approve' or 'disapprove' an ICL organized tournament whether in India or abroad. Therefore, the reliefs in the Indian claim are so structured which lay challenge to the representative capacity of BCCI — a claim if successful would result in a situation that there would be practically nothing left to be decided in the U.K. claim. For this purpose, a reference was made specifically to paragraphs 7, 11, 21, 25 to 31 of the Indian claim as also paragraphs 34C to 34L. The averments made in those paragraphs have been broadly paraphrased by me above. That the fact that these assertions are the ones on which BCCI has joined issue with ESPL was sought to be established by referring to the following paragraphs in the written statement filed by BCCI in the Indian claim:

A(f), B(a), B(b), B(c), B(d), B(e), B(f), B(g), B(h), B(j), B(s), B(t), B(u), B(v), B(w), B(x), B(y), C(6), C(10), C(14-15), C(20), C(24), C(27), C(28), C(34), C(34-I), C(40)”

2.3 In support of his submissions, a specific reference was made to the issues struck in the Indian claim being issue nos. 5, 9 and 11. The same are extracted hereinbelow for convenience:

***“5. Whether the defendant no. 5 is improperly and unlawfully interfering with the activities of the plaintiff constituting unlawful restraint? OPP***

***9. Whether the plaintiff has locus to challenge the withdrawal of the benefits by BCCI to its ex players, who have signed up with the plaintiff? OPP***

***11. Whether any part of the memorandum/rules and regulations of BCCI challenged in the plaint are void and illegal and can be called upon to be declared so at the behest of the plaintiff? OPP”***

2.4 Therefore, the net result and effect would be that necessarily under amended Regulation 32 of the ICC Regulations which mandates approval of the Home Board, that is, BCCI in the present case would no longer be material in the event ESPL were to succeed in its Indian claim; and vice versa, if this court were to decide the aforementioned issues against ESPL in favour of BCCI, then, it will remove the very basis of proceedings against ECB and the ICC for recognizing and giving effect outside India to BCCI’s action or in the very least it will narrow the issue in the English Court. It was further contended that in the very least, it would constitute an issue estoppel, and if this were to happen it would in the very least reduce the chances of the English Court to re-consider the said allegations made in the U.K. claim.

2.5 The Indian claim and the U.K. claim are inextricably interconnected. The BCCI, based on its Rules and Regulations, has taken a decision of not approving ICL. In the U.K. claim, amongst others, the grievances put forth by ESPL is that ICC and ECB are implementing the decisions taken by BCCI qua ICL. It is, therefore, essential that there is a determination of the validity of the BCCI’s Rules and Regulations on which are founded the actions of BCCI, ECB and ICC; which are, the subject matter of the grievance made by ESPL in its U.K. claim. This is an issue which can be more appropriately determined only

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in the Indian claim by this court and not by a court in U.K. The determination by this Court cannot be pre-empted by ESPL instituting a claim in U.K. — the relief wherein if granted would directly impinge upon the validity of the Rules and Regulations framed by BCCI — thus impacting the interest of the BCCI.

2.6 In this context, the fact that there is a reference to the U.K. Act for the purposes of seeking reliefs, cannot be an inhibiting factor for grant of injunction as: the decision in the U.K. claim is to be rendered by a court and not by any specialised tribunal or commission; any action in a foreign jurisdiction would necessarily be premised on law obtaining in such foreign jurisdiction, which would not by itself give the U.K. claim a colour of being based on a cause of action different from that of the Indian claim.

2.7 In substance, the Indian claim and the U.K. claim are the same in as much as there are assertions in the Indian claim that BCCI has abused its monopolistic and dominant position to the detriment of ESPL. Reference in this regard was made to paragraph 34H to 34L of the Indian suit.

2.8 As to the appropriateness of the Indian courts, it was contended as follows:

- (i) The Indian court is an appropriate forum in as much as ESPL has chosen to approach an Indian court by way of a suit filed in this court.
- (ii) Both ESPL and BCCI are Indian entities.
- (iii) In so far as ICC is concerned it has no physical presence in U.K; being a company which has its registered office in the British Virgin Island and head quarters in Dubai.
- (iv) The actions of the ICC which are subject matter of the U.K. claim were decisions which emanated from Dubai even though conveyed through its solicitors in London to ESPL; and as asserted by ESPL in the U.K. claim they were based on BCCI's decision taken in India; which was — not to approve the ICL. Therefore, the ICC is not any more connected with U.K. than, it is with India.

- (v) There is thus, not only an overlap of issues but also reliefs. The issues raised in the Indian suit would one way or the other result in narrowing or covering the issues obtaining in the U.K. claim.
- (vi) The trial of the Indian suit is at an advance stage. As a matter of fact, out of six (6) witnesses cited by the ESPL, cross-examination in respect of four (4) witnesses, is almost over. In fact, BCCI has already tendered its examination-in-chief by way of affidavits of the three (3) witnesses, it has decided to examine. Therefore, the witnesses both for BCCI and ESPL are Indian.
- (vii) It is the BCCI's decision which is assailed both in the Indian claim as well as the U.K. claim.

2.9 In addition to above, Mr Desai also submitted that the court will also bear in mind several other factors such as a failure of the ESPL to disclose the pendency of the Indian claim; the Principle of Comity would not get effected but rather be advanced if the injunction as claimed is granted, in view of the fact that the action in the U.K. court has not yet commenced; and that this court should protect and preserve its jurisdiction to decide on issues with regard to the validity of Rules and Regulations of an Indian entity which is assailed by another Indian entity.

2.10 At this stage, just to digress a little, it may be important to note that a second claim of a proposed action against ICC and ECB was received by BCCI vide notice dated 19.01.2010. This matter was brought to fore at the hearing held before me on 22.01.2010. It was indicated to the counsel for ESPL to take appropriate instructions in the matter since I was still in the midst of a hearing. On 25.01.2010 I was informed that even though a notice of 19.01.2010 referred to a proposed action only against ICC and ECB, this measure was adopted in view of the ad interim order of injunction dated 07.12.2009 passed by me. Ms Pratibha M. Singh, learned counsel for ESPL, on instructions, informed me that there was every intention of impleading BCCI in the claim served on the BCCI vide communication dated 19.01.2010 (hereinafter referred to as the '2<sup>nd</sup> U.K. Claim').

Consequently, this resulted in passing of order dated 25.01.2010 by me. The operative part of the order dated 25.01.2010 reads as follows:

*“.....In these circumstances, since I am still in the midst of hearing, I deem it fit to restrain defendant no. 1 from proceeding with its proposed claim which is subject matter of the present proceedings till the next date....”*

2.11 In view of the aforesaid position, Mr Desai made submission even with regard to the 2<sup>nd</sup> U.K. claim. His submissions were briefly as follows:

- (i) That dropping BCCI as a party in the 2<sup>nd</sup> U.K. claim was a mere contrivance.
- (ii) The principal issue as regards the validity of the BCCI's action of disapproving ICL clearly remained the fundamental basis even as regards the 2<sup>nd</sup> U.K. claim. This is only an indirect ploy adopted by ESPL in achieving what it made explicitly clear in its earlier U.K. claim. Therefore, the non-impleadment of BCCI in the 2<sup>nd</sup> U.K. claim would not in any manner render the submissions made hereinabove in respect of the 1<sup>st</sup> U.K. claim any less relevant. Mr Desai concluded by submitting that the fundamental issue is that the principal cause in both the U.K. claim and the Indian Claim is the conduct of the BCCI which is assailed in India. Merely because ESPL has chosen to challenge the consequences of the conduct or decisions taken by BCCI which have spilled into a jurisdiction outside India cannot result in a situation that the same cause can be tried in two parallel proceedings specially in the circumstances that the ESPL has chosen this court as the appropriate forum in its Indian claim.
- (iii) Parallel proceedings by the same entity, that is, ESPL involving overlap of: issues, cause of action and reliefs, if allowed to proceed, will be oppressive and vexatious. This is specially so since, not only is the Indian claim at an advance stage but also given the fact that the U.K. claim has been instituted after ESPL failed to obtain interim relief against BCCI.
- (iv) Since there is an overlap of causes of action, it would be more appropriate if the common issues are resolved in this court, which is, the more appropriate forum before permitting the continuation of a proceeding in U.K.

2.12 In support of his submission Mr Desai cited the following judgments:

*Modi Entertainment Network vs W.S.G. Cricket Pte. Ltd (2003) 4 SCC 341; The Abidin Daver (1984) 1 All.E.R. 470; Delton Cables Ltd. vs TDT Copper Ltd. 1997 II AD (Delhi) 889; Horn Linie Gmbh & Co. vs Panamerican Formas E Impresos SA & Anr (2006) 2 Lloyd's Reports 44; G.A.F. Corporation vs Amchem Products Inc. (1975) Vol. I Lloyd's Law Reports 601; Turner vs Grovit (Court of Appeal) (1999) 3 WLR 794; Turner vs Grovit (House of Lords) (2002) 1 WLR 107; and lastly, ONGC vs Western Company of North America (1987) 1 SCC 496.*

3. As against this, Ms Pratibha M. Singh, learned counsel appearing for ESPL has submitted as follows:

3.1 The basic pre-condition for grant of anti-suit injunction are not satisfied. In this context she referred to the following:-

(i) On the date of filing of the instant suit there was no action instituted by ESPL in U.K. (a position which obtains today albeit on account of the injunction order) and hence, the relief as prayed for cannot be granted.

(ii) The parties, cause of action, and the relief sought for in the U.K. claim and that in the Indian claim are different.

4. Ms Pratibha Singh elaborated by submitting that the relief prayed for in the U.K. claim is based on the U.K. Act. This court cannot adjudicate upon issues raised in respect of the U.K. Act. Similarly, in respect of cause of action it was submitted that while the Indian claim was instituted in 2007, the cause of action in respect of the U.K. claim arose only in 2009 upon rejection of ESPL's application by ICC for seeking approval for tournaments which it proposes to organize under the banner of ICL. Thus, the U.K. claim takes into account events which happened subsequent to the filing of the Indian claim and hence, has a completely distinct cause of action.

4.1 Furthermore, it was submitted that in so far as parties to the two actions are concerned, that is, the Indian claim and the U.K. claim they are clearly different. The ICC and ECB are not party to the Indian claim.

4.2 It was also contended that ICC and ECB are also outside the jurisdiction of this court.

4.3 A submission was also made that ESPL's right to seek remedy in a foreign court and/or its right to sue is sacrosanct which cannot be interfered with by this court except in a very rare case, where it is wholly inequitable to permit proceedings in a foreign court. In this regard reference was made to explanation of Section 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') which, according to the learned counsel, expounded the public policy that even where cause of action is the same as arising in the foreign court, the Indian court has power to deal with a suit pending before it and hence, by the very same analogy a foreign court cannot be precluded from entertaining a proceeding based on a "*different*" cause of action.

4.4 It was next contended that even if the relief claimed by ESPL in the Indian claim is granted it would still not satisfy the prayers sought for by ESPL in the U.K. claim.

4.5 Elaborating on the distinctiveness of the cause of action in the U.K. and the Indian claim, the learned counsel submitted as follows: Its action in this court, which is part of its Indian claim, is based on the BCCI's conduct in preventing successful organization of tournaments by ESPL in India by preventing players from participating in these tournaments and by impeding the availability of stadiums for hosting such tournaments. As against this, what is complained of in the U.K. claim is the actions of both ICC and ECB against ICL which have impacted ESPL in U.K.; as also the action of ICC in not recognizing ICL as the 'Official Cricket' under Regulation 33 and as "Approved Unofficial Cricket" under Regulation 32 of the ICC Regulations. The decisions of both ICC and ECB are violative of the provisions of the U.K. Act. The BCCI is a necessary party in the U.K. claim only to the extent that it is a representative of Indian Cricket which is recognized by the ICC. Therefore, the averments made in the U.K. claim pertaining to BCCI's

involvement (read paragraph 36 to 38 of the U.K. claim) are only a factual narrative of the events. The cause of action in the U.K. claim is not based on this factual narrative but on the reliefs sought or on the “grounds” on which the reliefs are sought.

4.6 Also this court is not the court of natural jurisdiction in regard to issues raised by ESPL vis-à-vis recognition of tournaments organized by ICL under the ICC Regulations and the boycott of ICL by ICC, ECB and BCCI.

4.7 Furthermore, for the BCCI to obtain an anti-suit injunction it would have to, amongst others, demonstrate to this court that the proceedings in U.K. are both vexatious and oppressive. The proceedings can only be vexatious and oppressive if two sets of proceedings are instituted in respect of the same cause of action. In determining whether the proceedings are vexatious and oppressive the test is not one of the mere inconvenience caused to a party on account of expenditure and hardship. In any event in arriving at a conclusion as to whether the proceedings are vexatious and oppressive the interest of ESPL in approaching the U.K. court cannot be disregarded.

4.8 Lastly, in the event an injunction as sought for by the BCCI is granted, it would violate the principle of comity as obtaining between Indian and the U.K. Courts.

4.9 In support of her submissions the learned counsel relied upon the following judgments:

*Moser Baer India Ltd vs Koninklijke Philips Electronics NV & Ors. 151 (2008) DLT 180; Magotteaux Industries Pvt. Ltd & Ors. vs AIA Engineering Ltd 155 (2008) DLT 73 (DB); SNI Aerospatiale vs Lee Kui Jak & Anr. (1987) 3 All.E.R. 510; and Modi Entertainment Network & Anr. vs W.S.G. Cricket Pte. Ltd (2003) 4 SCC 341.*

5. Before I deal with the various issues raised in the present application it may be necessary to give the brief facts with regard to the constitution of the parties in the present suit and the circumstances which led to the institution of the present suit as gleaned from documents and pleadings necessary for disposal of the present application.

5.1 The BCCI, as averred in the plaint, is a society registered under the Tamil Nadu Societies Registration Act, 1975 way back in 1929. The ESPL is a private limited company registered in India under the Indian Companies Act, 1956, having its registered office in Mumbai. The ESPL is part of the Essel Group of Companies. The ESPL in April, 2007 launched a professional cricket league under the banner of ICL. The ECB and ICC are companies limited by guarantee. The ECB is not only a body which governs cricket in England and Wales but also represents the English cricket team on the ICC. The ECB is also charged with the responsibility of organizing both international cricket matches as also domestic cricket competition in England and Wales.

5.2 The ICC is a company which is registered in British Virgin Island with its head quarters located in Dubai. The ICC is an international body constituted for governance of cricket. The members of ICC are the national governing bodies such as BCCI and ECB. The BCCI alongwith 12 other test playing nations, which include ECB, is a "Full Member" of the ICC.

5.3 It appears that on 03.04.2007 ESPL launched ICL. For the purposes of organizing tournaments under the ICL banner ESPL approached the Karnataka State Cricket Association. By a letter dated 22.06.2007 its request for making the Chinnaswamy Stadium available to it was refused. There are also allegations that letters were written by various cricket associations to its district associations directing them not to associate themselves with "unapproved" tournaments, at the pain of losing benefits and privileges conferred on the district associations, players, umpires by BCCI and members State Associations. A reference in this regard was made to letter dated 27.06.2007, as also a resolution passed at the special general meeting convened by the BCCI on 21.08.2007 in Mumbai. Instances of cancellation of registration of players by State Associations such as the Tamil Nadu Cricket Association (see letter dated 10.09.2007 appended at page 549 of Vol. III) are also alluded to.

5.4 Being aggrieved in August, 2007 the ESPL instituted the Indian claim in this court. On 27.08.2007 in the Indian claim an ad interim order was issued by this court whereby an

injunction was issued to Union of India, acting through its various ministries, from terminating services or taking any disciplinary action against the persons employed on account of their cricketing skills by reason of their affiliation with the ICL.

5.5 On 02.04.2008 the ESPL through their solicitor approached ICC to seek clarification as to whether events organized by ICL would qualify as “official cricketing events”. The said letter ended by calling upon the ICC to give reasons and supply copies of its rules and policy in the event it were to conclude that events organized by ICL did not qualify as “official” cricketing events. Along with the said letter it also enclosed two schedules setting out details of its activities and the names of the players who had participated or, were to participate in events organized by ICL. *The aforesaid communication was followed by a second communication dated 23.06.2008 once again issued by solicitors of ESPL to ICC. In this letter a reference was made to its letter dated 03.04.2007 made to BCCI.* To be noted it is not disputed that no response was sent by BCCI, however, based on various press reports ESPL concluded that BCCI had rejected its request for granting “official” cricket status to tournaments organized by ESPL under the banner of ICL. In this letter in particular reference is made to various wrongs committed by BCCI as against ESPL. These being relevant are quoted hereinbelow:

- “1. Preventing the ICL from using state-owned cricket grounds to host ICL tournaments.*
- 2. Banning any player involved in the ICL from playing cricket at any level (including college/university and state and level) in India for the Indian national team.(emphasis is mine)*
- 3. Seeking to have players involved in the ICL dismissed from their jobs with public owned companies, such as Air India.*
- 4. Amending its regulations to establish a ‘benevolent fund’ rather than a ‘pension fund’ which is dispersed at the sole and exclusive discretion of the BCCI. This has resulted in the cessation of pension payments being made to ex-players who are presently associated with the ICL, and*
- 5. Banning and threatening to ban any and all third parties who have assisted in the ICL events including but not limited to suppliers, dealers and other such persons/ parties.”*

5.6 Based on ESPL's understanding of Regulation 33 of the ICC Regulations it concluded that since BCCI would not give its consent it could not get an "official" tournament status from ICC under the said Regulation. Nevertheless ESPL sought to make an application under Regulation 32 of the ICC Regulation. The ICC responded to the said communication vide its letter dated 20.04.2009. In brief, ICC conveyed to ESPL that its request under Regulation 33 of the ICC Regulation for grant of approval to an ICL tournament as "official" cricket was dependant on the Member Board recognizing such a tournament as "unofficial", which, in this context admittedly was not the case and hence, its application was considered under Regulation 32 of the ICC Regulations which, at the relevant point in time vested power in the ICC to approve a tournament as an "unofficial" cricket event based on various factors contained therein. After detailing out various reasons, in the light of the criteria provided in Regulation 32 of the ICC Regulations, it rejected ESPL's application for approving ICL cricket tournament as an "unofficial" cricket event.

5.7 To complete the narrative in June, 2009 amendments were brought about in ICC Regulation 32. It is common ground, the net effect of the amendment in the ICC Regulation 32 is that the discretion which vested with ICC to approve a tournament as an "unofficial" cricket tournament had been taken away. It appears ESPL being aggrieved by such turn of events, for which it squarely blames BCCI, issued a notice dated 16.11.2009 to BCCI through its Solicitors informing thereby that it intended to institute action against BCCI alongwith ICC and ECB. The draft particulars of the claim which is referred to as the 1<sup>st</sup> U.K. claim by me in the judgment was appended along with the said notice. By this communication time was given till 1600 hours on 07.12.2009 to the solicitors of BCCI to respond to the notice. By a communication dated 23.11.2009 the solicitors of BCCI sought time to advise their counterpart, i.e., solicitors of ESPL as to whether they were at the relevant point in time authorized to accept service on behalf of ICC, ECB and BCCI. By a written communication dated 26.11.2009 the solicitor of ESPL refused to extend the deadline of 07.12.2009.

6. In view of the aforesaid events BCCI approached this court. On 07.12.2009 after hearing the counsel for ESPL an ad interim injunction was granted by me whereby, ESPL was restrained from taking action against BCCI. Time was granted to both sides to complete pleadings both in the suit as well as the interlocutory application (in short the 'IA'). Aggrieved by the order dated 07.12.2009 the ESPL had carried the matter in appeal. The Division Bench of this Court vide order dated 07.01.2010 expressed the view that since the IA had not been disposed of, the same be taken up for hearing. Accordingly, the date of hearing was advanced by the Division Bench to 22.01.2010 with the direction that the I.A. be disposed of on or before 30.01.2010. To expedite the matter the Division Bench also directed that the appeal filed by ESPL be treated as reply to the IA filed by the BCCI. Opportunity was granted to BCCI to file a response to the same. It was further observed that the presence of ECB as well as ICC would not be necessary for disposal of the IA.

7. The matter has been taken up for hearing on a day to day basis from 22.01.2010 onwards. The counsels for the parties concluded their arguments only on 28.01.2010. Supplementary submissions of judgments cited by either side were handed over on 29.01.2010. A written statement was filed by ESPL though beyond the timeline fixed. Consequently, it was agreed by the counsel for ESPL that reliance need not be placed on it for the purpose of disposal of the present application.

7.1 In this background, according to me, it would be necessary to decide the following issues:

- (i) The jurisdiction of this Court to grant an anti-suit injunction.
- (ii) The necessary requisites for grant of anti-suit injunction.
- (iii) As to whether or not this court should exercise its discretion in the circumstances of this case to grant such an order in favour of BCCI.

#### JURISDICTION AND THE NECESSARY REQUISITES TO GRANT ANTI-SUIT INJUNCTION

8. Let me, therefore, firstly deal with the already well-settled principles for grant of an anti-suit injunction. In order to appreciate what an anti-suit injunction contemplates, it

would have to be seen in contradistinction with an injunction which an Indian court grants vis-à-vis proceedings pending before it in preference to proceedings pending in a foreign court. An anti-suit injunction involves a restraint on a party seeking to approach a foreign court. As against this wherein an Indian court is approached by a party for a stay of its own proceedings it necessarily delves into issues such as: forum convenience, that is, which would be the appropriate forum; the Indian Court or the Foreign Court; the jurisdictional clause as to the choice of court in the event the dispute emanates from a contract; and in some cases it is called upon to deal with an arbitration agreement obtaining between the parties. Therefore, in such a situation in a sense it is the court which determines the appropriateness of the forum by deciding whether or not it should cede jurisdiction over a matter in preference to a foreign court. In determining, which would be the appropriate forum, that is, Indian court or the foreign court it necessarily takes into account the forum with which the dispute has a “real” and “substantial” connection. In the present case, I am not called upon to deal with a situation where there is a jurisdictional clause in respect of choice of forum. In any event this issue is no longer res integra as it squarely covered by the Judgment of the Supreme Court in the case of *Modi Entertainment* and hence, does not require any elaboration. In a situation where an Indian Court is moved for an anti-suit injunction possibly two situations arise in so far as the defendant is concerned: one, where a party against whom an anti-suit injunction is sought is an Indian party or resident in India and the other where the defendant is a foreign party or resident abroad. In so far as a party is an Indian or a party resident in India is concerned, it presents no difficulty with respect to the aspect of jurisdiction. Undoubtedly, the Indian court would have jurisdiction in the grant of an anti-suit injunction against Indian party or party resident in India. In case of a foreign party or those resident abroad the court in India will necessarily have to tread carefully in issuing an anti-suit injunction as in such circumstances it will have to base it on the principle of sufficiency of connection in the context of appropriateness of the forum. The courts in India will have to be even more circumspect where the foreign party has already instituted an action in a foreign

court. An Indian court will have to necessarily bear in mind that if summons are issued outside the territorial jurisdiction of Indian courts, it may not be complied with or, that the foreign party may attempt to seek remedy in the jurisdiction of the court where it is resident. However, subsistence of such situation should not deter an Indian Court to issue an injunction if it otherwise finds it has jurisdiction.

9. As is well settled an anti-suit injunction is directed against a person and hence, acts in “*personam*” and not against a court in which the defendant proposes to institute an action. Though, the result in effect would be, which is unavoidable, that proceedings cannot be initiated in the foreign court by the defendant.

10. In the instant case the party against whom, that is, ESPL anti-suit injunction is sought by BCCI being an Indian party, resident in India, undoubtedly this court would have jurisdiction over it.

11. There has been a debate even in the U.K. (and I am consciously referring to the case law in U.K. as the defendant here, that is, ESPL proposes to file an action in U.K.) as to what is the amplitude of its power to grant an anti-suit injunction. An inquiry, which in my view, provides a clue to the same of the situations in which anti-suit injunctions have been granted over a period of time. For this purpose, I do not propose to travel too far in point of time.

11.1 In the case of *Castanho vs Brown and Root (UK) Ltd.: 1981 AC 557 @ 573 (E)*, Lord Scarman, speaking for the court, painted a wide canvass when he opined that “*the width and flexibility of equity are not to be undermined by categorization. Caution in the exercise of the jurisdiction is certainly needed: but the way in which the Judges have expressed themselves from 1821 onwards amply supports the view for which the defendants contend that the injunction can be granted against a party properly before the court, where it is appropriate to avoid injustice*”. A position which was affirmed by the House of Lords in the case of *British Airways Board vs Laker Airways (1984) 3 All. E.R. 39*. There was, however, a perceptible shift in the position when in the judgment of the House of Lords in the case of *South Carolina Insurance Co. vs Assurantie NV 1987 AC*

24 where it expounded that an anti-suit injunction will issue only in three situations. These were categorized as (a) where there are two or more forums available (one of which is a domestic forum) (b) where a party invades or threaten to invade the legal and equitable right of the other party not to be sued in a foreign court (c) where instituting proceedings abroad would be unconscionable. These categories were reflected in Lord Brandon's speech while speaking for the court. Lord Goff in a concurring but a separate speech disagreed that in grant of injunction the court is restricted to exclusive categories. The relevant extract at page 44-45 (F-H & A-B) reads as follows:

*“LORD GOFF OF CHIEVELEY. My Lords, I find myself to be in respectful agreement with the conclusion reached by my noble and learned friend Lord Brandon of Oakbrook, on this appeal, and with the reasons given by him for reaching that conclusion. I wish, however, to draw attention to one matter upon which I have certain reservations, and to which I attach importance.*

***I am reluctant to accept the proposition that the power of the court to grant injunctions is restricted to certain exclusive categories. That power is unfettered by statute; and it is impossible for us now to foresee every circumstance in which it may be thought right to make the remedy available. In particular, I do not regard the exercise of the power to restrain a person from commencing or continuing proceedings in a foreign forum as constituting an exception to certain limited categories of case in which it has been said that the power may alone be exercised. In my opinion, restraint of proceedings in a foreign forum simply provides one example of circumstances in which, in the interests of justice, the power to grant an injunction may be exercised. I have elsewhere explained in detail, for reasons which it is unnecessary for me to repeat in the present case, why, on the basis of a line of established authority, I am at present inclined to the opinion that an injunction has generally been granted in such circumstances for the purpose of protecting the English jurisdiction, and why I doubt, with all respect, whether the speech of my noble and learned friend, Lord Scarman, in *Castanho v. Brown & Root (U.K.) Ltd.* [1981] A.C. 557, contains the last word on the subject. I refer, in this connection, to my judgment in *Bank of Tokyo Ltd. v. Karoon (Note)* [1987] A.C. 45.”** (emphasis is mine)*

11.1 The categorization theory, however, did not find favour with the Privy Council as is evident from the judgment of *Societe Nationale Industrielle Aerospatiale vs Lee Kui Jak* 1987 AC 871, lord Goff once again speaking for himself and four other Law Lords at page 892-893 (G-H & A-F) opined as follows:

*“The decided cases, stretching back over a hundred years and more, provide however a useful source of experience from which guidance may be drawn.*

***They show, moreover, judges seeking to apply the fundamental principles in***

*certain categories of case, while at the same time never asserting that the jurisdiction is to be confined to those categories. Their Lordships were helpfully taken through many of the authorities by counsel in the present case. One such category of case arises where an estate is being administered in this country, or a petition in bankruptcy has been presented in this country, or winding up proceedings have been commenced here, and an injunction is granted to restrain a person from seeking, by foreign proceedings, to obtain the sole benefit of certain foreign assets. In such cases, it may be said that the purpose of the injunction is to protect the jurisdiction of the English court. Indeed, one of their Lordships has been inclined to think that such an idea generally underlies the jurisdiction to grant injunctions restraining the pursuit of foreign proceedings: see South Carolina Insurance Co. v. Assurantie Maatschappij "De Zeven Provinciën" N.V. [1987] A.C. 24, 45, per Lord Goff of Chieveley; **but their Lordships are persuaded that this is too narrow a view.** Another important category of case in which injunctions may be granted is where the plaintiff has commenced proceedings against the defendant in respect of the same subject matter both in this country and overseas, and the defendant has asked the English court to compel the plaintiff to elect in which country he shall alone proceed. In such cases, there is authority that the court will only restrain the plaintiff from pursuing the foreign proceedings if the pursuit of such proceedings is regarded as vexatious or oppressive: see McHenry v. Lewis (1882) 22 Ch.D. 397 and Peruvian Guano Co. v. Bockwoldt(1883) 23 Ch.D. 225. Since in these cases the court has been presented with a choice whether to restrain the foreign proceedings or to stay the English proceedings, we find in them the germ of the idea that the same test (i.e. whether the relevant proceedings are vexatious or oppressive) is applicable in both classes of case, an idea which was to bear fruit in the statement of principle by Scott L.J. in St. Pierre v. South American Stores (Gath & Chaves) Ltd. [1936] 1 K.B. 382, 398, in relation to staying proceedings in this country, a statement of principle now overlaid by the adoption in such cases of the Scottish principle of forum non conveniens, which has been gratefully incorporated into English law.*

*The old principle that an injunction may be granted to restrain the pursuit of foreign proceedings on the grounds of vexation or oppression, **though it should not be regarded as the only ground upon which the jurisdiction may be exercised,** is of such importance, and of such apparent relevance in the present case, that it is desirable to examine it in a little detail. As with the basic principle of justice underlying the whole of this jurisdiction, it has been emphasised that the **notions of vexation and oppression should not be restricted by definition.**" (emphasis is mine)*

11.2 The sum and substance is that a court while exercising its power to grant an anti-suit injunction exercises its equitable jurisdiction in the same manner in which it ordinarily exercises that power. Therefore, in coming to a conclusion as to whether an anti-suit injunction should issue, the English Courts it appears are not fettered by the categories laid

down in the *South Carolina* case. As a matter of fact, the first of the three categories was whittled down in the *British Airways Board* case.

12. In the *South Carolina* case, the first category referred to is the availability of two or more forum before an injunction can issue. The House of Lords in the *British Airways Board* case evolved the principle which it referred to as a ‘*novel*’ problem that anti-suit injunction could issue even in a “single forum” case. The English Court of Appeal applied this principle in the case of *Midland Bank vs Laker Airways (1986) 1 Q.B. 689* (which was incidentally the second part to the litigation, the first part being the *British Airways Board* case) and granted an anti-suit injunction where the defendant — Laker Airways Ltd. took the plea that for the acts of omission and commission of Midland Bank it had remedy only in the United States (U.S) Courts and that too under the U.S anti-trust law.

13. Based on the prefatory observations above, let me first examine as to whether there are two forums available to ESPL to bring an action against BCCI in respect of grievances raised. It has been submitted before me by counsel for the ESPL that the only forum available to ESPL, with respect to its grievances against BCCI was, the court in U.K. The reason for making this submission is briefly that the ESPL is aggrieved primarily on account of the action of ICC and ECB in rejecting its application both under Regulation 32 and 33 of the ICC Regulation. In support of this submission it has been said that there are decisions and actions taken by BCCI which have been implemented both by ECB and ICC to the detriment of ESPL. The charge is one of “*conspiracy*” and “*abuse*” of dominant status of ICC, ECB and BCCI, which is amenable to an action under the U.K. Act. It is the submission of the learned counsel for the ESPL in respect of allegations made in U.K. claim only the courts in U.K. are the appropriate forum. Mr Desai in rebuttal, treading cautiously, stated that there were two forums available eventhough the appropriate forum was the court in India. In support of his submission he made a comparative analysis of assertions made in the Indian claim and those made in the U.K. claim to show that they were overlapping issues, and hence ESPL by instituting a suit in this court (that is Indian claim), had demonstrably indicated the appropriateness of the Indian forum. In this regard

he specifically referred to the averments made in paragraph 36 to 38, 55 and 62 of the U.K. claim, amongst others, to demonstrate that these were averments which found a reflection in the Indian claim, and hence the decisions of ICC and ECB, impugned by ESPL, in the U.K. claim, were only a consequence of the cause articulated by ESPL in the Indian claim. Mr Desai contended that what is sought to be challenged in the U.K. is the implementation by ECB and ICC, the decisions taken by BCCI with respect to the disapproval of tournaments organized under the aegis of ICL. The power to take such decisions is vested in the BCCI by virtue of Memorandum, Rules and Regulations. This very representative capacity of the BCCI is under challenge in Indian claim. Therefore, if the challenge to the Rules and Regulations of the BCCI which are basis for its representative capacity in the ICC and its alleged monopolistic character is successful then there would remain practically nothing in ESPL's U.K. claim. According to Mr Desai the cause for ESPL's grievance lay in India while, its consequences were felt in the U.K. Thus, if the test of real and substantial connection was applied it would be apparent that the court in India was the appropriate forum.

14. Let me, therefore, allude to what is specifically referred to in the Indian claim vis-à-vis BCCI's representative character and authority over participation of players in tournaments organized by it. In this regard reference is made to clauses 2(s), 2(u) and 2(v) of the Memorandum of BCCI which being relevant are extracted hereinbelow:

*“....2(s) To select teams to represent India in test matches, One day International and Twenty/20 matches played in India or abroad, and to select such other teams as the Board may decide from time to time....*

*.....2(u) To appoint the Manager and/or other official of Indian Teams.*

*2(v) To appoint India's representative or representatives on the International Cricket Conference and other Conferences, Seminars connected with the game of cricket.....”*

Also regard may be had to the following Rules and Regulations of the BCCI:

*“....33-d. Private organizations shall not be allowed to organize an International Tournament or International match/matches in which foreign players/teams are participating or likely to participate. If at all such a*

*tournament/match/matches is to be stage, then it should be exclusively by the affiliated member which recommends the proposal and within whose jurisdiction the tournament/match/matches will be staged.”*

*“33-e All International Tournaments, except in very exceptional cases, should be managed by the Board only.....”*

*“34. No Member, Associate Member or Affiliate Member shall participate or extend help of any kind to an unapproved tournament.*

*No Player (Junior & Senior) registered with the BCCI or its Member, Associate Member or Affiliate Member shall participate in any unapproved tournament.....”*

And the extracts from the Players’ Registration Form and the appendix appended thereto which reads as follows:

*“....2. I shall not play or participate in any cricket match or tournament organized as charity/festival/benefit match or **tournament not registered with or not approved by the Association or BCCI or ICC or any of its affiliated members** without the written permission of the BCCI, either in India or abroad.... (the emphasis is mine)*

*....9. No registered player can play or participate in a Cricket match or Tournament not recognized by the Association or Board or the ICC or any of its affiliated members without the written permission of the Board either in India or abroad.*

*10. No registered player can play or participate in a Cricket match or Tournament organized as Festival/Charity/Benefit match or Tournament not registered with or **approved by the Association or Board or ICC or any of its affiliated members** without the written permission of the Board either in India or abroad. (the emphasis is mine)*

*If any of the registered players participate in any of the Tournaments or matches not permitted by the **BCCI or ICC** and its affiliated members, he will be liable for deregistration and will be registered only after a gap of one year which period the Board may waive at its discretion.....” (emphasis is mine)*

15. A perusal of the aforesaid provisions leaves no doubt in my mind that the BCCI, in a manner of speaking, wears a representative cap for Indian cricket both in India and abroad albeit by virtue of the power conferred by various provisions of the Memorandum and Rules and Regulations. Some of these have been extracted hereinabove to only

demonstrate the point in issue. This aspect in no uncertain terms has been accepted in the averments made by ESPL in its U.K. claim; in this respect briefly consider the following assertions: With respect to events of August, 2007 BCCI rebuffed the ESPL's attempt at seeking co-operation of BCCI for recognition of tournaments organized by ICC. To buttress its assertions reference is made to the BCCI resolution of 21.08.2007 whereby BCCI evidently in no uncertain terms indicated to its state affiliated units and the related cricket organizations against associating with ICL; and that if they did, they would do so only at the pain of losing benefits that they derive from BCCI or the state affiliated units. Averments are also made to the effect that because of the ICL being target of boycott orchestrated and carried out by the BCCI, ICC and ECB through their "*representative regulatory framework*", ESPL has not been able to attract large number of players well-known to the wider U.K. audience to play in tournaments organized by ICL. It is also averred that the object of boycott is to prevent ICL from staging matches both in *India* and abroad. There are undoubtedly specific averments with respect to involvement of BCCI in respect of the boycott of ICL in paragraphs 36 to 38 of the U.K. claim. In particular, reference is made to events in paragraph 38 of the U.K. claim which clearly refers to the events which occurred prior to August, 2007 when, the Indian claim was instituted. More importantly, the two letters of ICC dated 23.06.2008 and 20.04.2009 which are undoubtedly the subject matter of the U.K. claim refers directly or indirectly to ESPL's first letter dated 03.04.2007, addressed to BCCI, on the issue of approval of ICL cricket tournaments. At the heart of these averments is the grievance of ESPL that because BCCI represents Indian cricket it has taken decisions which are inimical to ESPL, which in turn are being implemented under the aegis of ECB and ICC. BCCI in defence of its action has taken a stand that the genesis of its representative capacity emanates from its constitution, which is the Memorandum and the Rules and Regulations framed in that regard. Therefore, BCCI in my view, has correctly submitted that the dispute has real and substantial connection with courts in India for that; the Rules and Regulations in issue are those which are framed by an Indian entity and the challenge to the Rules and Regulations

is reflected in the issues cast in the Indian claim (a reference to which has already been made by me in the earlier part of my judgment). The BCCI has a legitimate expectation that these issues will be decided by an Indian court — given the reality that the witnesses of fact would be Indians even in respect of this part of the U.K. claim which relates to the alleged infractions in India. ESPL has taken recourse to the Indian court by instituting the Indian claim. There are undoubtedly issues which overlap. On a balance, in my view, it would be correct to say that the Indian court is the appropriate forum for ESPL.

16. The submission of Ms Pratibha Singh that the reference to the “BCCI’s involvement in the boycott of ICL” made in paragraph 36 to 38 of the U.K. claim is only a narrative of events which transpired prior to the service of the draft U.K. claim on BCCI, is in my view, untenable. Every part of the draft claim, in my view, would have to be read as ESPL’s assertion of its proposed stand in the U.K. claim, at this stage. I have not been shown any authority of the English court or referred to any rule, practice or procedure followed in the U.K. courts which would substantiate the submission of Ms Singh in that regard.

17. But let me for the moment not hinge my discussion on my conclusion that the Indian court is the appropriate forum. For the sake of testing the submissions made by the learned counsel for the ESPL let me assume, as contended by the learned counsel, that because the grievance is primarily in respect of actions of BCCI, ICC and ECB which have been implemented in U.K. by ECB and ICC are covered by the provisions of the U.K. Act and hence, the English Court will be the only appropriate forum in the matter. Resultantly, no suit for anti injunction would lie. In this regard, I had put to Ms Singh as to whether it was her submission that an action for anti-suit injunction does not lie where there is only a single forum available to the defendant to proceed against the parties it is aggrieved. The learned counsel had replied in the affirmative.

18. It is at this juncture that I had drawn attention of Ms Singh to the two judgments of the English Courts, that is, *British Airways Board* case and the *Midland Bank* case which hold to the contrary. In both cases; the first being a decision of the House of Lords, and

second the Court of Appeal; it was observed that the English Courts have the power to grant anti-suit injunction even in cases where there is only a single forum available. In the *British Airways Board* case while the principle was accepted the injunction was refused because the airlines had acquiesced to the jurisdiction of the U.S. Court. As against this in the *Midland Bank* case the anti-suit injunction was granted despite the fact that the defendant, that is, the Laker Airways Ltd; was desirous of approaching the U.S. Court to sue Midland Bank in U.S. under the *anti-trust law* prevailing in U.S. disregarding its plea that it was the only forum available to it.

18.1 To demonstrate the invalidity of the proposition put forth on behalf of ESPL, the following brief facts in the case of Midland Bank require to be noticed. Laker Airways Ltd. was in liquidation. The liquidator had commenced proceedings in the U.S. against a number of international airlines which, according to him, were responsible for the financial collapse of Laker Airways Ltd. The liquidator, while dealing with the affairs of Laker Airways Ltd., discovered that Midland Bank, which was, involved in mounting a financial rescue operation for Laker Airways Ltd. had withdrawn support from Laker Airways in circumstances which a court in U.S. would infer as conspiracy with the other airlines (other than Laker Airways Ltd) who were the defendants in an existing American action in a manner, which put Laker Airways Ltd out of business. Upon receiving notice of such proposed action Midland Bank, which was undoubtedly a bank based in U.K., approached the courts in U.K. seeking two broad reliefs (i) declaration that they were not liable under the English or the U.S. Law for the collapse of Laker Airways Ltd.; and (ii) sought an injunction restraining Laker Airways Ltd. from *instituting* or *continuing* an anti-trust suit against them in the U.S.

18.2 In the first instance, Midland Bank was granted an interlocutory injunction, which, on an application by Laker Airways Ltd, was discharged. There were two cross-appeals filed, one by Midland Bank other by Laker Airways Ltd. Laker Airways Ltd. appeal against the decision of the court below refusing to strike out the claim of Midland Bank. Allowing the appeal of the Midland Bank the Court of Appeal issued an anti-suit

injunction against Laker Airways Ltd. on the ground that it was “unconscionable” to bring an action against Midland Bank in U.S. notwithstanding the fact that that it was perhaps the only forum available. One of the factors the Court of Appeal considered important was that Midland Bank perhaps had no “*relevant presence*” in the U.S. at the time of collapse of Laker Airways Ltd (notwithstanding the fact that it had business interest in the U.S.); and that the Midland Bank discharged its duties as a part of its banking business carried out in England. In these circumstances, the Court of Appeal came to the conclusion that it would be unconscionable to permit Laker Airways Ltd. to bring an anti-trust suit against the Midland Bank. The principle adopted in the *Midland Bank* case was one which the House of Lords had laid down in the case instituted by the liquidator of Laker Airways Ltd against various airlines, that is, the *British Airways Board* case. The distinguishing factor, as observed above, in not injunctioning Laker Airways Ltd’s action in U.S. against the airlines was the fact that they had acquiesced to the jurisdiction of the U.S. court [see observations of Lord Dillon at page 701 (A-G); page 702 (H); and at page 705 (A-B)]. *It is to be noted that in the speech of the Lawton L.J. there is reference to the fact that the pre-trial evidence available was examined to determine as to whether a charge of combination or conspiracy could be made out against Midland Bank in US Court. Though Lord Lawton stopped short of weighing the evidence, a perusal of evidence was nevertheless made.* [See observation at pages 698 (C-H) and page 700 (D-G)].

18.3 The observations of the House of Lords in both *British Airways Board* case and *Midland Bank* case being pertinent are set out below:

*British Airways Board* case at page 45 to 46 (e-j) and (a-g)

*“In the result your Lordships are confronted in the civil actions with a case in which there is a single forum only that is of competent jurisdiction to determine the merits of the claim; and that single forum is a foreign court. For an English court to enjoin the claimant from having access to that foreign court is, in effect, to take on itself a one-sided jurisdiction to determine the claim on the merits against the claimant but also to prevent its being decided on the merits in his favour. This poses a novel problem, different in kind from that involved where there are alternative forums in which a particular civil claim can be pursued: an English court and a court of some foreign country both of which are recognised under English rules of conflict of laws as having jurisdiction to entertain proceedings against a defendant for a remedy for acts or omissions*

which constitute an actionable wrong under the substantive law of both England and that foreign country.

Cases which have these characteristics can now conveniently be labelled as *forum conveniens* cases. In them the High Court has jurisdiction to control how the choice of forum shall be exercised. It does so by the use, as circumstances may require, either of its discretionary power to grant or refuse a stay of the action in the English court by the party who is a plaintiff there, or of its discretionary power to enjoin a party who is, or is threatening to become, a plaintiff in the foreign court from continuing or commencing proceedings in that court. Leaving aside claims that can immediately be identified as frivolous and vexatious, the High Court, at the stage at which it exercises this jurisdiction, is making no determination on the merits of the claim: it is deciding by which court, English or foreign, the merits of the claim ought to be tried. The principles to be applied by the High Court in making this decision in *forum conveniens* cases have been developed over the last 10 years in a number of decisions of this House starting with *The Atlantic Star*, *Atlantic Star (owners) vs Bona Spes (owners)* (1973) 2 All.E.R. 175, [1974] A.C. 436, continuing with *MacShannon v. Rockware Glass Ltd.* [1978] 1 All. E.R. 625, [1978] A.C. 795 and *Castanho v. Brown & Root (U.K.) Ltd.* [1981] 1 All. E.R. 143, [1981] A.C. 557, and ending with *The Abidin Daver* [1984] 1 All. E.R. 470, [1984] A.C. 398; but the principles expounded in the speeches that were delivered in all these cases start from the premise that the claim by one party against an adverse party is a claim to a right that is justiciable in England. Except for a short passage in the opinion of Lord Scarman, in *Castanho vs Brown & Root (UK) Ltd.* (with which all four other members of the Appellate Committee, including myself, agreed), **I do not find the speeches in the *forum conveniens* cases of assistance in solving the novel problem which your Lordships have to face in the civil actions that are subjects of the instant appeals.**

The answer to these appeals, in my opinion, clearly emerges from the application to the allegations that are crucial in *Laker's* case against *British Airways* and *British Caledonian* in the American action of what since the merger of the courts of common law and Chancery has been a fundamental principle of English legal procedure. That principle, originally laid down in *North London Railway Co. v. Great Northern Railway Co.* (1883) II Q.B.D. 30, was re-stated by me (albeit in terms that I recognise were in one respect too narrow) in *Siskina (cargo owners) v. Distos Cia Naviera S.A., The Siskina* [1977] 3 All. E.R. 803 at 824, [1979] A.C. 210 at 256 as follows:

"A right to obtain an ... injunction is not a cause of action ... It is dependent on there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened, by him of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court."

This, being said in the context of an application for a *Mareva* injunction, omitted to mention the type of case that is of comparatively rare occurrence in the English courts in which the plaintiff seeks against a person amenable to the jurisdiction of the English High Court an injunction to restrain the defendant from bringing suit against him in a foreign court on the ground that the plaintiff

is entitled under English law to a legal or equitable right not to be sued in that foreign court by that person on the cause of action that is the subject of such proceedings. A right not to be sued on a particular cause of action in a particular foreign court by the person against whom the injunction is sought may be contractual in origin. A common example of this is an exclusive jurisdiction clause in a contract. Furthermore, if under English law a defence would be available to the injunction-seeker, that defence may be given anticipatory effect as a right not to be sued that is enforceable by injunction in an action for a declaration of non-liability. **Of such defences it is not difficult to point to a number of examples, most of them equitable in historical origin, such as estoppel in pais (which was also a defence at common law), promissory estoppel, election, waiver, standing by, laches, blowing hot and cold - to all of which the generic description of conduct that is "unconscionable" in the eye of English law may be given. I would accordingly agree, as I did in Castanho vs Brown & Root (UK) Ltd. with the qualification to the statement of principle in the stark terms in which I expressed it in The Siskina that was added by Lord Scarman in Castanho's case, [1981] 1 All E.R. 143 at 149, [1981] A.C. 557 at 573:"**

**Midland Bank** case — extracts of the speech of Lawton L.J. at pages 697 (H), 699 (F-H), 700 (A-F)

*“In my judgment, by the standards of English law, the facts which I have summarised would not begin to justify making a charge of conspiracy in either a criminal or a civil court.....*

*.....In my judgment, the plaintiff banks were in a wholly different situation. Their connection with Laker Airways arose from banking transactions in England which were governed by English law and were intended to be so governed. There was no connection between them and any airlines operating in the United States by any arrangement comparable to the Bermuda 2 Treaty (Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America concerning Air Services (1977) (Cmnd. 7016)). They did nothing in the United States which would have been governed by the United States antitrust legislation. **At the material time, save on the international inter-bank market, they themselves had no banking business in the United States. Midland Bank's** subsidiary bank in California, which had a separate legal existence and over which they had no managerial control, had no connection of any kind with the airlines involved in the liquidator's antitrust suit. Such banking activities as their subsidiary, Thomas Cook Ltd., carried on in the United States were incidental to that group's tourist business and had no relevance. It follows, so it seems to me, that it cannot be said that the plaintiff banks have submitted themselves to the United States antitrust legislation in the way that British Airways and British Caledonian Airways had done. Leggatt J. misdirected himself in adjudging that the position of the banks was comparable to that of the two airlines. When deciding to discharge the interlocutory injunction he took into account matters which he should not have done.*

*It still remains to consider whether the threatened antitrust suit if instituted would be **unconscionable conduct on the part of the liquidator. What he is trying to do is to make the plaintiff banks liable to the heavy financial penalties which can be awarded in a United States antitrust suit for acts done in England and intended to be governed by English law and in respect of which he has no claim at all in England. In my judgment, this would be unjust and, in consequence, unconscionable;** and the more so when, so far as can be seen from an English Bench, the liquidator has not, by English standards, got the beginnings of a case to justify a charge of combination or conspiracy against the plaintiff banks. In my judgment, the weakness of the evidence is a factor which can be taken into account, together with the other more weighty factors, in deciding whether conduct is unconscionable.*

*To treat the weakness of the evidence as a separate and distinct ground for adjudging that the threatened conduct in a case such as this is unconscionable raises difficult problems. Clearly, someone subject to English jurisdiction can act in breach of the United States antitrust legislation and anyone aggrieved by such acts should, prima facie, be allowed to seek compensation in a United States court, using United States procedure and having his suit judged by United States standards, not English. It would be wrong, so it seems to me, for English judges to regard themselves as examining magistrates, deciding whether the plaintiff in the United States court had made out a case fit for trial. That is the function of the United States judge after the conclusion of the pre-trial discovery. Cases might occur, as Lord Diplock recognised in the *British Airways* case [1985] A.C. 58, 86, in which it was plain that the United States suit was bound to fail so that the making of it was frivolous and vexatious.....” (emphasis is mine)*

Speech of Dillon L.J. at page 704 (E-H) and 705 (A-C)

*“The starting point, as I see it, is that **Laker Airways' cause of action in the existing antitrust suit and in the proposed antitrust suit against the plaintiff banks arises solely under the provision of United States statutes, the Sherman Act and the Clayton Act.** These first made certain combinations or conspiracies in restraint of trade criminal offences under United States law and then gave civil remedies in the United States federal courts against the offenders. By English conflict of law rules these Acts are purely territorial in their application: see per Lord Diplock in the *British Airways* case [1985] A.C. 58, 79. Prima facie, therefore, in view of the oppressive nature, to English minds, of the United States procedures, it is unconscionable and unjust for a person who is subject to the jurisdiction of the English courts to seek to invoke the United States jurisdiction under these United States Acts against an English company or individual who is not subject to United States jurisdiction.*

*Of course, an English company may be found to have submitted to the foreign law, e.g. to the Sherman and Clayton Acts, in respect of its activities on which the complaint against it in the foreign proceedings*

*under, e.g., those Acts would be founded. In such a case, it would not be unconscionable or unjust that the foreign proceedings should be brought against the English company because of those activities. That was the factual position of British Airways and British Caledonian Airways in British Airways Board v. Laker Airways Ltd. [1985] A.C. 58 as I have already mentioned and, for my part, I read the speech of Lord Diplock in that case as primarily directed to the facts of that case, and his observations, at pp. 86-87, as delivered against the background of his findings in relation to the position of British Caledonian Airways in relation to the Bermuda 2 agreement. If the plaintiff banks had at the time of the Laker Airways collapse no relevant presence in the United States, and as their activities at that time took place in England as part of their banking business here, then it would, in my judgment, be unconscionable that Laker Airways should be allowed to bring an antitrust suit against the plaintiffs in the United States under United States statutes which are not part of English law. Contrary to the view of Leggatt J., therefore, I would reject Laker Airways' primary contention that it does not matter whether the plaintiff banks had or had not a presence in the United States at the relevant time."*

19. In the instant case the argument of the learned counsel for the ESPL that actions of the alleged conspirators, that is, BCCI, ICC and ECB, can be actioned by ESPL only by taking resort to the U.K. Act in the courts in U.K. and hence, anti-suit injunction cannot be granted, is untenable. This is specially so, if one were to keep in mind the rigour that the English Courts have applied to themselves. The question, however, remains as to whether the conduct of BCCI in the instant case is "unconscionable". This is once again an area which can have no fixed parameters. What would constitute an "unconscionable" conduct would involve appreciation of facts and circumstances in each case. Ms Singh has argued that there is no such pleading in the present suit. In my view, as observed above, whether or not the conduct is "unconscionable" or "unjust" is to be seen from the circumstances obtaining in a particular case. Though, according to me, restricting the relief to only those case where conduct is "unconscionable" or "unjust" is again harking back to the categories ekked out by the English Courts in the *South Carolina Insurance Co.* case which, they themselves have not accepted in the subsequent case, as observed by me above, such as in the *British Airways Board* case and *Societe Nationale Industrielle* case. In the instant case what is clear is that ESPL has sought to open two fronts at the same time. Having instituted an action against BCCI, that is, the Indian claim in this court where, not only has

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the evidence of ESPL come on record substantially but also the evidence of BCCI in the form of affidavit of evidence (i.e., examination-in-chief). The examination-in-chief of the witnesses of BCCI is available with the ESPL who is bound to use the evidence on record in its proposed action in U.K. This, according to me, to a great extent will impact the defence of the BCCI in an action which ESPL seeks to bring in U.K. In my view this will be an unjust and unfair conduct which cannot but be construed as an unconscionable.

20. The submission of the learned counsel for the plaintiff that the same set of parties are not arrayed in the U.K. and the Indian claim, and that the U.K. claim is not based on the same cause of action, in my view, misses the point that in examining as to whether BCCI is entitled to an anti-suit injunction against the ESPL in proceeding with its U.K. claim the court is required to see whether it has jurisdiction over the defendant and whether the institution or the continuation of an action already filed would be unconscionable or unjust or vexatious and oppressive. A court in determining whether it ought to exercise its discretion it may have regard to the parties or the cause at issue. The reason being; there may be instances when parties are not identical but there is an “identity of interest” or “undisassociability of interest” (see *Dicey and Morris* Thirteenth Edition, Vol 1, page 409, paragraph 12-046 and 12-047). An injunction will nevertheless issue. Similarly, there may not be in place a pending action in the Indian court the cause of action test would not apply. Where, however, there is an action pending in an Indian court (as in the instant case) the plaintiff seeking an anti-suit injunction may seek assistance from it to derive home its point that it has a legitimate expectation both legal and equitable to be sued in the Indian court. Therefore, in my view a principle analogous to one, which is, applicable in proceedings under Section 10 of the CPC where, the court is called upon to determine as to whether it should or should not stay subsequent proceeding initiated before it between the same parties in respect of the same cause of action; can be resorted to. Even in such cases the courts have repeatedly held that same parties means “*the parties as between whom the matter, substantially in issue has arisen, has to be decided*”. The complete identity of either the subject matter or the parties is not required. (See observations in *Shorab*

*Merwanji Modi and Anr vs Mansata Film Distributors and Anr AIR 1957 Cal 727* and the decision of the Supreme Court in the case of *Gupte Cardiac Care Centre and Hospital vs Olympic Pharma (P) Ltd (2004) 6 SCC 756*). Article 21 of the Brussel Convention is similar. The test of “identity of interest” and “undisassociability of interest” has often been invoked by the courts in U.K. whenever issues under Article 21 of the Brussel Convention have arisen.

21. Applying the said principle to the facts of the present case it is quite evident that there is both, an “identity of interest” and “undisassociability of interest” in as much as at the heart of the dispute qua BCCI is its ability to influence decisions taken by ECB and ICC in its capacity as the Home Board representing Indian cricket. The resultant impact of which is that tournaments organized by ICL whether in India or abroad do not receive the recognition that ESPL seeks either as an ‘official’ cricket event or ‘approved’ but ‘unofficial’ cricket event. The fact that the U.K. has two claimants or has defendants other than BCCI in the form of ECB and ICC in my view would not be an impeding factor for exercise of power to grant anti-suit injunction, if otherwise the court is persuaded to do so in favour of BCCI. Cause of action also in my view does not mean a complete identity of cause in the Indian claim and the U.K. claim. The test is what is the object sought to be achieved. The object sought to be achieved is the adjudication of the issue that BCCI cannot represent the interest of Indian cricket so as to influence the decisions of ECB and ICC in a manner that impact the recognition of tournaments organized by ICL as either ‘official’ cricketing events or as ‘approved unofficial’ cricket events. In my view the issues in the U.K. claim and the Indian claim are; as correctly submitted by Mr Desai, “overlapping”. The adjudication of issues in the Indian claim would to my mind substantially render the cause in U.K. otiose. This can also to be examined from the point of view of reliefs claimed. A perusal of the following, amongst other, reliefs both in the Indian and U.K. claims would demonstrate that the ultimate object sought to be achieved in the Indian claim and the U.K. claim is the same. For the sake of convenience the relevant reliefs of the Indian claim and the U.K. claim are extracted hereinbelow:

## INDIAN CLAIM

“.....(iii) *Pass a Decree of Permanent Injunction restraining/ prohibiting defendant no.5, its assigns, office bearers, employees, agents successors or any other entity acting in the name and/or on its behalf – from intimidating, threatening in any manner whatsoever, inducing or inciting or in any other manner interfering with the attempts of the Plaintiff to sign up contracts with players - past and present – for participating in its tournaments **and from interfering in any manner with the conduct of the activities of the plaintiff’s Indian Cricket League;***

“.....(viii) *Pass a Decree in favour of the Plaintiff and against the defendants declaring that **clauses 2(a), 2(g), 2(s), 2(u), 2(v) of the Memorandum of the BCCI and clauses 1(d), 9(c), 9(d), 9(g), 13(v)(b), 13(v)(c) and 13(v)(f) of the Rules and Regulations are illegal, non-est and void.***

(ix) *Pass a decree in favour of the Plaintiff and against the defendants declaring that Rules 33-d, 33-e and 34 of the **Rules and Regulations of the BCCI are illegal, non-est and void.***

(x) *Pass a decree in favour of the plaintiff and against the defendants declaring that clause 2 of the form of **Players Registration – Ranji Trophy** and also Regulations 9 and 10 of the Regulations annexed therewith as **illegal, non-est and void....**”*

## U.K. CLAIM

“(i) *A declaration against all **defendants** to the effect that by **agreeing** and/or **deciding to carry out** and/or **implement the boycott of the ICL** each breached the Chapter I prohibition and/or the Chapter II prohibition and/or **was in restraint of trade,***

(ii) *An injunction against each of the defendants **carrying out** and/or **implementing the boycott of the ICL;***

(iii) *An inquiry as to **damages** in respect of the infringements of the Chapter I prohibition and/or the Chapter II prohibition;.....”*

The object sought to be achieved is fully reflected in the reliefs sought for by ESPL.

22. The other submission for learned counsel for the ESPL was that by entertaining the prayer of BCCI for grant of anti-suit injunction, the principle of comity of courts would get violated. In this regard the learned counsel sought to place reliance on the explanation to CS(OS) 2312/2009

Section 10 of the CPC. In my view, first and foremost, the provisions of explanation to Section 10 of CPC do not in any manner impede an Indian court from granting anti-suit injunction if it otherwise deems it fit. The only intent of the explanation perhaps is, that while granting anti-suit injunction the court should keep in mind the parameters which govern the exercise of that power. Comity means nothing more than “courtesy” or “civility”. In the context of courts it would mean the principle on the basis of which effect is given to the decisions and laws of the courts of one State or jurisdiction by another not by way of obligation but by way of deference (See *Black’s Law Dictionary 16<sup>th</sup> Edition, page 267*) If, in the given circumstance, on principle, the court is inclined to grant an order of anti-suit injunction then in my view the principle of comity would have been adhered to and not departed from as contended by the learned counsel for the ESPL. The following observations of the English Court of Appeal in *Aggeliki Charis Compania Maritima S.A. vs Pagnan S.p.A. (1995) 1 Lloyd’s Law Reports 87 at page 95* in this regard are illustrative of the point in hand.

*“For my part, I do not contemplate that an Italian Judge would regard it as an interference with comity if the English Courts, having ruled on the scope of the English Arbitration clause, then seek to enforce it by restraining the characters by injunction from trying their luck in duplicated proceedings in the Italian Court. I can think of nothing more patronizing than for the English Court to adopt the attitude that if the Italian Court decline jurisdiction, that would meet with the approval of the English Court, whereas if the Italian Court assumed jurisdiction, the English Court would then consider whether at that stage to intervene by injunction. That would not only be invidious but the reverse of comity. The Judge was not deterred from rejecting this approach by The Golden Anne and, in my judgment, he was right not to be deterred.*

*That case is sufficiently explained as an exercise of discretion in the light of the foreign court’s past history of involvement. It is not to be regarded as authority for the proposition that it is wrong in principle to grant an injunction before the foreign court has decided whether to assume jurisdiction or reject it in favour of arbitration. That it is not wrong in principle to do so is plain from the recent decision of this court in Continental Bank.*

*Contrary to Mr Bumble’s view, the law is not normally “an ass” and comity does not require it to behave like one. In my judgment, the Judge’s*

*conclusion that the Charterers' maintenance of proceedings in Venice are vexatious is correct in the circumstances, and his consequent exercise of discretion in favour of granting an injunction was unassailable."*

23. It was submitted by the learned counsel for ESPL that anti-suit injunction is not maintainable at this stage as no action has yet been instituted in the court in U.K. In my view this submission is again untenable. Mr Desai submitted before me that the notice dated 16.11.2009, which was accompanied by a draft statement of claim is intended to be filed by ESPL, in U.K. court (which has been referred by me as the 1<sup>st</sup> U.K. claim) has been served upon BCCI in accordance with the prevailing practice and procedure in respect of prosecution of cases in U.K. This position was not disputed by the learned counsel for the ESPL. In these circumstances, the only conclusion that one can draw is that the action in a sense has already been initiated; even though not yet instituted in court. However, I am of the view that even otherwise the power of the court to grant injunction at a stage where a perceptible threat of action in the offing, is made out, the court's power to grant an anti-suit injunction is not ousted merely because an action is not instituted. As a matter of fact a delay in bringing a motion to court by a plaintiff for grant of an anti-suit injunction can be a good ground to decline the relief. (See *Ticumchand Sautokechand vs Sautokechand Singhee 1920 (24) C.W.N. 735*). Alacrity as a matter of fact enures to the benefit of parties since it does away with avoidable expense and wastage of time.

24. To summarize, having regard to the factors to which I have made a reference hereinbelow, I am persuaded to grant an anti-suit injunction only qua BCCI: (i) the plaintiff has chosen to file the Indian claim, the issues in which substantially overlap with the issues raised in the U.K. claim; (ii) the determination of the issues raised in the Indian claim would substantially do away with the grievance of ESPL which finds its reflection in the U.K. claim; (iii) the evidence in the Indian claim is at an advance stage. Out of the six (6) witnesses cited by the ESPL examination of four (4) witnesses is almost over. Moreover BCCI has already filed its affidavit by way of evidence (examination-in-chief) which is available with ESPL. To cite an instance of interlinkage of evidence, the affidavit

of Mr Himanshu Mody is a case in point, in particular, his deposition in paragraph 15. In the said paragraph in no uncertain terms the deponent has alluded to the fact that BCCI is exerting pressure and intimidating not only players (both Indian and foreign) but also “international bodies” and “cricketing bodies” of other countries from the ICL. This conduct of BCCI is termed by the deponent as “monopolistic” and “unlawful” causing wrongful loss. The deponent in paragraph 15(a) and (b) of his affidavit has given an example of how influence has been exerted on the foreign cricket board ECB as also ICC. The policy of CSA and ECB, as contained in the e-mails of the deponent to the ICL representative, has been appended as exhibits to the affidavit of the deponent. There is every possibility of the said evidence being used by ESPL in its proceedings in U.K.; (iv) both the BCCI and the ESPL are Indian entities; a substantial part of the grievance raised with regard to the recognition of tournaments held by ICL is in India. This is not to say that ICL is not aggrieved by the non-recognition of tournaments held outside India. However, both form an inextricable part of ESPL’s grievance in the U.K. claim; (v) on a comparative scale the disadvantage of BCCI in form of cost and expenses (see *ONGC* case) would be greater, while the ESPL may have the advantage of a possibly higher monetary gain in the form of a damage, if it succeeds; (See *SNI Aerospatiale* case). In the *Midland Bank* case the possibility of Midland Bank being mulct with a greater quantum of damages was considered as a relevant factor in the grant of an anti-suit injunction. (vi) BCCI has a legitimate right to contend that the Indian court being the court with which issues raised qua BCCI have a real and substantial connection — it has a legitimate right to be sued in the Indian courts. The fact that in the U.K. claim and in the documents filed there is a substantial reference to the events of April/August, 2007 and that in respect of those issues the pendency of the Indian claim cannot be denied; and (vii) lastly, even if it is assumed that U.K. court is the only forum available to ESPL even then on a principle of unconscionability (the reasons for which I have given hereinabove) BCCI is entitled to injunction qua itself.

25. At this stage, I may also touch upon the submission of Mr Desai that the anti-suit injunction should issue in respect of the allegations made which are subject matter of the U.K. claim should not be confined to the BCCI, that is, the injunction should extend to ECB and ICC. In my view this prayer cannot be entertained on the short ground that neither the ECB nor ICC is before me. The plaintiff in its suit cannot propound the cause of a litigant for relief who has not sought relief from the court. To that extent, I am in agreement with the submissions made by the learned counsel for ESPL, Ms Singh.

26. That brings me to the various judgments cited by the learned counsel for ESPL. First and foremost, was the judgment of a Single Judge of this Court in the case of *Moser Baer*. As is evident on a perusal of the judgment that the issue before the court as to whether it should or should not grant anti-suit injunction arose, in the context of a jurisdictional clause appearing in a contract. Such is not the situation in the present case. The facts of the case are distinguishable. In *Magotteaux Industries Pvt. Ltd*, a Division Bench of this Court was concerned with an action filed in the Indian court for infringement of a patent and a complaint filed before a specialized tribunal which had powers of investigation into the violations complained of. The Division Bench in paragraph 67 of the judgment adverted to the fact that the cause of action in the two proceedings in issue were separate, in as much as, the action filed in the Indian court was one for infringement of a patent which is “territorial in nature” and, therefore, infringement caused of a patent in other jurisdictions (where it is registered, and the patentee necessarily has monopoly rights) leads to a situation whereby, separate causes of action arise on each infraction. Such is not the situation in the present case in view of the fact that, as discussed above, the issues overlap and there is a commonality.

27. The *Modi International* case; on which both sides placed reliance to bring to fore some of the observations made by the court, is also essentially a case of jurisdictional clause obtaining in a contract entered between the parties. The Supreme Court was therefore, called upon to deal with an issue as to whether parties to the dispute should be allowed to forego the jurisdictional clause in the contract. The Supreme Court came to the

conclusion that no anti-suit injunction ought to be granted since parties had agreed to a jurisdictional clause, and to that extent the principles of the CPC qua jurisdiction, which is that the parties by consent cannot confer jurisdiction where non-exists was not applicable to foreign courts. The parties can agree to a neutral court of their choice which has nothing to do with the performance of the contract.

28. For the reasons given, I confirm my order dated 07.12.2009 while order dated 25.01.2009 is vacated. This injunction shall operate only up to the stage of adjudication of CS(OS) 1566/2007. The application is disposed of in the above terms.

**Dasti.**

**RAJIV SHAKDHER, J**

**JANUARY 04 , 2010**  
**kk**