

* **HIGH COURT OF DELHI : NEW DELHI**

+ **I.A. No. 12539/2009 in CS (OS) No. 1237/2009**

Ravinder Singh Mahindra ...Plaintiff

Through : Ms. Malvika Rajkotia with
Mr. Ranjay N., Advs.

Versus

Param Singh & Ors. ...Defendants

Through : Ms. Geeta Luthra, Sr. Adv.
with Mr. Jatin, Adv.

Reserved on : December 3, 2009

Decided on : January 8, 2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. The present suit has been filed by the plaintiff for declaration, permanent injunction, rendition of accounts and specific enforcement of an agreement with the following prayer :

- a) Grant an anti suit injunction restraining the defendant from filing any further proceedings against the plaintiff in the USA;
- b) Call upon the defendant to render accounts for the purpose of a division of assets in accordance with the agreement entered into by the parties;
- c) Award damages for the mental harassment and torture suffered by the plaintiff on account of the acts of the defendant; and,

- d) Specifically enforce the agreement dated 12th March, 2008 duly signed by the parties.

2. The brief facts of the case are that the plaintiff and defendant no. 1 were married at New Delhi on 2nd May, 1993, after which they moved back to the USA on 4th May, 1993 and resided there till 2004. They had two children while they were in the USA. When the parties relocated to India, the plaintiff moved to Bangalore in pursuit of his contractual job obligation. The plaintiff then moved to Gurgaon on account of bad health. As per the plaintiff, the defendant no. 1 during this entire time had been harassing the plaintiff by taking away the documents of the joint properties etc. and by repeatedly asking for a divorce. On 29th May, 2008 the plaintiff filed a divorce petition in Gurgaon which was dismissed on account of lack of jurisdiction and which has been challenged in the Hon'ble High Court of Punjab and Haryana at Chandigarh.

3. On 7th June, 2008 defendant no. 1 filed a complaint in the Police Station at Defence Colony that the plaintiff had been making telephonic threats to her. On 10th June, 2008 defendant no. 1 moved out of the matrimonial residence at Gurgaon. On 24th July, 2008 defendant no. 1 filed another complaint against the plaintiff under the Indian Passports Act and the Indian Penal Code. Thereafter defendant no. 1 filed a divorce petition in the USA, a judicial separation petition in the USA and a divorce petition in Delhi along with complaints in the CAW Cell, Vasant Vihar, New Delhi, Police Station Neb Sarai, Passport

Office, Bhikaji Cama Place as well as a complaint of Domestic Violence at Patiala House Courts, New Delhi. Therefore the present suit was filed.

4. The suit along with the application for interim injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC for brevity) being I.A. No. 8650/2009 was listed before this court on 16th July, 2009. In the application for interim stay, the plaintiff had prayed for an order restraining the defendant by way of an ex parte ad interim injunction from filing any legal proceedings against the plaintiff in California, USA and from prosecuting any proceedings already filed. On that date, this court passed an order restraining defendant no. 1 from initiating any fresh legal proceedings against the plaintiff in California, USA with respect to the matrimonial discord between the plaintiff and defendant no. 1.

5. The defendants filed a written statement on 23rd September, 2009 as well as an application under Order XXXIX Rule 4 of the CPC for setting aside of the restraining order passed on 16th July, 2009. The defendants also filed an application being I.A. No. 12539/2009 under Order VII Rule 11 of the CPC for rejection of the plaint on the ground that the present suit does not disclose any valid cause of action and is also not maintainable. At the time of hearing, both the parties have made submissions only in the application filed under Order VII Rule 11 CPC.

6. It is the defendants' averment in the said application that the present suit has been filed for specific performance of the alleged

agreement dated 12th March, 2008, however, the said agreement has no sanctity in the eyes of law.

7. Further, the defendants have averred that a perusal of the plaint shows that it does not contain even a whisper of the alleged agreement that the plaintiff wants to enforce. In view of the fact that the said agreement has not been mentioned and therefore, material facts and particulars with regard to the same have not been averred, no cause of action has been disclosed.

8. The crux of the defendants' contention is that the alleged agreement is not a valid agreement as there was no consensus of the parties and neither was there any consideration for the same. The unstamped and unregistered document itself states that it would come into play only if a mutual consent petition was filed by 19th March, 2008 and considering that no such petition was filed, the agreement is not applicable to the parties.

9. It is also the defendants' contention that another agreement dated 15th March, 2008 was made between the parties which incorporated certain differences and improvements upon the agreement dated 12th March, 2008, indicating that the latter agreement was never meant to be acted upon and is therefore, not enforceable under law.

10. The defendants have then submitted various other submissions on merit of the case and referred various decisions but the same are not relevant for the purpose of deciding the present application.

11. In the reply to this application, the plaintiff has submitted that the suit filed on his behalf has been filed for various reliefs including, but not limited to, specific performance of the agreement dated 12th March, 2008. Therefore, without prejudice to his rights and for the sake of argument, even if the agreement is held to be not enforceable, there are other reliefs which have been prayed for which would need to be considered.

12. According to the plaintiff, the agreement dated 12th March, 2008 is submitted to be a spousal agreement which has been acknowledged and admitted by the defendants and therefore, the same is enforceable. Further, the said agreement was signed by both the parties and therefore it is wrong to say that there was consensus between them.

13. The contention of the plaintiff is that the defendants have filed multiple cases against the plaintiff being a total of nine cases in Delhi, India and one case in California, USA and have been constantly harassing the plaintiff and his family. According to the plaintiff, despite the interim order restraining the defendants from doing so, the defendant No.1 has initiated fresh proceedings against the plaintiff in USA Court for the similar relief. Therefore, in order to avoid oppressive or vexatious proceedings, the present suit has been filed by the plaintiff.

14. The details of pending litigation being civil and criminal between the parties in India and overseas have been elaborately mentioned in the plaint in para 9 and 5.

15. In order to determine the present application it is necessary to refer the plaint wherein there are specific averments as regards the agreement dated 12th March, 2008 in paras 13 (g) and 14 of the plaint :

“13. ...

- g. The parties then tried to negotiate a settlement with the intervention of lawyers. The matter was getting stalled on the issue of financial settlement. This was over several months. Eventually the parties met at the residence of a mutual friend and came to an agreement with regard to custody and financial settlements.

It is relevant to mention that the custody arrangement was arrived at on the premise that the parties would be living next to each other in India. However clearly that has changed in that they may not be able to live next to each other. However the spirit of the agreement was that the children would have free and unobstructed access to their parents who would together be caregivers. There was no parenting plan with the plaintiff reduced to a weekend and vacation parent. On the contrary, the role for him would be that of an equally committed caregiver as the mother.

14. Needless to say the custody aspect of the agreement was never even looked at and acted upon.....”

Prayer (d)

“Specifically enforce the agreement dated 12th March, 2008 duly signed by the parties.”

16. In the plaint, the plaintiff has sought the relief on the basis of the cause of action which is reproduced hereinbelow :

“27. That the cause of action accrued in favour of the plaintiff and against the defendant on 23rd March, 2009 when she invoked jurisdiction of the US court after having submitted t the jurisdiction of the Indian Court in various proceedings and verifying a petition for divorce on the same day for the Indian Court.”

17. The law on the issue under consideration is very well settled and is encapsulated in *Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express*, (2006) 3 SCC 100 wherein the Supreme Court, with regard to the scope of an application under Order VII Rule 11 observed as under :

“12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.”

18. As regards disclosure of cause of action, reliance can be placed on the finding *Om Prakash Srivastava Vs. Union of India & Ors.*, (2006) 6 SCC 207 reproduced hereinbelow :

“12. The expression “cause of action” has acquired a judicially settled meaning. In the restricted sense “cause of action” means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary

conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in “cause of action”. (See *Rajasthan High Court Advocates’ Assn. v. Union of India.*)

13. The expression “cause of action” has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. (See *Gurdit Singh v. Munsha Singh.*)

14. The expression “cause of action” is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (see *Black’s Law Dictionary*). In *Stroud’s Judicial Dictionary* a “cause of action” is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In *Words and Phrases* (4th Edn.) the meaning attributed to the phrase “cause of action” in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See *Navinchandra N. Majithia v. State of Maharashtra.*)”

19. In the case of *Union of India & Ors. Vs. Adani Exports Ltd. & Anr.*, AIR 2002 SC 126, the Supreme Court observed as under :

“10. ... Cause of action as understood in civil proceedings means every fact which, if traversed,

would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. It is the bundle of facts which taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. Each and every fact pleaded in the writ petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned.”

20. Thus, from the aforesaid case law it is apparent that while considering the expression “cause of action”, the Court ought to look at the factual situation that gives rise to an enforceable claim taking into consideration the averments made in the plaint, which when read collectively, constitute a bundle of facts that form the basis of institution of the present suit by the plaintiff.

21. After going through the plaint, in view of the settled law in this regard, I do not think it prudent to entertain, at this stage of the proceedings, the contentions of the defendants relating to enforceability of the agreement dated 12th March, 2008 and other objections raised at the time of hearing have to be considered at the time when the main injunction application and application for vacation of injunction

22. The arguments vis-à-vis the unregistered and unstamped status of the agreement dated 12th March, 2008 have no force at this stage of matter when the court is dealing with the application under Order VII Rule 11 CPC nor this court while considering the present application can determine the validity of the document. Further, the

document has been relied upon for the relief of specific performance which is *not the only relief* prayed for. There are other reliefs which are sought by the plaintiff in the main suit, therefore, it is wrong to allege by the defendants that the plaint disclose no cause of action.

23. Now I shall discuss the second contention of the defendants that the suit file by the plaintiff is not maintainable and no order of an anti suit injunction can be passed as the defendants have the right of filing a suit or a proceeding in the courts at the foreign courts if their rights are being impinged or violated. Various decisions have been referred during the hearing of the case.

24. The landmark judgment laying down the principles which are to be taken into consideration by a Court at the time of passing an anti suit injunction is *Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd.,(2003) 4 SCC 341* and the principles laid down are reproduced hereinbelow :

“24. From the above discussion the following principles emerge:

(1) In exercising discretion to grant an anti-suit injunction the court must be satisfied of the following aspects:

(a) the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court;

(b) if the injunction is declined, the ends of justice will be defeated and injustice will be perpetuated; and

(c) the principle of comity — respect for the court in which the commencement or continuance of action/proceeding is sought to be restrained — must be borne in mind.

(2) In a case where more forums than one are available, the court in exercise of its discretion to grant anti-suit injunction will examine as to which is the appropriate forum (forum conveniens) having regard to the convenience of the parties

and may grant anti-suit injunction in regard to proceedings which are oppressive or vexatious or in a forum non-conveniens.

(3) Where jurisdiction of a court is invoked on the basis of jurisdiction clause in a contract, the recitals therein in regard to exclusive or non-exclusive jurisdiction of the court of choice of the parties are not determinative but are relevant factors and when a question arises as to the nature of jurisdiction agreed to between the parties the court has to decide the same on a true interpretation of the contract on the facts and in the circumstances of each case.

(4) A court of natural jurisdiction will not normally grant anti-suit injunction against a defendant before it where parties have agreed to submit to the exclusive jurisdiction of a court including a foreign court, a forum of their choice in regard to the commencement or continuance of proceedings in the court of choice, save in an exceptional case for good and sufficient reasons, with a view to prevent injustice in circumstances such as which permit a contracting party to be relieved of the burden of the contract; or since the date of the contract the circumstances or subsequent events have made it impossible for the party seeking injunction to prosecute the case in the court of choice because the essence of the jurisdiction of the court does not exist or because of a *vis major* or force majeure and the like.

(5) Where parties have agreed, under a non-exclusive jurisdiction clause, to approach a neutral foreign forum and be governed by the law applicable to it for the resolution of their disputes arising under the contract, ordinarily no anti-suit injunction will be granted in regard to proceedings in such a forum convenience and favoured forum as it shall be presumed that the parties have thought over their convenience and all other relevant factors before submitting to the non-exclusive jurisdiction of the court of their choice which cannot be treated just as an alternative forum.

(6) A party to the contract containing jurisdiction clause cannot normally be prevented from approaching the court of choice of the parties as it would amount to aiding breach of the contract; yet when one of the parties to the jurisdiction clause approaches the court of choice in which exclusive or non-exclusive jurisdiction is created, the proceedings in that court cannot *per se* be treated as vexatious or oppressive nor can the court be said to be forum non-conveniens.

(7) The burden of establishing that the forum of choice is a forum non-conveniens or the proceedings therein are

oppressive or vexatious would be on the party so contending to aver and prove the same.”

25. During the course of hearing, it was not disputed that the defendant no. 1 filed a divorce petition in USA on 8th December, 2008. The same was dismissed on 12th March, 2009 on account of no residence status in the USA. Thereafter, defendant no. 1 filed a petition for judicial separation in the USA on 23rd March, 2009 and five days later, filed a divorce petition under Section 13 (i) (ia) of the Hindu Marriage Act, 1955 in the District Court, Delhi. These facts which disclose that defendant no. 1 has filed multiple proceedings against the plaintiff based on an almost similar cause of action and for similar relief read with the details of litigation mentioned in para 9 and para 5 of the plaint.

26. In the case of *Magotteaux Industries Pvt. Ltd. & Ors. Vs. AIA Engineering Ltd., 155 (2008) DLT 73 (DB)* referred by learned Senior counsel for the defendants, the Division Bench of this Court had the occasion to deal with a similar point with regard to grant of an anti suit injunction. In that case the injunction was not granted because the cause of action in both the matters were different and occurred on different dates which was the relevant consideration of the grant of anti suit injunction. Paras 57 of the judgment read as under :

“57. It appears that the causes of action in both the matters are different and occur on different dates which becomes relevant for the consideration of the grant of anti-suit injunction. In Suit No.189/2006 there was no specific averment that the respondent has appointed two companies in USA and Italy to deal with the product i.e. composite wear components in question. It was also not alleged by either of the parties that the respondent has actually been exporting the product in question under the infringement

of patent of appellant No.2 granted in India nor there is any averment by the Appellants or respondent that the respondent is exporting composite wear components from India, and/or two companies appointed by the respondent has imported the goods from U.S.A.”

In view of the facts mentioned in preceding para 25, this judgment does not help the case of the defendant no. 1 as the facts in the present case are quite different.

27. In view of settled law on the subject, prima facie, it appears as far as filing of present of an anti suit injunction is concerned, the same is maintainable and the objections raised by the defendants have no force at this stage of the matter particularly while considering the present application. This objection is still open which has to be considered at the time of hearing of the interim application.

28. In view of the above said discussion, the application of the defendants being I.A. No. 12539/2009 is not maintainable and the same is disposed of accordingly.

CS(OS) NO.1237/2009

29. List the matter before the roster Bench on 15th February, 2010 for further directions.

MANMOHAN SINGH, J.

JANUARY 8, 2010

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