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Settling the Conundrum: The Law of Anti-Suit Injunctions in India

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ABSTRACT

An injunction is an adequate solution in the nature of a judicial order that requires a person to do or abstain from performing particular activities. It is a restraining order that prohibits either of the sides to an equitable litigation from doing or allowing people under its authority to commit an act that is unfair to the other side. An injunction expressly prohibits a certain sort of behavior. The Anti-suit injunction is a sort of court-issued injunction. An anti-suit injunction is an order made by a court to prevent further proceedings in another court. If a party violates such an order, the domestic court may issue a contempt of court order against that party. The following paper discusses and tries to settle the conundrum around the concept of Anti-suit injunction in India.

Keywords: *Injunction, anti-suit injunction, court, restraining, India.*

I. INTRODUCTION

Anti-suit injunctions are used to establish a specific venue for resolving conflicts. As a result, it primarily addresses jurisdictional difficulties. The origin of anti-suit injunctions may be traced back to the contest for control in England between common law and catholic courts. Common law courts used injunctions to limit the authority of religious tribunals. The fundamental goal of anti-suit injunctions is to prevent the same entities from suing in two territories at the same time. To halt simultaneous proceedings, a party might go to the court inthe place of arbitration and ask that court to prevent the other party from starting or continuingaction in a foreign jurisdiction. Anti-suit injunctions are often used when one party to an arrangement commences court actions against another in a Court, despite the fact that the arbitration agreement between the parties specifies another location for arbitration. Theopposing party will then commence arbitration procedures against the first party in the countryagreed upon by both parties as the seat of the arbitration, resulting in simultaneous proceedings.Parallel procedures may result in delays, the disclosure of sensitive information, and contradicting verdicts. Anti-suit injunctions are intended to prevent this.

When an agreement includes an arbitration provision, an anti-sitting injunction may be

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 [ISSN 2581-5369]

utilizedin one of two distinct ways:

1. to avoid having to go to court in other nations. This facilitates arbitration procedures inaccordance with the parties' agreements;
2. It might be used to halt the arbitration and have the case resolved by a court in a countryother than that of the panel. In this instance, the arbitration would be null and void. However, the court is doubtful to grant an injunction preventing the arbitral procedures.In the event that an arbitral panel's jurisdiction is challenged, courts will usually not hold a hearing and will refer the decision to the arbitral tribunal.

Arbitrators may impose anti-suit injunctions to maintain the jurisdiction of the arbitration tribunal, to protect the efficacy of the judgment, or even to neutralise other anti-suit injunctions.In the *West Tanker case,* the European Court of Justice ruled that the English Court lacked theauthority to halt Italian proceedings, and that the Italian Court had to decide on its jurisdiction.[2] Anti-suit injunctions in regard to arbitration were found to be illegal with the Brussels Regulation, which states that courts in member states of the Brussels Regulation must recognize each other's jurisdiction.

In *Ust-Kamenogorsk Hydropower Plant JSC v. AES Ust-Kamenogorsk Hydropower Plant LLP*, the Supreme Court confirmed that the English court has jurisdiction to enjoin the resumption or initiation of international deliberations ushered in violation of an arbitration agreement, even if there is no real, suggested, or envisioned arbitration.[3] This authority is onlyapplicable to countries that are not covered by the Brussels Regulation.

II. THE CONFERRING OF JURISDICTION IN ANTI-SUIT INJUNCTIONS

In its most common use, the word “jurisdiction” refers to the degree to which an institution may rule on an issue. A court or other proper venue with jurisdiction over the matter resolves a disagreement between two entities. In today's world, when parties and individuals are linked beyond geographical lines, the concept of “jurisdiction” is very important. The jurisdiction ofan adjudicatory body is determined by a number of variables, including the monetary worth of the dispute, the location of the agreement's execution, the parties' agreement on exclusive jurisdiction, and so on. Although the Code of Civil Procedure, 1908 establishes the criteria fordetermining jurisdiction, it is not comprehensive since various individual statutes offer authority to different forums and even prohibit the jurisdiction of a

[2] Allianz SpA & Generali Assicurazioni Generali SpA v. West Tankers Inc., 2009 WL 303723
[3] Ust-Kamenogorsk Hydropower Plant JSC v. AES Ust-Kamenogorsk Hydropower Plant LLP, [2013] UKSC35

 [ISSN 2581-5369]

forum over a specific topic.

In the case of a disagreement, the online trade age brings up the possibility of many jurisdictions. The digital marketplace, which has developed and increased in recent years, makes the globe a single market in and of itself, but the law of territorial jurisdiction of a court or forum over disputes originating from such transactions must be grasped with great clarity. There is the potential of invoking the jurisdictions of various geographical regions in a dispute involving parties located in separate geographical territories. In such a case, the parties always have the alternative of granting "exclusive jurisdiction" to any one court or forum among those with jurisdiction. However, the issue of determining jurisdiction gets complicated when no exclusive jurisdiction has been given by agreement and numerous courts or forums have the authority to execute jurisdiction, a condition known as "actual" or "accessible" jurisdiction.

III. Deciphering the difference between anti-suit injunctions and anti-arbitration injunctions

The notion of Anti-Arbitration Injunctions evolved from Anti-Suit Injunctions, however there is a distinction between the two. In the most rational thinking, an anti-suit injunction is an order issued by a court to a side prohibiting it from commencing or proceeding with an action in any other court. An Anti-Arbitration Injunction, on the other hand, is a court order prohibiting a party from initiating or proceeding with an Arbitration Hearing. Although the Arbitration and Conciliation Act of 1996 does not identify anti-arbitration injunctions, Indian courts have pondered upon this concept many times in the past. Due to the absence of legislative recognition of anti-arbitration injunctions, the Indian Courts' attitude to the same has been inconsistent, causing considerable uncertainty within the international arbitration community.

The most recent decision on the subject of anti-arbitration injunctions was made by a single Judge of the Calcutta High Court in the case of *Balasore Alloys Limited v. Medima LLC*, in which the Court restated the authority of Indian judiciary to award anti-arbitration injunctions in international arbitral proceedings.[4] In doing so, the Calcutta High Court addressed the Supreme Court's opposing decisions *in S.B.P. & Co. v. Patel Engineering*[5][6] and *Kvaerner Cementation India Limited v. Bajranglal Agarwal and Anr.*[6], while largely

[4] Balasore Alloys Limited v. Medima LLC, G.A. No. 871/2020
[5] S.B.P. & Co. v. Patel Engineering, (2005) 8 SCC 618
[6] Kvaerner Cementation India Limited v. Bajranglal Agarwal and Anr., 2000 (3) SCC 695

 [ISSN 2581-5369]

depending on the former to reach its decision. Although the *Balasore Alloys case* is in accordance with Supreme Court law, the Calcutta High Court's assessment that an anti-arbitration injunction is purely governed by the fundamentals relating to anti-suit injunctions, as set down by the Supreme Court in *Modi Entertainment Network v. W.S.G. Cricket*[8], contradicts previous Delhi High Court judgements in this respect.

IV. PRINCIPLES PERTAINING TO ANTI-ARBITRATION INJUNCTIONS

The Calcutta High Court has firmly declared in the Balasore Alloys case that an anti-arbitration injunction may only be given within the grounds laid out by the Apex Court in the *Modi Entertainment* verdict. In the aforementioned ruling, the Supreme Court established a comprehensive set of criteria governing anti-suit injunctions prohibiting hearings before an international court. According to the Supreme Court, the following factors must be considered by Indian courts before issuing such injunctions:

a) The party seeking the injunction must be amenable to the court's personal jurisdiction;

b) Refusal to grant the injunction may result in denial of justice;

c) Comity principles;

d) Whether the parties have agreed to approach a neutral foreign forum and be governed by the applicable law for resolving their disputes?; and

In another case, in *Rotomac Electricals Pvt Ltd v. National Railway Equipment Company*, the High Court of Calcutta observed that:

'When several parties to the agreement are from distinct nations and litigations are begun in the home country of one of the contracting parties, the proceedings cannot be considered to be commenced in a *forum non conveniens* if the jurisdiction is sometimes suitable.'[7]

Whenever the participants to a lawsuit are from separate nations hundreds of kilometres apart, one of the sides will be adversely affected. Procedures in India would be inconvenient for the party from the US, and hearings in the US would be inconvenient for the side from India. Since a result, whether or not an anti-suit injunction may be issued by an Indian court differs from case to case, as the circumstances of one case may be unique to the other.

In light of the foregoing discussion, and upon far more thought and consideration, it could indeed be ascertained that the decision of the Calcutta High Court to maintain that Indian

[7] Rotomac Electricals Pvt Ltd v. National Railway Equipment Company, CS No 10 of 2011

 [ISSN 2581-5369]

courts have the authority to award anti-arbitration injunctions restricting international arbitration hearings is consistent with previous Supreme Court decisions. Nonetheless, notwithstanding the judgment of the Supreme Court in the *Patel Engineering case*, the higher judiciary in India had been delivering contradictory judgements on the precepts relating to anti-arbitration injunctions, leading to puzzlement amongst international arbitration society. In light of this, the Supreme Court, rather than merely declining to intervene with the judgment of the single judge-bench in the *Balasore Alloys case*, could have delved into the concerns of anti-arbitration injunctions, therefore putting an end to this debate.

V. CRITICAL ANALYSIS OF ANTI SUIT INJUNCTIONS

The trend of issuing anti-suit injunctions is greeted with opposition, particularly when the judgments seek to block the beginning and continuation of legal processes in other countries. It is identified as a prerequisite to the jurisdiction's ability to pick which matters may be heard. Another objection against the approach is that it violates the concept of *Kompetenz-Kompetenz*, which states that the judge hearing the case is the arbitrator of its own competency. Because "jurisdiction is thing that is proclaimed, not thing that can be commanded," no national court enjoys a foreign court instructing everyone else what to do in relation to a given litigation, particularly when it comes with the possibility of obstruction of justice. Proponents of anti-suit injunctions believe that the injunctions are intended against people in order to prevent them from initiating legal procedures, thus not meddling with the authority and competence of other Courts. Such decrees, nevertheless, implicitly question the authority of other Courts, and such an order ultimately limits the jurisdiction of an oversea jurisdiction.

The European Court of Justice ruled in *Turner v. Grovit* that the issuing of an anti-suit injunction by a contracting state's judicial authority to compel a person from beginning or enduring court action at the Court of another Contracting Party is forbidden.[8] The Court concluded that the Convention is founded on a reciprocal faith relation between the Contracting Parties, and that the jurisdiction of one court cannot be examined by the court of another Contracting Party.

VI. ANTI-SUIT INJUNCTIONS, CYBERSPACE & TRADEMARK LAW

In supplement to the authority conferred by the Civil Procedure Code, the Trade Marks Act

[8] Turner v. Grovit, Case C-159/02 (2004).

 [ISSN 2581-5369]

in India provides that a claim for trademark infringement or passing off might well be filed before a court in whose authority the petitioner lives or does trade.Several companies not only function in electronically, but they also choose to advertise their brands and marks on the web via numerous ways, including owning web addresses that may have all of the attributes of a trademark. Companies often meet forgers on the internet while at it, stressing the challenge of execution against international defendants.

In such circumstances, the intentional availment test or consummated contract is used to determine whether a court has jurisdiction or not. First at instance of sites, the sheer availability of a website in a given location may not be enough for judges to exert individual authority. In *HT Media Ltd. & Anr. v. Brainlink International Inc. & Anr.,* the Delhi High Court used its intrinsic authorities to issue an anti-suit injunction against the international defendants, preventing it from conducting legal procedures against the Indian plaintiff in a US district

court.[9] In doing so, the court used the principles established in the *Modi Entertainment decision*. According to the Court:

Because the Plaintiff has not claimed Trademark rights in the United States, the action filed in the Eastern District of New York is frivolous and burdensome. Plaintiffs' trademarks are registered in India, and the Plaintiffs' goodwill extends worldwide. However, the Plaintiffs do not conduct trade in the USA. Respondents had attempted to give the Domain name to the Plaintiffs for USD $3 Million, but when they were unable to do so, they initiated an action for Declaration in attempt to obstruct the Plaintiffs' ability to use their rights. The initiation of the litigation is also an effort to legitimize the claimed infringing activity of the Plaintiffs' registered trademarks. Plaintiffs have shown a prima facie basis for the issuance of an anti-suit injunction in this Court.

VII. CONCLUSION

Even if people criticise anti-suit injunctions for diminishing or disputing a Court's right to determine on its own jurisdiction, it is also to be remembered that the same prerogative of the arbitration tribunal (that was jointly selected by contractual parties) must be maintained. It is not acceptable to have completely inappropriate court intrusions that weaken the power of arbitral tribunals in a business transaction when the parties come into agreements without any pressure and after weighing the benefits and drawbacks. In such instances, anti-suit

[9] HT Media Ltd. & Anr. v. Brainlink International Inc. & Anr., CS (COMM) 119/2020

 [ISSN 2581-5369]

injunctions may be a useful instrument in ensuring the efficient functioning of arbitration.

Anti-suit injunctions have a role in Indian law and have developed via the decisions of several High Courts and the Supreme Court. While issuing an anti-suit injunction in any instance, the court must also recognize that this type of injunction entails the court interfering with the jurisdiction of some other court, and so, an anti-suit injunction must be given judiciously and supported by the facts of each case. Anti-suit injunctions are vital in determining a better suitable forum and prohibiting parties from commencing frivolous and coercive proceedings in other countries with the express goal of inflicting difficulty to the opposing party.

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 [ISSN 2581-5369]