



GRAVITAS LEGAL

The Epiphany Called Anti-Suit and Anti-Anti-Suit Injunctions

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Introduction

What is so unique about the Delhi High Court's order in *Interdigital Technology Corporation & Ors. v. Xiaomi Corporation & Ors.*ⁱ, (hereinafter '*Xiaomi* case') which has pulled the Indian legal fraternity's attention. Yes, it is the first '*Anti-anti Suit Injunction*' order ever passed by an Indian Court. Ever heard of this legal nomenclature? I did not, at least not before October 9, 2020, when Hon'ble Mr. Justice C. Hari Shankar passed this one of its kind order. The said order was later confirmed by the High Court's judgment dated May 3, 2021.

Analysis and Findings

To get a grip over the concept of '*Anti-anti Suit Injunction*' (hereinafter '**A2SI**') we need understand concept of ant-suit injunctions. So, without further ado, let us directly refer to the case laws holding the field.

In *Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd.*ⁱⁱ, the Supreme Court was called upon to examine the principles governing grant of an anti-suit injunction by a court of natural jurisdiction against a party to a suit before it, restraining him from instituting and/or prosecuting the suit, between the same parties, if instituted, in a foreign court of choice of the parties. The instructive observations of made by the Supreme Court are as follows:

"10. ... When a court restrains a party to a suit/proceeding before it from instituting or prosecuting a case in another court including a foreign court, it is called anti-suit injunction. It is a common ground that the courts in India have power to issue anti-suit injunction to a party over whom it has personal jurisdiction, in an appropriate case. This is because courts of equity exercise jurisdiction in personam. However, having regard to the rule of comity, this power will be exercised sparingly because such an injunction though directed against a person, in effect causes interference in the exercise of jurisdiction by another court.

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[Emphasis Added]

Thus, the Supreme Court in *Modi Entertainment Network* (supra), held that in considering whether an anti-suit injunction is to be granted or not, the court is to inquire whether the defendant is amenable to the personal jurisdiction of the court, whether the ends of justice would be defeated by refusal to grant the injunction and where there are more than one forums available, and which is the forum convenience for bringing the action in question having regard to the convenience of the parties and other factors. The court has also to bear in mind the principle of comity.

Later, in *Dinesh Singh Thakur v. Sonal Thakur*ⁱⁱⁱ, the issue before the Supreme Court was whether in the present facts and circumstances of the said case, the Appellant-husband was entitled to the decree of anti-suit injunction against the Respondent-wife.

9. Anti-Suit Injunctions are meant to restrain a party to a suit/proceeding from instituting or prosecuting a case in another court, including a foreign court. Simply put, an anti-suit injunction is a judicial order restraining one party from prosecuting a case in another court outside its jurisdiction. The principles governing grant of injunction are common to that of granting anti-suit injunction. The cases of injunction are basically governed by the doctrine of equity.

10. It is a well-settled law that the courts in India have power to issue anti-suit injunction to a party over whom it has personal jurisdiction, in an appropriate case. However, before passing the order of anti-suit injunction, courts should be very cautious and careful, and it should be granted sparingly and not as a matter of routine as such orders involve a court impinging on the jurisdiction of another court, which is not entertained very easily specially when the it restrains the parties from instituting or continuing a case in a foreign court.

[Emphasis Added]

As is evincible, the Supreme Court just as in the case of *Modi Entertainment Network* (supra), in *Dinesh Singh* (supra) also laid emphasis upon defendant's amenability or accountability to the personal jurisdiction of the Court before which such an injunction is prayed for, by the plaintiff. In other words, a Court can order an anti-suit injunction against a party/defendant, only and only if the Court has personal jurisdiction over such a party/defendant.

In the *Xiaomoi* case, Hon'ble Mr. Justice C. Hari Shankar in his 9th October order, after refereeing to the abovementioned decisions of the Supreme Court opined that it exercises personal jurisdiction over the Xiaomi, the defendant therein.

Are Anti-Suit Injunctions Global in Character

Now, the quintessential question, which emanates is, whether such anti-suit injunction orders have global ramifications. That is to say, whether a court, let's say, the Delhi High Court having territorial jurisdiction limited over Delhi, can pass an injunction order, restraining the defendant, not to institute a suit or proceeding against the plaintiff, not only in Delhi or in any other state of India but also in any court throughout the world.

The affirmative answer surfaces from the maxim *Lex fori*, which has universal application. The said rule dictates that a civil court while determining the issue of jurisdiction over a particular matter has to apply the procedural laws of the country to which such civil court belongs. Simply put, the procedural laws governing the issue of jurisdiction of courts in civil suits are primarily of national character.

Under the civil procedural Law applicable in India, that is, the CPC, section 19 and 20 of the CPC by and large lay down the rules regarding personal jurisdiction in India. Section 19 of the CPC deals with suits for compensation for wrongs to persons or movables. Such suits, in terms of Section 19 of the CPC may be instituted where the wrongs occurred, where the defendant resides or carries on business, or where the defendant works for personal gain. Section 20 on the other hand deals with other suits. In terms of Section 20 of the CPC in case of non-resident defendants, civil courts in India can exercise jurisdiction if 'cause of action' wholly or in part, arises within such civil court's territorial jurisdiction.

The Delhi High Court dealt with the issue of jurisdiction in cyberspace in the case of (*India TV) Independent News Service Pvt Limited vs. India Broadcast Live LLC and Ors.*^{iv}. In the said case the plaintiffs, India TV, an independent news service ran a television Channel called INDIA TV. It also owned the website, 'indiatvnews.com'. The television channel is and was available for live viewing on the said website. In January 2007, the defendants-India Broadcast live, launched a news channel, 'indiatvlive.com, in India and Los Angeles. The website prominently displayed the words 'INDIA TV' inside the sketch of a television. The plaintiff, filed an injunction to prevent the defendant from using the mark INDIA TV as a part of its domain name or in any other manner on their website. The entire defence of the defendants centred on the contention that all the defendants in the case were American entities, formed and effectively established in the United States of America, with absolutely no presence in India.

Negating the contentions of the defendants, the Delhi High Court ruled that it had personal jurisdiction over the defendants and thereby granted an injunction in favour of the plaintiffs and against the defendants. The Delhi High Court stated that in order for it to assume personal jurisdiction, the following factors had to be considered:

- (i) Whether defendant's activities had a sufficient connection with the forum State, that is, India;
- (ii) Whether the cause of action arose out of the defendant's activities within the forum at Delhi; and
- (iii) Whether the exercise of jurisdiction would be reasonable.

The Court noted that the mere accessibility of a website in a particular place may not be sufficient to assume personal jurisdiction over the owners of the website. However, if the website was interactive, permitting the browsers to subscribe to the services provided by the owners/operators, the position would be different. Further, limited interactivity of the website, for example, one restricted to receiving Internet browsers' names and expressions of interest (but not signing up for services) may not be sufficient for the Court to exercise personal jurisdiction.

The Delhi High Court held that the website 'indiatvlive.com' was not passive in nature. The services offered on the website could be accessed by subscription around the world, including from Delhi, which was within the jurisdiction of the Delhi High Court. Some articles published on the website also showed that indiatvlive.com was targeting the Indian market, and had been launched in both Delhi and Los Angeles. Since the plaintiffs targeted Indian audiences, it would suffer damage in the local market because the defendant's website was accessible and open to receiving subscriptions in India. Hence, the defendant was carrying on activities within the jurisdiction of the Delhi High Court; had sufficient presence in the jurisdiction of the court;

and the claim had arisen because of India Broadcast Live's activities within the jurisdiction of the Court. Consequently, the Court could exercise personal jurisdiction over the defendants.

Recently, again the Delhi High Court in *Swami Ramdev and Ors. v. Facebook, Inc. and Ors.*,^v ruled that it can grant a global injunction in respect of the offending material or content, in order to disable or block the content on a global basis. None of defendants in the said case objected for blocking the URLs for the Indian Domain but objected to removal/ blocking/ disabling of the impugned content on a global basis. *Per contra* the plaintiffs prayed for order of global-blocking, citing the same as the only effective remedy. The Court after analyzing the foreign jurisprudence on the concept of 'geo-blocking', sided with the plaintiffs and opined thus:

82. Thus, if uploading of data which the Court considers defamatory or offensive has taken place from IP addresses located in India, then Indian Courts would have jurisdiction to direct the platforms to remove and disable access to the said information or material, from the computer network of these platforms on to which the said information and data has been replicated. The material/information having originated from India, courts in India would have jurisdiction to direct removal of the same.

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90. Applying these very principles to the present case, it is clear that any order passed by the Court has to be effective. The parties before this Court i.e. the platforms are sufficiently capable to enforce an order of global blocking. Further, it is not disputed that the platforms are subject to in personam jurisdiction of this Court. The argument of the platform is that owing to the disparity in the law of defamation in the different jurisdiction, such an order ought not to be passed.

[Emphasis Supplied]

The common thread running through all the case laws discussed hereinabove is the issue of 'personal jurisdiction' over non-resident defendants. In cases where the injunctive relief prayed for, by a plaintiff against a defendant has an extraterritorial scope and global effect, it is not necessary that defendant must be residing within the territorial jurisdiction of Indian courts. Rather, so long as the Indian Court exercises over such a defendant 'personal jurisdiction' or 'personam jurisdiction' as stated by the Delhi High Court in *Swami Ramdev* (supra) then such an injunctive relief can be granted by the Indian Courts, irrespective of the fact that the said injunctive relief shall have an impact in a foreign shore. Simply put, for a Court in India to grant against any defendant an injunctive relief, having extraterritorial scope and global effect it is requisite that the said Court exercises over the defendant 'personal jurisdiction'.

The Conundrum of 'Anti-anti Suit Injunction' ('A2SI')

The competence of Indian courts, to grant A2SI was first recognised by a Division Bench of the High Court of Calcutta in *Devi Resources Ltd. v. Ambo Exports Ltd.*^{vi}, wherein it was stated:

"Thus, despite no law providing for an anti-suit or an anti-arbitration injunction, the general equitable jurisdiction of granting an injunction encompasses the authority to grant an anti- suit or anti-arbitration injunction or even an anti-anti-suit injunction. But such an injunction is issued only in the most extreme of cases where the refusal of the injunction may result in palpable and gross injustice in the meanest sense."

Before, the Delhi High Court, in the *Xiaomi* Case, the defendant-Xiaomi was successful in obtaining from, Wuhan Intermediate People’s Court (Wuhan Court) a global anti-suit injunction against the plaintiff.

The plaintiff contended before, the Delhi High Court that the anti-anti-suit injunction was necessary in order to do complete justice, as the subject matter of the proceedings, in the suit before the Delhi High Court and in the Wuhan Court, were different and if the injunction granted by the Wuhan Court was allowed to remain in place, not only would the plaintiff be enjoined from prosecuting the proceedings before the Delhi High Court; no court, in the world, would be entitled to adjudicate on the issue of infringement of the plaintiff technology.

The Delhi High Court noted that the principles for grant of anti-anti-suit injunction were broadly the same as those, which applied to grant of an anti-suit injunction.

The Delhi High Court after referring to decisions of other International jurisdictions first observed that it exercised personal jurisdiction over the defendants-Xiaomi. It is only after acknowledging its ‘personal jurisdiction’ over defendants, the Delhi High Court proceeded to grant a global injunction in favour of the plaintiff and against the defendants, restraining the defendants globally from pursuing the anti-suit injunction allowed by Wuhan Court.

ⁱ I.A. 8772/2020 in CS(COMM) 295/2020

ⁱⁱ (2003) 4 SCC 341

ⁱⁱⁱ (2018) 17 SCC 12

^{iv} MANU/DE/1703/2007

^v 2019 SCC OnLine Del 10701

^{vi} (2019) 2 Cal LT 50



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