



Law on anti-suit injunction in India

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Abstract

In international arbitration, anti-suit injunctions refer to interim orders/measures issued by arbitral tribunals restraining the parties to the arbitration from commencing or pursuing recourse in Domestic law or other international forums pending resolution of a dispute before a particular arbitration forum. Similarly, the concept is being used in traditional courts and has been derived from English law and is categorically a common law yet there are certain grey areas in Indian legal context which need to be addressed. Thus, here is an in-depth analysis on common law of Anti-Suit Injunction which is substantially barred by section 41 (a) & (b) of the Specific Relief Act, 1963 yet is well established and prevailing law as interpreted in landmark judgments by Hon'ble Supreme court of India.

Keywords: anti-suit injunctions, international arbitration, english law, specific relief act 1963, hon'ble supreme court of India

Introduction

What is Anti-Suit Injunction?

Anti-Suit Injunction refers to a common law wherein an order is issued by a competent court or tribunal that prevents opposite party from commencing or continuing any legal proceeding within the same jurisdiction or in foreign jurisdiction.

The interference in foreign jurisdiction is likely to raise certain questions of illegality which are answered over time though judicial interpretations and the law sustains to be legally valid and anti-suit injunction orders are commonly witnessed to be granted in International Arbitration cases and Matrimonial cases.

In international arbitration, anti-suit injunctions refer to interim orders/measures issued by arbitral tribunals restraining the parties to the arbitration from commencing or pursuing recourse in Domestic law or other international forums pending resolution of a dispute before a particular arbitration forum. Arbitration rules explicitly refer to the power of arbitral tribunals to grant provisional measures. The Permanent Court of International Justice, and the Iran-US Claims Tribunal, among other international courts and tribunals, have granted anti-suit injunctions in the past in the form of provisional or interim measures.

How is the Relief of Anti-Suit Injunction Substantially Barred by Law in India?

The law on injunction in India is governed and specifically dealt in Order XXXIX of the Civil Procedure Code 1908 and section 37 to 41 of the Specific Relief Act 1963. From a plain reading of Order XXXIX Rule 1 and 2 of CPC, it is clear that it does not specifically deals with granting injunctions or interlocutory orders in respect to any judicial or quasi-judicial proceedings whereas the section 41 of the Specific Relief Act 1963, straight away refuses and bars to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought ^[3] or to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought ^[4] or to restrain any person from instituting or prosecuting any proceeding in a criminal matter ^[5]. The legislative intent is clear from plain reading of section 41 of the Specific Relief Act 1963 that it may be a well prevalent common law but does not find place in Indian domestic law.

In this backdrop, it becomes pertinent to quote Section 41 of the Specific Relief Act, 1963 for clearer understanding of the law which provides for various instances and circumstances under which injunction cannot be granted.

“41. Injunction when refused. —An injunction cannot be granted—

- a. to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- b. to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;
- c. to restrain any person from applying to any legislative body;

- d. to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- e. to prevent the breach of a contract the performance of which would not be specifically enforced;
- f. to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- g. to prevent a continuing breach in which the plaintiff has acquiesced;
- h. when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- i. when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;
- j. when the plaintiff has no personal interest in the matter.”

Interpretation by Indian Judiciary/ Analysis of Landmark Judgements by Hon’ble Supreme Court of India

In India, it is a well-settled law that the courts 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 it restrains the parties from instituting or continuing a case in a foreign court ^[6].

Now, for clearing this confusion with respect to the bar created by section 41 (a) and (b) on the relief sought by anti-injunction suit, the Hon’ble Supreme Court of India in landmark case of *Oil and Natural Gas Commission v. Western Co. of North America* ^[7] while relying upon its own judgement in case of *Cotton Corporation of India v. United Industrial Bank* ^[8], and interpreting the applicability of section 41 of Specific Relief Act, 1963 has observed as under:-

“18...This provision, in our opinion, will be attracted only in a fact-situation where an injunction is sought to restrain a party from instituting or prosecuting any action in a court in India which is either of coordinate jurisdiction or is higher to the court from which the injunction is sought in the hierarchy of Courts in India....”

It is clear from above observation by Hon’ble Apex Court of India that the provision of section 41 of Specific Relief Act, 1963 will be attracted in case restraint is sought from instituting or prosecuting any action in a court in India which is either of coordinate jurisdiction or is higher to the court from which the injunction is sought in the hierarchy of Courts in India. From this it can be devised that the lower courts in India does not have power to entertain such suits interfering with jurisdiction or coordinate and higher benches including that of Foreign Courts since they cannot be categorized inferior to District & Sessions Court in India in the hierarchy of courts. Now before commenting on jurisdiction of foreign proceedings, let us take a note of the common law observation in paragraph 1039 of *Halsbury's Laws of England Vol. 24 at, page 579* which holds as under:-

"With regard to foreign proceedings the court will restrain a person within its jurisdiction from instituting or prosecuting proceedings in a foreign court whenever the circumstances of the case make such an inter-position necessary or expedient. In a proper case the court in this country may restrain person who has actually recovered judgment in a foreign court from proceeding to enforce that judgment. The jurisdiction is discretionary, and the court will give credit to foreign courts for doing justice in their own jurisdiction."

The Hon’ble Supreme Court of India to this regard had granted such a restraint order in *V/O Tractoroex- port, Moscow v. M/s Tarapore & Company and Anr.*, ^[9] and had restrained a party from proceeding with an arbitration-proceedings in a foreign country (in Moscow). Further, the Apex Court of India in landmark judgement of *Modi Entertainment Network and Oil and Natural Gas Commissioner's case* ^[10], though while rejecting to grant any relief of anti-suit injunction, has laid down the following guidelines: -

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 conveniens and favoured forum as it shall be presumed that the parties have thought over their convenience and all other relevant factors before submitting to non-exclusive jurisdiction of the court of their choice which cannot be treated just 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; and
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.”

Further, the Hon’ble Delhi High Court has removed all the doubts regarding legal impediment caused by Section 41(a) and (b) of Specific Relief Act, 1963 on the relief sought in anti-suit injunction and has further clarified as to law regarding forum non-conveniens and other guidelines as laid by Supreme Court of India. The Hon’ble Delhi High Court in case of *Horlicks Ltd. And Anr. vs Heinz India (Pvt.) Limited* ^[11] has observed as under:-

“84. On the conspectus of the aforesaid, we hold as under:

1. The doctrine of anti-suit injunction though may be applicable both in foreign forums and domestic forums in different countries has no place in India regarding another domestic forum in view of the specific bar created by Section 41(b) of the said Act as interpreted in *Cotton Corporation of India Limited v. United Industrial Bank Limited* and *Ors’s case (supra)*. It would apply only in case of a foreign forum or in a situation where an injunction is sought against a domestic court which is subordinate to the one where such an application is made.
2. The principle of forum non convenience applies to foreign forums and Indian courts can apply the said principle vis-à-vis foreign forums or while exercising discretionary jurisdiction under Article 226 of the Constitution of India.
3. The principle of forum non convenience does not apply to civil suits in India which are governed by the said Code, there being no provision under the Code for the same and recourse to Section 151 CPC is not permissible for application of the principle of forum non convenience to domestic forums especially keeping in mind that it is the other side of the coin of the doctrine of anti-suit injunction. An aggrieved party can, however, approach the Supreme Court under Section 25 of the said Code.”

Conclusion

It is therefore interpreted and made clear from aforesaid observation that law related to anti-suit injunction has no place in India in domestic forums in view of the specific bar created by Section 41(a) and (b) of Specific Relief Act, 1963 and the powers of granting anti-suit injunction restraining and interfering with any Foreign Court proceedings only lie only with the Hon’ble High Court and Hon’ble Supreme Court of India in extraordinary writ jurisdiction.

References

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6. *Dinesh Singh Thakur v. Sonal Thakur* 2018 AIR (SC) 2094.
7. 7 AIR 1987 SC 674
8. 8 [1983] 3 S.C.R. 962
9. [1970] 3 S.C.R, 53
10. 2003 SC 1177
11. FAO (OS) No. 86 of 2009, decided on 23 October, 2009.