

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) No.107/2010 & CM Nos. 2517/10, 2520/10,
6557-58/10 & 6561-62/10

Essel Sports Pvt. Ltd.
(Indian Cricket League)

...Appellant through
Mr. Harish Salve, Sr. Adv.,
Mr. C.S. Vaidyanathan, Sr.
Adv., Mr. Maninder Singh,
Sr. Adv. with Ms. Pratibha
M. Singh, Ms. Surabhi
Mehra & Mr. Nikhil Mehra,
Advs.

versus

Board of Control for Cricket
in India & Ors.

.....Respondent through
Mr. C.A. Sundaram, Sr. Adv.
with Ms. Radha
Rangaswamy, Mr. Raman
Kumar, Mr. Harsh Kaushik &
Mr. Amit Sibal, Adv.
Mr. Ramji Srinivasan, Sr.
Adv. with Ms. Dahlia Sen
Oberoi, Ms. Manya Kumar &
Mr. Zeyaul Haque Adv. for
Respondent Nos.2 and 3.

WITH

FAO(OS) No.154/2010 & CM No.4243/2010

Board of Control for Cricket
in India

.....Appellant through
Mr. C.A. Sundaram, Sr. Adv.
with Ms. Radha
Rangaswamy, Mr. Raman
Kumar, Mr. Harsh Kaushik &
Mr. Amit Sibal, Adv.

versus

Essel Sports Pvt. Ltd. & Ors.
(Indian Cricket League)

...Respondent through
Mr. Harish Salve, Sr. Adv.,
Mr. C.S. Vaidyanathan, Sr.
Adv., Mr. Maninder Singh,
Sr. Adv. with Ms. Pratibha

M. Singh, Ms. Surabhi
Mehra & Mr. Nikhil Mehra,
Advs.
Mr. Ramji Srinivasan, Sr.
Adv. with Ms. Dahlia Sen
Oberoi, Ms. Manya Kumar &
Mr. Zeyaul Haque Advs. for
Respondent Nos.2 and 3.

%

Date of Hearing : January 10, 2011

Date of Decision : March 31, 2011

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MS. JUSTICE MUKTA GUPTA

- | | |
|--|-----|
| 1. Whether reporters of local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the Judgment should be reported in the Digest? | Yes |

VIKRAMAJIT SEN, J.

1. This Judgment will dispose of connected Appeals No. FAO(OS) 107/2010 and FAO(OS) 154/2010 emanating from the common Order of the learned Single Judge dated 4.2.2010, by means of which an interim injunction on the Plaintiff's application under Order XXXIX Rule 1 and 2 Code of Civil Procedure, 1908 (CPC for short) restrained the Defendant, Essel Sports Pvt. Ltd. (ESPL) from proceeding against the Plaintiff, the Board of Control for Cricket in India (BCCI), in Courts in England. The Plaintiff submits that there is complete identity between the cause of action of the notified *lis* proposed and thereafter actually filed on 4.2.2010 in the High Court of Justice,

Chancery Division, London and the dispute which is subject matter of Suit, CS(OS) No.1566/2007, filed by ESPL against the BCCI presently pending in this High Court. By the subject Order, the learned Single Judge vacated the injunction relating to the International Cricket Council (ICC) and the England & Wales Cricket Board (ECB).

2. The facts, in a nutshell, are that ESPL started a cricket tournament in the name and style of the Indian Cricket League (ICL) wherein the competing teams constitute players of both Indian and foreign nationality at domestic and international level. It is alleged that the BCCI, by virtue of being the concerned Home-Board regulating cricket in India, publically opposed the Indian Cricket League tournament and also overtly and covertly took all possible steps to stultify its operations. The ESPL has alleged that the BCCI used its influence on various state agencies, ICC and the respective foreign Home-Boards to boycott the ESPL tournament, namely, the ICL. ESPL filed a Suit, CS(OS) No.1566/2007 on 24.8.2007 against the BCCI, in which the Union of India and Karnataka State Cricket Association were also made parties, seeking declaratory and mandatory injunctive reliefs against the Defendants. While the Suit is progressing in this High Court, BCCI filed the subject Suit for issuance of an anti-suit injunction against ESPL alleging

that BCCI had received a Notice dated 16.11.2009 sent by the Solicitors of ESPL in England. This Notice states that ESPL intended to file a suit against BCCI in the Court of England & Wales in the United Kingdom. Similar notices were sent to ECB and ICC who were proposed to be made the co-defendants in that Suit. In this Suit in hand, CS(OS) No.2312/2009, BCCI has prayed for a perpetual injunction against ESPL from initiating any action against BCCI in any other judicial forum in respect of the allegations, subject matter and reliefs contained and covered in the earlier Suit, CS(OS) No.1566/2007 pending before Delhi High Court.

3. An interim injunction was granted on 25.1.2010 in favour of the Plaintiff/BCCI and Defendants No.2 and 3, namely, ECB and ICC, restraining ESPL from proceeding with its proposed claim before the U.K. Courts, till the next date of hearing. Vide impugned Order dated 4.2.2010, the learned Single Judge made the stay in favour of the BCCI permanent till the final disposal of the subject anti-suit injunction action. However, the stay *qua* ICC and ECB was vacated. All the adversaries, discontent with different parts of the Order of the learned Single Judge, have filed their respective Appeals. In FAO(OS) No.107/2010, ESPL has impugned that part of the Order wherein the learned Single Judge has restrained it from proceeding against BCCI in the

U.K. Courts. In FAO(OS) No.154/2010, BCCI has impugned the decision of the learned Single Judge disallowing its prayer to extend the anti-suit injunction against ICC and ECB. Moreover, ICC and ECB have also filed their Cross-objections in FAO(OS) No.107/2010 filed by ESPL praying that ESPL should be enjoined from proceeding against them in the U.K. Suit filed by ESPL. It transpires that the very action which was initially proposed to be pursued against BCCI along with ICC and ECB has now been filed by ESPL, the only change being that BCCI has been dropped from the notified array of parties pursuant to the learned Single Judge's Order. Therefore, substantially BCCI, ICC and ECB are claiming the same relief from the Court, viz. that the action in U.K be enjoined *in toto*.

4. We shall first deal with the Appeal filed by ESPL, that is, FAO(OS) No.107/2010. Mr. Salve, the learned Senior Counsel for ESPL, has contended that the learned Single Judge has gravely erred in holding that the two Suits, that is, the one filed in India and the other filed in United Kingdom, are similar in substance and that, therefore, the U.K. Suit is oppressive and vexatious in nature. It is also argued that such a temporary anti-suit injunction is unknown in law and tantamounts to this Court managing the Board of a foreign Court, which is repugnant to the concept of international comity amongst Courts. Mr. Salve

has laid great store on the fact that the action proposed in the notice of the Solicitors of ESPL in England is substantially distinct from the one already filed and under adjudication in this High Court. It is argued that in the pending Indian Suit, the actions of BCCI have territorial bearing in India; for instance, BCCI forbidding local bodies to permit the use of their stadia; banning of Indian players from playing in ICL and withdrawal of pension of former Indian players associated with ICL etc. *Per contra*, the U.K. Suit only takes within its sweep complaints which are contextual to actions taken or intended to be taken in the U.K. It is emphasized that the reliefs sought in England are substantially different to those in the process of adjudication in India. Essentially, these claims are based on the U.K. Competition Act and the curial advantage that the Plaintiff may have by prosecuting its case in the foreign court ought not be nullified by an anti-suit injunction. It has also been submitted that the reliefs sought in the English action are not directed only to BCCI but are also against ICC and ECB which are foreign bodies amenable to the jurisdiction of English Courts. Predicated on this argument, it is urged that the English action is a single forum case; and that Indian Courts should not grant an injunction against actions proposed to be filed or actually filed in Courts ordinarily or naturally possessing jurisdiction

over the dispute. With regard to this proposition, Mr. Salve has relied on *ONGC -vs- Western Company of North America*, (1987) 1 SCC 496, ***Modi Entertainment Network -vs- W.S.G. Cricket Pte. Ltd.***, (2003) 4 SCC 341, ***Moser Baer India Ltd. -vs- Koninklijke Phillips Electronics NV***, 151 (2008) DLT 180, ***British Airways -vs- Laker Airways Ltd.***, [1984] 3 All ER 39, ***Midland Bank -vs- Laker Airways Ltd.***, [1984] 3 All ER 526.

5. Secondly, Mr. Salve submits that the finding of the learned Single Judge that the proposed action is oppressive and vexatious is also erroneous because, as per the Appellants, the Courts in the U.K. are the natural forum. He has sought support from *SNI Aerospatiale -vs- Lee Kui Jak*, [1987] 3 All ER 510 and ***MacShannon -vs- Rockware Glass Ltd.***, (1978) 1 All ER 625. Mr. Salve has also relied on the Explanation to Section 10 of the CPC to buttress his contention that even if the second action is based on the same cause of action, the rationale of Section 10 of the CPC will not bar the filing of the subsequent suit in a foreign court. To support this proposition, the Appellant has placed reliance on ***Magotteaux Industries Pvt. Ltd. -vs- AIA Engineering Limited***, 155(2008) DLT 73(DB). Section 10 of the CPC is reproduced below for facility of reference:-

Section 10. Stay of suit.—No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously

instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation.—The pendency of a suit in a foreign court does not preclude the Courts in India from trying a suit founded on the same cause of action.

6. It is also urged by Mr. Salve that the English action ought not to be injuncted as being unconscionable or vexatious and oppressive only because BCCI, being an Indian party, will be compelled to defend an action in a foreign jurisdiction. Since the dispute is between commercial entities having international presence, defending their positions in the U.K. for the actions in U.K. jurisdiction, cannot be said to be vexatious. It is underscored that BCCI is the richest Board in the cricketing world and, therefore, the expenses likely to be incurred in defending the *lis* in the U.K. Courts cannot be viewed as oppressive.

7. ***Magotteaux Industries***, no doubt, observed that the Explanation to Section 10 of the CPC provides that the pendency of a suit in foreign courts does not preclude Indian Courts from trying an action founded on the same cause of

action. According to our learned Brothers, applying the said provision conversely, a foreign court should also not be precluded from entertaining any suit based on some cause of action for which a suit is pending in an Indian Court. The dispute in that case concerned the breach of a patent by a party in different jurisdictions. An anti-suit injunction was prayed for in India against that party/defendant restraining it from prosecuting its rights in the U.S. Courts. The Court had observed that patent rights are sovereign rights granted by a sovereign state bestowing thereby limited monopoly rights to the inventor to the exclusion of others for a set period. The *ratio decidendi* of ***Magotteaux Industries*** is that since the foreign suit dealt with infringement of the patent granted by the U.S. laws, the U.S. action was based on a distinct territorial cause of action, the remedy for which would lie only in that particular jurisdiction; and, therefore, Indian Courts should not grant an anti-suit injunction predicated on an alleged infraction in India of patent rights granted by Indian law. It is contended that a similar situation arises in the present case as well, inasmuch as ESPL has threatened to invoke the jurisdiction of the UK Courts invoking the UK laws.

8. In ***MacShannon***, the House of Lords declined the grant of an anti-suit injunction, *inter alia*, on the ground that the costs of

prosecuting the suit in Scotland would be oppressive. The Court on this account held as follows:

In the MacShannon and the Fyfe cases, the plaintiff's opposition to a stay rested on allegations in his solicitor's affidavit stating that (1) higher damages are awarded in the English than in the Scottish courts, (2) the Scottish system of pleading was inferior to the English system and might prejudice the plaintiff, increase the costs and lengthen the duration of the litigation, (3) party and party costs were less generously assessed in Scotland than in England.

These allegations were all denied in an affidavit sworn by the defendants' Scottish solicitors. Neither Robert Goff J. nor the Court of Appeal attempted what they described as "the invidious and impossible task" of deciding which of the two sets of affidavits was to be preferred.

The majority of the Court of Appeal concluded [1977] 1 W.L.R. 376, 385 that in each case the plaintiff's justification for bringing an action in England when its natural forum was Scotland, was-

"the advice of responsible and experienced solicitors ... [the judge] was right to attribute weight to the plaintiffs' solicitors' unproven belief that it would be to the plaintiff's advantage to litigate in England and right to balance it against the disadvantages to the defendants deposed to in the affidavits of their solicitors."

In my opinion this conclusion was wrong in law and vitiates the exercise of the judge's discretion and the

decision of the majority of the Court of Appeal. Unproven belief cannot in law constitute a reasonable justification for bringing an action in England or make it unjust to send the plaintiff back to his own country where the action could be litigated more cheaply than in England and just as satisfactorily from everyone's point of view. Since the judge's discretion was based upon a wrong legal principle, that discretion and its approval by the majority of the Court of Appeal is open to review by your Lordships.

When no justification has been shown for bringing an action in England it is, in my opinion, obviously unjust to make the defendant incur the substantial extra expense and inconvenience which he would suffer were he obliged to defend the action in England. The extra expense as shown in the defendants' affidavits consists of a substantial extra outlay for witnesses' travelling and accommodation expenses whether the trial takes place in Carlisle, Newcastle or London. The inconvenience consists of the harm which the defendants' business would suffer through the disruption caused by their employees being kept away from their work substantially longer than necessary.

9. In ***British Airways***, an anti-suit injunction was sought against Laker Airways from prosecuting its claim in the United States under the Sherman Anti Trust Act and for 'intentional tort'. The plea of the British Airways was that the procedure in the US Courts under the Anti Trust Act was highly oppressive

and distinct from that of British law and further that the action could as well be prosecuted in the British Courts. The Court observed that the circumstances in that case were such that even if the allegations against British Airways in the American action were to be proved, they would disclose no cause of action on the part of Laker Airways against British Airways which would be justiciable in an English Court; and that the Clayton Act which creates civil remedy with three-fold damages for criminal offences under the Sherman Act, is, under English rules of conflict of laws, purely territorial in its application. Therefore, in these circumstances, the Court found it to be the case of a 'single forum' in respect of which injunctions could not have been granted by the U.K. Courts. It would be relevant to reproduce the following paragraphs from this Judgment:-

The proposition is that, even if the allegations against B.A. and B.C. in the complaint in the American action can be proved, they disclose no cause of action on the part of Laker against B.A. or B.C. that is justiciable in an English court. The Clayton Act which creates the civil remedy with threefold damages for criminal offences under the Sherman Act is, under English rules of conflict of laws, purely territorial in its application, while because the predominant purpose of acts of B.A. and B.C. that are complained of was the defence of their own business interests as providers of scheduled airline services on routes on which Laker was seeking

to attract customers from them by operating its Skytrain policy, any English cause of action for conspiracy would be ruled out under the now well-established principle of English (as well as Scots) law laid down in a series of cases in this House spanning 50 years of which it suffices to refer only to *Mogul Steamship Co. Ltd. v. McGregor, Cow & Co.* [1892] A.C. 25 and *Crofter Hand Woven Harris Tweed Co. Ltd. v. Veitch* [1942] A.C. 435.

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 the 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 upon itself a one-sided jurisdiction to determine the claim upon the merits against the claimant but also to prevent its being decided upon the merits in his favour. This poses a novel problem, different in kind from that involved where there are alternative fora 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* [1974] A.C. 436, continuing with *MacShannon v. Rockware Glass Ltd.* [1978] A.C. 795 and *Castanho v. Brown & Root (U.K.) Ltd.* [1981] A.C. 557, and ending with *The Abidin Daver* [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 my noble and learned friend, Lord Scarman, in *Castanho's* case [1981] A.C. 557 (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 B.A. and B.C. 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) 11 Q.B.D. 30, was re-stated by me (albeit in terms that I recognise were in one respect too narrow) in *Siskina (Owners of cargo lately laden on board) v. Distos Compania Naviera S.A.* [1979] A.C. 210, 256:

"A right to obtain an ... injunction is not a cause of action ... It is dependent upon 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."

10. Thirdly, the impugned Judgment is challenged on the ground that it transgresses the norms of judicial comity and amounts to regulating the 'court diary' of another Court. It is contended that the question whether the U.K. Court is the appropriate Court to be seised of the proposed action should be left to that Court alone to decide; and the circumstances do not warrant the writ of this Court to interfere with the jurisdiction

of the UK Court. It is contended that the question of *forum non conveniens* is a question to be decided by that forum itself which is said to be the *forum non conveniens*. It is not appropriate and, in turn, is violative of the principles of comity that one Court should enjoin another foreign Court from hearing a matter on the ground that the other Court is *forum non conveniens*. Reliance is placed on *Mitchell -vs- Carter*, (1997) BCC 907 wherein an injunction was supplicated for against the liquidator of the defendants from proceeding against the assets of the company in the United States under the US Bankruptcy Code. The Court referred to the principle of comity and held that “there must be a good reason why the decision to stop foreign proceedings should be made here rather than there. The normal assumption is that the foreign judge is the person best qualified to decide if the proceedings in his Court should be allowed to continue. Comity demands a policy of non intervention”. Reference has also been made to *Barclays Bank plc -vs- Homan*, [1992] BCC 757 where the Court observed that “today the normal assumption is that an English Court has no superiority over foreign court in deciding what justice between the parties requires and in particular, that both comity and commonsense suggest that the foreign judge is usually the best person to decide whether in his own court he should accept or

decline jurisdiction, stay proceedings or allow them to continue". A reference has also been made to the view of the learned Single Judge of this Court in ***Moser Baer India Ltd.*** wherein a distinction was made between an anti-suit injunction and the doctrine of *forum non conveniens* in these succinct words:-

7. The concepts of anti-suit injunction and *forum non conveniens* require some examination. An anti-suit injunction is granted by a Court preventing the parties before it from instituting or continuing with proceedings in another Court. On the other hand, the doctrine of *forum non conveniens* is invoked by a Court to not entertain a matter presented before it in view of the fact that there exists a more appropriate Court of competent jurisdiction which would be in a better position to decide the lis between the parties. So, in a sense the principle on which an anti-suit injunction is invoked is just the reverse of the principle on which the doctrine of *forum non conveniens* is employed.

11. We are, however, completely confined and bound by the opinion articulated by the Supreme Court in ***Modi Entertainment Network***. Parties to the dispute had consented that their "agreement shall be governed by and construed in accordance with English law and the parties hereby submit to the non-exclusive jurisdiction of the English courts (without reference to English conflict of law Rules)". Their Lordships did

not find any valid reason to grant an anti-suit injunction in disregard of this jurisdictional clause; it declined to restrain the Respondent from prosecuting the case in the chosen forum, that is, the English Courts. The Judgment perspicuously discusses several decisions spanning the globe, namely:-

1. *Donohue –vs- Armco Inc*, (2002) 1 All ER 749 (HL)
2. *SABAH Shipyard (Pakistan) Ltd. –vs- Islamic Republic of Pakistan and Karachi Electrics Supply Corpn. Ltd. (2002)*, 2002 EWCA Civ 1643 (CA)
3. *Airbus Industrie GIE –vs- Patel*, (1998) 2 All ER 257 : (1999) 1 AC 119 : (1998) 1 WLR 686 (HL)
4. *C.S.R. Ltd. –vs- Cigna Insurance Australia Ltd.*, (1997) 189 CLR 345 : (1997) 146 ALR 402 (Aust HC)
5. *Amchem Products Inc –vs- Workers’ Compensation Board*, (1993) 102 DLR (4th) 96 (Can SC)
6. *British Aerospace Plc –vs- Dee Howard Co.*, (1993) 1 Lloyd’s Rep 368
7. *British India Steam Navigation Co. Ltd. –vs- Shanmughavilas Cashew Industries*(1990) 3 SCC 481
8. *SNI Aerospatiale –vs- Lee Kui Jak*, (1987) 3 All ER 510 : 1987 AC 871 : (1987) 3 WLR 59 (PC)
9. *Oil and Natural Gas Commission –vs- Western Co. of North America*, (1987) 1 SCC 496
10. *Spiliada Maritime Corpn. –vs- Cansulex Ltd.*, (1986) 3 All ER 843 : 1987 AC 460 : (1986) 3 WLR 972 (HL)
11. *Castanho –vs- Brown & Root (U.K.) Ltd.*, 1981 AC 557 : (1981) 1 All ER 143 : (1980) 3 WLR 991 (HL)
12. *MacShannon –vs- Rockware Glass Ltd.*, (1978) 1 All ER 625 : 1978 AC 795 : (1978) 2 WLR 362 (HL)

13. *Carron Iron Co. -vs- Maclaren*, (1855) 5 HLC 416 : 24 LJ Ch 620 : 3 WR 597 (HL).

We have mentioned these precedents for the reason that we think it entirely futile to analyse them as this exercise has already been completed in ***Modi Entertainment Network***. The Supreme Court had delineated the parameters within which the grant of an anti-suit injunction would be justified, and we fall entirely within these frontiers. Even with regard to the decisions that have been delivered after ***Modi Entertainment Network***, it is not possible for us to charter a course that is not in consonance with the principles culled out by their Lordships. For facility of reference paragraph 24 of ***Modi Entertainment Network*** is reproduced:-

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 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 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.

12. We shall now analyse the contentions of the rival parties. The first question is whether the cause of action in both the Suits is common. The Indian Suit, CS(OS) No.1566/2007 filed on 24.8.2007, is a Suit for Declaration, Permanent and Mandatory Injunction. ESPL has filed this Suit against the Union of India,

Karnataka State Cricket Association and BCCI which is arrayed as Defendant No.5. The Suit alleges that BCCI, which is a private organization affiliated to ICC, has not only publically opposed ICL but has overtly and covertly taken all possible steps to stultify its operations. It is also alleged that a *de facto* monopoly in the field of cricket is sought to be created in India by BCCI which is now acting arbitrarily in its own functioning as well as in the administration of the game.

13. The portions of the Plaint containing the allegations against the State entities and the BCCI are reproduced below for facility of reference and comparison:-

27. In response to the Plaintiff's communication dated 03.04.2007 sent to the defendant No.5-BCCI the BCCI responded by its communication dated 21.06.2007 addressed to all the Presidents and Hony Secretaries of all the affiliated units of defendant No.5 and was also sent to a number of players-intimidating and threatening them with serious consequences in the event any of their affiliated units permitting any of its stadiums and/or cricket players with them in participating in the tournaments/matches to be organized by the ICL. The Plaintiff states that the reference to private tournaments in the communication is obviously a reference to the ICL as there is no other known tournament being organized. This communication is clearly an effort to intimidate, both, players wishing to play for ICL, as well as ICL itself, as

well as a conspiracy that the defendant no.5 is formulating with its state affiliate units to cause wrongful loss, harm and damage to the plaintiff, in the light of the fact that the players have earlier been allowed to play in matches organized by event management companies (such as matches played between movie stars and cricket players), as well as matches organized by the ICC, which is also a private organization. In any event, the Plaintiff states that even though Defendant no.5 is a private body, it cannot discriminate against players on arbitrary grounds. The threat to disallow a player to participate in their tournament solely on the ground that he has also played in a tournament organized by the Plaintiff is clearly arbitrary.

.....

29. Defendant no.5 has also threatened stalwarts such as Kapil Dev that in the event they provide their expertise for the objectives to be achieved by ICL in any manner, the welfare schemes launched by the defendant no.5 including pension scheme and benefit matches shall not be made available to them and all those benefits shall stand withdrawn.

.....

31. The plaintiff states that the BCCI has directly and through its affiliate units etc. has started intimidating, threatening players that if they play in ICL, the players will not be able to be selected for 'Team India' irrespective of their performance. The plaintiff respectfully submits that defendant no.5 is systematically, with a malafide intention threatening

the players and state associations. Defendant no.5- has threatened to disqualify players participating in ICL tournaments from being eligible to be selected for "Team India". This threat is clearly designed to prevent young players from participating in ICL tournaments, hence damaging their scope of growth as players. This is also clearly a means of conspiring against and intimidating the plaintiff from succeeding in the formation of ICL, hence causing loss to the plaintiff.

.....

34-C Defendant No.5-BCCI seeks to rely upon its purported Memorandum, Rules & Regulations, Players' Registration Form and the regulations annexed therewith by contending that it has the power/authority to prevent cricketers, past and present, from playing any match other than those organized by or under the auspices of the BCCI. Defendant no.5-BCCI also seeks to justify its conduct on the basis of the said Memorandum, Rules and Regulations, Players' Registration Form and the Regulations annexed therewith.

34-D The plaintiff states that during the proceedings in the present suit before this Hon'ble Court on 27.8.2007, on behalf of defendant no.5 BCCI-had placed reliance upon its purported "Memorandum and Rules & Regulations" seeking to contend that it has the power/authority under its Memorandum to, inter alia, control the game of cricket in India, select the Indian Team, makes rules for the game of cricket in India etc.

The relevant clauses of the Memorandum of the defendant no.5- BCCI are as under:-

Memorandum

“...2(a) **To control the game of cricket in India** and give its decision on all matters including Womens cricket which may be referred to it by any Member Associations in India...

.....

...2(g) **To frame the laws of cricket in India** and to make alteration, amendment or addition to the laws of Cricket in India whenever desirable or necessary.

.....

...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..”

.....

34-F The defendant no.5-BCCI has also prescribed form for registration of the players for playing matches for Ranji Trophy etc. thereby incorporating therein an undertaking on behalf of each of the player that he shall not play, either in India or abroad in any other match or tournament which is not registered with, not approved by the affiliate Association or BCCI or ICC

without the prior written permission of the BCCI. The relevant clause of the Players Registration Form of the BCCI is reproduced as under:-

“..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.”

34-G There are certain Regulations which are annexed with Players’ Registration Form of the defendant no.5-BCCI, which also include similar clauses seeking to prohibit players from playing any other match organized by any other organization/agency. The relevant clauses of the said Regulations of the BCCI annexed with Players’ Registration Form are reproduced as under:

“..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.

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.”

34-H Without prejudice to the aforesaid contention of the Plaintiff that the amendments carried out by the defendant no.5-BCCI from time to time in its Memorandum & Rules and Regulations have not been placed before the Registrar of Societies, Tamil Nadu, for approval and the same being non-est and void- the plaintiff submits the Memorandum, the Rules and Regulations, Players Registration Form and the regulations annexed therewith of the BCCI- seeking to prevent the cricketers from participating in other tournaments without in any manner affecting the tournaments of the matches organized by BCCI, are clearly in unlawful restraint/restraint of trade. Further, the Memorandum and the Rules and Regulations etc. in so far as they seek to authorize the BCCI to represent its team as the Indian Team-are neither valid nor legal and are non-est and void. It is an admitted position that BCCI is a private organization as recognized by the Hon’ble Supreme Court in the case of Zee Telefilms Ltd v Union of India, (2005) 4 SCC 649, it is not having any jurisdiction or authority to take any action or decision with reference to Indian team and/or Cricket players for playing for the country.

34(I) The plaintiff further states that the defendant no.5-BCCI by virtue of its existing position, through the Memorandum, Rules & Regulations, Players’ Registration Form and the regulations annexed therewith, purports to create a monopoly in favour of a

private body in the game of cricket. The avowed stand of the defendant no.5 before the Hon'ble Supreme Court was that there is no bar on any other person from organizing matches or otherwise participating in the game of cricket. The plaintiff states that nonetheless in an abuse of its monopolistic position by having first mover advantage and having existing affiliations, defendant no.5 seeks to, in an unlawful and impermissible manner, restrict and control the game of cricket in a way that it continues to exercise sole and exclusive monopoly.

....

37-A The plaintiff submits that defendant no.5-BCCI has affiliate members/associations. These member associations have set up stadia for playing the game of cricket. The lands for these stadia have been allotted to the said associations by the State Governments/other authorities under State/Central Governments at concessional/token charges. It is submitted that the said lands have been allotted for promoting the game of cricket. In view thereof, the plaintiff is also entitled to the use of the stadia alongwith defendant no.5 and its affiliated associations for organizing cricket matches. The refusal of the use of the stadia by the affiliate state associations is malafide and is at the behest and under intimidation and threat of the defendant no.5. Hence, the plaintiff submits that such conduct on the part of the defendant no.5 is in restraint of trade/unlawful restraint and against public policy.

The fact that defendant no.5 is using duress and coercion on all its members is evident, inter alia, from

communication dated 29.8.2007 issued by the Cricket Club of India Ltd., Mumbai, which has become available to the plaintiff. The said communication quotes minutes of the meeting of the BCCI dated 28.8.2007 wherein action is taken against Mr Raj Singh Dungarpur, for issuing a press statement that the Brabourne Stadium would be available for the matches of the Plaintiff. This conduct of the BCCI clearly establishes it is threatening/intimidating all its members and affiliate associations and office bearers and with action if they deal with the plaintiff-Indian Cricket League.

Also, by way of its communication dated 10.09.2007 the Tamil Nadu Cricket Association cancelled the registrations of some players on the ground that they opted to play for the Plaintiff League.

.....

38. The plaintiff states that by its threats and acts of intimidation the defendant no.5 has committed malfeasance with defendants no.1 to 4, have committed non feasance by their lack of action against defendant no.5. It is the obligation of defendants no.1,2 and 3 to prevent the misrepresentation of defendant no.5 that it alone has the power to choose the Indian cricket team, while it is the obligation of defendants no.1,2 and 3 to ensure that the grounds given by them to the affiliate units of defendant no.5 at token value for the promotion of sports such as cricket, are used for this purpose only and further are made available to anyone promoting such purpose. These grounds have often been used for other purposes, such as for beauty

pageants, political rallies etc. but when ICL was desirous of using the Chinnaswamy Stadium, being a stadium on one such ground, to organize a cricket tournament, the user of the ground was denied to it by defendant no.4 and none of the defendants no.1,2 and 3 fulfilled their obligations in this regard of ensuring the user of the said ground for the promotion of cricket in these circumstances the defendant no.5 is guilty of various acts such as intimidation, malafide actions, malfeasance, conspiracy, public nuisance and all such acts give rights to the plaintiff and constitute a valid cause of action for filing the present suit against the defendant's herein. The plaintiff submits that if the defendant no.5 is guilty of the aforesaid acts the defendants no.1 to 4 are also guilty and have committed an act of non-feasance and by allowing the defendant no.5 to continue with its public nuisance. The plaintiff therefore submits that due to the said acts committed by the defendants the plaintiff is entitled for relief as prayed.

39. It is submitted that an independent and individual right of any one cannot be curtailed or restricted by any private body. Even the State cannot impose any restrictions save and except under Article 19(2) of the Constitution of India. Defendant no.5-BCCI never had nor has been provided with any power or authority to impose any restriction on any one from promoting the Sports and/or from participating therein. Rights are independent rights. No player can be so restricted or be put under threat by BCCI. The threatened acts and conduct on the part of defendant no.5-BCCI clearly

amounts to putting undue and illegitimate “threat” and “pressure”. The threat and intimidation by the defendant no.5 through restrictions sought to be imposed upon the Players as well as Associations are unfair, unjust, unreasonable, impermissible and illegal.

14. It is necessary underscore that neither the ICC nor the ECB are parties in the previously instituted *lis* which is presently pending in the Original Side of this Court, a feature that has been repeatedly emphasised by Mr. Salve. The reliefs which are claimed in the said Suit, CS(OS) No.1566/2007 by ESPL are as follows:-

- (i) 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 using the name and National Flag of India or representing to the public at large that the team of the defendant no. 5 represents India;
- (ii) Pass a Decree of Mandatory Injunction against Defendants 1 to take all necessary steps in accordance with law in ensuring that Defendant no.5 its assigns, office bearers, employees, agents, successors or any other entity acting in the name and / or on its behalf do not use the name and National Flag of India or represent to the public at large that the team of the defendant no.5 represents India;

- (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;
- (iv) Pass a Decree of Permanent Injunction restraining/ prohibiting the defendant no. 5 its assigns, office bearers, employees, agents, successors or any other entity acting in the name and/or on its behalf from issuing any threat inducement or any other statement whatsoever, publicly or privately, that interferes with the free will of any of its affiliate state units or the players who are members or associates of those affiliate units from in any manner entering into contracts with the Plaintiff;
- (v) Pass a Decree of Permanent Injunction restraining/ prohibiting the defendant no.5 its assigns, office bearers, employees, agents, successors or any other entity acting in the name and / or on its behalf from, in any manner, directly or indirectly, inducing or in any manner

being instrumental in its affiliate state units declining the user of the cricket grounds allotted to them by the defendant no. 2&3 or any other state authorities or other authorities for organizing the cricket matches therein by the ICL;

- (vi) Pass a Decree of Mandatory Injunction against Defendants 1-3 directing them to ensure that the State affiliates of Defendant no. 5 who are having Cricket stadiums on the lands allotted by the Government – to make available those Stadia to the plaintiff for ICL matches on such terms and conditions which this Hon'ble Court may deem fit and appropriate to be prescribed for that purpose;
- (vii) Pass a Decree of Permanent Injunction restraining/ prohibiting the defendant no. 5 its assigns, office bearers, employees, agents, successors or any other entity acting in the name and/or on its behalf from withdrawing the benefits in any manner whatsoever which it has been extending or is proposing to extend to its past cricket players including the pension and benefit match scheme on account of the fact that they have participated in the matches organized by the ICL;
- (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;
- (xi) Any other further orders as this Hon'ble Court deems fit and proper in the facts and circumstances of the present case;
- (xii) Costs be awarded

15. We shall now compare the asseverations in the proposed action sent along with the Notice issued initially by the Solicitors of the Appellant, and the U.K. action now pending in the High Court of Justice, Chancery Division after the grant of anti-suit injunction by the learned Single Judge in favour of BCCI. The averments *qua* the BCCI in the draft accompanying Notice were as follows:-

3. The Second to [] Claimants ("the Players") are professional cricketers who wish to negotiate contracts to play for teams participating in the ICL. The Players are listed in Schedule A to these

Particulars of Claim together with brief details of their playing careers to date.

.....

5. The Board of Control for Cricket in India ("**the BCCI**") is a not for profit society registered in accordance with the Tamil Nadu Societies Registration Act under the laws of India. The membership of the BCCI comprises State cricket associations and various cricket clubs across India. It organizes international matches for the Indian cricket team and a number of domestic cricket competitions in India, for which it exploits the broadcasting rights.

6. In particular, the BCCI promotes a Twenty20 cricket competition known as the Indian Premier League ("**the IPL**"). The first season of the IPL was launched in April 2008, the second season took place in South Africa in 2009 and the third is due to commence in India in March 2010. The worldwide broadcasting rights to the IPL were sold in February 2008 for ten years for a reported US\$ 1.026 billion to a consortium of the Sony Television network and the Singapore-based World Sports Group (which outbid the ESPN-Star Sports network, jointly owned by News Corporation and Disney).

.....

36. From its inception, ICL has received a hostile reaction from the BCCI. Early approaches in correspondence in which ICL aimed to achieve co-

operation between ICL and BCCI were rebuffed by BCCI.

37. On 21 August 2007, a resolution was adopted unanimously at a Special General Meeting of the BCCI, resolving that: “Every individual has a right to choose whether he wishes to associate himself with any other organization. However, if he chooses to associate himself with any other organization, he will not be entitled to derive any benefit from BCCI or be associated with any activities of the Board or its affiliated units”.

38. BCCI has since engaged in a range of activities clearly calculated to deter and prevent prospective players (and others) from involving themselves with ICL, and intended to obstruct the activities of the ICL.

PARTICULARS

- (1) Barring players associated with ICL from eligibility for the Indian national team.
- (2) BCCI sacked Kapil Dev as head of the Indian National Cricket Academy because of his involvement with ICL. Other players have been barred from involvement in BCCI events by reason of their association with ICL.
- (3) Interfering with existing and prospective contracts between players and the ICL through threats and intimidation.
- (4) Instructing all local affiliates not to allow cricket grounds to be used for ICL games or

otherwise to involve themselves or permit individuals to involve themselves with ICL, on penalty of exclusion from all BCCI activities and pensions.

- (5) Preventing the use of state-owned stadia for use as ICL match venues through BCCI's monopolistic management of such venues (or through its control of the local BCCI affiliates which manage the use of those stadia).
- (6) Amending the terms of the BCCI pension fund to discriminate against players who involve themselves with ICL.
- (7) Putting pressure on potential advertisers not to advertise on ICL by threatening to withhold opportunities for sponsorship activity with the BCCI.
- (8) Putting pressure on other country boards to ban their players from playing in the ICL and to bar them from playing for their country where they played in ICL (examples of such international bans include Shane Bond of New Zealand and Justin Kemp of South Africa).
- (9) In 2008, the BCCI announced the intention (in conjunction with Cricket South Africa and Cricket Australia) to launch an international club Twenty20 Champions League. Clause 2.4.6 of the invitation to tender for commercial rights in respect of the competition stated that involvement

directly or indirectly with ICL would result in automatic disqualification of any bidder.

- (10) The BCCI imposed a similar clause to that referred to in 38(9) above in the IPL broadcast rights tender document (see §6 above), thereby excluding the companies operating the Zee branded television channels from bidding as they are associated with ESPL (see §15 above).

....

50. The boycott of the ICL set out at §§ 36-49 has had a serious effect on the players.

16. The allegations against the BCCI which still remain in the action filed in the U.K. Courts even after the grant of anti-suit injunction are as follows:-

5. The Board of Control for Cricket in India ("**the BCCI**") is a not for profit society registered in accordance with the Tamil Nadu Societies Registration Act under the laws of India. The membership of the BCCI comprises State cricket associations and various cricket clubs across India. It organizes international matches for the Indian cricket team and a number of domestic cricket competitions in India, for which it exploits the broadcasting rights.
6. In particular, the BCCI promotes a Twenty20 cricket competition known as the Indian Premier League ("**the IPL**"). The first season of the IPL was launched in April 2008, the second season

took place in South Africa in 2009 and the third is due to commence in India in March 2010. The worldwide broadcasting rights to the IPL were sold in February 2008 for ten years for a reported US\$ 1.026 billion to a consortium of the Sony Television network and the Singapore-based World Sports Group (which outbid the ESPN-Star Sports network, jointly owned by News Corporation and Disney).

.....

35. From its inception, ICL has received a hostile reaction from the BCCI. Early approaches in correspondence in which ICL aimed to achieve co-operation between ICL and BCCI were rebuffed by BCCI.

36. On 21 August 2007, a resolution was adopted unanimously at a Special General Meeting of the BCCI, resolving that: "Every individual has a right to choose whether he wishes to associate himself with any other organization. However, if he chooses to associate himself with any other organization, he will not be entitled to derive any benefit from BCCI or be associated with any activities of the Board or its affiliated units".

37. BCCI has since engaged in a range of activities clearly calculated to deter and prevent prospective players (and others) from involving themselves with ICL, and intended to obstruct the activities of the ICL.

PARTICULARS

- (1) Barring players associated with ICL from eligibility for the Indian national team.
- (2) BCCI sacked Kapil Dev as head of the Indian National Cricket Academy because of his involvement with ICL. Other players have been barred from involvement in BCCI events by reason of their association with ICL.
- (3) Interfering with existing and prospective contracts between players and the ICL through threats and intimidation.
- (4) Instructing all local affiliates not to allow cricket grounds to be used for ICL games or otherwise to involve themselves or permit individuals to involve themselves with ICL, on penalty of exclusion from all BCCI activities and pensions.
- (5) Preventing the use of state-owned stadia for use as ICL match venues through BCCI's monopolistic management of such venues (or through its control of the local BCCI affiliates which manage the use of those stadia).
- (6) Amending the terms of the BCCI pension fund to discriminate against players who involve themselves with ICL.
- (7) Putting pressure on potential advertisers not to advertise on ICL by threatening to

withhold opportunities for sponsorship activity with the BCCI.

- (8) Putting pressure on other country boards to ban their players from playing in the ICL and to bar them from playing for their country where they played in ICL (examples of such international bans include Shane Bond of New Zealand and Justin Kemp of South Africa).
- (9) In 2008, the BCCI announced the intention (in conjunction with Cricket South Africa and Cricket Australia) to launch an international club Twenty20 Champions League. Clause 2.4.6 of the invitation to tender for commercial rights in respect of the competition stated that involvement directly or indirectly with ICL would result in automatic disqualification of any bidder.
- (10) The BCCI imposed a similar clause to that referred to in 37(9) above in the IPL broadcast rights tender document (see §6 above), thereby excluding the companies operating the Zee branded television channels from bidding as they are associated with ESPL (see §14 above).

17. Paragraphs 3 and 50 of the Draft Complaint, which referred to the players as one of the Claimants have been deleted in the action presently pending before the Chancery Division, London. Plainly, the foreign (English) professional cricketers are no

longer aggrieved by the alleged machinations of BCCI. Further, although there is no pointed reference to BCCI as a Defendant, the action filed in England contains the same allegations against BCCI.

18. Thus, it is clear that the ESPL in the action filed by it in the U.K. after suffering an anti-suit injunction from the Delhi High Court has only made superficial and cosmetic changes by dropping BCCI as one of the Defendants but has retained all the averments and allegations against the BCCI as it is. Therefore, it cannot be said that the action with which the ESPL has now filed is different to that which had been articulated in the Notice.

19. The action initially intended to be initiated in the U.K. Court was predicated on the premise that “ESPL has plans to stage ICL matches in the future outside India, including in the U.K.” The main allegation in the said action is also directed against the BCCI. The hostile actions of the BCCI are described as “boycott of ICL” by the BCCI and/or “orchestration by the BCCI”. These allegations are contained in the following paragraphs of the proposed Plaint:-

36. From its inception, ICL has received a hostile reaction from the BCCI. Early approaches in correspondence in which ICL aimed to achieve co-

operation between ICL and BCCI were rebuffed by BCCI.

37. On 21 August 2007, a resolution was adopted unanimously at a Special General Meeting of the BCCI, resolving that: "Every individual has a right to choose whether he wishes to associate himself with any other organization.. However, if he chooses to associate himself with any other organization, he will not be entitled to derive any benefit from BCCI or be associated with any activities of the Board or its affiliated units".

38. BCCI has since engaged in a range of activities clearly calculated to deter and prevent prospective players (and others) from involving themselves with ICL, and intended to obstruct the activities of the ICL.

20. The reliefs sought to be claimed by ESPL in their foreign action are as follows:-

- (1) 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;
- (2) An injunction against each of the Defendants carrying out and/or implementing the boycott of the ICL;
- (3) An inquiry as to damages in respect of the infringements of the Chapter I prohibition and/or the Chapter II prohibition;

- (4) Further or other relief; and
- (5) Costs.

21. From a reading of the two Claims/Plaints as well as the Notice, it cannot be contended otherwise than that the main allegations are made against the BCCI for orchestrating the alleged boycott against ICL. No doubt, the Indian Suit is pegged against the BCCI together with the concerned Indian parties, and the UK action is directed against ICC and ECB, but the actions of the BCCI remain at the fulcrum of the contention in both the suits.

22. In the U.K. action, we may reiterate, the allegation is that BCCI has influenced ICC and ECB to amend their regulatory framework to the end that approval can be granted for organizing an unofficial approved cricket tournament, only upon the concerned Home-Board conveying its no-objection. The assertion of ESPL is that BCCI has, by this stratagem, prevented the ICL from getting the status of an ICC approved unofficial cricket tournament. As a consequence, the foreign players intending to be associated with different affiliate cricket Boards, including the ICB could not play in the ICL tournament scheduled to be held in India; since they would not receive permission from their Home-Boards owing to the opposition of BCCI in respect of matches to be held in India, which, in turn,

would deleteriously affect the viewership in the U.K. where the viewership is substantially of persons from the Indian Subcontinent.

23. Drawing our attention to the prayers in the English action, Mr. Sundaram has contended that the provisions mentioned in the foregoing paragraph have not been challenged and no reliefs *qua* the Regulations of the ICC and the ECB have been claimed. Therefore, the argument that the distinctiveness of cause of action in the UK action is because of the challenge to the Regulations of ICC and ECB has no foundation. In Rejoinder, Mr. Salve argues that since the relief of Declaration and Injunction against the entire 'boycott' is sought, if it is granted, the Regulations will automatically get struck down. Furthermore, it is contended that the lacuna in drafting, if any, should properly be addressed before the UK Court and advantage of that cannot be obtained in this Court.

24. After perusing the two Claims and cogitating on the contentions of the adversaries, we are of the opinion that the cause of action in the two is substantially and materially the same. The alleged machination of the boycott of ICL by BCCI is the pivotal grouse around which the two actions revolve. The event, viz. ICL, is an international cricket tournament planned to be held in India. The permission sought in UK for the release

of players and the status of an approved unofficial cricket tournament was also sought in respect of the tournament which is to be held in India only. Therefore, it presently seems to us that it cannot be said that merely because a letter seeking the approval was written to ICC in the U.K. the substantial cause of action occurred in U.K.; as we have already recorded, ICC is neither registered in the U.K. nor is its Headquarters located there. We are not persuaded that the action filed in England is distinct from the cause of action which is the subject matter of the Indian litigation. There is a bald averment that the ESPL wishes to hold the ICL event in the UK in future. However, in our view, this statement of its intent in future will not confer jurisdiction upon the UK Court until such event actually transpires. No material change would result, we think, even in this hypothetical situation. We say this because if it is presumed that BCCI would record its objection as a Home-Board, it would stultify an ICL outside India by directly banning Indian cricketers from participating in such a foreign ICL tourney.

25. The second argument is that the UK Suit is being prosecuted under the UK Competition Act and, therefore, the action is based on a distinct statutory cause of action, thereby making the UK action a single forum case. However, we think the argument to be misconceived. A statutory cause of action

arises from breach of a specific duty cast or right conferred by a statute on a person. The existence or provision of a remedy being available under a statute would not, *ipso facto* without more, create a cause of action of a single forum character. This is especially so when the same remedy can be invoked and prayed for in another forum under the laws and statutes of different countries. We shall merely make a mention of the Judgments cited by learned Senior Counsel for the Respondent, viz. *Bell'Oggetti International Inc. -vs- Flooring and Lumber Company Ltd.*, 2001 O.T.C. 362 and *Horn Linie GmbH -vs- Panamerica Formas E Impresas SA*, [2006 2 Lloyd's Reports 44].

26. After comparing the reliefs sought in the two Claims, we are of the opinion that these declaratory and injunctive reliefs for the very same cause of action can be availed of under the Indian Competition Act or under the Indian Contract Act. We must immediately clarify that in the event of a challenge simplicitor to the ICC Regulations without any reference to the alleged machination of BCCI which are already sub judice the change would be drastic. Therefore, the argument that an anti-suit injunction takes away the juridical advantage is not tenable in the facts of the present case.

27. Having concurred with the learned Single Judge that the UK action is a two or multiple forum *lis*, we shall venture

forward to assess whether the UK action is oppressive or vexatious. Mr. Salve's contention in this regard has already been noted by us above. We agree that in a commercial dispute, the compulsion to defend an action in a foreign jurisdiction may not invariably lead to the conclusion that the foreign proceedings are oppressive; however, having to defend the same allegations by the same party in two different jurisdiction is unquestionably oppressive.

28. We will now advert to ***Magotteaux Industries***, on which Mr. Salve has placed reliance. The dispute pertained to a patent in respect of which the Plaintiff had filed a case for damages and for permanent injunction to restrain the Defendant from infringing its patent granted in India. The Defendant had taken a plea that there was already a case pending in the US Courts under US Tariff Act of a similar nature. The Division Bench observed that since a patent is a right granted by the sovereign State to the inventor, it is a creation of a statute. The privilege is a right, advantage or immunity granted to a person to exclusion of all others. Therefore, since the alleged infringement of the patent is a breach of a statutory right granted by a sovereign, its breach in that territory would give rise to a distinct and separate cause of action from the infringement of a similar patent granted by a different sovereign

state. Since in the present case there is no such breach of statutory right, this decision does not help the case of the Appellant. Our learned Brothers had observed that so far as the infringement of a patent in the US was concerned, these rights had been granted by a sovereign power and the cause of action pertaining to their violation had also arisen in a foreign jurisdiction. That being so, our learned Brothers had declined to grant an anti-suit injunction, even though there was allegedly a similar infringement perpetrated in India. With due respect to our learned and esteemed Brothers, the observation that the Explanation to Section 10 of the CPC would also apply conversely is in the nature of *obiter dicta*. Mr. Salve has strenuously canvassed that the Explanation to Section 10 of the CPC must enure to the benefit of the Appellants since the legal regime obtaining in this country in terms conceives of the jurisdictional legitimacy of a *lis* in India which is identical to that pending in a foreign jurisdiction. So far as we see it, the Explanation was in existence at the time when India was a dominion of a foreign power. The rationale of providing an appeal via Letters Patent may well have motivated the Legislators in going against the grain of the universal principle of law articulated in Section 10 of the CPC viz. a later action is required to be stayed. With due respect, we cannot concur with

the reasoning that Explanation to Section 10 of the CPC would operate conversely to enable a foreign court to assume jurisdiction in respect of a cause of action which is pending adjudication in this country. Since it appears to us that the view of our learned Brothers in ***Magotteaux Industries*** was given *en passant* and is in the nature of *obiter dicta*, we think it unnecessary to refer this question to a Larger Bench.

29. There cannot be any cavil to the propositions laid down in ***Modi Entertainment Network***, that a subsequent suit, if held to be vexatious and oppressive, can be enjoined by the Indian Courts, provided other necessary ingredients are also satisfied. Contrary findings of different Courts on same facts are an anathema to law, and if a party endeavours to invoke the jurisdiction of foreign Court to a cause of action already being prosecuted in the national forum, it would amounts to vexatious litigation.

30. In ***Modi Entertainment Network***, the Hon'ble Supreme Court has opined that an anti-suit injunction can be granted where the foreign proceedings are vexatious, oppressive or *forum non conveniens*. Courts have the bounden duty to ensure that the ends of justice are not thwarted. Ergo, an anti-suit injunction should be passed. Legal proceedings by an Indian party in a foreign Court, in which the prayers predominantly

concern another Indian party, even whilst a suit on similar allegations and reliefs is still pending in an Indian Court between the same parties, is, in our considered opinion, vexatious and oppressive.

31. The argument of Mr. Salve that the proceedings in the UK Court cannot be vexatious and oppressive for the reason that the UK is the natural forum is also untenable. Both the Plaintiff/ESPL and its main antagonist, BCCI, are Indian parties. The Regulations which appears to be hurting ESPL are of ICC and the approval and the declaration sought for in the U.K. Courts is also directed against the ICC which is a body registered in Virgin Islands with working Headquarters in Dubai. U.K. Courts thus have territoriality because of the location of the ECB, but it cannot be ignored that the reliefs claimed against ICB as on date are consequential upon the granting of reliefs *qua* BCCI. Besides, as already stated, the boycott, allegedly orchestrated by BCCI, is of the cricketing event to be held in India; and loss of viewership in UK is not by itself sufficient to make UK the natural forum of the dispute. Moreover, it must be presumed that none of the professional cricketers having allegiance to the ECB have any grievance with regard to the present cause of action.

32. Furthermore, the evidence sought to be adduced in the UK Court are of the same witnesses who have deposed in the Suit which is proceeding in India. If the UK Suit is allowed to proceed, it will only lead to a duplication of evidence and even more detrimentally to the possibility of conflicting or variant verdicts. Therefore, in light of all these facts, it appears to us that the U.K. Courts cannot be held to be *forum conveniens*. The learned Single Judge was justified in holding UK Courts to be *forum non conveniens*.

33. In ***Modi Entertainment Network***, the Apex Court observed that it is “commonplace 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 exercise of jurisdiction by another Court”. Thus, the *in personam* jurisdiction may be exercised against the Defendant if the Plaintiff is able to make out an appropriate case for its exercise. Indubitably, courts have to be circumspect in exercising its power to issue an anti-suit injunction, but it must do so where the ends of justice would otherwise be defeated.

34. We shall now analyse the argument of the Appellant that the temporary anti-suit injunction granted is against the principles of comity and amounts to Court Management of the UK Court. *Hilton -vs- Guyot*, 159 US 113 which was decided by the American Supreme Court in 1895 contains a definition of the term 'comity' which has also been accepted in Circa 1990 by the Canadian Supreme Court in *Morguaral Investment -vs- De Savoge*. It reads - "Comity in the legal sense is neither a matter of absolute obligation, on the one hand, nor of courtesy and goodwill, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having regard both to international duty and convenience, and the rights of its own citizens or of other persons who are under the protection of its laws." Comity does not demand of a Court possessing jurisdiction to abdicate its duty to decide a dispute in favour of a foreign Court possessing concurrent jurisdiction. It would be a dereliction of duty if the former declines to adjudicate so as to enable a '*forum non conveniens*' Court to proceed with the hearing of a *lis* filed or intended to be filed before it. In some vital respects, it is wholly dissimilar, or even the antithesis of the principle of "stay of the suit" as postulated in Section 10 of the CPC. We say this because the prior filing is not determinate

so far as issuance of an anti-suit injunction is concerned; and the Court passing this injunction does not halt its own proceedings but brings proceedings in another Court to a standstill. It achieves this by commanding any or all the parties before it, over whom it holds sway, to take requisite action.

35. In *Society of Lloyd's -vs- Peter Everett White*, [2002] I.L.Pr.10, the Court had granted an *ad interim* anti-suit injunction against the Defendant till the disposal of action in its jurisdiction. The impugned Order is palpably not the first out of its kind, as has been alleged on behalf of the ESPL.

36. The reasons for the grant of the anti-suit injunction by the learned Single Judge have been crystallized in the following paragraph of the impugned Judgment:-

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.

37. The learned Single Judge, in our opinion, was correct in holding that the BCCI has established that there is substantial overlapping of the two actions and that there would be a risk of conflicting judgments/orders if two parallel proceedings on the same issues are allowed to be preceded with. The tests laid down in ***Modi Entertainment Network*** for the grant of an anti-suit injunction have clearly been met since it appears to us also that the foreign suit is oppressive, vexatious and in a *forum non conveniens*. So far as the grant of the relief as a temporary injunction is concerned, the three factors that should co-exist, viz, *prima facie* case, balance of convenience, irretrievable loss and injury, have been shown so to exist by BCCI.

38. We, being the Appellate Court, would be justified in interfering with the impugned Order only if it is perverse. We do not detect any perversity. The view of the learned Single Judge is, at the lowest, a plausible one. In ***Wander Ltd. -vs- Antox India P. Ltd.***, 1990(Supp) SCC 727, their Lordships had analysed the powers of the Appellate Court to interfere with the discretionary orders passed by the lower courts in these terms - "The appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would

have taken a different view may not justify interference with the trial court's exercise of discretion". This decision has been followed subsequently in ***Seema Arshad Zaheer -vs- Municipal Corpn. of Greater Mumbai***, (2006) 5 SCC 282. The City Civil Court had granted a temporary injunction against the Corporation which was challenged before the Bombay High Court. Speaking for the Bench His Lordship R.V. Raveendran made the following pithy observations:-

32. Where the lower court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate court will interfere. Exercise of discretion by granting a temporary injunction when there is "no material", or refusing to grant a temporary injunction by ignoring the relevant documents produced, are instances of action which are termed as arbitrary, capricious or perverse. When we refer to acting on "no material" (similar to "no evidence"), we refer not only to cases where there is total dearth of material, but also to cases where there is no relevant material or where the material, taken as a whole, it is not reasonably capable of supporting the exercise of discretion. In this case, there was "no material" to make out a prima facie case and therefore, the High Court in its appellate jurisdiction, was justified in interfering in the matter and vacating the temporary injunction granted by the trial court.

39. In *Ramdev Food Products (P) Ltd. -vs- Arvinbhai Rambhai Patel*, (2006) 8 SCC 726, the Supreme Court has taken into consideration both ***Wander Ltd.*** and ***Seema Arshad Zaheer -vs- Municipal Corpn. of Greater Mumbai***, (2006) 5 SCC 282. His Lordship, S.B. Sinha, J., has perspicuously propounded the law in these words:

The grant of an interlocutory injunction is in exercise of discretionary power and hence, the appellate courts will usually not interfere with it. However, the appellate courts will substitute their discretion if they find that discretion has been exercised arbitrarily, capriciously, perversely, or where the court has ignored the settled principles of law regulating the grant or refusal of interlocutory injunctions. This principle has been stated by this Court time and time again. [See for example *Wander Ltd. v. Antox India P. Ltd.*, 1990 (Supp) Supreme Court Cases 727, *Laxmikant V. Patel v. Chetanbhai Shah*, (2002) 3 SCC 65 and *Seema Arshad Zaheer -vs- Municipal Corpn. of Greater Mumbai*, (2006) 5 SCC 282].

The appellate court may not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion.

40. In view of the above, Appellant has failed to make out a case warranting interference with the order of the learned Single Judge. The Appeal filed by ESPL is, therefore, dismissed. Pending applications also stand dismissed.

41. We shall now deal with the Appeal filed by the BCCI which is FAO(OS) No.154/2010 and the Cross-Objections filed by ICC and ECB in the foregoing ESPL Appeal. Both the Appeal and the Cross-Objections are directed against that part of the Order of learned Single Judge wherein the interim injunction *qua* ICC and ECB has been vacated. The reason for vacating the injunction sought in favour of ICC and ECB, as recorded by learned Single Judge, is that the injunction against ICC and ECB “cannot be entertained on the short ground that neither the ICC nor ECB is before me. The plaintiff in its suit cannot propound the case of a litigant for relief who has not sought relief from the Court”.

42. In the Cross-Objections filed by ICC and ECB, Mr. Ramji Srinivasan, learned Senior Counsel for ICC and ECB sought to urge that the learned Single Judge erred in vacating the stay *qua* ICC and ECB which was operating since 25.01.2010. His argument is that ICC and ECB are Defendants in BCCI Suit and thus were undeniably before the learned single Judge. Further, it is stated that a confusion was caused by the Order passed on

7.1.2010 in FAO(OS) No.20/2010 where the Division Bench observed that presence of ICC and ECB was not necessary at the hearing of the injunction application. Mr. Srinivasan states that this was taken to understand that ICC and EBC need not be present as necessary party and that the presence of BCCI would suffice before the learned Single Judge. Learned Senior Counsel for ESPL has vehemently refuted the stand of Mr. Srinivasan stating that ICC and ECB never submitted to the jurisdiction of the Hon'ble Delhi High Court, thus they cannot seek any protection from this Court and therefore the learned Single Judge was justified in not extending the anti-suit Injunction qua them. Secondly, it has been stated that FAO(OS) No.2/2010 was filed by ESPL against the Order dated 7.12.2009 injuncting ESPL from proceeding in the proposed action in UK. The Division Bench, after observing that since Order XXXIX Rules 1 and 2 application was still not decided finally, it was not appropriate to hear the Appeal until the application is finally disposed of. In view of the urgency, the Division Bench preponed the date of hearing and passed a direction that the application be disposed of by 30.1.2010 by the learned Single Judge. Further, it was also directed in light of the urgency that Memorandum of Appeal be treated as Reply to the Order XXXIX Rules 1 and 2 application and in that light only, the Court

observed that presence of Defendant Nos. 2 and 3, that is, ICC and ECB, "shall not be necessary for the purpose of the said hearing". This clarification, as per learned Senior Counsel for ESPL, was made so as to enable the learned Single Judge to dispose of Order XXXIX Rules 1 and 2 application expeditiously, even in the absence for any reason of ICC and ECB. We are in no manner of doubt that this did not mean that ICC and ECB were totally absolved from entering appearance and making the equitable prayers before the learned Single Judge. It is also stated that in light of the fact that ICC and ECB had not appeared before the learned Single Judge at the time of disposal of the application, nor have they submitted to the jurisdiction of Delhi High Court, the Cross-Objections filed by them in the ESPL Appeal should not be entertained. On the issue of maintainability of the Cross-Objections, Mr. Srinivasan has argued that both ICC and ECB have been made parties to the Suit filed by the BCCI, that both ICC and ECB have unconditionally subjected themselves to the jurisdiction of Delhi High Court, which fact has been duly recorded in our Order dated 19.07.2010, in FAO(OS) 107/2010. It is also argued that ECB and ICC have filed their Written Statements in the Suit and that they have a substantial interest in the matter and therefore vacation of stay *qua* them severely works to their detriment.

43. Mr. Srinivasan further contends that the springboard of the action before the UK Court is the alleged boycott of ICL by BCCI. The cause of action that pertains to ICC and ECB ensued subsequent and consequent upon the said boycott. Since the admitted position by ESPL is that the BCCI is at the centre of the entire conspiracy hatched against ICL and the same is already being adjudicated before the Delhi High Court, it would be travesty of justice if ICC and ECB are sued in the U.K. Court for the said dispute which essentially is between ESPL and BCCI. ICC and ECB have now filed their respective Written Statements in which they have stated that the Indian Court may not have the territorial jurisdiction to adjudicate the allegations based on the events that occurred outside India, but since the entire grievance can be decided in the Indian Suit; therefore, ESPL may be enjoined from prosecuting its action also against ICC and ECB. Once the same is decided, and the Indian Court pronounces on the allegations of anti-competitive practices levied against the BCCI, ESPL can then based on that decision pursue its remedies, if any, against ICC and ECB in the U.K. Court. Mr. Srinivasan has drawn our attention to various portions of the impugned Order where it has been observed that the cause of action and issues in the two claims are overlapping and that adjudication of the Indian Suit would substantially

render the cause in UK otiose. (These observations, however, are made in the context of the BCCI and not as regards ICC and ECB.)

44. Mr. Sundaram, in the Cross Appeal numbered FAO(OS) 154/2010 filed by the BCCI against the impugned Judgment, has pointed out that the mischief that is caused by excluding ECB and ICC from the protection of anti-suit injunction is that ESPL is proceeding with its proposed suit by dropping BCCI from the action initiated in the U.K., though it has retained all the allegations against BCCI. This, according to Mr. Sundaram, has caused a piquant situation where despite the BCCI not being a party to the action as a Defendant, all the allegations against the BCCI still survive and would require adjudication by the U.K. Court. Therefore, the purpose of the anti-suit injunction *qua* the BCCI also stands defeated in effect. It is, therefore, urged that the entire action based on the alleged boycott by the BCCI of ICL and its consequential events be enjoined *in toto* as it contains the same factual allegations which have been narrated in the Indian Suit.

45. Mr. Vaidyanathan, learned Senior Counsel controverts these arguments on the basis that ICC and ECB have throughout shown reluctance to appear before the Indian Court and have not subjected themselves to the jurisdiction of this

Court. It is further contended that the events on which the U.K. action is predicated are beyond the jurisdictional sway of this Court, and this fact has also been admitted by ICC and ECB in their Written Statements. Further, it is submitted by him that the Delhi High Court is not the appropriate or natural forum to entertain the English action. Thus, in the entire conspectus, an anti-suit injunction *qua* ICC and ECB cannot be granted. Learned Senior Counsel has placed reliance on *Mitchell -vs- Carter*, (1997 BCC 907) and *Barclays Bank PLC -vs- Homan*, (1992 BCC 757).

46. We shall now compare the asseverations in the proposed action sent along with the Notice issued initially by the Solicitors of the Appellant, and the U.K. action now pending in the High Court of Justice, Chancery Division after the grant of anti-suit injunction by the learned Single Judge in favour of BCCI. The averments *qua* the BCCI in the draft accompanying Notice as well as the action pending in the Chancery Division have already been reproduced above and it is noted that only cosmetic changes are made and there is no substantial difference in the two actions.

47. While upholding the injunction as regards BCCI, we have expressed the opinion that the English action substantially encompasses allegations that are also the subject matter of

Indian Suit which must properly be tried by Indian Court only. Having decided so, we have to agree with Mr. Sundaram, learned Senior Counsel for the BCCI that if the allegations as regards the role of the BCCI are allowed to be adjudicated in the U.K. action in the absence of BCCI, the temporary anti-suit injunction granted in its favour would prove to be a pyrrhic victory. As we have enjoined ESPL from proceeding against the BCCI on the ground that the proposed UK action overlaps with the Indian Suit, the *lis* ought not to be allowed to proceed. Therefore, in the interest of justice, and to prevent the mischief that is caused by a partial stay it is expeditious and necessary that the action which ESPL has now initiated which relies essentially on the allegations against the BCCI be also stayed. This position would obtain regardless of whether or not BCCI is a party to the U.K. litigation. It seems to us that if the Indian Suit is decided in favour of ESPL, the UK claim against ICC and ECB would become redundant in view of the nature of declaration and injunction claimed in the Indian Suit. It is the case of ESPL that the amendments in the Rules of ICC and the refusal to grant the status of an approved unofficial tournament was on the instance of the BCCI. The refusal to release players by ECB was allegedly is because of the pressure exerted by the BCCI and the provisions of ICC. If ESPL is able to prove anti-

competitive practices on the part of the BCCI and obtain a mandatory injunction against all such actions, all its grievances can be met by a decree in the Indian Suit itself.

48. In this analysis, BCCI has been able to establish the vexatious and oppressive nature of the U.K. action which ESPL is currently pursuing against ICC and ECB. We think it appropriate and in the interest of justice to pass an interim injunction against ESPL from proceeding with the action against ICC and ECB pending in the Chancery Division, London in so far as that action contains allegations against BCCI or in the event that the adjudication of that action overlaps with the pending Indian Suit, viz. CS(OS) No.1566/2007.

49. The Appeal of BCCI as well as the Cross-Objections filed by ICC and ECB are allowed in the above terms. CM No.4243/2010 stands disposed off. There shall be no order as to costs.

50. Trial Court record be sent back forthwith.

(VIKRAMAJIT SEN)
JUDGE

(MUKTA GUPTA)
JUDGE

March 31, 2011