

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 21st March, 2018**

+ **CS(COMM) 517/2017, IA No.8950/2017**

TOPS SECURITY LIMITED & ORS Plaintiffs

Through: Mr. Salar M Khan & Mr. Abhigyan
Choudhary, Advs.

Versus

PUNJAB NATIONAL BANK

(INTERNATIONAL) LIMITED & ORS. Defendants

Through: Mr. Jagdeep Kishore, Adv. for D-1.
Ms. Shruti Dhingra, Adv. for D-2 to 4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Tops Security Limited, Tops Electronic System Ltd. and Dr. Rahul Randhir Nanda, all giving their address as that of Mumbai, instituted this suit against (i) Punjab National Bank (International) Limited (defendant no.1), a banking company incorporated in United Kingdom and wholly owned subsidiary company of Punjab National Bank, India; (ii) The Shield Guarding Company Limited, London (defendant no.2), (iii) Topsgroup Security U.K. Limited, UK (defendant no.3) and (iv) Topsgroup Security Holding BV, Netherlands (defendant no.4), pleading:

(i) that the plaintiffs are the alleged guarantors for the loan facility granted by defendant No.1 to defendant No.2;

(ii) that the defendants No. 3 and 4 are the other alleged guarantors for the same loan facility;

- (iii) that the plaintiffs No. 1 and 2 and defendants No.2 to 4 are group companies;
- (iv) that the plaintiffs No. 1 and 2 are incorporated under the Companies Act, 1956 and having their registered office at Mumbai;
- (v) that the plaintiff No.3 is a majority shareholder and promoter of plaintiff No.1 and a Director on the Board of plaintiff No.2;
- (vi) that the defendant No.1, on request of the defendant No.2, on 21st November, 2012, granted a loan to the defendant No.2 primarily secured by the first and exclusive charge on all the current and fixed assets of defendant No.2 as well as by shares of defendant No.2;
- (vii) that by way of collateral security, a charge on property No. 239-241 Kennigton Lane in London was also created in favour of defendant No.1;
- (viii) that the defendant No.1, vide its Sanction Letter also sought corporate and personal guarantees of plaintiffs and defendants No. 3 and 4;
- (ix) that a facility agreement dated 27th February, 2013 was entered into between the defendants No. 1 and 2 for a total sum of GBP 6.5 million;
- (x) that as per the facility agreement, all the securities mentioned in the Sanction Letter aforesaid were to remain as securities;

(xi) that the officials of defendant No.1 assured the plaintiffs that the guarantees demanded from the plaintiffs were mere formalities;

(xiii) that upon such assurances, the plaintiffs No. 1 and 2, on 16th July, 2013, executed Deeds of Guarantee at New Delhi and the plaintiff No.3 executed individual Deed of Guarantee on 25th February, 2013 at New Delhi;

(xiii) that it was agreed that the guarantees and all documents in relation to the guarantees shall be governed and construed as per laws of India and it was further stated that any dispute arising in relation to the guarantees would be subject to non-exclusive jurisdiction of courts at New Delhi;

(xiv) On request of defendant No.2, in and around 4th April, 2014, the credit facility was enhanced to GBP 7 million and owing to which the defendant No.1 demanded additional Deeds of Guarantee from the plaintiffs for the enhanced amounts;

(xv) that the plaintiff No.3 signed the said Deed of Extension of Guarantee at London and the plaintiffs No. 1 and 2 signed the Deed of Extension of Guarantee at New Delhi;

(xvi) that the officers of the defendant No.1 however, procured the signatures of the plaintiff No.3 on an entirely new Deed of Guarantee instead of Deed of Extension of Guarantee given as draft; the plaintiff No.3 was not aware of swapping of the Deed at the time of the signing in London;

(xvii) that the defendant No.2 also did not furnish copy of the Deed got signed from plaintiff No.3, to the plaintiff No.3;

(xviii)that by the said Deed of Guarantee, the defendant No.1 made plaintiff No.3 unknowingly subject to non-exclusive jurisdiction of High Court of England and the guarantee to be governed by English law and the said guarantee was made applicable to the entire debt of GBP 7 million borrowed by defendant No.2 from defendant No.1;

(xix) that the defendants No. 1 and 2, around 9th July, 2015, entered into a second facility agreement whereby the defendant No. 1 agreed to provide defendant No.2 a short term loan of GBP 4.05 million;

(xx) that the plaintiff No.3 as owner of “The Manor House”, Brockhurst Park, Rickmans Lane, Stoke Poges, Slough Buckinghamshire, SL2 4AF, UK, vide Mortgage Deed dated 10th July, 2015 created a second charge over the said property in favour of the defendant No.1;

(xxi) that the plaintiff No.3, however, did not execute any Deed of Guarantee with respect to the loan facility of 4.05 million GBP;

(xxii) that the defendant No.1 is now contending that as on 20th February, 2017, total outstanding of GBP 10,078,005.87 million besides interest is due from the defendant No.2;

(xxiii)that the defendant No. 1 has been negligent in losing the primary securities;

(xxiv) that the defendant No.1 filed a composite petition before the High Court of Justice, Chancery Division, London against the plaintiffs and defendants No.2, 3 and 4 for recovery of the loan advanced by defendant no.1 to the defendant no.2, misrepresenting facts that the plaintiffs are liable for the entire dues;

(xxv) that detailed pleadings are made with respect to conduct of defendant No.1 in the London proceedings aforesaid;

(xxvi) that as far as the plaintiffs are concerned, no claim against them can be preferred before UK Court as not only their guarantees are to be construed as per laws of India but the same are to be tried at New Delhi Court where non-exclusive jurisdiction is agreed for;

(xxvii) that the UK court where proceedings have been preferred against defendant No.1, lacks jurisdiction;

(xxviii) that the plaintiffs No. 1 and 2 are not foreign entities and not subject to London jurisdiction and never submitted to the said jurisdiction;

(xxix) that the guarantee executed by plaintiff No.3 is to be interpreted as per laws of India and which grants non-exclusive jurisdiction to the Courts at New Delhi;

(xxx) that the plaintiff No.3, at the time of execution of the Deed was tricked into submitting to English jurisdiction though there was otherwise no such intention;

(xxxi) that the plaintiff No.3 is a person of Indian origin having Indian passport and residing at UAE, having his business interest mainly in India and thus is not amenable to London jurisdiction;

(xxxii) that all the affairs of the plaintiffs No. 1 and 2 are in India;

(xxxiii) that the High Court of London is neither the agreed forum between the parties nor the forum of convenience of the plaintiffs and the plaintiffs have no office or representative in UK;

(xxxiv) that the cost of contesting the litigation in UK is also prohibitively costly;

(xxxv) that the defendant No.1 has opted to file proceedings before the High Court at London with *mala fide* intent;

(xxxvi) that the curial and substantive law by which the Guarantees have to be interpreted is Indian law;

(xxxvii) that the entire cause of action between the plaintiff and the defendant No.1 arose at New Delhi where the Guarantees were signed.

2. The plaintiffs, on the aforesaid pleas, have claimed the following reliefs:

(i) Declaration that the High Court of London has no jurisdiction to entertain and decide the claim of the defendant No.1 insofar as against the plaintiffs.

(ii) Declaration that the Deeds of Guarantee executed by plaintiffs are unenforceable, null and void and the defendant No.1 having lost

valuable securities, is not entitled to seek a remedy against the plaintiffs.

(iii) Declaration that the mortgage deed of “Manor House” is bad and illegal for want of consideration since plaintiff No.3 who is owner thereof has no debt vis-a-vis the facility of GBP 4.05 million and is not the guarantor thereof.

(iv) Permanent injunction restraining the defendant No.1 from proceeding further in the High Court of London against the plaintiffs.

(v) Recovery of damages in the sum of Rs.2,25,00,000/-.

3. Needless to state the suit is accompanied by the application for interim relief seeking to restrain the defendant No.1 from proceeding against the plaintiffs in the UK Courts.

4. The suit came up before this Court first on 8th August, 2017 when summons thereof were ordered to be issued though ex parte relief sought not granted.

5. The defendants no.2 to 4 in response to the summons of this Court had appeared on 27th September, 2017 and though were granted four weeks’ time to file written statement, have neither filed any written statement nor sought extension of time for filing thereof and their right to file written statement was closed on 12th January, 2018.

6. The defendant No.1 has filed a written statement to which no replication has been filed by the plaintiffs.

7. The counsel for the plaintiffs, on 23rd January, 2018 sought adjournment stating that the plaintiffs wanted to settle with the defendant No.1. Though the counsel for the defendant No.1 stated that he had no such instructions but further stated that the suit had become infructuous. On the condition that if no settlement was arrived at, the plaintiff will deposit cost of Rs.10,000/- with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, the suit was ordered to be listed for today.

8. Today, Mr. Salar M. Khan, counsel for the plaintiffs again seeks adjournment on the ground of the plaintiffs being desirous of settling with the defendant No.1.

9. Counsel for the defendant No.1 states that the plaintiffs, after the last date of hearing on 23rd January, 2018, have not approached the defendant No.1 for any settlement and opposes the adjournment. It is also contended that the plaintiffs, in the plaint, have misrepresented facts and indulged in falsehood. Attention is invited to para 39 of the plaint where the plaintiff No.3, Dr.Rahul Randhir Nanda is pleaded to be having Indian passport. Attention is next invited to the statement dated 18th August, 2017 filed by the plaintiff No.3, Rahul Randhir Nanda before the High Court of Justice, Chancery Division in claim No.HC-2017-000994, in para 5 whereof he has stated “I became a British citizen on 16th December, 2016. A copy of my British passport can be found at page 1.” Attention is also invited to the copy of the British passport of plaintiff No.3, Dr. Rahul Randhir Nanda attached to the said statement. It is argued that the plaintiffs, by pleading false

fact before this Court of the plaintiff No.3 having an Indian passport, sought to obtain ex parte order from this court.

10. The counsel for the plaintiffs, on being asked to show as to how this suit is maintainable, states that since he had instructions from the plaintiffs to take adjournment today from the court, he has not even brought his files and is thus unable to argue anything. He however with reference to the statement aforesaid filed before the High Court of Justice, Chancery Division, London states that the plea in para 39 of the plaint, of the plaintiff No.3 being an Indian citizen, is a typographical error and the plaintiffs have along with the plaint filed documents including the British passport of the plaintiff No.3 and an Indian origin certificate.

11. The aforesaid is no explanation for the falsity committed. It is not understandable that if the counsel for the plaintiffs drafting the plaint was aware that the plaintiff No.3 is a British citizen, how there could be a typographical error of his having an Indian passport. Not only so, the plaintiffs as well as their Advocate who has drafted the plaint have signed the plaint and are expected to sign the plaint after reading and in token of acceptance of what is stated therein.

12. Considering the nature of the case, the averment, of the plaintiff No.3 having an Indian passport, was of significance to grant of the relief which the plaintiffs were seeking ex parte. As far as the explanation now given of the plaintiffs having filed copy of the British passport of plaintiff No.3 in the Part III file, I may state that the plaintiffs along with the plaint filed documents contained in three

bulky Volumes and the Court, on the first date of hearing, when the application for ex parte interim relief is taken up for consideration and when the defendants are not present, cannot be expected to verify each and every averment made in the plaint with reference to the documents filed and more so when the documents are bulky, and proceeds on the basis of the statements made in the plaint which have been verified by the advocate who is also an officer of the Court. If such explanations were to be accepted in every matter, it would open the gates for the Advocates to draft and make any statement in the plaint and to subsequently get away by calling it a typographical error.

13. In my view, the plaintiffs are disentitled to the discretionary reliefs claimed in the suit on this ground alone and the suit liable to be dismissed for the sole reason of the plaintiffs having so abused the process of this Court.

14. I may however record that the counsel for the defendant No.1 has also argued a) that the defendant No.1, though a subsidiary of Punjab National Bank, India, is a foreign company incorporated in UK; b) that the defendant No.2 is the principal borrower from the defendant No.1; c) that the entire shareholding of defendant No.2 is held by the defendant No.3; d) that the entire shareholding of defendant No.3 is held by defendant No.4; e) the plaintiffs No. 1 and 2 are the shareholders of the defendant No.4 and the plaintiff No.3 is a Chairman of group of companies, as admitted in the plaint as well.

15. The counsel for the defendant No.1, on the basis of the aforesaid, has contended that it is not as if the plaintiffs are

inconvenienced in any manner whatsoever in contesting the litigation in London. It is contended that the plaintiffs, through the vehicles of defendant Nos. 2 to 4, are carrying on business in London and Netherlands and have invoked territorial jurisdiction of this Court only to wriggle out of the liabilities incurred outside India to the defendant No.1 and which are under enforcement in the Courts of the jurisdiction where the said liabilities were undertaken.

16. The counsel for the defendant No.1 has also drawn attention to the facility agreement dated 27th February, 2013 between the defendants No. 1 and 2 which at pages 67 and 68 of Volume 1 of Part III file, which provides as under:-

“29.8 Governing law and Jurisdiction

This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by English law without regard to Conflict of law Rules.

xxxxxx

xxxxx

xxxxx

29.10 Enforcement

29.10.1 Jurisdiction

29.10.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity of termination of this Agreement) (a “Dispute”).

29.10.1.2 *The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.*

29.10.1.3 *This clause 29.10.1 is for the benefit of the Lender only. As a result, lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.*

29.10.1.4 *Waiver of Immunity*

The Borrower irrevocably agrees that, should any Party

take any proceedings anywhere (whether for an injunction, specific performance, damages or otherwise in connection with any Financing Document), no immunity (to the extent that it may at any time exist, whether on the grounds of sovereignty or otherwise) from those proceedings, from attachment (whether in aid of execution, before judgment or otherwise) of its assets or from execution of judgment shall be claimed by it or with respect to its assets, any such immunity being irrevocably waived. The Borrower irrevocably agrees that it and its assets are, and shall be, subject to such proceedings, attachment or execution in respect of its obligations under the Financing Documents.”

17. The counsel for the defendant No.1 has thereafter drawn attention to the Clauses in the Debenture Agreement executed between defendants No. 1 and 2, Pledge Agreement executed by defendant No.3 in favour of defendant No.1 and the Deed of Mortgage executed by defendant No.2 in favour of defendant No.1, at pages 86, 87, 95, 98, 102 of Volume 1 of Part III file and all of which provide for the terms thereof to be construed in accordance with English law, without regard to conflict of law and rules and for the non-exclusive jurisdiction of the Courts at England.

18. The counsel for the defendant No.1 has next invited attention to:

A. The following Clause in the Deed of Guarantee executed by the plaintiff no.2 in favour of defendant no.1:

“19. GOVERNING LAW & JURISDICTION

This Guarantee and all documents executed under / in relation to this Guarantee shall be governed by and construed in accordance with the laws of India. Any disputes arising under / in relation to this Guarantee shall be subject to the non-exclusive jurisdiction of the Courts at New Delhi. This shall not however limit the rights of the Bank to take proceedings in any other court of Competent Jurisdiction.”

B. The following Clause in the Deed of Guarantee executed by the plaintiff no.2 in favour of defendant no.1:

“19. GOVERNING LAW & JURISDICTION

This Guarantee and all documents executed under / in relation to this Guarantee shall be governed by and construed in accordance with the laws of India. Any disputes arising under / in relation to this Guarantee shall be subject to the non-exclusive jurisdiction of the Courts at New Delhi. This shall not however limit the rights of the Bank to take proceedings in any other court of Competent Jurisdiction.”

C. The following Clause in the Deed of Guarantee executed by the plaintiff no.3 in favour of defendant no.1:

“19. GOVERNING LAW & JURISDICTION

This Guarantee and all documents executed under / in relation to this Guarantee shall be governed by and construed in accordance with the laws of India. Any disputes arising under / in relation to this Guarantee shall be subject to the non-exclusive jurisdiction of the Courts at New Delhi. This shall not however limit the rights of the Bank to take proceedings in any other court of Competent Jurisdiction.”

D. The following Clause in the Amendment Agreement to the Facility Agreement executed by the defendant no.2 in favour of defendant no.1:

“21 This Amendment Agreement and any dispute or claim arising out of or in connection with it or its

subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with the law of England and Wales.”

E. The following Clauses in the Deed of Guarantee dated 4th April, 2014 executed by the plaintiff no.3 in favour of defendant no.1:

“18.(a) This Guarantee shall be governed by and interpreted in accordance with English Law.

19. The Guarantor irrevocably submits to the non-exclusive jurisdiction of the High Court of Justice of England but this Guarantee may be enforced in any court of competent jurisdiction.”

19. The counsel for the defendant no.1 has handed over in the Court a copy of the order dated 7th December, 2017 of the High Court of Justice, Chancery Division in the matter of ***Punjab National Bank (International) Ltd. Vs. (1) Dr. Rahul Nanda, (2) Tops Security Ltd., (3)Topsgrup Electronics Systems Ltd., (4) Topsgrup Holding BV, and, (5) Topsgrup Security UK Ltd.*** as under:

- “1. The application dated 18th August 2017 is dismissed: with the Court finding that all of the Defendants have been properly served with the proceedings and the London is an appropriate forum for this litigation;
2. The Defendants do pay the Claimant’s costs of the application dated 18th August 2017 to be assessed if not agreed.
3. The Defendants do make an interim payment of those costs in the sum of [£30,000] by 21st December 2017.

IT IS FURTHER ORDERED BY CONSENT:

1. The Claimant has permission to file and serve amended Particulars of Claim in the form of the draft amended Particulars of Claim dated 5th December 2017; The Defendants' solicitors having a copy of this amended Particulars of Claim, further service is dispensed with;
2. The Claimant do pay the costs of the fifth Defendant of and occasioned by the amendment to the Particulars of claim to be assessed if not agreed.
3. This order shall be served by the Claimant on the other parties."

and which order is recorded to have been passed:

"UPON HEARING Mr. D. Haan Q.C. and Mr. Panton, Counsel for the Claimant and Ms Vora and Mr. Francis, Counsel for the Defendants.

AND UPON the hearing of the Defendants' application dated 18th August 2017"

and on the basis thereof it is contended that the plaintiffs are appearing before the Court in UK and have been heard and an order therein has already been passed against them and the suit is thus infructuous.

20. The counsel for the plaintiffs has not even responded to the aforesaid contentions.

21. The litigants and the counsels cannot in this fashion insist upon the Courts keeping the suits pending. If a request for adjournment were to be held to come in the way of the Court proceeding with the suit, the Courts will not only be unable to dispose of suits inasmuch as in most cases it is found that one of the parties to the lis is interested in

keeping the same pending, but the same would also play havoc with the administration of justice and work to the prejudice of the opposing parties and allow Courts and litigation to be used as a tool of oppression and coercion. Rather, it is the contention of the counsel for the defendant no.1 also that the Courts at UK are repeatedly told by the plaintiffs as well as the defendants no.2 to 4 of the pendency of this suit, to delay the proceedings therein as well.

22. I have considered the controversy.

23. Bereft of surplusage, the plaintiffs in this suit are seeking to restrain the defendant no.1 from proceeding further against the plaintiffs in the High Court of Justice, Chancery Division, London by claiming anti-suit injunction against the defendant no.1 and the core question for decision is whether the plaintiffs in the facts are entitled to such anti-suit injunction and the said question does not entail any disputed questions of fact inasmuch as the documents on the basis of which anti-suit injunction is claimed have been placed by the plaintiffs themselves before the Court and are not disputed by the defendant no.1.

24. The counsel for the defendants no.2 to 4, though appears today also, has not stated anything. The interest of the plaintiffs and of the defendants no.2 to 4 is one and the same.

25. Supreme Court, in ***Modi Entertainment Network Vs. W.S.G. Cricket PTE. Ltd.*** (2003) 4 SCC 341, held that i) the Courts in India, like the Courts in England, are Courts of both law and equity; ii) the principles governing grant of injunction, an equitable relief, by a Court will also govern grant of anti-suit injunction which is but a species of

injunction; iii) courts in India have power to issue anti-suit injunction to a party over whom it has personal jurisdiction, in an appropriate case; iv) this is because Courts of equity exercise jurisdiction in personam; v) however, having regard to the rule of comity, this power will be exercised sparingly, because such an injunction though directed against a person, in effect causes interference in the exercise of jurisdiction by another Court; vi) under Code of Civil Procedure, 1908, one or more Courts may have jurisdiction to deal with a subject matter; where only one Court has jurisdiction, it is said to have exclusive jurisdiction; where more Courts than one have jurisdiction over a subject matter, they are called Courts of available or natural jurisdiction and the parties are entitled to agree beforehand to approach either of the available Courts of natural jurisdiction and thereby create an exclusive or non-exclusive jurisdiction in one of the available forums; vii) however by agreement, the parties cannot confer jurisdiction, where none exists; viii) however this principle does not apply when the parties agree to submit to the exclusive or non-exclusive jurisdiction of a foreign Court; indeed in such cases the English Courts do permit invoking their jurisdiction; ix) the test for issuance of anti-suit injunction to a person amenable to the jurisdiction of the Court in person has been varying ; first it was 'equity and good conscience'; the test later adopted was 'to avoid injustice'; the test adopted in the recent cases is, whether the foreign proceedings are 'oppressive or vexatious'; x) the essence or the ultimate objective is to enquire how best the interests of justice will be served; whether grant of anti-suit injunction is necessary in the interests of justice; and xi)

however, in a case where a jurisdiction agreement exists, it is not necessary, in all cases, to show that foreign proceedings are vexatious, oppressive or that the local Court is a natural forum for the claim and there is no obligation upon the claimant to seek relief from foreign court first.

26. Supreme Court, after holding so and on the basis of case law, laid down the following principles:

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

- (a) the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court;
- (b) if the injunction is declined the ends of justice will be defeated and injustice will be perpetuated; and
- (c) the principle of comity – respect for the court in which the commencement or continuance of action/proceeding is sought to be restrained – must be borne in mind;

(2) In a case where more forums than one are available, the Court in exercise of its discretion to grant anti-suit injunction will examine as to which is the appropriate forum (forum conveniens) having regard to the convenience of the parties and may grant anti-suit injunction in regard to proceedings which are oppressive or vexatious or in a forum non-conveniens;

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

parties the court has to decide the same on a true interpretation of the contract on the facts and in the circumstances of each case;

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

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

(7) The burden of establishing that the forum of choice is a forum non-conveniens or the proceedings therein are oppressive or vexatious would be on the party so contending to aver and prove the same.”

27. Applying the aforesaid principles and of which the first is that the defendant should be amenable to the personal jurisdiction of the Court, I am unable to fathom as to how the defendant no.1, a banking company incorporated in United Kingdom, can be said to be amenable to the personal jurisdiction of this Court. The only plea in this regard is that the defendant no.1 is a wholly owned subsidiary company of Punjab National Bank (India). However, merely for the said reason, it cannot be said that the defendant no.1, admittedly a foreign bank, is amenable to the personal jurisdiction of this Court. A wholly owned subsidiary is a juristic entity independent of its shareholder/s and the Courts at India or this Court would not get personal jurisdiction over such wholly owned subsidiary of Punjab National Bank (India) (which has not even been impleaded as a party). It is also not the plea that Punjab National Bank (India) had any role to play in the contract/s between the defendant no.1 and the plaintiffs and the defendants no.2 to 4 or has any role to play in the dispute.

28. It cannot be forgotten that the plaintiffs and of which only the plaintiffs no.1 and 2 are found to be situated in India (the plaintiff no.3 is admitted to be a British citizen), have not had any independent transaction with the defendant no.1. The transaction / relationship of the plaintiffs with the defendant no.1 is a corollary of the transaction at U.K. between the defendant no.1 and defendant no.2, again a British corporation. The plaintiffs, in consideration of such financial

assistance rendered by defendant no.1 to defendant no.2 at UK have furnished Guarantees in favour of the defendant no.1. It is the plea in the plaint itself that the plaintiff no.3 Dr. Rahul Randhir Nanda is the majority shareholder and promoter of defendant no.2 through the web of defendants no.3 and 4 and plaintiffs no.1 and 2. The said plaintiff no.3 Dr. Rahul Randhir Nanda himself has given up Indian citizenship and opted to become a British citizen and is carrying on business in Britain through the defendant no.2 which has availed financial assistance from the defendant no.1. The plaintiffs no.1 and 2, though situated in India, are mere cogs in the said web spun by the plaintiff no.3 Dr. Rahul Randhir Nanda. Thus the human face behind the defendant no.2 who is the principal debtor of the defendant no.1 is also not within the jurisdiction of this Court and invoked the jurisdiction of this Court by falsely pleading to be within the jurisdiction of this Court.

29. It cannot also be forgotten that the immovable property of the plaintiff no.3 over which the plaintiff no.3 has created a charge in favour of defendant no.1 as part of the guarantee executed in favour of defendant no.1 and qua which charge / mortgage declaration is sought, is also situated in UK and as per established principle of *Lex Situs*, the Courts within whose jurisdiction the immovable property is situated have exclusive jurisdiction over disputes concerning immovable property.

30. The plaintiffs having failed in the first test itself for being entitled to anti-suit injunction, this suit is entirely misconceived and liable to be thrown out at the threshold.

31. As far as the reliance by the plaintiffs in the plaint on the Clauses in the Deeds of Guarantee executed by the plaintiffs no.1 and 2 is concerned, as would be evident from a reading of the said clauses reproduced hereinabove, only 'non-exclusive' jurisdiction as distinct from 'exclusive' jurisdiction was conferred on the Courts at New Delhi, without limiting the rights of the defendant no.1 to take proceedings in any other Court of competent jurisdiction. Invocation of the jurisdiction of the London Court against the plaintiffs is in consonance with the said Clauses.

32. Supreme Court, in *Modi Entertainment Network* supra has already held that the parties are presumed to have thought over their convenience and all other relevant factors before submitting to non-exclusive jurisdiction and that party to a contract containing such a Clause cannot be prevented from approaching the Court of choice as it would amount to aiding to the breach of the contract.

33. As far as the principles of convenience and meeting the ends of justice is concerned, as aforesaid, the loan transaction between the defendant no.1 as the creditor and the defendant no.2 as the principal debtor admittedly took place within the jurisdiction of the Courts in UK and the plaintiffs no.1 and 2 (with whom only we are concerned now in view of what has been said hereinabove qua the plaintiff no.3) are but cogs in the web spun by the plaintiff no.3 (who is also not within the jurisdiction of this Court) for holding control over the defendant no.2 and in whose name the loan was taken from the defendant no.1. Mere presence in India of the said cogs will not make invocation of the jurisdiction of the London Court against plaintiffs

no.1 and 2 as onerous or as perpetuating injustice to the plaintiffs no.1 and 2. For this reason also, the plaintiffs are not entitled to anti-suit injunction.

34. There is another aspect of the matter. According to the plaintiffs also, the decision on the claims of the defendant no.1 against defendants no.2 and 4 and against the defendant no.3 cannot be in Indian Courts and jurisdiction of the London Court has been rightly invoked. It is just and appropriate that the claim of the defendant no.1 against the plaintiffs no.1 and 2 as guarantors and which claim is ancillary to the claim against others, is also decided by the same Court and the claims arising out of the same transaction are not segregated. For this reason also, ends of justice require that the claims of the defendant no.1 against plaintiffs no.1 and 2 are also adjudicated by the foreign Court whose jurisdiction has already been invoked rather than by this Court.

35. The suit thus, has but to fail and is dismissed.

36. The plaintiffs are also burdened with costs of Rs.5 lacs, payable to the defendant no.1.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

MARCH 21, 2018

‘ak/gsr’..

(Corrected & released on 2nd May, 2018)