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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 4th February, 2019

Date of decision : 29th April, 2019

+ **CS (OS) 2919/2014, CCP(O) 39/2015, I.As. 18666/2014, 766/2015,
7457/2015, 15025/2015, 17388/2015, 21429/2015**

M/S INDIABULLS REAL ESTATE LTD. Plaintiff

Through: Ms. Mumtaz Bhalla, Mr. Aayush
Malhotra & Ms. Abhilasha Vij,
Advocates (M-9560703760)

versus

M/S VERITAS INVESTMENT RESEARCH
CORPORATION & ORS.

..... Defendants

Through: Mr. Amit Dube & Mr. Rajul
Shrivastava, Advs. (M-9891860220)
Mr. Abhinav Vashisht, Sr. Advocate
with Ms. Mamta Tiwari & Ms. Charu
Ambwani, Advocates for D-4

AND

+ **CS(OS) 3199/2014 & CCP(O) 51/2015, I.As. 20503/2014, 7351/2015,
15030/2015, 17390/2015 & 25811/2015**

M/S INDIABULLS HOUSING FINANCE LTD Plaintiff

Through: Mr. Abhinav Vashisht, Sr. Advocate
with Ms. Mamta Tiwari & Ms. Charu
Ambwani, Advocates

versus

M/S VERITAS INVESTMENT RESEARCH
CORPORATION & ORS.

..... Defendants

Through: Mr. Amit Dube & Mr. Rajul
Shrivastava, Advocates.
Ms. Mumtaz Bhalla, Mr. Aayush
Malhotra & Ms. Abhilasha Vij,
Advocates for D-4.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

I.A.17388/2015 (to bring on record the additional affidavit) in CS(OS) 2919/2014

I.A.17390/2015 (to bring on record the additional affidavit) in CS(OS) 3199/2014

1. For the reasons stated in the applications, the same are allowed. The additional affidavits are taken on record. I.As. are disposed of.

I.A.766/2015 (u/O VII Rule 10 CPC) and I.A.15025/2015 (for dismissal of plaint) in CS (OS) 2919/2014

I.A.7351/2015 (u/O VII Rule 10 CPC), I.A. 15030/2015 (for dismissal of plaint) and I.A. 25811/2015 (u/Order VIII Rule 10) in CS (OS) 3199/2014

2. A research report titled Bilking India dated 1st August, 2012 (*hereinafter 'Report'*) published by Veritas Investment Research Corporation (*hereinafter 'M/s Veritas Investment'*) is the origin of the present litigation between the parties. The two Plaintiffs are Indiabulls Real Estate Limited and Indiabulls Housing Finance Limited (earlier known as Indiabulls Finance Services Limited). They belong to the Indiabulls Group of Companies and are collectively referred to as '*Indiabulls*'.

3. M/s Veritas Investment is a Canadian company engaged in the publication of research reports. Defendant No.2 – Mr. Neeraj Monga was its executive vice-president and head of research. Defendant No.3 – Mr. Nitin Mangal is a chartered accountant, who was a consultant with Defendant No.1- M/s Veritas Investment, and is the co-author of the Report - Bilking India. For the sake of convenience, Defendant Nos.1 to 3 are together referred to as '*Veritas*', except when specifically mentioned by name.

4. M/s Veritas Investment is engaged in the business of publishing reports in respect of equities, stocks, etc. It published a report dated 1st

August, 2012 titled '*Bilking India*' on 8th August, 2012. The said report was circulated to all of Veritas's clients, in India and abroad. In the said report, it claimed to have made an analysis of various companies of the Indiabulls group. As per Indiabulls, prior to the publication of the Report, some contact was established between Veritas and Indiabulls, wherein a monetary demand was made by Veritas's employees as consideration for not publishing the Report. However, when the demand did not fructify, the Report was released for publication by Veritas. These allegations are denied by Veritas, which also denies the emails relied upon by Indiabulls. This Court, however, is not concerned with the correspondence exchanged between the parties, owing to the limited nature of the present two suits. Immediately upon publication of the report, Indiabulls claimed that its share prices fell sharply in the stock market and two criminal complaints were filed by Indiabulls against Defendant Nos.2 and 3 in Gurgaon and in Mumbai. Mr. Nitin Mangal, Defendant No.3, had to repeatedly seek anticipatory bail before the Punjab and Haryana High Court and the Bombay High Court. He was however arrested and remained in custody for a few days. Thereafter, he was granted regular bail by the Sessions Court, Gurugram. However, the said complaints are still stated to be pending.

5. Simultaneously, with the publication of the Report i.e., on the same day, Indiabulls issued a press release dated 8th August, 2012 in which it made various allegations against Veritas. In view of the allegations made in the said press release, Defendant Nos.1 and 2 – M/s Veritas Investment and Mr. Neeraj Monga, filed a suit bearing No.CV-14-509707 (*hereinafter*, '*Canadian Suit*'), before the Superior Court of Justice at Ontario, Canada (*hereinafter*, '*Canadian Court*'), seeking general and special damages for

libel, conspiracy and economic harm, as also punitive and aggravated damages. The details of the said suit would be discussed a little later.

6. Indiabulls Real Estate Limited then filed the present suit being CS(OS) 2919/2014, seeking an anti-suit injunction in the following terms:

“(a) Permanently restraining the Defendants No. 1 & 2 from continuing the purported proceedings initiated by it against the Plaintiff before the Superior Court of Justice, Ontario in the matter titled as Veritas Investment Research Corporation and Neeraj Monga Vs Indiabulls Real Estate Limited and Indiabulls Housing Finance Limited bearing no. CV-14-509707; (b) Pass an order restraining the Defendants No. 1- 3, from filing any other proceeding (Jointly Or Severally) against the Plaintiff before the Superior Court Of Justice, Ontario and/or any Other Court;”

7. A Ld. Single judge of this Court vide order dated 25th September, 2014, restrained M/s Veritas Investment and Mr. Neeraj Monga from proceeding further with the Canadian suit. All the Defendants, including Mr. Nitin Mangal, were further restrained from initiating any further proceedings against Indiabulls before the Canadian Court. The operative portion of the said order dated 25th September, 2014 is as under:

“I have heard the learned Senior counsel appearing on behalf of the plaintiff and have gone through the contents of the plaint coupled with the documents placed on record. I am of the view that the plaintiff has been able to make out a strong prima facie case for the grant of an ex-parte ad-interim order. The balance of convenience also lies in favour of the plaintiff. Hence, till the next date of hearing, the defendants No.1 & 2 are restrained from proceedings with the suit filed by them against the plaintiff before the Superior Court of Justice at Ontario, bearing No. CV-14-509707 titled as

Veritas Investment Research Corporation and Neeraj Monga vs. Indiabulls Real Estate Limited and Indiabulls Housing Finance Limited and no further proceedings shall be initiated by defendants No.1 to 3 against the plaintiff before the same Court.”

8. A similar suit was, thereafter, filed by Indiabulls Housing Finance Limited being CS (OS) 3199/2014. Following the order passed in CS (OS) 2919/2014, the Defendants in CS(OS) 3199/2014, i.e., Veritas were restrained from proceeding in the Canadian Suit in this suit as well, vide order dated 27th October, 2014.

9. A few days later i.e., on 31st October, 2014, Indiabulls appeared before the Canadian Court and on 27th February, 2015, Indiabulls filed a *Van Breda* motion in the Canadian suit seeking dismissal of the Canadian Suit for want of jurisdiction (*hereinafter, ‘Van Breda motion’*). The said motion is still stated to be pending consideration. Indiabulls has led its evidence in support of the *Van Breda* motion. In the said motion, M/s Veritas Investment, Mr. Neeraj Monga and Mr. Nitin Mangal filed affidavits resisting the motion. On the basis of the contents of the affidavits filed by Mr. Monga and Mr. Mangal, contempt petitions were filed being CCP(O) 39/2015 in CS(OS) 2919/2014 and CCP(O) 51/2015 in CS(OS) 3199/2014 against the Defendants.

10. On 15th April, 2015 notices were issued in the contempt, and the *ex-parte* injunctions, which were granted on 25th September, 2014 and 27th October, 2014 in both the suits, were confirmed.

11. Thereafter, Veritas entered appearance in the present suits, and filed applications for dismissal of the suits and rejection of the complaints. It was submitted by Veritas as recorded in two orders i.e. 26th September, 2016 and

26th May, 2017, that the present two suits are infructuous as Indiabulls has appeared in the Canadian suit and has filed a motion for dismissal of the Canadian suit. Thus, according to Veritas, the anti-suit injunction, as prayed for in the present suits, is not liable to be granted/continued in favour of Indiabulls, due to their active and voluntary participation in the Canadian suit. It is contended by Veritas that the suits are rendered infructuous in light of the same.

12. Indiabulls has since filed a suit seeking damages on the ground of defamation and libel, being suit no. 1474/2015, which is pending before this Court.

13. On the basis of the three affidavits filed by Mr. Anthony Scilipoti, authorised representative of M/s Veritas Investment, Mr. Neeraj Monga and Mr. Nitin Mangal, two further suits were filed by Indiabulls being suit nos.1016/2015 and 1006/2015. Both these suits sought similar reliefs in respect of reliefs of injunction qua publication of the contents of the affidavits filed by Veritas before the Canadian Court, including republication of the same. The injunction sought in CS(OS) 1016/2015 was as under:

“i. Pass a decree of Permanent Injunction restraining the Defendant Nos. 1-5, its associates, sister concerns, agents, officers, representatives, correspondents, employees and/or any other person, entity in general in print or electronic media, via internet, or otherwise, from publishing, republishing, carrying out any reports or articles or telecasts or programs or debates or any discussion or reporting or publicising in any other manner, any other matter of any kind, directly or indirectly pertaining to the affidavits filed by the Defendants No. 1 to 3 in February, 2015, before the

Superior Court of Justice at Ontario or any matter incidental thereto, except the publication or news of the exact judicial order;

ii. Pass a decree restraining the Defendant Nos. 1-5 from disseminating the affidavits filed by the Defendants No. 1 to 3 in any form whatsoever;”

14. These two suits were disposed of on 4th February, 2019 on the basis of undertakings given by Veritas that it does not intend to publish the contents of the said affidavits, except for relying upon their contents for the purpose of judicial proceedings in Canada.

15. Thus, as on date, the following proceedings are pending between Indiabulls and Veritas:

- Defamation suit No. CV-14-509707 filed by M/s Veritas Investment and Mr. Neeraj Monga before the Superior Court of Justice at Ontario, Canada for damages.
- Suit Nos.2919/2014 and 3199/2014 seeking anti-suit injunction qua the Canadian Suit, filed in the Delhi High Court.
- Suit No. 1474/2015 for damages by Indiabulls against Veritas, including injunction based on defamation in Delhi High Court.

16. The suit for defamation, filed before this Court, being CS (OS) 1474/2015, is pending adjudication. The present order deals only with the two suits seeking anti-suit injunction, the contempt petitions filed therein and all the other applications therein.

17. The details of the applications pending in each of the suits are set out below:

CS(OS) 2919/2014	
Application No.	Particular(s)
CCP(O) 39/2015	Contempt petition filed against Veritas for filing affidavits before the Canadian Court in violation of order dated 25 th September, 2014, as confirmed on 15 th April, 2015
I.A. 18666/2014	Under Order XXXIX Rules 1 and 2 CPC filed by Indiabulls
I.A. 766/2015	Under Section 20 CPC read with Order VII Rule 10 CPC, seeking return of plaint.
I.A. 7457/2015	Exemption from filing certified copies with the contempt petition
I.A. 15025/2015	Under Order VII Rule 11 CPC seeking dismissal of the suit
I.A. 17388/2015	Seeking to bring on record additional affidavit of Defendant No.3 in support of I.A. No.766/2015
I.A.21429/2015	Under Order XXXIX Rule 4 CPC, for setting aside the order of injunction dated 15 th April, 2015.

CS(OS) 3199/2014	
Application No.	Particular(s)
CCP(O) 51/2015	Contempt petition filed against Veritas for filing affidavits before the Canadian Court in violation of order dated 27 th October, 2014, as confirmed on 15 th April, 2015
I.A. 20503/2014	Under Order XXXIX Rules 1 and 2 CPC filed by

	Indiabulls
I.A. 7351/2015	Under Section 20 CPC read with Order VII Rule 10 CPC, seeking return of plaint.
I.A. 15030/2015	Under Order VII Rule 11 CPC seeking dismissal of the suit
I.A. 17390/2015	Seeking to bring on record additional affidavit of Defendant No.3 in support of I.A. No.7351/2015
I.A. 25811/2015	Under Order VIII Rule 10 closing the right of Defendant No.1 and 2 to file written statement.

18. All the I.As. were heard from time to time. The present order disposes of all the above applications.

Stand of Indiabulls

19. Indiabulls has sought anti-suit injunctions in these two suits, seeking to restrain Veritas from proceeding with the Canadian suit, or any other proceedings before any other Court. The stand of Indiabulls is that the Report was published and was directed against Indiabulls. The registered office of Indiabulls Real Estate Ltd. is in Delhi. The Report is intricately connected with India, inasmuch as majority of investors of Indiabulls are based out of India. The Report was published in India, and was communicated to various clients of Veritas. The filing of the Canadian suit is a counterblast to the criminal complaints filed by Indiabulls against Veritas. The filing of the Canadian suit is also an attempt to arm twist Indiabulls, and not allow adjudication of the criminal complaints pending in India. The pending criminal proceedings against Veritas, and the Canadian suit are in substance based on the same cause of action. Thus, Indiabulls

pleads that decisions of two different Courts, on the same substance might lead to conflicting decisions. Relevant paras of the plaint in CS(OS) 2919/2014 read as under:

“33. It may be relevant to state here that the basis of adjudication in both the proceedings (in India and Ontario) would be the factum of the Report being either true or false and its consequent effect. Thus, the substance as well as the cause of action of the Suit filed by the Defendants No. 1 & 2 before the Superior Courts of Justice at Ontario is already pending before the Courts in India, and the decision of two different courts on the same substance/cause of action might lead to conflicting discussions, much against the principles of equity, fairplay and justice.

34. The institution of the Suit (sic. Canadian suit) is an attempt to impede the process of investigation in the FIR since the Defendants have refused to cooperate with the police authorities in India which fact has also been recorded by the Courts in India. By invoking the jurisdiction of the Courts at Ontario by way of the Suit, it appears that the Defendants No. 1 & 2 have intentionally and maliciously sought to oust the jurisdiction of the Indian Courts so as to obstruct investigation in the FIR already pending in India since the year 2012. The conduct of the Defendants No. 1 & 2 in initiating the Suit in Ontario is highhanded, oppressive and amounts to obstructing the course of administration of justice.”

20. It is also claimed that the filing of the Canadian suit is oppressive and vexatious, and with an intention to harass Indiabulls, as the Canadian Court is not a natural forum for Indiabulls, since Indiabulls has no office or base in Canada. The relevant paras of the plaint in CS(OS) 2919/2014 read as under:

“35. Pertinently, the Suit at Ontario is not only oppressive and the same has been initiated with an

intent to harass the Plaintiff inasmuch as the foreign court is not the natural forum for the Plaintiff as they have no base, representation, or office in Ontario, Canada. The Plaintiff, therefore, cannot efficiently defend itself in such an alien territory and mindful of this, the Defendants No. 1 & 2 have deliberately initiated the Suit there to deprive the Plaintiff of its meaningful right to be heard and defended.

36. It is most respectfully submitted that the very initiation of the Suit is violative of the principles of natural justice and fair play. Moreover, the costs to be incurred for the travel of witnesses (who are based in India) and seeking legal reference before a foreign Court would put undue pressure on the pockets of the Plaintiff. By seeking to invoke the jurisdiction of a foreign Court, the Defendants No. 1 & 2 are trying to take advantage of their financial strength and bargaining power to arm twist and subjugate an Indian party in foreign lands.”

21. Thus, it is claimed that the evidence and the witnesses involved in the dispute between the parties, as also the subject matter, are located in India. The real controversy between the parties has arisen in India. Since the Canadian Court has not declined to exercise jurisdiction, Indiabulls ought not to be made to defend an oppressive and vexatious litigation in the Canadian Court.

Stand of Veritas

22. On behalf of Veritas, various objections have been raised. First, that the requisite pre-conditions for grant of anti-suit injunction are not made out in the present suits. It is further claimed that after the grant of the *ex-parte* injunctions in the present suits, Indiabulls has filed a ‘*Van Breda motion*’ seeking dismissal of the Canadian Suit before the Canadian Court and hence, no cause of action survives in the present suits. It is further claimed

that the so-called emails, which form the basis for the allegation of monetary demands by Veritas, are completely concocted and fabricated, and hence the emails, though relied upon in the plaint, were not filed on record. Veritas, further claimed that Indiabulls indulged in enormous harassment of Veritas and its employees by lodging criminal complaints, both in Mumbai and Gurgaon. Mr. Nitin Mangal- Defendant No.3 was granted anticipatory bail by the Bombay High Court, but this fact was not disclosed in CS(OS) 2919/2014. It is claimed that the emails exchanged were doctored. Mr. Nitin Mangal was taken into custody on 25th November, 2014, and had to remain in jail for 12 days before he was granted bail by the Ld. Sessions Court in Gurgaon. Since Indiabulls has already voluntarily joined the proceedings in the Canadian suit, the present suits are liable to be dismissed.

23. It is further pleaded that no cause of action has arisen within the jurisdiction of this Court. Thus, invocation of jurisdiction by this Court is harassment and torture to Veritas. Mr. Nitin Mangal is a resident of Indore, Madhya Pradesh and is not amenable to the personal jurisdiction of this Court. Defendant Nos.1 and 2 are based in Canada and are not amenable to the personal jurisdiction of this Court. Veritas also seeks vacation of injunction granted by this Court on the ground that Indiabulls has already led evidence before the Canadian Court and the two witnesses of Indiabulls have also been cross examined on 11th August, 2015 and 12th August, 2015, in the *Van Breda* motion filed by them in the Canadian Court. In fact, notice has been issued to Mr. Nitin Mangal to appear in the Canadian suit for cross-examination on the said motion. However, he could not appear and depose in view of the orders passed in the present suits and the filing of the contempt petitions. The present suits are, thus, an abuse of process as they

are being used to prevent Veritas's witnesses from deposing in the *Van Breda* motion and are preventing the Canadian Court from deciding the said motion. It is prayed that the suits are liable to be dismissed as not maintainable.

Submissions on behalf of Indiabulls

24. On behalf of Indiabulls, Mr. Abhinav Vasisht, Ld. Senior Advocate has submitted that the disputes between the parties have the closest connection with India and especially New Delhi. The filing of the defamation suit in Canada was nothing but a counter blast to the criminal proceedings filed by Indiabulls in India. The motion filed by Indiabulls, seeking dismissal of the Canadian suit for lack of jurisdiction, is a without-prejudice motion. In fact, Defendant No.3, Mr. Nitin Mangal is guilty of contempt of court, as despite the order of injunction operating against him, he filed an affidavit of evidence in the Canadian suit. Veritas is seeking 10 million dollars for damages for defamation and libel against Indiabulls and 1 million dollars as aggravated damages in the Canadian suit. The dispute has no connection with Canada or Ontario. The Canadian Court has itself, in its order dated 2nd October, 2015, while dismissing the application of Veritas seeking an anti-suit injunction against the suit for defamation filed by Indiabulls, held that India is the logical forum and Indiabulls has no operations in Canada. The anti-suit injunction application filed by Veritas seeking stay of the defamation suit before the Delhi High Court, was dismissed by the Canadian Court. Thus, Indiabulls has not submitted to the jurisdiction of the Canadian Courts.

25. Further, though a closure report was filed by the Mumbai police in 2015 in respect of the criminal complaints made against the Defendants,

Indiabulls has protested against the same. Two clients of Veritas namely IKRA and World Bank are based in Delhi. Both of them received the Veritas report. Indiabulls Real Estate Ltd. has its registered office in Delhi. The details of the documents from the Registrar of Companies in respect of Indiabulls group companies were received in Delhi. According to Mr. Vasisht, Indian Courts are the proper forum to adjudicate as to whether there is any defamation. In fact, Indiabulls was served through its office in London, as it has no presence in Canada. The Canadian Court lacks natural jurisdiction and is a *forum non conveniens* for Indiabulls. The Canadian suit is an oppressive and vexatious suit. He further submitted that an anti-suit injunction is nothing but another form of injunction and if any part of the cause of action arises in this Court, these suits are liable to be entertained.

26. The Ld. Senior Advocate relied upon the following judgments:

- ***(India TV) Independent News Service Pvt. Ltd. v. India Broadcast Live LLC and Ors. 2007 (35) PTC 177 (Del) (hereinafter, 'India TV');***
- ***Essel Sports Pvt. Ltd. v. Board of Control for Cricket in India ILR (2011) V Delhi 585 (hereinafter, 'Essel Sports');***
- ***Union of India v. Vodafone Group PLC United Kingdom & Anr. [CS(OS) 383/2017 decided on 7th May, 2018];***
- ***Nirmaljit Singh Narula v. Indijobs at Hubpages.Com & Ors (2012) 190 DLT 51;***
- ***SEBI v. Pan Asia Advisors Ltd. and Anr. (2015) 14 SCC 71;***
- ***Modi Entertainment Network v. W.S.G. Cricket PTE Ltd. (2003) 4 SCC 341 (hereinafter, 'Modi Entertainment');***

- ***Lalji Raja and Sons v. Firm Hansraj Nathuram 1971 (1) SCC 721*** (hereinafter, 'Lalji Raja');
- ***R. Vishwanathan and Ors. V. Rukn-ul-Mulk Syed Abdul Wajid AIR 1963 SC 1;***
- ***Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy & Anr., [CS (OS) 894/2008 decided on 23rd November, 2009]*** (hereinafter, 'Banyan Tree');
- ***Tamilnad Mercantile Bank Share Holders Welfare Association v. S.C. Sekar and Ors. (2009) 2 SCC 784;***
- ***Spiliada Maritime Corporation v. Cansulex Ltd., [1987] 1 A.C.460,*** (hereinafter 'Spiliada Maritime');
- ***Masri v. Consolidated Contractors International (UK) Ltd. & Ors., [2008] EWCA Civ 625*** (hereinafter, 'Masri');
- ***Iain Calder and John South v. Shirley Jones 465 U.S. 783 (1984);***
- ***Excaliber Ventures LLC v. Texas Keystone Inc. and Ors. [2011] EWHC 1624 (Comm).***

Submissions on behalf of Veritas

27. On the other hand, Mr. Amit Dube, Ld. counsel appearing for Veritas, has submitted that all suits filed by Indiabulls in Delhi are an abuse of process. Veritas is an independent equity research organisation. Indiabulls has caused enormous harassment to Veritas and its employees. It has made reckless allegations against Veritas. It filed criminal complaints against its employees/consultants, which led to the arrest of Mr. Nitin Mangal. On 5th August, 2014 the Canadian suit was filed by Veritas, owing to various illegal acts on behalf of Indiabulls. After being served with the notice of the

Canadian Suit, Indiabulls filed the present two suits and obtained *ex-parte* injunctions. Within a few days after the *ex-parte* injunctions were granted on 25th September, 2014 and 27th October, 2014, Indiabulls appeared before the Canadian Court on 31st October, 2014. Since Indiabulls submitted to the jurisdiction and joined the proceedings in the Canadian Suit, the present suits ought not to be allowed to continue. The Canadian suit is not oppressive and vexatious. In fact, the conduct of Indiabulls is oppressive and vexatious, as it filed criminal complaints against Veritas, so much so that one consultant was arrested and was kept in jail for 12 days. He did not get a job for several months. The officers of Veritas are unable to travel to India and defend themselves in the proceedings filed by Indiabulls in view of the criminal complaints. Veritas is literally being prevented from availing its legal remedies as its officers are unable to travel to India and in the Canadian suit, its officers are not being allowed to give evidence. Reckless allegations were made against Veritas. Ld. Counsel for the Defendant, placed heavy reliance on the complaints to submit that the cause of action for the anti-suit injunction in India, as pleaded in the complaints, is the filing of the Canadian suit in which Indiabulls has joined the proceedings. It has led expert testimony. Under sections 15, 16, 17 & 18 of CPC personal jurisdiction over the property is needed. To determine the cause of action, only the complaint is to be seen in the Canadian suit and in the present two suits.

28. Ld. Counsel for the Defendants relies on the following judgments in support of his submissions:

- ***Modi Entertainment (supra);***
- ***Tops Security Ltd. & Ors. v. Punjab National Bank (International) Ltd and Ors. [CS (COMM) 517/2017 decided on 21st March, 2018]***

(hereinafter, 'Tops Security');

- ***Quantum Securities Pvt. Ltd. v. NDTV (2015) 10 SCC 602;***
- ***Ponty Singh v. Anu Singh Bhatia [RFA (OS) 12/2014 decided on 12th March, 2014] (hereinafter, 'Ponty Singh DB');***
- ***Ponty Singh v. Anu Singh Bhatia [CS(OS) 820/2012 decided on 6th January, 2014] (hereinafter, 'Ponty Singh SJ');***
- ***Shipping Corporation of India Ltd. v. Machado Brothers and Ors. (2004) 11 SCC 168;***
- ***Amaprop Ltd. v. Indiabulls Financial Services Ltd. and Anr. [11-1291-cv decided on 25th May, 2012];***
- ***Nau Nihal Singh Rana v. Sunil Kumar (2013) 202 DLT 465;***
- ***Dalip Singh v. State of Uttar Pradesh & Ors. (2010) 2 SCC 114;***
- ***A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Ors. (2012) 6 SCC 430;***
- ***Lincoln v. Daniels [1961] 3 All ER 740;***

Proceedings in the present suit:

29. After the initial injunctions were granted on 25th September, 2014 and 27th October, 2014 the same were confirmed on 15th April, 2015. The Defendants thereafter entered appearance and sought rejection of the plaint for lack of jurisdiction, and thereafter moved applications for vacation of injunction and sought rejection of plaint under Order VII Rule 11 CPC.

30. The Plaintiff also filed contempt petitions in both the suits. The applications under Order VI Rule 17 amending the pecuniary limit of the suit to above Rs.2 crores, were allowed vide order dated 11th May, 2016. On 22nd September, 2016 and 26th May, 2016, the Defendants argued before the

Court that the present two suits have become infructuous in view of the participation of Indiabulls in the Canadian proceedings. Thereafter, on 10th October, 2018, it was submitted on behalf of Indiabulls that it has no objection if Veritas' witnesses are permitted to depose in the Canadian suit, insofar as the *Van Breda* motion is concerned. Accordingly, the following order was passed on 10th October, 2018, in the present suits:

“1. The present matter was partly heard on the last two occasions and was listed for further submissions today.

2. Today, Ld. Senior counsel appearing for the Plaintiff submits that they have no objection if the Defendant No.3 or other witnesses on behalf of the defendants adduce evidence in the Canadian court proceedings limited to the motion in respect of lack of jurisdiction.

3. Vide order dated 25th September, 2014 this Court had restrained the Defendant Nos.1 & 2 from proceeding with the suit filed by them against the Plaintiff before the Superior Court of Justice at Ontario, Canada. Subsequently, vide order dated 15th April, 2015, the said order was confirmed.

4. It is not disputed that the Plaintiff herein, after filing of the present suit, filed a motion before the Superior Court of Justice, Ontario, Canada seeking dismissal of the suit on the ground of lack of jurisdiction. Further, witnesses on behalf of the Plaintiff have already deposed in the said suit supporting the said motion. Some witnesses of the Defendant have also deposed. Witness statements including of the Defendant no.3 herein, were filed in the said motion. At that stage, the Plaintiff filed contempt petition being CCP No.39/2015. The Defendant No.3, who is an Indian citizen, did not however depose therein, due to the pendency of the present suit and the contempt petition. Thus, the motion filed by the Plaintiffs herein continues to be pending, as per the Counsel for the Defendants,

resulting in a stalemate.

5. The applications filed by the Defendants seeking dismissal of the suit and rejection of the plaint are partly heard. Further submissions would be heard on the next date.

6. However, while decision on the said applications is to be still passed by this Court, after hearing of the parties. In the meantime, the earlier injunction orders are modified. The Defendants including the Defendant No.3 are permitted to adduce evidence and give their testimony before the Superior Court of Justice Ontario, Canada, in the motion filed by the Plaintiff seeking dismissal of the suit due to lack of jurisdiction. It is clarified that, pending further orders to be passed in the applications filed by the Defendants, there is no impediment in the Defendants fully defending their position in the motion in respect of the motion of lack of jurisdiction including filing pleadings, witness statements and deposing their witnesses, before the Superior Court of Justice Ontario, Canada.

7. The Defendants have received the original affidavits of undertaking from their clients and they wish to place the same on record. Let the same be filed within three days with advance copy to the Plaintiffs.

8. List for remaining arguments on 29th October, 2018.”

31. From the above order, it is clear that with the consent of parties, witnesses of Veritas, including Mr. Nitin Mangal, were permitted to depose in the Canadian suit in respect of the *Van Breda* motion. Thereafter, in the two subsequent suits being CS (OS) 1006/2015 and 1016/2015, Veritas had submitted undertakings, pursuant to which the said two suits were disposed of on 4th February, 2019. The said order reads as under:

“1. The Plaintiff, Indiabulls Real Estate Limited and Indiabulls Housing Finance Limited, (hereinafter, ‘Plaintiffs’) are engaged in the business of real estate

development and housing finance. The Defendant No.1, M/s Veritas Investment Research Corporation and Ors (hereinafter, 'Defendant No.1') is a company incorporated in Canada, and is engaged in the business of equity research. Defendant No.2, Mr. Neeraj Monga, used to be the Executive Vice-President of Defendant No.1 company, and Defendant No.3, Mr. Nitin Mangal, is an accountant who authored the report titled 'Bilking India' dated 1st August, 2014, along with Defendant No.1 and 2.

2. The report 'Bilking India' was published by the Defendants on 8th August, 2012, via Bloomberg and the website of Defendant No.1. It was published by the India Research Team of Defendant No.1. On the day when the report was published, the Plaintiff moved an FIR under Section 499 of the Indian Penal Code, 1860. Plaintiff also gave out a Press Release against the report on its website, <http://www.indiabulls.com/pdf/Announcement.pdf>, as well as the Delhi edition of Business Standard and Hindustan Times, stating that the averments made in the 'Bilking Report' were factually incorrect. Thereafter, in the month of July/August, 2014, Defendant Nos.1 and 2 filed a case for damages in the Superior Court of Justice in Ontario, Canada, assailing the press release published by the Plaintiff.

3. The Plaintiffs have filed CS(OS) 2919/2014 and CS(OS) 3199/2014 seeking anti-suit injunctions restraining the Defendants from proceeding with the suits in Ontario. In the said proceedings in Ontario, the Defendants filed affidavits which according to the Plaintiffs contained various averments against the Plaintiff and its businesses.

4. CS(OS) 1006/2015 has been filed by Indiabulls Real Estate Ltd seeking the following reliefs.

“(a) Pass a decree of Permanent Injunction restraining the Defendants, its associates, sister concerns, agents, officers, representatives,

correspondents, employees and/or any other person, entity, in print or electronic media, via internet, or otherwise, from publishing, re-publishing, carrying out any reports or articles or telecasts or programs or debates or any discussion or reporting or publicising in any other manner, any other matter of any kind, directly or indirectly pertaining to the affidavits filed by the Defendants No. 3 to 5 in February, 2015, before the Superior Court of Justice at Ontario or any matter incidental thereto, except the publication or news of the exact judicial order;

(b) Pass a decree restraining the Defendants from disseminating the affidavits filed by the Defendants No. 3 to 5 in any form whatsoever;

(c) Pass such other, further orders, directions and decree, as this Hon'ble Court may deem fit in the facts and circumstances of this case and in the interest of justice.”

5. In CS(OS) 1016/2015, the Plaintiff therein, seeks the following reliefs:

“i. Pass a decree of Permanent Injunction restraining the Defendant Nos.1-5, its associates, sister concerns, agents, officers, representatives, correspondents, employees and/or any other person, entity in general in print or electronic media, via internet, otherwise, from publishing, re-publishing, carrying out any reports or articles or telecasts or programs or debates or any discussion or reporting or publicising in any other manner, any other matter of any kind, directly or indirectly pertaining to the affidavits filed by the Defendants No.1 to 3 in February, 2015, before the Superior Court of Justice at Ontario or any other matter incidental thereto, except the publication of news of the exact judicial

order;

ii. Pass a decree restraining the Defendant Nos. 1-5 from disseminating the affidavits filed by the Defendants No.1 to 3 in any form whatsoever;

iii. Pass any such further order or direction as this Hon'ble Court may deem necessary in the interests of justice and equity."

6. The Defendants No.1 and 2 vide affidavit dated 2nd October, 2018 have given undertakings before this Court in the following terms:

"1. That, the Defendants No. 1 and 2 i.e. Veritas Investment Research Corporation and Neeraj Monga had instituted a suit in Canada before the Superior Court of Ontario bearing number CV-14-50907 against the Plaintiff Indiabulls Real Estate Limited in CS (OS) 1006 of 2015 and the Plaintiff Indiabulls Housing Finance Limited in CS (OS) 1006 of 2015 pending before this Hon'ble Court.

2. That, in response to the Notice of Motion moved in the aforesaid Canadian suit by the aforesaid Plaintiffs before this court who are Defendants in the abovementioned Canadian suit, Mr. Anthony Scilipoti, the CEO of the Veritas Investment Research Corporation, Mr. Neeraj Monga and Mr. Nitin Mangal, who was co-author of report Bilking India, had filed three separate affidavits. These affidavits of Mr. Scilipoti, who is President and CEO of Veritas Investment Research Corporation, dated March, 2015, of Mr. Neeraj Monga dated April, 2015 and of Mr. Nitin Mangal dated February, 2015 are part of the record of this Hon'ble Court. These affidavits that were filed as against the Notice of Motion in the Canadian suit moved by the Defendants

therein seeking dismissal of the Canadian suit were only meant for use in court proceedings pending before the Superior Court of Ontario bearing number CV-14-50907 as evidence of the deponents and/or any proceeding or proceedings incidental and/or to the Canadian suit. The Defendants i.e. Veritas Investment Research Corporation, Mr. Neeraj Monga and Mr. Nitin Mangal never had any intention of publishing these affidavits elsewhere except for the purpose of relying on them in court proceedings pending before the Superior Court of Ontario bearing number CV-14-50907 as evidence of the deponents and/or any proceeding or proceedings incidental and/or related to the Canadian suit. The Defendants categorically submit that they have never published these affidavits, directed or requested any third party to publish these affidavits or their content. The Defendants submit that, to the extent that these affidavits have been filed, or will be filed, in the Canadian proceedings, they are, or become, part of a court file which is available and accessible to all members of the public, including parties unrelated to and unaffiliated with the Defendants.

3. That, the Defendants, without formally attorning to the jurisdiction of this Hon'ble Court, and without prejudice to the defence challenging this Hon'ble Court's jurisdiction advanced by the Defendants before this Hon'ble Court, undertake not to use the aforesaid three affidavits, except in court proceedings pending before the Superior Court of Ontario bearing number CV-14-50907 and in any proceeding or proceedings incidental and/or related to then Canadian suit, within or outside of Canada, or as otherwise may be

ordered by a court in which any such proceedings have been instituted. The Defendants also undertake that they shall use these affidavits, if necessary, in any judicial or other proceedings related to the criminal cases filed against them by the Indiabulls Real Estate Limited bearing FIR No. 99/2012 dated 08.08.2012 registered with PS Udyog Vihar, Gurugram, Haryana and CR No. 20/2012 dated 09.08.2012 registered with PS Cyber, Mumbai. The Defendants also undertake not to republish, nor direct or request any third party to publish these affidavits anywhere else apart from the proceedings mentioned above, provided, however, that, due to the fact that these affidavits are, or will become, part of a publicly available and accessible court file in Ontario, any third-party publication of these affidavits, or any of the content of these affidavits, which was not directed or requested by the Defendants, shall constitute, or be deemed to constitute, a breach of this undertaking. For the avoidance of doubt, this undertaking provided by the Defendants does not encompass the Defendants preventing, or taking any active steps to prevent any such third-party publication of the three affidavits, or their content, which arises from, or is incidental to, these affidavits being, or becoming, part of a court file which is publicly available and accessible in Canada.”

7. The undertaking given by Defendant No.3 dated 8th October, 2018, is identical to the undertakings given by Defendant Nos.1 and 2, except the fact that Defendant No.3 acknowledges that prior to filing of his affidavit, he was interviewed by various media organisations in relation to his arrest at Gurugram in relation to the report ‘Bilking India’. Thus, he states, Wall Street

Journal had carried news reports in that regard. The relevant portion of the affidavit given by Defendant No.3 is as under:

“The Defendant No. 3 prior to filing of his affidavit was interviewed by many media organisations since his arrest over police case at Gurugram over research report 'Bilking India' and some organisations including the Wall Street Journal had carried news reports in that regard.”

The rest of the affidavit of Defendant no.3 is not being reproduced for the sake of brevity, being identical to the undertakings given by Defendant Nos. 1 and 2.

8. From a perusal of the affidavits filed before this Court, it is clear that the Defendants have undertaken to this Court that the affidavits filed by them in response to the notice of motion filed by the Plaintiff in the Superior Court Justice of Ontario were meant only for use for Court proceedings as evidence of the said deponents, and that they had no intention of publishing these affidavits anywhere else, except for the purpose of relying upon them in Court proceedings. A categorical statement has also been made that the contents of the said affidavits have never been published or got published by the deponents. The said deponents have also undertaken not to use the said affidavits except in Court proceedings pending in the Superior Court of Justice at Ontario, Canada or in other related proceedings within and outside Canada as also in legal proceedings filed by the Plaintiff against the said Defendants. The Defendants have clarified that if the records of these proceedings become publicly available, due to any reason which is not attributable to the Defendants, the same ought not to be construed as a breach of the undertaking.

9. The Court has perused the undertakings. The said undertakings satisfy the prayers in the plaint which seek a permanent injunction. Accordingly, accepting

the undertakings given by the Defendants, a decree of permanent injunction is granted restraining the Defendants, their associates or anyone acting on their behalf from publishing and re-publishing or getting published any reports or articles or any program in the print and electronic media, based on the contents of the affidavits filed by the Defendants before the Superior Court Justice of Ontario, except publication as part of the Court orders or official records of the Court or use in legal proceedings, in terms of the affidavits of undertaking given before this Court.

10. The undertakings of the Defendants are accepted. Both suits are decreed in terms of paragraph 7 above. All pending applications also stand disposed of.”

32. Thus, in the present two proceedings, being CS(OS) 2919/2014 & CS(OS) 3199/2014, the only question is as to whether the suits praying for anti-suit injunction qua the Canadian proceedings are maintainable in view of the settled legal position and in view of the subsequent events that have transpired. This question is to be decided on the pleadings in the Canadian suit and the settled principles of law on the grant of anti-suit injunctions. None of the issues on merits of the dispute are to be adjudicated in these two suits. The substantive suit for damages by Indiabulls is pending adjudication in this Court.

Legal Position on Anti-Suit Injunctions

33. The legal position on anti-suit injunctions is well-settled in India, through various precedents. In ***Modi Entertainment (supra)***, the Supreme Court dealt with anti-suit injunctions in general and anti-suit injunctions arising out of contractual relationships. Since the present cases do not involve a contractual relationship, the principles as laid down in ***Modi***

Entertainment (supra), relevant to the present proceedings, are set out below:

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

.....

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.

.....

(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.”

34. Thus, as per the judgment in **Modi Entertainment (supra)**, for grant of an anti-suit injunction, the following conditions have to be fulfilled:

- a) That the Defendant should be amenable to the personal jurisdiction of the Court;
- b) That the Court has to examine whether the proceedings, against which injunction is sought, are vexatious and oppressive.
- c) If the forum, where the proceedings are pending, are *forum non conveniens* for the party seeking anti-suit injunction.
- d) If the grant of injunction would meet the ends of justice.
- e) The principle of comity of Courts has to be borne in mind.
- f) A person seeking the injunction has the burden of proving the same.
- g) Above all, the power of anti-suit injunctions is to be exercised sparingly.

35. In **Essel Sports (supra)** a Ld. Division Bench of this Court, following the judgment in **Modi Entertainment (supra)**, granted an injunction against the proceedings pending in the UK on the ground that “*the English action substantially encompasses allegations that are also subject matter of Indian*

Suit which must properly be tried by Indian Court only.”¹

36. Further, the Division Bench in ***Essel Sports (supra)*** observed as under:

“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.”

37. The Court, therefore, granted an injunction after arriving at a conclusion that the issues raised in the UK action overlapped with the earlier pending suit in Delhi High Court and the proceedings in UK were vexatious and oppressive.

38. In ***Ponty Singh DB (supra)*** in a matrimonial dispute between husband and wife, where an anti-suit injunction was sought by the husband against the wife from initiating proceedings in Singapore, a Ld. Single Judge of this Court had dismissed the suit. In appeal, the Ld. Division Bench again considered ***Modi Entertainment (supra)*** and observed that the husband had appeared before the Court in Singapore and submitted to the jurisdiction of the said Court. Further, the principle of *forum non conveniens* would not apply as the husband had submitted to the jurisdiction of the Court in Singapore. Relevant paragraphs are set out below:

“13. The learned Single Judge has correctly opined that having submitted to the jurisdiction of the Court at

¹ *Essel Sports Pvt. Ltd. v. Board of Control for Cricket in India*, ILR (2011) V Delhi 585, para 47
CS (OS) 2919/2014 & 3199/2014

Singapore the appellant must await decision of his application filed in the Court of Singapore.

.....

15. Since the appellant has not questioned the jurisdiction of the Courts at Singapore on any plea of domicile, we refrain from going in the issue. We reiterate. Appellant has invoked the principle of Forum non-convenience. He has submitted to the jurisdiction of the Court at Singapore and has pleaded that divorce proceedings initiated by his wife should be stayed on the principle of Forum non-convenience. As per Rules of the Court in Singapore, having submitted to the jurisdiction of the Court at Singapore, the appellant has no option but to litigate on the plea of Forum convenience at Singapore.”

39. In fact, a perusal of the judgment of the Ld. Single Judge in ***Ponty Singh SJ (supra)***, which led to the appeal, shows that the husband had moved the Singapore Court for vacation of the Mareva injunction, which was granted by the said Court. Upon the filing of the said application by the husband, the Ld. Single Judge had held that the suit seeking anti-suit injunction here, had become infructuous. The observations of the Ld. Single Judge are apt and set out hereinbelow:

“16. After giving my thoughtful consideration to the entire submissions made from both the sides I have come to the conclusion that not only the plaintiff is not entitled to any interim relief but even his suit itself is liable to be dismissed as being infructuous. As noticed already, when the suit was filed the plaintiff had claimed only the relief that the defendant should be restrained from initiating any legal proceedings against him in Singapore or any other foreign country for the dissolution of their marriage. However, after the institution of the suit the plaintiff claimed to have come to know that the defendant had already initiated

proceedings against him in a Singapore Court for the dissolution of their marriage and also for maintenance and the Singapore Court had also issued a Mareva injunction freezing all his bank accounts. Though, in the plaint the plaintiff had pleaded that in case any legal proceedings are instituted by the defendant against him he would seek amendment in the plaint and claim appropriate relief in respect of those proceedings but the plaintiff did not seek any amendment of the plaint. Undisputedly, after having come to know about the initiation of divorce proceedings in Singapore by the defendant he had approached that Court for vacation of the Mareva injunction as also for stay of the divorce proceedings by taking shelter under the principle of forum non-conveniens. That step taken by the plaintiff shows that he was no more interested in getting relief from this Court in respect of the proceedings initiated by his wife in Singapore. It was rightly contended by the learned senior counsel for the defendant that after having approached the Singapore Court before the filing of the second stay application in the present suit he should now await the decision of the Singapore Court on his prayer for stay of those proceedings on the principle of forum non-conveniens. The plaintiff in these circumstances has disentitled himself to get any relief in the present suit in respect of the proceedings initiated against him by his wife in Singapore Court. This suit is certainly now an infructuous suit and considering the fact that the plaintiff himself has chosen not to seek even amendment in the plaint for claiming the relief of injunction against the defendant restraining her from continuing with the proceedings in the Singapore Court the suit cannot be continued by this Court even in view of the provisions of Order VII Rule 7 CPC relied upon by the learned senior counsel for the plaintiff.

17. I am also of the view that learned senior counsel

for the defendant was right in placing reliance on a judgment of the Hon'ble Supreme Court in "Shipping Corporation of India Ltd. Vs. Machado Brothers and Others" (2004) 11 SCC 168 wherein the Supreme Court held that Courts should not continue to deal with infructuous litigation.

18. I, therefore, dismiss the suit itself as having become infructuous and the two stay applications also stand dismissed."

40. In ***Tops Security Ltd. (supra)*** after considering the judgment in ***Modi Entertainment (supra)*** this Court, held that the Defendant company, which was based in UK, is not amenable to the personal jurisdiction of this Court, though it was a subsidiary of an Indian bank. On that ground, the anti-suit injunction was denied and the suit was dismissed. Paragraph 27 of the said judgment reads as under:

"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.”

41. The Plaintiff has placed heavy reliance on the judgment of this Court in *India TV (supra)* on the issue of personal jurisdiction. In the said case, the Court laid down the following tests to determine as to whether jurisdiction can be exercised by a Court over a foreign entity. The observations of the Court are as under:

“45. In order for the grant of an anti-suit injunction, one of the conditions is the amenability of the defendant to the personal jurisdiction of the court. The position in the United States, in this behalf, as enunciated in the judgments referred to by the learned Counsels for the parties, is to inquire firstly, whether jurisdiction can be exercised under the 'long arm' statute of the state and secondly, whether the finding of jurisdiction satisfies the constitutional requirements of due process. American Courts basically apply a three part test to determine whether specific personal jurisdiction can be exercised over non-resident defendants. These include an act or transaction within the forum state by which the defendant purposefully avails himself of the privilege of conducting activities within the forum; claim/cause of action arising out of the defendant's forum related activities and whether the acts of the defendant or its consequences have a substantial enough connection with the forum to make the exercise of jurisdiction over the defendant reasonable [Cybersell Inc. case (supra); Panavision International LP case (supra)]. Besides, whether the defendant's conduct had an effect in the forum state (an effects test) would also be seen [Panavision International LP case (supra)].

46. As regards the exercise of personal jurisdiction in cases involving Internet activities, the position appears to be that mere 'passive' posting of a website does not give jurisdiction to the court within whose jurisdiction,

the complainant company is present. Thus, personal jurisdiction cannot be exercised over non-residents merely because their website is accessible within the jurisdiction of the court. There has to be something more to indicate purposeful direction of activity to the forum state in a substantial way. In Cybersell Inc. case (supra) limited interactivity of the website restricted to received browser's name and expression of interest but not signing up for the services provided was not considered to be sufficient for the exercise of jurisdiction.

47. Insofar as the position in this country is concerned, there is no 'long arm' statute as such which deals with jurisdiction as regards non-resident defendants. Thus, it would have to be seen whether the defendant's activities have a sufficient connection with the forum state (India); whether the cause of action arises out of the defendant's activities within the forum and whether the exercise of jurisdiction would be reasonable.

.....

50. The plaintiff's channel being primarily an Indian news channel intended for Indian audiences, any damage alleged to have been caused or alleged to be likely to arise to the goodwill, reputation etc of the plaintiff would be in India. Further, the alleged damage that may have arisen or may be likely to arise to the plaintiff would be as a consequence of the fact that the impugned website is accessible in India and the services provided can be availed of in India.

51. The result of the aforesaid is that the defendant is carrying on activities within the jurisdiction of this court; has a sufficient contacts with the jurisdiction of the court and the claim of the plaintiff has arisen as a consequence of the activities of defendant No. 1 within the jurisdiction of this court. This court can thus exercise personal jurisdiction over the defendants.”

42. Thus, in this case, the Court relied upon the three tests laid down in

Cybersell, Inc v. Cybersell. Inc. 130 F.3d 414 (1997) and Panavision International LP v. Dennis Toppen; Network Solutions Inc D.C. Case No. CV-96-03284-DDP. Appeal No.97-55467 The said tests are:

- a) Purposeful availment test
- b) Substantial connection test
- c) Effects test.

43. The conclusion of the Court was that if the activities of the Defendant had sufficient connection within India and if the cause of action arose within India, and it was reasonable to exercise jurisdiction, then the Court would exercise jurisdiction over the Defendants. This position has been reiterated by the Ld. Division Bench in ***Banyan Tree Holding (supra)*** where the Court has observed:

“39. India TV appears to be somewhat closer to the development of law in this regard since the decision in Casio. In India TV, the learned single Judge impliedly doubted the correctness of the decision in Casio. The learned single Judge in India TV acknowledged that a mere accessibility of website may not be sufficient to attract jurisdiction of the forum court. This, in the considered view of this Court, is the correct position in law.

.....
42. This Court holds that jurisdiction of the forum court does not get attracted merely on the basis of interactivity of the website which is accessible in the forum state. The degree of the interactivity apart, the nature of the activity permissible and whether it results in a commercial transaction has to be examined. For the ‘effects’ test to apply, the Plaintiff must necessarily plead and show prima facie that the specific targeting of the forum state by the Defendant resulted in an injury or harm to the Plaintiff within the forum state.

For the purposes of a passing off or an infringement action (where the plaintiff is not located within the jurisdiction of the court), the injurious effect on the Plaintiff's business, goodwill or reputation within the forum state as a result of the Defendant's website being accessed in the forum state would have to be shown. Naturally therefore, this would require the presence of the Plaintiff in the forum state and not merely the possibility of such presence in the future. Secondly, to show that an injurious effect has been felt by the Plaintiff it would have to be shown that viewers in the forum state were specifically targeted. Therefore the 'effects' test would have to be applied in conjunction with the "sliding scale" test to determine if the forum court has jurisdiction to try a suit concerning internet based disputes."

44. The parties have relied upon some foreign authorities, most of which have been considered in *Modi Entertainment (supra)*. It would, however, be relevant to quote from *Spiliada Maritime (supra)* which laid down different tests such as –

- a) Which is the forum most suitable to try the case;
- b) Which forum would have the advantages of efficiency, expedition and economy in the case;
- c) Where the case may be tried suitably for the interests of all the parties and for ends of justice.

45. In *Masri (supra)*, the Court of appeal in UK granted an anti-suit injunction as the proceedings, against which an injunction was sought, constituted "*re-litigation abroad of a claim, which has already been subject of an English judgment*".

46. The judgments in respect of anti-arbitration injunctions, which deal with the principle of *Kompetenz-Kompetenz* of the Arbitral Tribunal are not

relevant for the purpose of the present disputes, as the principles that apply in an anti-arbitration proceedings, are not identical to that seeking an anti-suit injunction, though overlapping.

47. The Plaintiff relied upon *Lalji Raja (supra)* to argue that Section 20(c) of CPC would confer jurisdiction of a Court in India over a foreigner, if the cause of action arose within the jurisdiction of this Court.

48. Since *Spiliada Maritime (supra)* and other authorities from foreign jurisdictions have already been considered by the Supreme Court in *Modi Entertainment (supra)*, insofar as this Court is concerned, the tests in *Modi Entertainment (supra)*, which have been consistently followed, would be final and binding. The effects doctrine is to be considered, only to the extent as laid down in *Modi Entertainment (supra)*.

49. In the facts of the present two suits, the following two broad questions emerge:

- Whether the Defendants are amenable to the personal jurisdiction of this Court?
- Whether, in view of the settled legal position, the anti-suit injunction is liable to be granted in favour of the Plaintiffs restraining the Defendants from pursuing the Canadian suit?

Question 1 - Whether the Defendants are amenable to the personal jurisdiction of this Court?

50. Insofar as jurisdiction is concerned, the same is governed by Section 9 read with Section 20 CPC. The Court has jurisdiction to entertain and adjudicate all civil suits brought before it, provided the conditions required under Section 20 are satisfied.

51. A perusal of Section 9 of CPC shows that “*all suits of a civil nature can be tried by the Court unless there is an express or implied bar*”. Section 16 of CPC deals with immovable property and where the suits in respect thereof can be filed. In the case of immovable property, the suits can be filed in the local limits of whose jurisdiction the property is located. However, in respect of compensation for wrong to immovable property, a suit can be filed as per the proviso of Section 16. Sections 17 and 18 of CPC also deal with different situations in case of immovable property located within the jurisdiction of different Courts, or if there is uncertainty, as to where the immovable property is situated, etc. Section 19 of CPC, however, deals with compensation for wrong done to movable property, and how the Plaintiff has an option of suing in different forums.

52. Section 20 of CPC, however, is wider in its application. Section 20 (a) & (b) deal with those cases where the Defendants voluntarily reside, carry on business, or work for gain. Section 20(c) provides that a suit can be filed within the local limits of the Courts where the cause of action arises, wholly or in part.

53. The cause of action, insofar as the present two suits are concerned, is the filing of the Canadian proceedings. The Plaintiff, itself, in paragraph 44 in CS(OS) 2919/2014 and paragraph 51 of CS(OS) 3199/2014 pleads as under:

“ CS (OS) 2919/2014

44. The cause of action to file the present suit first arose when the Defendants No. 1 & 2 filed the Suit before the Superior Court of Justice at Ontario. The cause of action again arose sometime in the first week of September when the Plaintiff was made aware of the existence of the Suit filed by the Defendants No. 1 & 2.

The cause of action is continuing since the Defendants No. 1 & 2 despite being fully aware that the FIR is prior in time and pending investigation, is purportedly proceeding with the Suit which has been filed without any lawful cause or justification which the Plaintiff disputes as being fraudulent and void.

.....

CS (OS) 3199/2014

51. The cause of action to file the present suit first arose when the Defendants No. 1 & 2 filed the Suit before the Superior and injustice will be perpetuated by Hon'ble Court of Justice at Ontario. The cause of action again arose sometime in the first week of September when the Plaintiff was made aware of the existence of the Suit filed by the Defendants No. 1 & 2. The cause of action is continuing since the Defendants No.1 & 2 despite being fully aware that the FIR is prior in time and pending investigation, is purportedly proceeding with the Suit which has been filed without any lawful cause or justification which the Plaintiff disputes as being fraudulent and void."

54. The submissions on behalf of Indiabulls that the Court exercises personal jurisdiction over Veritas are based on the premise that the Report - Bilking India was published and was accessible across the world including in India and in Delhi. The clients of the Defendants had access to the report in Delhi. One of the Plaintiffs has its registered office in Delhi. The damage was caused to the Plaintiffs in Delhi. In the opinion of this Court, these factors would be relevant to determine as to whether the Plaintiffs can sue the Defendants for defamation in Delhi, and whether this Court would have jurisdiction to adjudicate the same. But the question is to what extent are they applicable in a case where an anti-suit injunction is being sought.

55. The anti-suit injunction in the present two suits on the date of the

filing of the suits has been sought on the following basis:

- a) That the criminal complaint/FIR, which is prior in point, is pending, and that the investigations are pending with the police authorities;
- b) That the subject matter has closest connection to India;
- c) That there is possibility of multiplicity of judgments and contradictory judgments;
- d) That the filing of the Canadian suit and defending it would be oppressive for Indiabulls, as it would incur heavy legal costs;
- e) That the Indian Courts would be the natural forum to adjudicate the dispute relating to Indiabulls;
- f) That the clarification dated 8th August, 2012, was published by Indiabulls in India;
- g) That the Superior Court of Justice, Ontario, Canada is a *forum non-conveniens* for Indiabulls.

56. A perusal of the above grounds, which form the basis of the anti-suit injunction shows that it is not the case of Indiabulls that an identical issue is pending adjudication before this Court. The criminal complaints were filed in Gurgaon and in Mumbai. In fact, anticipatory bail applications were entertained by Punjab & Haryana High Court and the Bombay High Court. Thus, no proceeding, as on the date of filing of the complaints, was pending in this Court, in relation to the issues at hand. Secondly, the first civil suit is the Canadian suit filed by Veritas in the Superior Court of Justice at Ontario. The defamation suit being CS(OS) 1474/2015 was filed by Indiabulls before this Court on 19th May, 2015, almost 10 months after filing of the Canadian suit. The cause of action for filing of these two suits seeking anti-suit injunction was, therefore, the filing of the Canadian suit, and not the

publication of the report.

57. Thus, while interpreting Section 20, and considering whether this Court has jurisdiction, it has to be seen as to whether the cause of action arose in Delhi for grant of an anti-suit injunction as the cause of action for such a suit, is the filing of the Canadian Suit.

58. Defendant No.1 is a Canadian company. It published a report, which was circulated on the internet. Defendant No.2 also resides in Canada. Defendant No.3 is a Chartered Accountant and a consultant for M/s Veritas Investment, who was the co-author of the report, who is also not a resident of Delhi. The Report – Bilking India was published on the internet and circulated across the world, including in India. The clarification issued by Indiabulls dated 8th August 2012 which forms the basis of the Canadian suit, was circulated in Delhi as much as it was circulated in Canada. It was published on the internet by means of a press release.

59. For grant of an anti-suit injunction, the Defendants ought to be amenable to the personal jurisdiction of this Court, or the cause of action ought to have arisen within the territorial jurisdiction of this Court. Immediately upon the publication of the reports, the first criminal complaint was filed in Gurugram and thereafter in Mumbai. Thus, nothing was pending in Delhi. None of the FIRs were registered in Delhi. No prior suit was pending in Delhi between the same parties. None of the Defendants reside in Delhi. None of the Defendants carry on business in Delhi, though the reports may be circulated in Delhi as much as they are in other parts of the world, where internet access is available.

60. Even in *India TV (supra)*, three tests were laid down to determine jurisdiction against non-resident Defendants i.e.,

- a) Whether the Defendants' activities have sufficient connection with India;
- b) Whether the cause of action arises and;
- c) Whether the exercise of jurisdiction would be reasonable.

61. All the three above tests have to be satisfied to confer jurisdiction, and mere existence of one is not sufficient. In **India TV (supra)**, the non-resident Indian company had an address in Delhi as its India address. Thus, in the said case, this Court held that this Court had jurisdiction and there was sufficient connection with India. This is not so in the present case.

62. Even in **Lalji Raja (supra)**, the Court exercised jurisdiction and enjoined the execution proceedings, on the ground that the decree was passed by a foreign court to which the CPC did not apply.

63. Again, in **Essel Sports (supra)**, a previous suit was already pending in the Delhi High Court, which according to the Ld. Division Bench, “*substantially*” encompassed the same allegations.

64. The Defendants' activities of publishing the Report may have a connection with India owing to the fact that Indiabulls is an Indian company, its investors are located in India, several of its clients are located in India etc. Thus, there may be a cause of action for Indiabulls to seek damages qua defamation, which would be considered in the defamation suit, which it has already done in this Court. However, that is not the same as seeking “*an injunction restraining proceedings in a Canadian Court*”. As held in **India TV (supra)**, the remaining two tests as to cause of action and whether it is reasonable to grant an injunction, have also to be satisfied. The issue of personal jurisdiction is, thus, closely linked with the other factors relating to grant of anti-suit injunction which is discussed in the next section.

QUESTION 2 - Whether the anti-suit injunction is liable to be granted in favour of the Plaintiffs restraining the Defendants from pursuing the Canadian suit?

65. In order to decide whether an anti-suit injunction is liable to be granted, this Court has to consider the following:

- i. Whether Indiabulls' conduct of having appeared before the Canadian court and filing a motion for dismissal of the said suit, has rendered the prayers for anti-suit injunction, before this Court, infructuous?
- ii. Whether the proceedings in Canada are vexatious and oppressive for Indiabulls?
- iii. Whether the Canadian court is *forum non conveniens* for Indiabulls?
- iv. Whether the grant of an anti-suit injunction would meet the ends of justice?
- v. Principle of comity of courts is to be factored and borne in mind;
- vi. The power to grant anti-suit injunctions is to be exercised sparingly;
- vii. Whether the cause of action for the anti-suit injunction has arisen within the jurisdiction of this Court?
- viii. Finally, as held in *India TV (supra)*, is it reasonable to grant an anti-suit injunction?

66. The reliefs sought in the present two suits are merely anti-suit injunctions. Immediately after filing of these two suits and grant of *ex-parte*

injunctions, Indiabulls moved the *Van Breda* motion before the Canadian Court seeking dismissal of the Canadian proceedings. It has also filed its pleadings and led evidence. Indiabulls has deposed Justice Mukul Mudgal (Retd.) and Mr. Anil Malhan, executive director of Indiabulls Housing Finance Ltd., as witnesses, in support of its motion. Veritas has also filed its pleadings and filed its witness statements, resisting the said motion. At that stage, Indiabulls moved contempt petitions seeking restraint against Veritas' witnesses from deposing in the Canadian proceedings. It has been clarified, vide order dated 10th October, 2018 that the witnesses of Veritas can depose before the Canadian Court insofar as the *Van Breda* motion for jurisdiction is concerned. In the Canadian Court, Veritas sought an anti-suit injunction, restraining Indiabulls from proceeding with the defamation suit being CS(OS) 1474/2015. The said injunction was refused by the Canadian Court vide order dated 2nd October, 2015. Thus, both parties are, clearly, defending their respective positions in the respective Courts.

67. The Supreme Court of Canada in ***Club Resorts Ltd. v. Morgan Van Breda, Viktor Berg, Joan Van Breda, Tony Van Breda, Adam Van Breda and Tonnille Van Breda and other connected matters [2012] 1 SCR 572*** – also known as the ***Van Breda case*** held as under:

“[103] If a defendant raises an issue of forum non conveniens, the burden is on him or her to show why the court should decline to exercise its jurisdiction and displace the forum chosen by the plaintiff. The defendant must identify another forum that has an appropriate connection under the conflicts rules and that should be allowed to dispose of the action. The defendant must show, using the same analytical approach the court followed to establish the existence of a real and substantial connection with the local

forum, what connections this alternative forum has with the subject matter of the litigation. Finally, the party asking for a stay on the basis of forum non conveniens must demonstrate why the proposed alternative forum should be preferred and considered to be more appropriate.

[104] This Court reviewed and structured the method of application of the doctrine of forum non conveniens in *Amchem*. It built on the existing jurisprudence, and in particular on the judgment of the House of Lords in *Spiliada Maritime Corp. v. Cansulex Ltd.*, [1987] 1 A.C. 460. The doctrine tempers the consequences of a strict application of the rules governing the assumption of jurisdiction. As those rules are, at their core, based on establishing the existence of objective factual connections, their use by the courts might give rise to concerns about their potential rigidity and lack of consideration for the actual circumstances of the parties. When it is invoked, the doctrine of forum non conveniens requires a court to go beyond a strict application of the test governing the recognition and assumption of jurisdiction. It is based on a recognition that a common law court retains a residual power to decline to exercise its jurisdiction in appropriate, but limited, circumstances in order to assure fairness to the parties and the efficient resolution of the dispute. The court can stay proceedings brought before it on the basis of the doctrine.

[105] A party applying for a stay on the basis of forum non conveniens may raise diverse facts, considerations and concerns. Despite some legislative attempts to draw up exhaustive lists, I doubt that it will ever be possible to do so. In essence, the doctrine focusses on the contexts of individual cases, and its purpose is to ensure that both parties are treated fairly and that the process for resolving their litigation is efficient. For example, s. 11(1) of the CJPTA provides that a court may decline to exercise its jurisdiction if, “[a]fter

considering the interests of the parties to a proceeding and the ends of justice”, it finds that a court of another state is a more appropriate forum to hear the case. Section 11(2) then provides that the court must consider the “circumstances relevant to the proceeding”. To illustrate those circumstances, it contains a non-exhaustive list of factors:

- (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum;*
- (b) the law to be applied to issues in the proceeding;*
- (c) the desirability of avoiding multiplicity of legal proceedings;*
- (d) the desirability of avoiding conflicting decisions in different courts;*
- (e) the enforcement of an eventual judgment; and*
- (f) the fair and efficient working of the Canadian legal system as a whole. [s. 11(2)]”*

68. A perusal of the tests laid down above, show that to decide the issues arising in the *Van Breda* motion filed by Indiabulls, the Canadian Court would now be considering convenience of the parties, expenses for the parties, avoiding multiplicity of proceedings, avoiding conflicting decisions etc. Various presumptive connecting factors, new presumptive connecting factors and the doctrine of *forum non-conveniens* would also be considered. As part of the presumptive connecting factors, the Court would be considering Indiabulls’ domicile, whether Indiabulls is carrying on its business in Canada and whether a tort was committed in Canada. Indiabulls would be rebutting Veritas’s submissions that there exist presumptive connecting factors to Canada. The Canadian Court would also be considering the arguments of Indiabulls that the Superior Court of Justice at Ontario is a *forum non-conveniens*. Upon consideration of these factors, the Canadian

Court would be adjudicating the *Van Breda* motion. Can this Court, then, pre-judge the said issue? Obviously it cannot. Indiabulls has itself invoked the jurisdiction of various courts and authorities across India. The question of *forum non conveniens* is squarely going to be decided in the Canadian court. For this Court to hold that the Canadian court is a *forum non conveniens* for Indiabulls would be pre-judging the issues that squarely arise in the *Van Breda* motion which has been filed by Indiabulls in the Canadian court. This Court would be hesitant to embark on the said journey as both parties are entitled to place their respective stands before the Canadian court, which they have already done and the same would be adjudicated by the said Court.

69. Indiabulls having submitted to the jurisdiction, even if without prejudice, the present two suits, following the judgment in ***Ponty Singh DB (supra)***, would have to held to be infructuous. The suits were filed at a stage when Indiabulls had not moved the Canadian Court, and much water has flown under the bridge since then.

70. While the Canadian Court is fully seized of the disputes between Indiabulls and Veritas, it is not open to this Court to pronounce upon whether Veritas should be permitted only to defend the motion for jurisdiction, and not pursue its case on the merits of the dispute in the Canadian proceedings, if the Canadian court permits it. To hold that the Canadian court can decide the *Van Breda* motion alone and that Indiabulls would, if it fails in the said motion, be entitled to move this Court again for interim injunction or press for permanent injunction against continuance of further proceedings in the Canadian suit, would seriously impinge upon the comity of courts. The Canadian suit is the first suit in point of time. No

proceeding was pending in Delhi when the Canadian suit was filed. This Court cannot, under the garb of an anti-suit injunction, seek to micromanage proceedings pending in a Canadian court. To say that Veritas is permitted to file pleadings and depose its witnesses qua the *Van Breda* motion ONLY and not beyond, would not be just and reasonable and would also be violative of the principle of freedom of seeking adjudication. It would, in effect, mean that this Court believes that it would be appropriate to conduct a stage-by-stage supervision of the Canadian proceedings. This would be contrary to the principles of Comity of Courts, which forms the fulcrum of the test for grant of an anti-suit injunction. The Canadian Court would have the power to adjudicate Indiabulls' motion on jurisdiction, in an unbridled manner.

71. As to whether the proceedings in Canada are vexatious or oppressive, Indiabulls is a corporate entity having large scale businesses. It is not an individual litigant, for whom expenses of trial would be a relevant consideration. It has already engaged counsels, moved a motion for dismissal of the Canadian suit and adduced testimony of its witnesses. It is capable of defending itself in the Canadian suit.

72. The apprehension of contradictory judgments is also unfounded, as on the day when the Canadian Suit was filed, the only pending proceedings were the criminal proceedings in Gurugram and Mumbai and no defamation suit had been filed by Indiabulls in this Court. In the Mumbai criminal proceedings, a closure report is stated to have been filed, which is objected to by Indiabulls. In fact, the suit for defamation filed by Indiabulls is subsequent to the Canadian Suit for damages filed by Veritas. The fact that Indiabulls published a clarification where various allegations were made

against Veritas, may have given a ground for Veritas to sue in Canada. Whether the Canadian Court ought to exercise jurisdiction, is not for this Court to comment upon. However, Veritas being a Canadian company, had its own reputation to secure, and chose to approach the Canadian court.

73. Subsequently, Indiabulls has approached this Court by filing a suit for damages and injunction against re-publication of the Report and Veritas' affidavits filed before the Canadian Court. The Canadian suit is first in point of time. The proceedings in Canada, under these circumstances cannot, therefore, be considered to be vexatious or oppressive. Both Indiabulls and Veritas are corporate entities, who have the wherewithal to defend themselves before the appropriate fora. Admittedly, Indiabulls has already agreed for the Canadian Court to proceed with the hearing in the *Van Breda* motion. Depending upon the decision of the Canadian Court, both the parties would be availing of their respective remedies.

74. Indiabulls has relied upon various findings of the Canadian Court, contained in the order dated 2nd October, 2015, to argue that the Canadian Court also believes that it does not have jurisdiction. The following are the findings relied upon by Indiabulls:

“[7] The plaintiffs used employed an Indian resident to co-author the report and had authored a number of other reports in relation to the Indian markets in the prior months. The defendants allege that the plaintiffs were targeting the Indian market in 2011 and cannot deny India is a logical forum for the settling of disputes engendered by the plaintiffs' foray into that market. The defendants, on the other hand, are Indian-based companies with no operations in Canada. The plaintiffs say they are Ontario-based, have clients and a reputation to defend in Ontario and are entitled to

move here. They claim to fear appearing in or defending Indian proceedings, although how much of this is due to their failure to appear in prior proceedings and how much to alleged deficiencies in the Indian system of justice remains to be seen. Each side claims juridical advantages justifying them moving in their home jurisdictions which they claim to be the only jurisdiction qualified to decide the questions that separate them. Neither side shows much evidence of wearying of the battle after four years and the objectives that originally spurred them into battle appear obscured by the fog of war.

.....
[23] *The police attempted to proceed to investigate the criminal complaints. Veritas claims that it offered full co-operation. Perhaps in their minds they did. However, the co-operation suggested by Mr. Monga's affidavit suggested that they would co-operate with requests providing they arrived through formal Mutual Legal Assistance Treaty channels. They politely but firmly declined to come to India to discuss the matter. They have not presented me with any evidence that they volunteered disclosure of the documents regarding the sources of information used in the reports that the Indian police sought disclosure of.*

[24] *It would appear to be beyond dispute that the Veritas parties have been quite cautious about engaging in India directly and it is reasonable for me to infer that their hesitating cooperation with police investigations was cautious and tentative. As parties named in the complaints, they had every right to take legal counsel and carefully consider the degree of assistance if any they chose to lend to a police investigation that might possibly lead to charges against them. The verbal arm's race underway between the parties to colour each other's motives and actions with negative connotations on this subject, among others, falls on deaf ears. This court does not supervise*

Indian police investigations nor is it in the habit of second guessing the right of potential suspects to such investigations to act on legal advice to protect their rights.

.....
[31] Assuming the Veritas parties were unaware of the injunction proceedings when they proceeded in September despite the presence of their consultant/employee Mr. Mangal in court, they certainly became aware of the proceedings in sufficient time to appear at the return of the interim anti-suit injunction motion scheduled for April, 2014 in New Delhi. They admitted as much at the hearing before me. The Veritas parties made a deliberate choice not to contest the anti-suit injunction made against them in India although they clearly had an opportunity to do so before it was confirmed.

.....
[34] On February 25, 2015 - two days before the defendants delivered their motion material - the plaintiffs obtained an affidavit of Mr. Mangal. It will be recalled that Mr. Mangal was one of the co-authors of the "Bilking India" report as well as a party specifically named in the anti-suit injunction issued by Singh J. on September 25, 2014. Mr. Monga frankly admits to having solicited the affidavit of Mr. Mangal for use in defending against the anticipated motion of the defendants to stay the Ontario action.

[35].....Mr. Mangal was not required to provide the affidavit.

[36] Being personally resident in India and subject to the jurisdiction of the High Court, filing an affidavit in the Ontario proceeding was an astonishingly risky step for Mr. Mangal to have taken, whatever his views of the propriety or scope of Singh J.'s order or of his own detention by Indian police pursuant to their investigation. He might, for example, have appeared at the return of the interim injunction proceedings in

April to argue for the lifting of the injunction to allow him to file his affidavit or sought directions as to whether swearing an affidavit would be considered to violate the injunction. The timetable for the hearing of the defendants' Van Breda motion was not until June 2015. There was time enough for Mr. Mangal at least to have attempted to comply with or clarify Singh J.'s order.

.....
[40] *The plaintiffs have also filed material suggesting that the defendants have recently attorned to Ontario's jurisdiction in some fashion. It is common ground that the pending stay motion of the defendants is no more than a conditional appearance in Ontario to this point. The plaintiffs allege that the defendants have sufficient presence to warrant my assuming in personam jurisdiction over them. They point to two additional factors. Firstly, it is suggested from "anonymous" sources that the CEO of Housing Finance came to Ontario to meet with unnamed financial industry professionals at some point in July 2015. I cannot begin to credit such obviously inadmissible evidence with any weight, even if it did have relevance. At most, this evidence suggests that the plaintiffs missed an opportunity to arrange personal service. I can hardly conclude more based on such sketchy and unreliable evidence of transitory presence.*

.....
[44] *I am quite troubled by the fact that I cannot determine that the defendants have attorned to Ontario jurisdiction from anything placed before me. The allegation via anonymous tip of a brief visit by the CEO of one of the defendants to Ontario is entirely inadmissible and statements made in a draft offering memorandum offering Indian securities by way of private placement do not appear to me to be sufficient to tip the scales in favour of personal jurisdiction. The plaintiff concedes that the defendants' Van Breda*

motion pending amounts to a conditional appearance only. The defendants do not carry on business in Ontario and indeed the clash between the parties originates from the ill-starred efforts of the Veritas parties to penetrate the Indian market with their research products. Whether there is sufficient basis to have any proceedings in Ontario remains to be seen when the Van Breda motion is heard; I have very grave doubts as to whether I have jurisdiction to make any other order at all in respect of the defendants were I so inclined.

.....
[50] The fact that the defendants failed to even attempt to persuade Singh J. as to why the antisuit injunctions issued against them should be vacated in April when they had the opportunity weighs heavily against them. They have obviously also taken no steps to persuade the Indian court to desist in the Indian Claim pending before it either.

[51] The plaintiffs thus far have determined that it is not in their best interests to attorn to the jurisdiction of the Indian courts. That makes it difficult for them to satisfy this branch of the Amchem (supra) test. Choices have consequences. It does not automatically follow that this court's role is to relieve the plaintiffs of the consequences of their choice. They did not venture to give the Indian courts much of a chance to prove them wrong by challenging the anti-suit injunction despite having an opportunity to do so. I am being asked to assume that any attempt to persuade Singh J., for example, of the privilege attaching to statements made by the defendants in affidavits filed in the Ontario proceeding, would have fallen on deaf ears. I cannot make any such assumption when they never attempted to persuade him. At least some of the arguments raised concerning forum of necessity are a reference to the consequences of their refusal to appear in India in the first place and are thus somewhat circular.

.....
[56] Whether Ontario is an appropriate forum for the plaintiffs' existing Ontario action is the very issue that will be before the court if and when the defendants' Van Breda motion is brought on for a hearing. Who will get the best of whom that day, I cannot venture to say. That is not the question before me. The question is whether the Indian Claim belongs in Ontario as a more appropriate forum than India. In that regard, the answer would appear to be "very unlikely".

[57] The defendants carry on business in India and the damages alleged to have been suffered by them were predominantly in India. The plaintiffs report was written with the aid of an employee or consultant on the ground in India and was one of several such reports written about the Indian market with a view to penetrating that marketplace. To the extent truth of the reports is intended to be advanced as the defence in the matter - and the plaintiffs affidavits to date strongly success this is the case - the facts to be relied upon in establishing that truth are the public filings of the defendants in India, the work of the auditors in India, the affairs of an Indian employee trust (whose affairs played a large part in the report) and other evidence concerning the defendants' business which is located in India without any connection to Ontario. Indeed, it is hard to see that there are any facts relevant to the main issue - truth or falsity of the defamatory statements - that are connected to Canada or Ontario in any way. The *raison d'être* of such research reports is to advise parties who may have or may in future initiate investment positions - long or short - in the securities of the subject of the report. Those securities are listed on Indian exchanges even if the clientele (prior to the release of the report on Bloomberg) was in Asia but allegedly outside of India."

75. The Canadian Court thus arrived at the conclusion that an anti-suit

injunction would not be granted by it in respect of the Indian proceedings viz., the defamation suit CS (OS) 1474/2015, subsequently filed by Indiabulls – now pending in this Court. At that stage, Veritas had not yet appeared in the present two suits and had not taken steps to contest the same. The above findings of the Canadian Court, do not automatically mean that this Court can grant an anti-suit injunction against the Canadian proceedings. The *Van Breda* motion, which is pending in the Canadian Court, would have to be adjudicated by the Canadian Court, for which Indiabulls has already submitted to its jurisdiction. The findings above on Veritas' anti-suit prayer, would obviously be considered by the Canadian Court while deciding the *Van Breda* motion. However, these findings by themselves do not entitle Indiabulls for grant of anti-suit injunctions, as the tests for grant thereof are substantially different.

76. Anti-suit injunctions are nothing but a species of injunctions, which are discretionary remedies. The conduct of parties has an enormous bearing, while the Court considers the prayer for any injunction. In the present case, Veritas is a company which is engaged in the publishing of research reports and Defendant Nos.2 & 3 were co-authors of this Report. The Report - *Bilking India* was obviously not palatable to Indiabulls. However, the conduct of Indiabulls, in causing harassment to the authors of the report by filing criminal complaints against them, by getting one of them arrested, issuing a press release making allegations against Veritas etc. was clearly not called for. While the remedies of Indiabulls against any report, which according to it may have contained incorrect or misleading facts, were always available to them, to threaten criminal action for publication of a research report was an extreme step. Defendant No.2, Mr. Nitin Mangal, a

professional was forced to approach Courts repeatedly for anticipatory bail/bail in Gurgaon and Mumbai, and was also put to personal hardship. Such a reaction in the face of publications and articles written by researchers could have a '*chilling effect*' on publishing. Moreover, such litigation could also result in genuine researchers being dissuaded from writing articles which would not be in the interest of the investing public.

77. In fact, it is the stand of Veritas that due to the treatment meted out to Defendant no.3, post registration of FIRs by the police authorities, Defendant No.3 advised Defendant No.2, not to travel to India. It also led Defendant Nos.2 & 3 to file affidavits before the Canadian Court detailing the treatment meted out to them and harassment that they had to endure. When these affidavits were filed, contempt applications were moved before this Court that action under contempt law could be taken for filing of these affidavits. This completely dissuaded Defendant Nos.2 & 3 from appearing before the Canadian Court and deposing in the *Van Breda* motion, though the evidence of Indiabulls had concluded in the said motion. All this goes to show that the pendency of the present proceedings is, in fact, foreclosing Veritas from defending the *Van Breda* motion filed by Indiabulls before the Canadian Court and is also acting as an impediment in Veritas availing its remedies. The remedy of an anti-suit injunction is not meant to result in such an impasse. The conduct of Indiabulls, in the opinion of this Court, does not entitle it to the discretionary relief of injunction.

78. The questions raised in the applications under Order VII Rule 10 CPC and Order VII Rule 11 CPC are issues of law, as the contents of the Canadian suits and the factum of filing the *Van Breda* motion are not in dispute. The subsequent defamation suit is pending adjudication in the Delhi

High Court. Thus, it is held that neither of the Defendants being residents of Delhi, and no part of the cause of action for the purposes of the anti-suit injunctions having arisen in Delhi, no earlier proceedings being pending in Delhi, the Defendants are not amenable to the personal jurisdiction of this Court. This Court also holds that these are not fit cases for grant of anti-suit injunctions, in view of the settled principles of law. The present two suits are, thus, liable to be dismissed. The dismissal of the present two suits would, however, not bar any future remedies that may be available to either of the parties in India or in Canada, or any other forum of competent jurisdiction.

I.A.18666/2014 (u/O XXXIX Rules 1 & 2 CPC) and 21429/2015 (u/O XXXIX Rule 4 CPC) in CS (OS) 2919/2014

I.A.20503/2014 (u/O XXXIX Rules 1 & 2 CPC) in CS (OS) 3199/2014

79. As the suits are dismissed, these applications are infructuous and are disposed of.

CCP(O) 39/2015 and I.A. 7457/2015 in CS(OS) 2919/2014
CCP(O) 51/2015 in CS(OS) 3199/2014

80. The present contempt petition was filed alleging contempt against M/s Veritas Investment, Mr. Neeraj Monga and Mr. Nitin Mangal on the ground that they had filed affidavits before the Superior Court of Justice at Ontario, wherein allegations have been made against the Indian legal system. The said affidavits are detailed in nature. Indiabulls alleged that filing of the said affidavits constitutes contempt of order dated 25th September, 2014 and 27th October, 2014, as also order dated 15th April, 2015. Veritas has given undertakings to the following effect:

**“Undertaking by Mr. Anthony Scilipoti on behalf of
M/s Veritas Investment and by Mr. Neeraj Monga**

1. That the Defendants No.1 and 2 i.e. Veritas Investment Research Corporation and Neeraj Monga had instituted a suit in Canada before the Superior Court of Ontario bearing number CV-14-50907 against the Plaintiff Indiabulls Real Estate Limited in CS(OS) 1006 of 2015 and the Plaintiff Indiabulls Housing Finance Limited in CS(OS) 1006 (**sic.1016**) of 2015 pending before this Hon'ble Court.

2. That, in response to the Notice of Motion moved in the aforesaid Canadian suit by the aforesaid Plaintiffs before this court who are Defendants in the abovementioned Canadian suit, Mr. Anthony Scilipoti, the CEP of the Veritas Investment Research Corporation, Mr. Neeraj Monga and Mr. Nitin Mangal, who was co-author of report Bilking India, had filed three separate affidavits. There affidavits of Mr. Scilipoti, who is President and CEO of Veritas Investment Research Corporation dated March, 2015, of Mr. Neeraj Monga dated April, 2015 and Mr. Nitin Mangal dated February, 2015 are part of the record of this Hon'ble Court. These affidavits that were filed as against the Notice of Motion in the Canadian Suit moved by the Defendants therein seeking dismissal of the Canadian suit were only meant for use in court proceedings pending before the Superior Court of Ontario bearing number CV-14-50907 as evidence of the deponents and/or any proceeding or proceedings incidental and/or to the Canadian suit. The Defendants i.e. Veritas Investment Research Corporation, Mr. Neeraj Monga and Mr. Nitin Mangal never had any intention of publishing these affidavits elsewhere except for the purpose of relying on them in court proceedings pending before the Superior Court of Ontario bearing No. CV-14-50907 as evidence of the deponents and/or proceeding or proceedings incidental and/or related to the Canadian suit. The Defendants categorically submit that they have never published these affidavits, directed or requested any third party

to publish these affidavit or their content. The Defendants submit that, to the extent that these affidavits have been filed, or will be filed, in the Canadian proceedings, they are, or become, part of a court file which is available and accessible to all members of the public, including parties unrelated to and unaffiliated with the Defendants.

3. That, the Defendants without formally attorning to the jurisdiction of this Hon'ble Court, and without prejudice to the defence challenging this Hon'ble Court's jurisdiction advanced by the Defendants before this Hon'ble Court, undertake not to use the aforesaid three affidavits, except in court proceedings pending before the Superior Court of Ontario bearing number CV-14-50907 and in any proceeding or proceedings incidental and/or related to the Canadian suit, within or outside of Canada, or as otherwise may be ordered by a court in which any such proceedings have been instituted. The Defendants also undertake that they shall use these affidavits, if necessary, in any judicial or other proceedings related to the criminal cases filed against them by the Indiabulls Real Estate Limited bearing FIR No.99/2013 dated 08.08.2012 registered with PS Udyog Vihar, Gurugram, Haryana and CR No. 20/2012 dated 09.08.2012 registered with PS Cyber, Mumbai. The Defendants also undertake not to republish, nor direct or request any third party to publish these affidavits anywhere else apart from the proceedings mentioned above, provided, however, that, due to the fact that these affidavits are, or will become, part of a publicly available and accessible court file in Ontario, any third-party publication of these affidavits, or any of the content of these affidavits, which was not directed or requested by the Defendants, shall constitute, or be deemed to constitute, a breach of this undertaking. For the avoidance of doubt, this undertaking provided by the Defendants does not encompass the Defendants preventing, or taking any

active steps to prevent any such third-party publication of the three affidavits, or their content, which arises from, or is incidental to, these affidavits being, or becoming being, or becoming, part of a court file which is publicly available and accessible in Canada.

Undertaking by Mr. Nitin Mangal, to the extent it differs from the above undertaking

2.....The Defendant No.3 prior to filing of his affidavit was interviewed by many media organisations since his arrest over police case at Gurugram over research report 'Bilking India' and some organisations including the Wall Street Journal had carried news reports in that regard....."

81. Vide order dated 10th October, 2018, with the consent of parties, both witnesses of Veritas have been permitted to give their evidence in the *Van Breda* motion filed by Indiabulls. Thus, the contempt petitions no longer survive. The undertakings given by the witnesses of Veritas are accepted by this Court and the contempt petitions are disposed of by observing that the deponents shall be bound by the statements made in the said affidavits.

82. In view of the above order passed in the contempt, I.A. 7457/2015 in CCP(O) 39/2015 is dismissed as infructuous.

83. Both the suits are dismissed in the above terms. All pending applications also stand disposed of. The observations made herein shall not bind any of the other proceedings pending between the parties.

**PRATHIBA M. SINGH, J.
JUDGE**

APRIL 29, 2019/dk