IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 23RD DAY OF DECEMBER 2021

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S.No. 588 of 2019

Mohan Rao,
Apartment No.10,
"Venkata Krishna Nivas",
No.8, Rachachar Street,
T.Nagar, Chennai – 600 017. ... Plaintiff

-Vs-

1. Prasad Koorma,
No.168, Kodambakkam High Road,
Chennai – 600 034.

2. Ellar Infotek Solutions Pvt. Ltd.,
C-53, Guindy Industrial Estate,
Chennai – 600 032. ... Defendants

Civil Suit praying that this Hon'ble Court be pleased to pass a Judgment and Decree against the Defendants as under;

a) Permanent Injunction restraining the Defendants from violating the negative covenant contained in Clause 2.6 of the Settlement Agreement dated 24th April 2013 entered into between the Plaintiff and the 1st Defendant by enforcing the "Motion to Compel" and calling upon the Plaintiff to Depose as a witness in Docket Nos.1782-CV-00187 and 1382-CV-01245 filed before the Hon'ble Superior Court, Norfolk Country of the Common Wealth of Massachusetts.

b) Costs of the suit.

This civil suit having been heard on 17/12/2021 in the presence of Mr.Gautam S. Raman, Advocate for the plaintiff herein and the defendants herein not appearing in person or by an Advocate and the said defendants herein having been set exparte and upon reading the Plaint filed herein in C.S.No. 588 of 2019 and the other exhibits therein referred to and upon perusing the evidence adduced therein and having stood over for consideration till this date and coming on this day before this Court for order in the presence of said advocates for the parties hereto and this Court having observed that the plaintiff has been able to establish through the evidence placed by him on record that the subpoena issued to him by a Foreign Court at the instance of the defendants is vexatious, **it is ordered as follows:-**

That (1) Prasad Koorma and (2) Ellar Infotex Solutions Pvt Ltd., the defendants herein, be and are hereby restrained by an order of permanent injunction from violating the negative covenant contained in Clause 2.6 of the Settlement Agreement dated 24th April 2013 entered into between the Plaintiff and the 1st defendant by enforcing the “Motion to Compel” and from calling upon the Plaintiff to Depose as a witness in Docket Nos.1782-

CV-00187 and 1382-CV-01245 filed before the Hon'ble Superior Court, Norfolk Country of the Common Wealth of Massachusetts.

2. That there shall be no order as to costs of this suit.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID THIS THE 23RD DAY OF DECEMBER 2021.

Sd/-
ASSISTANT REGISTRAR (O.S-I)

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

ED

03.01.2022

C.S.No. 588 of 2019

DECREE

DATED : 23.12.2021

THE HON'BLE MR. JUSTICE
ABDUL QUDDHOSE

FOR APPROVAL: 03/01/2022

APPROVED ON : 10/01/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2021

PRONOUNCED ON : 23.12.2021

Coram:
THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S.No.588 of 2019

Mohan Rao .. Plaintiff

Vs.

1.Prasad Koorma
2.Ellar Infotex Solutions Pvt Ltd.,
C-53, Guindy Industrial Estate,
Chennai – 600 032. .. Defendants

Civil Suit filed Order VII Rule 1 CPC r/w Order IV Rule 1 of Original Side Rules seeking for permanent Injunction restraining the defendants from violating the negative covenant contained in Clause 2.6 of the Settlement Agreement dated 24th April 2013 entered into between the Plaintiff and the 1st Plaintiff by enforcing the “Motion to Compel” and calling upon the Plaintiff to Depose as a witness in Docket Nos.1782-CV-00187 and 1382-V-01245 filed before the Hon'ble Superior Court, Norfolk Country of the Common Wealth of Massachusetts.

For plaintiff : Mr.Gautam S.Raman

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The suit has been filed for permanent injunction restraining the defendants from violating the negative covenant contained in Clause 2.6 of the Settlement Agreement dated 24th April 2013 entered into between the

Plaintiff and the 1st defendant by enforcing the "Motion to Compel" and calling upon the Plaintiff to depose as a witness in Docket Nos.1782-CV-00187 and 1382-V-01245 filed before the Hon'ble Superior Court, Norfolk County of the Common Wealth of Massachusetts.

2. The plaint averments in a nutshell are as follows:

(a) The plaintiff was employed with Atlantic Broadband Finance LLC, USA (hereinafter referred to as ABF) engaged in the field of software development for more than 20 years.

(b) The second defendant is the private limited company engaging in the business of outsourcing back office services and Software development to various foreign companies, particularly in the United States of America

(c) The first defendant is the Director of the second defendant along with one Mr.Krishnan Venkatasubramanian @ Venkat Krishnan (hereinafter referred to as "Venkat"). Mr.Venkat had always represented to the plaintiff that he was the sole person in-charge of the day to day affairs of the second defendant company and was in-charge of its management.

(d) Around the year 2004, the plaintiff's employer namely ABF had requested the plaintiff to find a company in India in order to outsource certain jobs. The plaintiff immediately contacted Venkat who represented

the second defendant company and enquired with him whether he would be able to provide necessary back office services. He agreed to the request made by the plaintiff and a Master Service Agreement was entered into on 02.01.2004 between ABF and the second defendant.

(e) During the subsistence of the Master Service Agreement, Mr.Venkat had raised invoices to be paid to the second defendant but had instructed ABF to remit payments to his company Elite Corp. USA LLC which he had represented to be one of the subsidiaries of the second defendant.

(f) ABF and the plaintiff were not at all aware that Mr.Venkat was infact diverting payments meant for the second defendant to one of his own companies, namely Elite Corp. USA LLC.

(g) The deceit practised by Venkat was brought to light only after a suit came to be filed by the defendants against the plaintiff's employer, ABF, before the Superior Court, County of Norfolk, Common Wealth of Massachusetts vide Civil Docket No.CV2012-01898B for recovery of a sum of around USD 350,000 along with punitive damages.

(h) The plaintiff was suspended by his employer ABF pending dispute, blaming the plaintiff for the suit brought against them though the reason for the Suit was the deceitful acts of Venkat.

(i) The plaintiff, desirous of settling the dispute between his employer

and the defendants had approached the first defendant in Chennai for an amicable settlement in his own capacity in good faith and to avoid a prolonged litigation and in order to protect the plaintiff's reputation with his employer which had been damaged due to the suit filed by the defendants.

(j) The first defendant agreed to settle the dispute upon receipt of Rs.4,45,00,000/- which the plaintiff agreed.

(k) The plaintiff met the first defendant at Hotel Pratap Plaza at Kodambakkam, Chennai which is owned by the first defendant and a Settlement Agreement dated 24th April 2013 was entered into between the Plaintiff and the first defendant and the terms of the settlement are that upon receipt of the total amount of Rs.4,45,00,000/-, the first defendant will take steps to withdraw the suit filed by the second defendant against ABF.

(l) According to the plaintiff, clause 2.6 of the Agreement states that the defendants would not involve either the plaintiff or ABF including its Directors, Employees etc., parties to any litigation, directly or indirectly involving the Master Service Agreement and clause 8.11 vests jurisdiction with the Courts in Chennai pertaining to all matters arising out of the agreement and only the laws of India will be applicable.

(m) Upon full payment of Rs.4,45,00,000/-, the defendants had withdrawn their suit "with prejudice" on 06.10.2014.

(n) While things stood thus, when all was settled, the plaintiff has subsequently resigned amicably from his employment and has decided to settle down in India. He was shocked to receive a Subpoena from the defendants to be summoned as a non-party witness in two suits filed by the defendants against Elite Associates INC and 3 others and another suit against one Allan Stern and 2 others. The plaintiff has also been called upon to produce all email correspondences, text messages, reports etc., between venkat and him, documentation pertaining to Venkat, Elite Associates and Elite Inc., all correspondence with Allan Stern and Adaptive Engineering LLC and all documentation between him and Allan Stern and Adaptive Engineering LLC.

(o) The plaintiff upon perusing the contents of the Complaint filed before the Superior Court, Norfolk County, found that Venkat had habitually been diverting monies owed to the defendants. The defendants have filed two suits one against Venkat and Elite Software Solutions and Elite Corporation and another suit against one Allan Stern and Adaptive Engineering LLC.

(p) A copy of the subpoena was served at the plaintiff's address at Belmont M.A on 30.01.2019. But since the plaintiff was travelling, he has not seen the subpoena for a number of weeks. A copy was emailed to the plaintiff's counsel in America only on 19.02.2019 and it is relevant to mention that a subpoena was issued in the month of March 2018 to the

plaintiff but it was later cancelled.

(q) The plaintiff's lawyer had contacted the defendants' counsel vide email dated 19.06.2019 and had informed them that they were not in office and were not in a position to receive the Motion to Compel and only after receipt of the email, they were aware of the same. The defendants' counsel had replied to the email and agreed to withdraw the Motion to compel, if a date for the plaintiff to depose could be arrived at. The plaintiff's counsel in America had sent emails on 20th, 24th, and 28th June 2019 giving certain dates to the Defendants' counsel who had not replied to the same. The plaintiff's counsel had spoken with the defendants' counsel on 19.07.2019 but still no confirmation regarding dates were given.

(r) According to the plaintiff, the Agreement dated 24.04.2013 clearly prohibits the defendants from involving the plaintiff in any litigation concerning Mr.Venkat either directly or indirectly and is deemed to include a prohibition from calling the plaintiff as a witness to depose in such proceedings and the plaintiff is not bound by any offer of his counsel in USA to appear and depose in legal proceedings contrary to his contractual rights under the Agreement dated 24.04.2013.

(s) The Hon'ble Superior Court, Norfolk County had allowed the defendants' motion to compel and had fixed the date of the plaintiff's deposition as 03.10.2019 at the defendant's office in America vide order dated 05.08.2019.

(t) The plaintiff had begun developing certain health ailments towards the end of July and has decided to return to Chennai for Surgery to be performed. The plaintiff's surgery was scheduled on 27.09.2019 and thereafter rescheduled to 15.10.2019.

(u) One Richard Shea, CEO of ABF has also received the Subpoena. Clause 2.6 of the agreement clearly states that even the employees/Directors of ABF will not be involved in any litigation against any party who is directly or indirectly involved in the dispute between ABF and the defendants and in view of the same, the subpoena to Richard Shea of ABF is also a breach committed by the defendants.

(v) The plaintiff is presently in Chennai owing to his health problems. Motion to compel the plaintiff as a non-party witness is in breach of the Agreement dated 24.04.2013 and is clearly vexatious and intended only to harass the plaintiff. In these circumstances, the suit has been filed

3. The defendants have been duly served and are represented by a learned counsel, but till date no written statement has been filed by them and hence, they were already set exparte by this Court on 24.08.2021.

4. Before the learned Master, the plaintiff was examined as a witness (PW1). In his proof affidavit, he has reiterated the contents of the plaint filed in support of this suit. Through PW1, the following documents were marked as exhibits:

Exhibits	*Nature of the documents*
P1	Original Settlement Agreement between Prasad Koorma and Mohan Rao at Chenani dated 24.04.2013
P2	Photocopy of the Voluntary Stipulation of Dismissal – Common Wealth of Massachusetts, Norfolk SS Superior Court Department dated 12.08.2013
P3	Photocopy of the complaint before the Massachusetts, Norfolk SS Superior Court Department bearing docket No.13 – 01245 between Ellar Infotek Solutions Private Ltd vs. Allan Stern dated 19.08.2013
P4	Photocopy of the Amendment agreement to the Settlement Agreement dated 04.11.2013
P5	Photocopy of the Amendment Complaint before the Massachusetts, Norfolk SS Superior Court Department bearing docket No.2013-CV-1245 between Ellaar Infotek Solutions Private Limited vs. Allan Stern dated 18.04.2014
P6	Photocopy of the Clerk's notice, Common Wealth of Massachusetts, County of Norfolk, The Superior Court dated 10.06.2014
P7	Photocopy of the Stipulation of Dismissal – Common Wealth of Massachusetts, Norfolk SS Superior Court Department dated 18.09.2014
P8	Photocopy of the Complaint before the Massachusetts, Norfolk SS Superior Court Department bearing docket No.13-01245 between Ellaar Infotek solutions Private Ltd and M.K.Prasad vs. Elite Associates and other dated 10.02.2017
P9	Photocopy of the Subpoena Duces Tecum – Common Wealth of Massachusetts, Norfolk SS, Superior Court Department dated 17.11.2017
P10	Photocopy of the Subpoena for re-notice of taking deposition of Mohan Rao dated 31.01.2019
P11	Photocopy of the Email correspondence between the plaintiff and Defendants' counsel dated June/July 2019.

5. As seen from the evidence, available on record, it is clear that earlier, the plaintiff was working with ABF and he was in their employment for about 20 years and his last position was as a Senior Director. The plaintiff was introduced to the second defendant company by a person

named Venkat and the said Venkat represented himself as a Director to the second defendant Company and was in-charge of the day to day affairs of the said company. A Master Service Agreement has been entered into between ABF and the second defendant and under the said agreement, the second defendant agreed to provide back office operations for ABF. The plaintiff was made to believe that Elite Corp USA LLC is a subsidiary of the second defendant with whom Master Service Agreement was entered into and on instructions of Venkat, the payments were made by ABF to the said company. Only after a suit came to be filed by the defendants against ABF before the Hon'ble Superior Court, County of Norfolk, Common Wealth of Massachusetts seeking for recovery of a sum of USD 350,000 along with punitive damages, the plaintiff came to know that Venkat had deceived ABF to make payments to Elite Corp USA LLC instead of the second defendant.

6. It is also seen from the evidence available on record that the settlement agreement dated 24.04.2013 was entered into between the plaintiff and the first defendant who is a Managing Director of the second defendant at Chennai under which the plaintiff paid a sum of Rs.4,45,00,000/- towards full and final settlement of the suit filed against ABF before the Superior Court, County of Norfolk, Common Wealth of Massachusetts, USA.

7. Clause 2.1.4 & 2.6 of the settlement agreement which has been marked as Ex.P1 are extracted hereunder:

> " 2.1.4 Mohan shall pay Rs.2,50,00,000/- (Rupees Two Crores Fifty Lakhs Only) being the balance settlement amount, in one and more instalments within the Extended Settlement Period. Mohan shall in order to securitise and protect the interests of Prasad create a Simple Mortgage in favour of Prasad or his nominee(s), on encumbered, Freehold Immovable Property/properties of his choice and which are wholly owned by him or his family members on or before the date by which the proposal for withdrawal cited in clause 2.1.3 is ready for filing in the court. The aggregate value of such immovable property / properties, mortgaged shall be equal to more than Rupees 2,50,00,000/- (Rupees Two Crores Fifty Lakhs Only)"
>
> "2.6 Prasad undertakes to ensure that neither Mohan nor any director, employees, partners of ABB, Grande and Shasta Solutions shall be, directly or indirectly, made a subject matter of any legal proceeding on account of any action taken or proposed to be taken by Prasad or the Company against any party which directly or indirectly pertains to the ABF MSA. Similarly, Mohan undertakes that neither Mohan nor any of the above said parties, directly or indirectly, make Prasad or any of his Family Members or Legal Heirs a subject matter of any legal proceedings."

8. As seen from the aforementioned clauses, it is clear that the defendants are prohibited from involving the plaintiff in any litigation either directly or indirectly concerning Venkat which arises either directly or indirectly pertaining to the subject matter of the Master Service Agreement. Even though two suits filed by the defendants in America neither involved the plaintiff nor any allegations were levelled against the plaintiff, this Court is of the considered view that the issuance of subpoena to the plaintiff is in breach of clause 2.6 of the settlement agreement dated 24.04.2013 (Ex.P1). The plaintiff is now permanently residing in India and has also left services of ABF in USA and now not in any way connected with the said company.

9. Eventhough the subject matter of the suit is only a subpoena issued by a Foreign Court which is challenged, the said subpoena affects the rights of the plaintiff as he is no longer employed with ABF and he has also now become a permanent resident of India. This Court is of the considered view that the subpoena issued by a Foreign Court at the instance of the defendants is vexatious in view of the fact that under the settlement agreement dated 24.04.2013 (Ex.P1), the defendants on receipt of a sum of

Rs.4,45,00,000/- from the plaintiff unconditionally agreed not to initiate any further legal action either directly or indirectly against the plaintiff. The plaintiff has also paid the sum of Rs.4,45,00,000/- to the first defendant.

10. This Court has also perused and examined the other documents filed by the plaintiff which have been marked as Ex.P2 to Ex.P12 and after perusing the same is of the considered view that the defendants have sought for subpoena through Foreign Court only to harass the plaintiff despite the existence of a settlement agreement dated 24.04.2013 (Ex.P1). Therefore, the issuance of Subpoena by the Foreign Court is vexatious and has been issued at the instance of the defendants only to harass the plaintiff. Hence, this Court is of the considered view that the relief sought for in the plaint has to be granted in favour of the plaintiff.

11. The learned counsel for the plaintiff has relied upon the decision of the Hon'ble Supreme Court in the case of Modi Entertainment Network and Another vs. W.S.G.Cricket Pte. Ltd. reported in (2003) 4 SCC 341 wherein the Hon'ble Supreme Court laid down the principles for grant of anti-suit injunction and the relevant paragraph is extracted hereunder:

> *“**24.** From the above discussion the following principles emerge:*
>
> *(1) In exercising discretion to grant an anti-suit injunction the court must be satisfied of the following aspects:*

(a) the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court;

(b) if the injunction is declined, the ends of justice will be defeated and injustice will be perpetuated; and

(c) the principle of comity — respect for the court in which the commencement or continuance of action/proceeding is sought to be restrained — must be borne in mind.

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

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

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

of the court does not exist or because of a vis major or force majeure and the like.

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

(6) A party to the contract containing jurisdiction clause cannot normally be prevented from approaching the court of choice of the parties as it would amount to aiding breach of the contract; yet when one of the parties to the jurisdiction clause approaches the court of choice in which exclusive or non-exclusive jurisdiction is created, the proceedings in that court cannot per se be treated as vexatious or oppressive nor can the court be said to be forum non-conveniens.

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

12. In the case on hand, the plaintiff is now a permanent resident of India and the defendants are also having their office/residence in India and Settlement Agreement (Ex.P1) also prohibits the initiation of any legal proceedings against the plaintiff either directly or indirectly. Despite the same, the defendants have chosen to approach a Foreign Court and got a subpoena issued to the plaintiff.

13. The jurisdiction of dispute under the settlement agreement (Ex.P1) also makes it clear that only Chennai Courts have got jurisdiction to decide any dispute, but however the defendants have chosen to approach the Foreign Court and got a subpoena issued to the plaintiff which is not maintainable as it would amount to indirectly making the plaintiff acquiesce to the jurisdiction of the Court in America though he is now a permanent resident of India. Though the subject matter of the suit does not pertain to the suit filed in a Foreign Court and it is only a subpoena, this court is of the considered view that issuance of subpoena despite the existence of settlement agreement dated 24.04.2013 (Ex.P1) will amount to infringing the rights of the plaintiff indirectly as the subpoena has been issued by a foreign Court where the plaintiff is not presently residing or having his office. The forum convenies is only Chennai as the Plaintiff is now permanently residing only at Chennai and the defendants are also having their office and place of residence at Chennai.

14. The decision of the Hon'ble Supreme Court relied upon by the learned counsel for the plaintiff referred to supra is squarely applicable to the facts of the instant case as subpoena issued to the plaintiff is oppressive and is vexatious as despite the settlement agreement dated 24.04.2013 (Ex.P1), the said subpoena has been issued at the behest of the defendants.

15. Having resigned from ABF in the year 2019 and that too when the settlement agreement (Ex.P1) was entered into, the issuance of subpoena by a Foreign Court at the behest of the defendants to the plaintiff will amount to oppressing of the plaintiff and the subpoena issued is also vexatious.

16. Forum conveniens between the parties is only Chennai and not a foreign court in USA where the plaintiff is no longer living. This Court is of the considered view that the plaintiff has been able to establish through the evidence placed by him on record that the subpoena issued to him by a Foreign Court at the instance of the defendants is vexatious.

17. For the foregoing reasons, the said claim has been proved and the suit is decreed as prayed for. However, there shall be no order as to costs.

Sd./- A.Q.J.,
23.12.2021.

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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