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

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Date of Decision: 16.02.2021

% **MAT.APP.(F.C.) 24/2021**

MS. JYOTI LAKHTAKIA

..... Appellant

Through: Mr. Prosenjeet Banerjee, Ms. Shreya
Singhal & Ms. Prachi Dutta,
Advocates.

versus

MR. VINEET MEHRA

..... Respondent

Through: Ms. Malvika Rajkotia, Mr. Ramakant
Sharma & Ms. Ekta Sharma,
Advocates along with respondent in
person.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

J U D G M E N T

VIPIN SANGHI, J. (ORAL)

1. The present appeal under Section 19 of the Family Courts Act, 1984 has been preferred by the appellant Ms. Jyoti Lakhtakia (hereinafter referred to as Jyoti) – who is the wife of the respondent Mr. Vineet Mehra (hereinafter referred to as Vineet) to assail the order dated 12.02.2021 passed by the Principal Judge, Family Courts, New Delhi District, Patiala House Courts, New Delhi on an application under Order XXXIX Rules 1 & 2 CPC read with Section 7 of the Family Courts Act (in C.S. No.14/2018)

preferred by the respondent Vineet. By the impugned order the Family Court has restrained the appellant Jyoti from proceeding or prosecuting the *issue of declaration in respect of transfer of Universal Wealth Asset Limited* – a company incorporated in The British Virgin Islands; governed by the laws of United Kingdom, and; having its banking operations in Singapore (for short ‘UWA’), before the Superior Court of Justice, Ontario, Canada (hereinafter referred to as the Ontario Court), or any other Court. The appellant Jyoti has, however, been granted liberty to pursue her claim for maintenance and custody of the child without specifically claiming the aforesaid declaration.

2. The submission of Mr. Banerjee, learned counsel for the appellant is that the anti-suit injunction granted by the Family Court as aforesaid by the impugned order is completely without jurisdiction; wholly unjustified in the facts and circumstances of the case, and; in breach of the well established principles of law laid down by the Supreme Court for grant of an anti-suit injunction. To appreciate the submissions of the parties, we may notice some of the relevant facts before considering their submissions.

3. The parties were married according to Hindu rites and ceremonies on 07.11.2008 at Delhi. On 28.11.2013, they were blessed with a daughter. On 14.11.2014, they separated. On 03.08.2015 Vineet filed a divorce petition under Section 13 of the Hindu Marriage Act at Delhi. On the other hand, Jyoti commenced proceedings against Vineet for child custody and child & spousal support in the Ontario Court on 28.08.2015.

4. In her claim for maintenance/ child & spousal support, Jyoti

mentioned the businesses carried out by Vineet, including the business of UWA. Jyoti states that on 18.12.2015, she filed a detailed trial affidavit in relation to Vineet's income sources which included details about UWA. Apparently, on account of non-appearance of Vineet despite service, the Ontario Court passed a judgment dated 30.08.2016 noticing Vineet's non-compliance and deliberate delay in not participating in the proceedings.

5. On 26.10.2016 Vineet filed a motion with a detailed affidavit to set aside the relief granted to Jyoti vide judgment dated 30.08.2016 by the Ontario Court. On 31.01.2017, Vineet filed a detailed response affidavit before the Ontario Court, wherein he made specific averments with regard to UWA. Some of the averments made in the said affidavit by Vineet dated 31.01.2017 read as follows:

"22. Universal Wealth Assets Singapore ('Universal Wealth') was formed in the British Virgin Islands by Jyoti. It is her company and she is the sole shareholder of it. She operated Universal Wealth through a nominee director (Greenland Limited) to create a layer between her and management. Because the company was established in the British Virgin Islands, which is a tax haven that operates under the Swiss banking principles of secrecy, I have been unable to obtain records evidencing Jyoti's ownership of Universal Wealth. However, I was able to secure a letter from Greenland Limited confirming that Jyoti is its owner. Attached as Exhibit 'E' is a copy of this letter. I believe that the fact that Jyoti has copies of account statements, fund transfers, and other confidential documents related to Universal Wealth is evidence of her interest in it.

23. x x x x x x x x x

24. Jyoti used Universal Wealth to shelter herself from Canadian taxes related to these opportunities, which is partially why I believe she is trying to conceal her interest in the company now. I did not expect Jyoti and I would separate when I helped her create this company. Other than the apartment that we jointly own in Manesar because Jyoti made me a co-owner when she purchased it, I have not directly benefitted from the money earned by Universal Wealth.

25. Universal Wealth started by acting as an agent by representing various coal suppliers who were supplying coal into Asia, primarily Korea, China and India. The commissions paid to Universal Wealth were revenue. I estimate that at least 25-30% of all commissions were paid to external parties for business purposes.”

6. On 04.07.2017, Vineet, *inter alia*, filed C.S. No.14/2018 against Jyoti to seek the following reliefs:

“a). Pass a decree of Declaration declaring that the defendant is and has been the sole beneficial owner of the company by the name of Universal Wealth Assets Limited incorporated in British Virgin Islands and registered on 24.02.2005;

b) and pass a decree of permanent injunction in favour of the plaintiff and against the defendant thereby restraining the defendant, her agents, attorneys, servants and legal representatives from claiming the plaintiff to be the owner/beneficiary of the Universal Wealth Assets Pvt. Ltd. and further

c) pass a decree of mandatory injunction in favour of the plaintiff and against the defendant and directing her to make the true disclosure that she is sole beneficial owner of the Universal Wealth Assets Pvt. Ltd before all the concerned authorities/courts wherever the defendant has initiated proceeding against the plaintiff”

7. It is in this suit that impugned order has been passed on Vineet's application under Order XXXIX Rules 1 & 2 CPC.

8. Jyoti filed her written statement in the said suit thereby expressly stating that she is a foreign national and is not amenable to the jurisdiction of the Court. She, *inter alia*, stated "*The defendant humbly and explicitly submits that she is not submitting herself in any manner to the jurisdiction of this Hon'ble Court and the present Written Statement is respectfully being filed with this string attached expressly.*" She also raised the issue of territorial jurisdiction of the Court to deal with the subject matter of the suit, namely UWA which is a company incorporated under the laws of British Virgin Islands and UWA is amenable to the corporate laws of the United Kingdom. She stated that UWA is being run through the British Virgin Islands and the bank accounts of the said company are maintained at Singapore.

9. The Ontario Court on 30.08.2017 set aside the uncontested order dated 30.08.2016 in favour of Jyoti.

10. On 10.11.2017, Jyoti filed her claim, *inter alia*, for monetary support for herself and her daughter. To justify her claim for monetary support, she, *inter alia*, pleaded as follows:

"32. The Respondent has lied in these proceedings and manipulated the evidence to demonstrate that he has limited means. As just a few examples, which will be particularized in advance of trial:

1. At questioning and in his Affidavit for purposes of

setting aside the Uncontested Final Order, he swore that he has not ever owned Universal Wealth Assets (UWA) incorporated in the British Virgin Islands and the associated bank account with HSBC Singapore. UWA is a company worth millions and one which the Applicant knows to be the major source of his income. He swore, in fact, that UWA was owned by the Applicant. The Applicant, through counsel in the British Virgin Islands, secured proof that the Respondent owned UWA and then fraudulently transferred it to the Applicant during this litigation using a forged transfer document. Equiom, the fiduciary services company of UWA made three crime reports to the Singapore Police regarding this issue. The Respondent is also under investigation with the Toronto Police as a result of the fraud, and his prior assaults. As the Applicant understands there is currently a warrant out for the Respondent's arrest in Toronto regarding these issues.

2. In the Respondent's Affidavit, he swore that his net assets were in the amount of \$250,000. The Applicant has secured documentation, specifically a resolution the Respondent signed through HSBC and UWA stating that his net worth was between \$30 million USD and \$100 million USD as of 2015.

3. In the Respondent's Affidavit, he swore that that his income was \$190,000 and that he did not own or have any ownership interest in Coal Trade India Pte Singapore ("CTI") and Coal Trade India, which the Applicant knows to also be key sources of his income in addition to UWA. The Applicant has produced documentation demonstrating that the Respondent owns Coal Trade India and CTI. He is CTI's sole shareholder, beneficial owner, and maintains a directorship. The Applicant commenced an assistance with foreign litigation proceeding for disclosure in the United States against some of the entities with which CTI and Coal

Trade India do business. The disclosure from those entities, under the Order of the Court, revealed that the Respondent has earned at least 11.5 million dollars in commissions from those entities alone from 2011 to present and in 2017 from January until May alone, he has earned over \$2.16 million CAD.

33. As further evidence of the need for a lump sum, the Respondent refuses to pay support even when ordered to do so. From July, 2015 until November, 2016 he paid no support even when the Final Order of Justice Myers requiring same was in effect. In November, 2016 he agreed on consent to pay limited without prejudice support which is not reflective of his income at \$3,500.00 per month and he was late with almost every payment and missed some payments entirely requiring the Applicant to bring a contempt motion against him. It was only on the eve of the motion that he finally agreed to pay. The most recent October 30, 2017 Order of the Honourable Justice Stewart continued interim without prejudice child and spousal support and the Respondent is already in arrears \$12,415.00

34. In sum, the Respondent is not a reliable payor. He has perpetrated a fraud against the Applicant with respect to his company, UWA presumably to avoid tax consequences and divert the consequences to her. He conceals evidence, particularly his income. He has not complied with one undertaking from his questioning, refuses to produce bank statements, credit card statements, financial statements from his company, or even Income Tax Returns. He refuses to pay support even when ordered to do so. In the circumstances, and in light of the above, the Applicant necessarily seeks lump sum support, enforceability of any support order against the Respondent's property, and a non-depletion Order until the lump sum support obligations have been satisfied."

11. Vineet responded to the said petition of Jyoti on 14.12.2017. While replying to the claim for monetary support made by Jyoti, in paragraph 22 of

his reply, Vineet stated as follows:

“22. Jyoti's allegation that I own Universal Wealth Assets ("UWA") is false. UWA is a company which was incorporated for Jyoti's benefit in 2005 and registered in the British Virgin Islands ("BVI"). BVI operates under Swiss banking principles of secrecy and Jyoti, as a Canadian citizen, was not able to operate or be formally part of UWA's financial structure. I operated and managed UWA on her behalf and acted as the signing officer for UWA in the capacity of a trustee for Jyoti's benefit. I followed her instructions for every transaction undertook as UWA's signing officer. I was a nominee shareholder for Jyoti.

23. Between August 11, 2010 and July 1, 2015, UWA transferred a total of USD\$1,935,700 to Jyoti and her family. I never benefitted directly from my relationship with UWA. On November 28, 2016, I transferred the UWA shares registered in my name and I resigned as a director of UWA.”

12. Thus, the issue whether the beneficial ownership of the shareholding of UWA was fraudulently transferred by Vineet to Jyoti appears to be a hotly contested issue of fact before the Ontario Court, as both sides have made specific allegations in that respect, seriously disputing the version of the opposite party, while asserting their own stand.

13. As the proceedings in the Ontario Court progressed, Vineet while participating in those proceedings on 15.03.2019 provided his list of witnesses that he sought to produce in relation to the issues arising for consideration before the Ontario Court, including in relation to the aforesaid issue of fact. The relevant extract for our purpose from the list of witnesses provided by Vineet reads as follows:

<i>“Name of Witnesses</i>	<i>Issue to be addressed (from section 3 above)</i>	<i>Specific topic(s) the witness will address</i>	<i>Time estimate</i>	
			<i>In chief</i>	<i>In cross</i>
<i>Vineet Mehra</i>	<i>All issues</i>		<i>1 day</i>	<i>1 day</i>
<i>Bala Ganesan (ex director HSBC Private Bank Singapore)</i>	<i>Support</i>	<i>Issue of Universal Wealth Assets (“UWA”) ownership</i>	<i>2 hours</i>	<i>2 hrs.</i>
<i>Sandeep Sharma (Ex CEO HSBC Private Bank)</i>	<i>Support</i>	<i>Issue of UWA ownership</i>	<i>30 minutes</i>	<i>30 min</i>
<i>Matthew Stock (lender to UWA)</i>	<i>Support</i>	<i>Issue of UWA ownership</i>	<i>30 minutes</i>	<i>30 min</i>
<i>Hazel Concepcion (Equiom)</i>	<i>Support</i>	<i>Issue of UWA ownership</i>	<i>30 minutes</i>	<i>30 min”</i>

14. The said documents show that trial was fixed initially from 19.11.2010. But the same was adjourned as the parties were not ready to proceed. The same was again scheduled to start from 16.02.2021.

15. Vineet filed an affidavit of one of his witnesses Mathew Graham Stock dated 07.01.2021 in the Ontario Court in support of his plea with regard to UWA.

16. On 01.02.2021, before the Ontario Court, Vineet again provided a list of witnesses that he sought to produce in his defence, *inter alia*, to the claim

for monetary support made by Jyoti. The said list of witnesses included, *inter alia*, Mathew Graham Stock and Bala Ganeshan, who were cited as witnesses to establish the issue of *ownership of the said company*. We may observe that “ownership of company” in the context means the ownership of UWA and this fact is evident from perusal of the earlier list of witnesses provided by Vineet; the pleadings of the parties, and; the affidavit filed by Mathew Graham Stock dated 07.01.2021.

17. Vineet sought adjournment of the trial dates fixed by the Ontario Court from 16.02.2021. The said request was declined by the Ontario Court by an order dated 02.02.2021. The relevant extract of this order reads as under:

*“The parties attended a TMC with me on February 1, 2021. This case is scheduled for an 11.5-day trial, commencing February 16, 2021 (The parties requested 9.5 days and I added on two days to allow for technical issues, because the trial was likely proceeding by Zoom). The trial was originally scheduled to proceed on November 19, 2019 but was adjourned because the parties were not ready to proceed. The Respondent’s counsel attended the TMC yesterday and requested an adjournment of the trial on her client’s behalf. **The primary reasons for the request of the adjournment were that the Respondent did not have an income report to rely on at trial and wanted time to retain another expert, and he was stuck in India so he could not attend at the trial in person.***

x x x x x x x x x

For the reasons set out below, I have also dismissed the Respondent’s request to adjourn the trial to allow him more time to retain an expert and file a further income report.

*The parties have been separated since 2014 and involved in litigation since 2015. To make things very clear, they have been separated for over six years, without a final resolution of the support issues. They were only married for six years. The primary issue for trial is child support and specifically the Respondent's income. The parties have a seven-year old daughter who has her primary residence with the Applicant. The Applicant has an order for sole custody of the child. The Respondent has been residing in India during COVID-19 so access is not an issue. **The property issues are being dealt with in court in India and scheduled for trial in May 2021.***

x x x x x x x x x

The Respondent did miss the deadline for filing his affidavit, being his evidence in chief. I am prepared to extend that deadline to February 5, 2021.

Order to go as follows:

Respondent's request to adjourn the trial scheduled to begin February 16, 2021 is denied.

Respondent shall serve and file his affidavit, to be used as his evidence in chief, as set out in the TSEF, no later than February 5, 2021." (emphasis supplied)

18. The order dated 02.02.2021 passed by the Ontario Court shows that Vineet did not cite the pendency of the suit in question before the Family Court, or the fact that it was fixed for trial in May 2021, as a reason to seek adjournment of trial. It was not claimed that any issue raised/ arising before the Ontario Court was also pending consideration before the Family Court in C.S. No.14/2018. Having failed to obtain an adjournment of the trial from the Ontario Court, Vineet filed the application on 03.02.2021 under Order XXXIX Rules 1 & 2 CPC claiming an anti-suit injunction, in which the

impugned order has been passed.

19. Even after filing the application seeking anti-suit injunction, Vineet proceeded to file his affidavit before the Ontario Court on 05.02.2021, wherein he deposed, *inter alia*, in relation to UWA in paragraphs 43 & 44, and again in paragraphs 76 to 78, as follows:

“43. On December 15, 2017, the Applicant ceased to be a Director of Indigo to shield herself from disclosure which would prove that UWA funded Indigo’s global investments. However, she continues to be the guiding mind and beneficial owner of Indigo. The Applicant admits in her financial statements that she holds '1/3 common shares' in Indigo. Indigo invests in commodities and real estate.

*A copy of all the financials statements sworn by the Applicant is attached as **Exhibit G** of the REB.*

*44. The funds paid by UWA to Indigo enabled the Applicant to purchase real estate and invest in commodities. I believe that the Applicant has received approximately \$7,000,000 from UWA from 2005 to 2015. Attached as **Exhibit H** of the REB is evidence of almost \$2,000,000 USD being transferred from UWA to the Applicant, Indigo, the Applicant's Father and Mother from 2010 to 2015. Based on the Applicant's own admission, she is the owner of UWA since December 2016, although she claims UWA was fraudulently transferred to her.*

x x x x x x x x x

Universal Wealth Assets Limited

76. In Response to paragraphs 68 - 87 of the Affidavit, the Applicant admits that UWA is the crux of the litigation. She claims that the shares were fraudulently transferred to her in 20 16. This claim is bogus and the Applicant is trying to protect herself from having to admit ownership of UWA and the use of its income to purchase 9 real estate properties worldwide and interest in a gas station in Canada.

77. *Universal Wealth Assets Limited ("UWA") was incorporated in the British Virgin Islands ("BVI") in 2005 by the Applicant. I was informed by the Applicant that UWA has been set up to serve as an investment vehicle for her and her family. In 2008, I was appointed as an additional director of UWA due to the fact that the Applicant, as a Canadian citizen, was unable to operate UWA's bank account, as UWA was a BVI corporation. I followed the Applicant's instructions in operating the UWA's HSBC bank account. I also held shares as a nominee shareholder for the Applicant. In 2016, I completely severed my involvement with UWA and transferred the shares held in trust to the Applicant. After the ending of my directorship at UWA, the Applicant appointed Greenland limited as a director of UWA. The Applicant has always been the beneficial owner and the directing mind behind UWA. Approximately \$2,000,000 was transferred from UWA to the Applicant and her family between 2010 and 2015.*

78. *Again, UWA is at the heart of legal proceeding in India for which a trial is scheduled on May 3, 2021."*

20. The submission of Mr. Banerjee, learned counsel for the appellant Jyoti is that much before the initiation of declaratory suit by Vineet, being C.S. No.14/2018 in July 2017, Jyoti had already invoked the jurisdiction of the Ontario Court in the year 2015, wherein she sought custody of the child and spousal & child support from Vineet. To justify her claim for monetary support, she, *inter alia*, enlisted UWA as an income generating asset of Vineet. Vineet did not participate in those proceedings despite service and invited the judgment dated 30.08.2016. Thereafter, Vineet filed a motion to set aside the relief granted to Jyoti vide judgment dated 30.08.2016. In those proceedings, he filed an affidavit on 31.01.2017 disputing Jyoti's claim with regard to his ownership of UWA. In this context, Mr. Banerjee

has specifically relied upon the averments made by Vineet in his affidavit dated 31.01.2017 as extracted above. Mr. Banerjee submits that Vineet, firstly, submitted to the jurisdiction of the Ontario Court without demur or reservations, and also did not raise any objection to the determination of the issues of fact which arose for its consideration. The issues of beneficial ownership of the asset UWA; the income generated therefrom, and; the alleged fraudulent transfer of ownership of it by Vineet to Jyoti have squarely arisen for determination before the Ontario Court.

21. Mr. Banerjee submits that even after filing of C.S. No.14/2018 – which, in any event, is completely without territorial jurisdiction and in respect whereof Jyoti has not submitted to the jurisdiction of the Court, Vineet has continued to not only participate in the Ontario Court proceedings, but has also sought to contest Jyoti's claim vis-à-vis UWA by filing his response to Jyoti's claim for monetary support. It is in this context that Mr. Banerjee has drawn our attention to the affidavit dated 14.12.2017 filed by Vineet, as also the list of witnesses filed by him where he has enlisted several witnesses to establish his case on the issue of UWA ownership.

22. Mr. Banerjee submits that even while seeking adjournment of the trial which were fixed from 16.02.2021 onwards, the primary reason for adjournments cited by Vineet was that he did not have the income report to rely at the trial, and wanted time to retain another expert. He never cited pendency of the declaratory suit, i.e. C.S. No.14/2018 before the Indian Court; or that the facts in issue before the Ontario Court overlap with the

facts in issue pending consideration before the Family Court in C.S. No.14/2018; or that the dates for trial in the said suit are fixed in May 2021, as the reason for seeking an adjournment of the trial before the Ontario Court.

23. Mr. Banerjee submits that the learned Family Court while passing the impugned order has completely failed to take into account the aforesaid aspects and has also not evaluated the serious primary objection of Jyoti to the very maintainability of the suit, i.e. C.S. No.14/2018 on account of her not having submitted to the jurisdiction of the Court, and also the lack of territorial jurisdiction – as the subject matter of the said suit is not within the jurisdiction, and no part of the cause of action has arisen within the jurisdiction of the said Court. Even Jyoti does not reside, or work for gain within the jurisdiction of the Court. In this regard, Mr. Banerjee has drawn our attention to the averment with regard to the jurisdiction made by Vineet in C.S. No.14/2018. He has specifically referred to paragraph 42 of the plaint in C.S. No.14/2018, wherein Vineet stated:

“42. That this Hon'ble Court has the territorial jurisdiction to try and dispose of the suit by virtue of the fact that the plaintiff herein is permanently residing in Delhi and has filed a Petition under Section 13 (1) (ia) of The Hindu Marriage Act, 1955 for a Decree Of Divorce bearing H.M.A. No. 569 of 2015 titled as “Vineet Mehra Vs. Jyoti Lakhtakia” in the Court of Sh. Arun Kumar Arya, Principal Judge Family Court, Patiala House Courts, New Delhi.”

24. Mr. Banerjee submits that merely because the petition under Section 13(1)(ia) of the Hindu Marriage Act preferred by Vineet is pending before

the Family Court, it does not follow that the Family Court would get the territorial jurisdiction to try a suit in respect whereof it, otherwise, has no territorial jurisdiction, particularly when the defendant in the suit, i.e. Jyoti has not submitted to the jurisdiction of the Court, and has expressly raised an objection in that regard. Mr. Banerjee submits that the residence of the plaintiff within the jurisdiction of the Court does not give jurisdiction to that Court.

25. Mr. Banerjee submit that the conduct of Vineet shows that even after filing the application to seek the anti-suit injunction, he has continued to participate in the proceedings before the Ontario Court by filing his own affidavit as late as on 05.02.2021, wherein he has again raised his defence qua UWA before the Ontario Court. He relies on the principles laid down by the Supreme Court in ***Modi Entertainment Network & Another Vs. W.S.G. Cricket Pvt. Ltd.***, (2003) 4 SCC 341, to submit that the learned Principal Judge has not examined the case in the light of this decision.

26. On the other hand, Ms. Rajkotia supports the impugned order. She submits that the first proceedings *inter se* the parties were instituted by Vineet on 01.08.2015 when he preferred the divorce petition before the Family Court. The action initiated by Jyoti before the Ontario Court came thereafter on 28.08.2015. Vineet had also instituted C.S. No.14/2018 on 04.07.2017 to seek a declaration that Jyoti is, and has been, the beneficial owner of the company UWA. Ms. Rajkotia submits that by filing her written-statement in C.S. No.14/2018, Jyoti has submitted to the jurisdiction of the Court trying the said suit.

27. She further submits that the Family Court has, on the basis of the pleadings, framed the issues and the matter has been kept for trial. The issue of territorial jurisdiction has also been framed, which is a mixed question of fact and law. Ms. Rajkotia submits that the issues raised by Jyoti before the Ontario Court are substantially the same as those pending before the Family Court in C.S. No.14/2018.

28. Ms. Rajkotia submits that Jyoti moved an affidavit before the Ontario Court on 18.01.2021, seeking a declaration that UWA was fraudulently transferred to her by Vineet. On 31.01.2021, she filed her opening trial statement before the Ontario Court, wherein she stated that:

“49. The Honourable Court will find that Universal Wealth Assets Limited was fraudulently transferred to the Applicant and that it is truly owned by the Respondent and not the Applicant”.

29. Ms. Rajkotia submits that the said declaration sought by Jyoti is in the teeth of the relief sought by Vineet in his C.S. No.14/2018.

30. She submits that Jyoti is surreptitiously bypassing the jurisdiction of the Indian Court by raising the same issues before the Ontario Court, of which the Indian Court is *in seisen* since 2017. She submits that if the injunction as granted by the Family Court is vacated, the suit of Vineet being C.S. No.14/2018 would be rendered infructuous. She submits that Jyoti is amenable to the jurisdiction of the Family Court, since the divorce proceedings are pending before the Family Court. She raised the issue of jurisdiction even in respect of the divorce proceedings, which challenge was

rejected. Even this Court has upheld the order of the Family Court with regard to it having jurisdiction to try the divorce petition preferred by Vineet against Jyoti. She submits that restraint has been sought by Vineet, and granted by the Family Court against Jyoti, and not the Ontario Court.

31. She submits that the principle that: where more forums than one are available, the Court in exercise of its discretion to grant anti-suit injunction will examine as to which will be 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 of *non-conveniens*, is not applicable to the present suit. She further submits that 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.

32. She has drawn our attention in support of her aforesaid submissions to the decision of the Supreme Court in ***Modi Entertainment*** (supra). Ms.Rajkotia has also placed reliance on the decision rendered by the Supreme Court in S.L.P.(Civil) No.14948/2020 on 19.01.2021 in ***Madhavendra L. Bhatnagar Vs. Bhavna Lall***. In this case, the Supreme Court found that the Trial Court and the High Court committed manifest error in rejecting the *ad-interim* relief claimed by the appellant of anti-suit injunction during pendency of the proceedings between the parties in the Court at Bhopal. She has also relied upon the decision in ***Essel Sports Pvt. Ltd. Vs. Board of Control for Cricket in India***, F.A.O.(O.S.) No.107/2010 decided by this Court on 31.03.2011.

33. She submits that injunction granted by the Family Court has only restrained Jyoti from proceeding, or prosecuting the issue of declaration in respect of UWA before the Ontario Court. At the same time, she is at liberty to pursue her claims for maintenance and custody of child without specifically claiming the said declaration.

34. She has also drawn our attention to the observation made by the Ontario Court in its order dated 02.02.2021, wherein the Ontario Court has itself observed that: *“The property issues are being dealt in Court in India and scheduled for trial in May 2021.”*. She submits that the only property issue *inter se* the parties being dealt with by the Indian Court is in C.S. No.14/2018, which relates to UWA. She submits that the Ontario Court is also conscious of the fact that the property issue in relation to the UWA is outside the realm of the proceeding pending before it.

35. Having heard learned counsels and perused the impugned order as well as the record placed before us, we are of the view that the learned Principal Judge, Family Court has clearly erred in passing the anti-suit injunction against Jyoti while passing the impugned order.

36. The facts taken note by us hereinabove show that the issue: whether UWA is a company beneficially owned by Jyoti, or by Vineet, is an issue which has squarely been raised, and is pending consideration before the Ontario Court. It appears that while raising her claim for spousal & child monetary support, Jyoti had enlisted UWA as an asset of Vineet. Vineet hit back by claiming that it is Jyoti, who is the beneficial owner of UWA and that she had deliberately layered the dealings qua UWA with a view to avoid

Canadian taxation laws. To this, the response of Jyoti is that Vineet has fraudulently transferred the shareholding in UWA in her name with a view to set up his plea, as aforesaid. The aforesaid pleadings of the parties give rise to serious factual disputes, and raise issues of fact before the Ontario Court. As pointed out by Mr. Banerjee, the fact that these issues arise for consideration before the Ontario Court is evident not only from the pleadings of the parties before that Court, but also from the list of witnesses filed by Vineet and the affidavit of Mathew Graham Stock dated 07.01.2021, as also Vineet's own affidavit dated 05.02.2021 filed before the Ontario Court. Determination of the said issues by the Ontario Court would have a bearing on the claim for child support/ maintenance claimed by Jyoti for her minor child. It may have other ramifications for Jyoti, in case Vineet is able to establish his defence that UWA always was, and continues to be, the beneficial asset of Jyoti.

37. Jyoti has argued that Vineet subjected himself to the jurisdiction of the Ontario Court without any protest or demur. Ms. Rajkotia has not disputed this position, and the pleadings of the parties placed before us also do not suggest that Vineet has ever disputed the jurisdiction of the Ontario Court to go into the aforesaid issues. Partial evidence in relation to the said issues has already been filed before the Ontario Court in the form of the affidavit of the witness Mathew Graham Stock, as well as the affidavit of Vineet himself. Thus, the Ontario Court is completely seized of these issues and has exhibited its intent to try and deal with these issues quickly by rejecting Vineet's application for adjournment of the trial, which was fixed from 16.02.2021 onwards and would be still continuing.

38. On the other hand, insofar as Vineet's C.S. No.14/2018 is concerned, Jyoti has specifically stated in her written-statement that she does not submit herself to the jurisdiction of the Court. The submission of Ms. Rajkotia that the said statement would be of no effect, on account of Jyoti having filed her written-statement, cannot be accepted. No part of written-statement can be ignored and merely because she has filed her written-statement, it does not follow that she has submitted herself to the jurisdiction of the Indian Court, when she has expressly and, in no uncertain terms, stated that she is a foreign national and does not submit to the jurisdiction of the Indian Court. She has filed the Written Statement with that caveat, which cannot be ignored.

39. Moreover, Jyoti has raised a serious issue of territorial jurisdiction of the Indian Court to try Vineet's suit to seek declaratory relief in respect of the UWA. This objection is premised on the fact that UWA is a company incorporated in British Virgin Islands and it is governed by laws of the United Kingdom. It has its banking operation in Singapore. She has also drawn our attention to paragraph 42 of Vineet's C.S. No.14/2018 in which Vineet discloses the basis for his invoking the territorial jurisdiction of the Indian Court qua the relief sought with regard to the UWA. The only plea of Vineet with regard to the territorial jurisdiction of the Indian Court is that he is residing permanently in Delhi, and that he has filed a petition for divorce under Section 13(1)(ia) of the Hindu Marriage Act before the Family Court. *Prima-facie*, neither of these two aspects are relevant to determine the territorial jurisdiction of the Court to deal with the suit being C.S. No.14/2018 filed by Vineet. Thus, it is clear to us that Jyoti had raised

a serious issue with regard to the territorial jurisdiction of the Indian Court to try Vineet's C.S. No.14/2018.

40. While dealing with an application under Order XXXIX Rules 1 & 2 CPC, the Court has to examine the same in the light of three cardinal principles, namely, existence of a good *prima-facie* case; the balance of convenience in favour of one, or the other, party, and; the irreparable loss or injury that the grant of, or refusal of, the injunctive/ protective relief may cause to one, or the other party.

41. It appears to us that the learned Principal Judge – while dealing with the application in question seeking anti-suit injunction filed by Vineet, has failed to examine the case in the light of the aforesaid three principles. The plea that it has no territorial jurisdiction – even though raised by Jyoti, has not received consideration by the learned Principal Judge, on the premise that it is a mixed question of fact and law. That, it may be. However, that, by itself, did not afford a reason to the learned Principal Judge to not examine this plea of Jyoti at least *prima-facie*.

42. The learned Principal Judge has also not appreciated that Vineet has been participating in the proceedings before the Ontario Court without any protest or demur, and has been raising his pleas and defences in relation to UWA. Vineet has also filed his list of witnesses, and in pursuance thereof, has also filed evidence of one witness, namely Mathew Graham Stock, as well as his own evidence before the Ontario Court. These aspects, in our view, clearly bring out a *prima-facie* case in favour of Jyoti, and not in favour of Vineet in the context of the anti-suit injunction. Pertinently,

Vineet did not even cite the pendency of the suit in the Indian Court, or claim that there are overlapping issues raised in the proceedings before the Ontario Court, and before the Indian Court in C.S. No.14/2018, or the fact that the C.S. No.14/2018 is slated for trial in May 2021, as the reasons for seeking an adjournment of the trial from 16.02.2021 onwards.

43. The plea raised by Ms. Rajkotia that Jyoti surreptitiously sought to expand her claim before the Ontario Court on 18.01.2021, by filing an affidavit seeking a declaration that UWA was fraudulently transferred to her by Vineet, is a plea that would be open to Vineet to raise before the Ontario Court and for the Ontario Court to consider if & when, and, as and when, such a plea is raised. The examination of the said plea would be undertaken by the Ontario Court in the light of the pleadings of the parties already on record before the said Court. It was not for the learned Principal Judge to examine whether Jyoti has raised the said plea 'fraudulently', or otherwise, before the Ontario Court. The impugned order does not even return a *prima-facie* finding on this issue after examination of the respective pleading of the parties before the Ontario Court which, as aforesaid, primarily falls for consideration before the Ontario Court. Whatever defence Vineet may have to the claim of Jyoti, including the defence that a fresh plea has been set up by Jyoti before the Ontario Court, can only be examined by that Court.

44. We do not agree with the submission of Ms. Rajkotia that the principle laid down in ***Modi Entertainment*** (supra), as taken note of by us in paragraph 31 hereinabove, is not attracted in the facts of the present case.

Even if one were to assume, for the sake of argument only, that the Indian Court has the jurisdiction to deal with the declaratory suit preferred by Vineet being C.S. No.14/2018, even then the said principle kicks in. The learned Principal Judge should have examined as to which of the two would be the appropriate forum as a *forum conveniens* for the parties – Ontario Court, or the Indian Court. When one examines this issue, there can be no doubt that the forum of conveniens is the Ontario Court to decide issues in relation to UWA, since the parties have made detailed and specific pleadings in the proceedings before the Ontario Court; the parties (or at least one of them) have/ has filed the list of witnesses related to that issue, and; the parties (or at least one of them, i.e. Vineet) has also filed his evidence/ partial evidence before the Ontario Court on the said issue. Moreover, both parties have submitted to the jurisdiction of the Ontario Court to determine the aforesaid issues qua UWA.

45. On the other hand, Jyoti has specifically stated that she does not submit herself to the jurisdiction of the Indian Court trying C.S. No.14/2018. She has raised a serious issue of territorial jurisdiction of the Indian Court to try C.S. No.14/2018, since the subject matter of the said suit is not situated within the jurisdiction of the Court; no part of cause of action appears to have arisen within the jurisdiction of the Court, and; the defendant Jyoti is also not residing within the jurisdiction of the Court. Moreover, no evidence has been led by either of the parties before the Indian Court in C.S. No.14/2018 yet.

46. In the aforesaid circumstances, the balance of convenience could not

be said to be in favour of Vineet. At the time when the anti-suit injunction was granted by the learned Principal Judge, the application of Vineet to seek adjournment of trial commencing on 16.02.2021 onwards had already been dismissed, and he had been granted an opportunity to file his evidence by 05.02.2021 – which he had filed after moving the application seeking the anti-suit injunction. The trial was slated to commence on 16.02.2021. The balance of convenience was certainly in favour of permitting the said trial to commence, rather than interdicting the progress of the trial. Since Vineet is already represented before the Ontario Court, in our view, no irreparable loss or injury would have been caused to him, if the trial before the Ontario Court were allowed to proceed.

47. The fact that the divorce petition is pending before the Family Court, in our view, is neither here nor there, since the determination of the territorial jurisdiction to try the said petition would depend on the facts relevant to determination of the said petition. The fact that the parties got married in Delhi gave jurisdiction to the Family Court in Delhi to deal with the divorce petition. That, however, does not lead to the conclusion that the Family Court would get jurisdiction to decide all and sundry suits/ petitions between the parties, including those over which it has no territorial jurisdiction. Section 7(1)(a) of the Family Courts Act, 1984 reads:

“7. Jurisdiction.-

(1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any

district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and”
(emphasis supplied)

48. Thus, the Family Court would have, and it would exercise the jurisdiction “*exercisable by any district court or any subordinate court*”, *inter alia*, in respect of a suit or proceeding between the parties to a marriage with respect to the property of the parties or either of them [See Section 7(1) Explanation (c)]. It is only that jurisdiction – which is exercisable by the District Court or any Subordinate Court, which gets vested in the Family Court qua disputes between the parties to the marriage. If the District Court, or Courts subordinate to it do not have territorial jurisdiction, the Family Court would not get jurisdiction to deal with such a suit.

49. Reliance placed by Ms. Rajkotia on *Madhavendra L. Bhatnagar* (supra) is misplaced. She has relied on this decision only to cite an incident where the Supreme Court held that anti-suit injunction could have been granted by the Trial Court and the High Court in respect of the proceedings pending in the Superior Court of Arizona. She has not stated as to what is the ratio of this decision and how she wishes to invoke the said ratio in the facts of the present case. Same is the position with regard to her reliance placed on *Essel Sports Pvt. Ltd.* (supra).

50. For all the aforesaid reasons, we find that the impugned order suffers from patent illegality. Accordingly, we set aside the impugned order dated 12.02.2021 passed by the Principal Judge, Family Courts, New Delhi District, Patiala House Courts, New Delhi on the application under Order

XXXIX Rules 1 & 2 CPC read with Section 7 of the Family Courts Act (in C.S. No.14/2018) preferred by the respondent Vineet and vacate the injunction granted. The application preferred by Vineet under Order XXXIX Rules 1 & 2 CPC, whereon the impugned order has been passed, is dismissed. The parties are left to bear their respective costs.

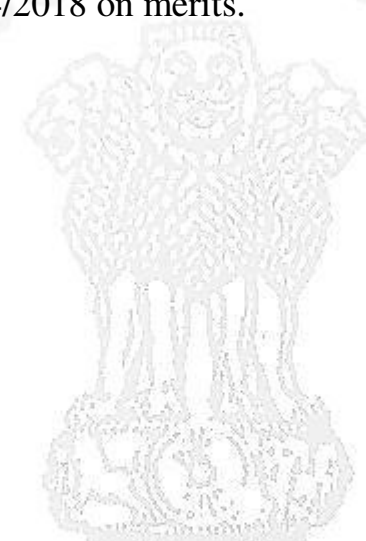
51. Observations made by us in this judgment have been made to deal with the present appeal, and shall not come in the way of the Family Court while deciding C.S. No.14/2018 on merits.

VIPIN SANGHI, J

REKHA PALLI, J

FEBRUARY 16, 2021

B.S. Rohella



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