

Modi Entertainment Network and anr. Vs. W.S.G. Cricket Pte. Limited

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Court : Mumbai

Decided On : Jan-30-2002

Reported in : 2002(3)ALLMR89; 2002(3)BomCR634

Judge : Pratibha Upasani, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 10 and 151; [Contract Act, 1872](#) - Sections 73

Appeal No. : Notice of Motion No. 120 of 2002 in Suit No. 2422 of 2001

Appellant : Modi Entertainment Network and anr.

Respondent : W.S.G. Cricket Pte. Limited

Advocate for Def. : Iqbal M. Chagla, ;Ravi Kadam and ;Anil Menon, Advs.

Advocate for Pet/Ap. : Aspi Chinoy and ;D.R. Dhond, Advs., i/b., ;Crawford Bayley and Co.

Judgement :

Pratibha Upasani, J.

1. In a suit for damages for breach of agreement allegedly committed by the defendants, this notice of motion is taken out by the plaintiffs, praying that the defendants be restrained by an order and injunction of this Court from continuing

and/or pursuing and/or prosecuting the same or taking any step in Claim No. HQ01X04867 filed in the High Court of Justice Queens Bench Division, England, till the hearing and final disposal of the present suit. The claim referred above is filed by the defendants (who are the claimants therein) in the Court in England alleging that the plaintiffs herein (who are the defendants in the claim filed in England) have committed breaches of their obligations by not paying certain amounts which the plaintiffs herein were bound to pay to the defendants and that because of certain payments which were made belatedly, they are also entitled to claim interest. These are some other incidental and consequential prayers also made in the claim, which is filed by the present defendants against the present plaintiffs, in the Court in England.

2. Few facts which are required to be stated to understand the controversy are as follows :

The plaintiffs are company registered under the Companies Act, 1956. They carry on business in the Media and Entertainment Industry. The defendants are company registered under the laws of Singapore. The parties entered into an agreement, dated 21st September, 2000, whereby the defendants, who had the exclusive licence for, inter alia, television rights, in respect of the ICC Knockout Cricket Tournament at Kenya between 3rd and 15th October, 2000, granted to the 2nd plaintiffs the exclusive licence to exhibit the said tournament on terrestrial television i.e. Doordarshan in India. The 2nd plaintiffs, in turn, assigned the same to the 1st plaintiffs. The case of the plaintiffs is that the defendants have acted in a manner contrary to the terms of the said agreement, dated 21st September, 2000, and committed breaches whereby the plaintiffs suffered loss and/or damage. The present suit is filed by the plaintiffs for recovery of the said loss/damage. The circumstances under which, as per the plaintiffs version, the defendants acted contrary to the terms of the said agreement, are as follows :

3. The defendants, who are licensors, granted to the plaintiffs/licensee, during the exhibition period, the exclusive licence to exhibit the feed (allowing television signal and/or tape-relay of the Matches, including international sound and guide commentary in English) solely by means of the television rights with commentary

in the authorised languages only, for the authorised number of exhibitions within the licensed territory on the terms and conditions contained in the agreement, dated 21st September, 2000. For the avoidance of doubt it was agreed between the parties that natural over-spill into the licensed territory of other licensed broadcasters transmission of the event will not constitute a breach of this agreement. It was also agreed between the parties that the licensee (the plaintiffs) shall not re-transmit or permit or authorise any third party to re-transmit its exhibitions of the television rights whether simultaneously or relayed by any means outside the licensed territory.

In consideration of the grant of the television rights, the licensee (the plaintiffs) were to pay to the designated account the licence fee, which was to be paid net of any all set-offs, deductions, withholding or taxes. The licensee (the plaintiffs) also undertook that its transmission and exhibitions of the television rights shall be of a high international standard, etc.

Clause 12 of this agreement also provided as follows :

'12. English Law

This agreement shall be governed by and construed in accordance with English Law and the parties hereby submit to the non-exclusive jurisdiction of the English Courts (without reference to English conflict of law rules)'.

A further clause also provided that each party would do all things necessary, including executing all documents necessary to give effect to the intention of the parties in relation to this agreement.

Under this agreement the plaintiffs were to pay to the defendants a consideration/license fee, which was to be computed as under :

(a) A guaranteed net amount of US \$ 35,00,000/-.

(b) A further sum of upto net US \$ 20,00,000/- in the event of the net advertising revenue exceeding the sum of the guaranteed amount of US \$ 35,00,000/-.

The plaintiffs, as per the agreement, were required to provide the defendants with the necessary documents to create an irrevocable charge on the revenue account of the plaintiffs with Citibank (i.e. the account in which the advertising revenue was to be deposited).

4. The event which was to be telecast i.e. the ICC Knockout Cricket Tournament at Kenya commenced from 3rd October, 2000. The agreement was executed on 21st September, 2000. The plaintiffs, therefore, had hardly ten days to obtain sponsors who would advertise during the telecast of the Matches. The plaintiffs case is that this was particularly a difficult task not only because time was short but also because of the fact that the said event was also being telecast on another channel simultaneously, namely, ESPN/Star Sports. The plaintiffs apprehended that the advertisers would, in all likelihood, divide their advertisements between these two channels. The plaintiffs were, therefore, very anxious to effectively, freely and quickly sell the advertisement slots on the said tournament telecast and were not expecting any impediment or obstruction which would have caused severe prejudice to them.

The plaintiffs accordingly sounded out to big advertisers/companies who would display their advertisements during the telecast of the Matches. Most of them were regular clients of the plaintiffs who had confirmed that they had, in principles, agreed to air their advertisements through the plaintiffs.

The plaintiffs, for the purpose of telecast of the said event, entered into an agreement with Doordarshan to telecast/beam/display the said signal through its satellite. The Doordarshan by way of consideration was to be paid a sum of rupees Four crores, as telecast fees. This contract with Doordarshan had to be entered because the agreement itself contemplated the exhibition of signals through Doordarshan alone and because Doordarshan has an exclusive monopoly over the domestic broadcasting in India, a fact which was known to the defendants.

The plaintiffs' contention is that Doordarshan's terrestrial network linkage is through satellite and its transmission within India is fee-to-air. It is contended by the plaintiffs that it is common knowledge in the field of satellite transmission, that

when signals are transmitted by satellite, the footprint of the satellite, invariably strays into areas which may not be covered by the licence to telecast the programme. This is because unlike contractually determined broadcast rights, which can prescribe different territories, there are inherent limitations and restrictions in controlling a satellite footprint. This phenomena is called 'natural over-spill' which is universally known and accepted. The plaintiffs contention is that in fact the more powerful the satellite, the wider is the over-spill. It is contended that if the footprint is wider, better is the commercial utility of the satellite and, therefore, there is always a theoretical conflict between the actual areas of the satellite footprint and the territorial limitations of contractual rights is inevitable. According to the plaintiffs, this conflict was resolved by not treating this phenomena as a violation of territorial rights of a licensee in another territory. According to the plaintiffs, the defendants were very much conscious of this fact and, therefore, there was a specific clause in the agreement which provided that a natural over-spill in the licensed territory of other licensed broadcasters would not constitute a breach of the agreement.

5. The plaintiffs' contention is that between 23rd September, 2000 and 2nd October, 2000, the plaintiffs obtained firm commitments from advertisers to the tune of Rs. 10 crores (US \$ 20,00,000). In this tournament, as naturally happens, most of the advertisers prefer to wait and watch India's performance in the initial few Matches and the kind of interest generated by the tournament. In the present case, since India played upto the final, the said tournament generated tremendous interest. The plaintiffs were therefore expecting to earn a windfall and advertising revenue in excess of the amounts guaranteed to the defendants and Doordarshan, from the sale of advertisement rights. This expectation of the plaintiffs, however, was not fulfilled and in fact they suffered loss because the defendants, from the beginning of the tournament, addressed letters to the plaintiffs contending that Doordarshan signal was being seen by viewers in the Middle-East region. The plaintiffs were informed that the local Middle-East sub-licensee, to whom licence rights for the Middle-East territory had been sold, had threatened to terminate his agreement with the defendants. The plaintiffs were, therefore, told that their feed would be stopped and the plaintiffs would be held responsible for the loss of revenue from the Gulf licensee. The plaintiffs, in turn, contacted Doordarshan, who

were transmitting the signal and who, however, disputed this assertion and also informed the plaintiffs that since the signal was not encrypted, any sighting of the same overseas was beyond their control and there was nothing that Doordarshan could do to prevent an unscrupulous cable operator in the Gulf from picking up the Doordarshan signal. This was conveyed by the plaintiffs to the defendants. According to the plaintiffs, the stand adopted by Doordarshan was both correct and well-founded because the satellite involved in question, namely, PASA and INSAT 2E, both have wide footprints whose spill over also is very wide. The theory is that the stronger the beam the wider the over-spill and therefore Doordarshan rightly contended that any attempt to rigidly enforce the territorial rights, as contemplated by the agreement, would make the entire system of satellite rights/broadcasting, unworkable. The plaintiffs contention is that the defendants, however, remained adamant and repeatedly threatened to disconnect the signal. According to the plaintiffs, the worst conduct of the defendants was that the threats given by the defendants were also made public by them.

Thus, it became known to the prospective advertisers that the telecast of the said programme on Doordarshan was likely to be discontinued or was in serious jeopardy. This resulted in a large number of prospective advertisers threatening to curtail their commitment to the plaintiffs. Several other advertisers who were interested in giving their advertisements, as India's performance was stunning in the tournament, pulled out of their commitments and gave their advertisements to ESPN channel instead of Doordarshan. The plaintiffs contention is that because of this conduct of the defendants, whereby the prospective advertisers ditched the plaintiffs and gave their advertisements to ESPN, the plaintiffs suffered loss of over US \$ 43,00,000/-. The plaintiffs have annexed to the plaint copies of letters of the concerned advertising agencies informing the plaintiffs about their decision not to advertise on Doordarshan, as a direct consequence of the uncertainty regarding the telecast of the Matches. Exhibits D-1, D-2, D-3 and D-4 to the plaint are some of the said letters.

Thereafter there was extensive correspondence between the parties, allegations, counter-allegations ensued, which resulted into the plaintiffs filing the present suit in this Court. Thus, the plaintiffs case is that the defendants threats of

disconnection was totally unlawful and unjustified and was given with a mala fide intention to cause loss to the plaintiffs and that from the threats the defendants stood to commercially benefit. The contention of the plaintiffs is that since the plaintiffs were bound to give the minimum guarantee amount to the defendants, the defendants had nothing to loose. However, the plaintiffs were put to loss as the advertisers avoided the plaintiffs and instead switched over to Star Sports (ESPN) from whom the defendants would receive large revenue. Allegation is made by the plaintiffs that the defendants and Mr. Rupert Murdoch (owner of Star) have an extremely close, interconnected financial nexus and involvement. It is contended by the plaintiffs that in fact the said Mr. Rupert Murdoch-controlled News corporation had supported the defendants in their bid for ICC Cricket telecast rights. The plaintiffs' contention further is that even Doordarshan informed the plaintiffs that the said threats were made by the defendants at the instance of the rival satellite channel, namely, ESPN. The plaintiffs contention is that the entire episode of the complaint allegedly made by the Middle-East-region-licensee was deliberately overplayed. The allegation of the plaintiffs against the defendants is that the threats of disconnection were made public to discredit the telecast on Doordarshan and to ensure that members of the cricket watching audience as well as advertisers, switched to ESPN. Their contention is that the threats issued by the defendants were put into practice and that the feed was not disconnected but the action of the defendants in making the threats public clearly was something not foreseeable by the plaintiffs, that it was not in accordance with the manner and spirit in which the agreement between the parties had to be abided and that the plaintiffs were put to loss by the defendants by their action. Hence the suit.

It appears that the defendants also filed claim for breach of contract against the plaintiffs in the High Court of Justice, Queens Bench Division, England, on 15th November, 2001. This claim came to be filed subsequently i.e., after the plaintiffs filed the present suit in this Court. It also appears that the plaintiffs filed their appearance in that claim under protest, raising at the first instance, the point of jurisdiction.

The submission of the plaintiffs is that the present suit filed by them against the defendants is filed earlier than the defendants' claim, which has been filed by them

in England, that the entire cause of action has arisen in India, that the parties who would be deposing in the said claim would all be from India and, therefore, the claim filed by the defendants in England be stayed. The plaintiffs contention is that if the claim filed in England is allowed to continued, it will cause enormous expenses to the plaintiffs, that it is not a convenient and proper forum at all and that the claim filed by the defendants in England is vexations and is filed only with a view to harass them. Their contention is that since all their witnesses, like the personnel from the Doordarshan, advertisers, etc., are in India, it would be next to impossible to secure their presence before the Court in England and that the defendants' intention in filing the claim there is only to prevent the plaintiffs from establishing their case in that Court in England. It is admitted by them that as per Clause 12 of the agreement, it was decided between the parties that the agreement shall be governed by and construed in accordance with English law and that the parties submitted to the non-exclusive jurisdiction of the English Courts. It is, however, submitted by them that in view of the vexatious nature of the claim and the mala fide intention of the defendants in not allowing the plaintiffs to succeed in that claim because of their inability to secure the presence of the witnesses from India to England that claim be stayed. It is contended that this Court has jurisdiction to pass such an injunction order against the defendants in the interest of justice in such a claim brought about by the defendants when what they had agreed to was only the non-exclusive jurisdiction of that Court.

6. The defendants have filed their affidavit in-reply wherein they have highlighted, apart from the merit of the matter, Clause 12 of the agreement which says that the agreement shall be governed by the English law and have submitted to the jurisdiction of the English Court. It is contended that when the parties have chosen the forum to agitate their claim, it is improper for the party to turn back and to approach this Court now, praying that the suit filed by the defendants as per Clause 12 of the agreement, be stayed. According to them, the plaintiffs have committed breach of the agreement by not making prompt payment of the security amount as per the schedule. They have denied the allegations made by the plaintiffs against them of acting in a mala fide way to cause loss to the plaintiffs.

7. I have heard Mr. Aspi Chinoy, Senior Counsel, for the plaintiffs and Mr. I.M. Chagla, Senior Counsel, for the defendants.

To substantiate his argument that this Court has got jurisdiction to pass the order of injunction restraining the defendants from taking any steps into the claim filed by them in the Court in England, Mr. Chinoy relied upon the judgments of this Court as well as the Supreme Court. They are, A.I.R. 1921 Bom 128 Lakhiram v. Poonamchand, : AIR1943 Bom206 Dhanraj & Co. v. Babulal Ramchandra, : [1987]1SCR1024 O.N.G.C. v. Western Co. of North America, and : [1981]1SCR899 Ramji Dayawala & Sons (P) Ltd. v. Invest Import.

The first case, reported in A.I.R. 1921 Bom 128 Lakhiram v. Poonamchandra, deals with the point whether a Court has jurisdiction to restrain a party within the jurisdiction from prosecuting a suit in a foreign Court. It is held that a Court certainly has jurisdiction to restrain a party within the jurisdiction from prosecuting a suit in a foreign Court if it thinks that the action of the party in filing the suit in the foreign Court is opposed to the notion of equity, etc. of the Court seeking to restrain him. It is further held that it cannot actually prevent the party from continuing his action in the foreign Court but if he came within the jurisdiction of the Court, proceedings might be taken against him for contempt.

In this case the Division Bench quoted the discussion in Venechand v. Lakhmichand Manekchand, reported in A.I.R. 1920(44) Bom. 272 wherein it was observed as follows :

'There is no doubt as to the jurisdiction of this Court to restrain a party within its jurisdiction from prosecuting a suit in a foreign Court. The principle on which this jurisdiction is exercised is set forth in the judgment of Lord Oranworth in the case of Carron Iron Company v. Maclaron, (2). It is that the Court acts in personam and will not suffer any one within its reach to do what is contrary to its notions of equity, merely because the act to be done may be, in point of locality, beyond its jurisdiction.'

In the second case relied upon by Mr. Chinoy, namely, : AIR1943 Bom206 Dhanraj & Co. v. Babulal Ramchandra, it was observed by Mr. Kania, J., as

follows :

'There is nothing in law to prevent a Court on the Original Side of a Chartered High Court from granting an injunction to restrain a defendant (though not residing there) from proceeding with a suit in another Court, provided it was shown on the face of the plaint that the High Court had jurisdiction to entertain the suit.'

While discussing this proposition a passage from A.I.R. 1920 Bom. 309 *Vanechand v. Lakhmichand* was quoted, which reads as follows :

'The authorities collected in that judgment, 1855(5) H.L.C. 416, embrace three classes of cases in which this principle has been enforced. There are, firstly, when the foreign suit is vexatious and has been filed by a party to a litigation pending in England in which complete relief may be had; secondly, when the foreign suit is ill-calculated to answer the ends of justice e.g., thirdly, the general grounds of equity and good conscience.'

Thus, the specific proposition laid down by the above two judgments is that this Court certainly has jurisdiction to restrain the defendant from proceeding in the suit which he has filed in another country.

It, however, has to be kept in mind that in both the authorities relied upon by Mr. Chinoy, the suit filed by the other party was filed before a forum which was not chosen by both the parties. There was no previous agreement between the parties to abide by the decision of a particular forum. However, by way of a general proposition the principle is clearly established that nothing can prevent this Court from issuing a stay or injunction.

In the third case cited by Mr. Chinoy, namely, : [1987]1SCR1024 *O.N.G.C. v. Western Co. of North America*, the parties had chosen the forum with consensus and the facts of the case were as follows :

'The appellant ONGC entered into a drilling contract with the respondent Western Company of USA. The contract provided for reference to arbitration in case of any difference arising out of the contract. The arbitration proceedings were to be governed by the Indian Arbitration Act, 1940 r/w the relevant rules. A dispute arose

between the parties which was referred to two arbitrators and an umpire was also appointed. The arbitrators entered on the reference in London, which was the agreed venue under the contract, but they could not agree on the matters outstanding in the reference. Since the umpire remained present throughout the proceedings before the arbitrators, he made a non-speaking Award followed by a supplementary Award without affording any hearing to the parties. The Awards of the umpire was then filed in the Bombay High Court at the instance of the respondent. About a month thereafter, the respondent lodged a plaint in the US District Court, inter alia, seeking an order confirming the Awards and a judgment for payment of interest until the date of the judgment and costs etc., by the ONGC. The appellant on its part filed an arbitration petition under sections 30 and 33 of the Indian Arbitration Act for setting aside the awards of the umpire and also prayed for an interim order restraining the respondent from proceeding further with the action instituted in the US Court. The Single Judge of the High Court granted an ex parte interim restraint order but by a subsequent order vacated the same after hearing the parties. The ONGC filed the present appeal by Special Leave against the Single Judge's order vacating the ex parte interim restraint. Allowing the appeal with directions, the Supreme Court held that the appellant was entitled to the interim restraint order as passed, as there were good and sufficient reasons for grant of the same. It was held that the High Court has undoubted jurisdiction in exercise of its inherent powers to grant such a restraint order whenever the circumstances of the case make it necessary or expedient to do so or the ends of justice so require.'

The fourth authority relied upon by Mr. Chinoy, namely, : [1981]1SCR899 Ramji Dayawala & Sons (P) Ltd. v. Invest Import lays down that when parties by contract agree to arrange for settlement of their disputes by a Judge of their choice, by procedure of arbitration voluntarily agreed upon, ordinarily the Court must hold the parties to their bargain. But the Apex Court has further gone on to say..... 'However, this is not an absolute rule. Granting or refusing to grant stay is still a matter within the discretion of the Court'.

Thus the thread running through all these judgments is unmistakably explicit. Though generally speaking, when the parties have agreed to abide by a particular

forum, the Court must hold the parties to their bargain. However, this is not an absolute rule, as observed by the Supreme Court. How its discretion has to be exercised in a given case would depend upon various circumstances. But to grant stay of the suit is still a matter within the discretion of the Court.

8. In the present case in hand, in my opinion, the plaintiffs have made out a very strong prima facie case for exercising this discretion in their favour and to stay the claim instituted by the defendants in the Court in England.

9. Mr. I.M. Chagla, Senior Counsel, for the defendants, forcefully argued that here is a case where two seasoned businessmen with their eyes open, entered into a contract choosing a particular forum, agreeing that the agreement would be governed by the English law and that they would submit to the English Court and now the plaintiffs cannot be heard to say that the forum which has been chosen by them is a wrong forum and that the claim filed in that forum should be stayed. To substantiate his arguments, Mr. Chagla relied upon the decision reported in A.I.R. 1927 Bom 135 V.R. Naik v. Balvant Sitaram Mahindre. However, the facts of this case disclose that the defendant there had entered appearance in the plaintiff's suit 'without prejudice' and also made a counter-claim. Thus he had appeared unconditionally and without prejudice, completely submitting to the jurisdiction. In the present case in hand, however, the plaintiffs have entered appearance in the Court in England under protest and at the first opportunity have raised the point of jurisdiction.

Another decision relied upon by Mr. Chagla is in the case of S.P. Chengalvaraya Naidu v. Jagannath & others, reported in : AIR 1994 SC853 . In this case the Supreme Court has observed that if there is a non-disclosure of relevant and material documents with a view to obtain advantage then it amounts to fraud. Mr. Chagla, in the present case at hand, drew the Court's attention to some of the correspondence between the parties which reveal that the plaintiffs were not complaining about any breach allegedly committed by the defendants, that they were accepting that, on the contrary, that there was delay on their part in making the payment as per the Schedule, and what they were asking for was only some more time to make the payment. Mr. Chagla contended that the plaintiffs had not

annexed copies of this correspondence to the plaint and that non-disclosure of these material documents amounted to fraud and, therefore, no injunction should be granted staying the defendants claim filed in the Court in England.

In this case, cited by Mr. Chagla, there was partition suit filed by the respondent without disclosing the deed of release, executed by him, whereby the respondent had relinquished his right and obtained a preliminary decree. At the time of hearing of application for final decree filed by the respondent, the appellants-defendants came to know about the want of locus standi of the respondent and challenged the application on the ground of fraud. Thus this was a gross case where the deed of release by a party was suppressed and a preliminary decree was obtained. In the present case in hand, the plaintiffs are sought to be painted by black colour, but no such fraud, of the magnitude, as is pointed out in the Supreme Court case cited by Mr. Chagla, appears it have been committed by the plaintiffs.

The third case relied upon by Mr. Chagla was of Queen's Bench Division (Commercial Court) *British Aerospace Plc. v. Dee Howard Co.*, reported in *Lloyd's Law Reports* 1993 Vol. 1 page 368. In this case again the approach of the parties on going back on words is deprecated by saying that when there are factors which are 'eminently foreseeable' at the time the agreement is entered into..... to use the phrase used by Mr. Justice Waller, then surely one of them cannot point out same factor which according to the party was not foreseeable for displacing the bargain which they had made. Thus what this authority lays down is that the parties must be held to their bargain. The situation, however, is different when it comes to a non-exclusive clause. It is also stated in this judgment that the burden of proof is on the plaintiff to satisfy the Court that a particular country is the proper forum for the trial of this kind. It also further goes on to say that the parties must point to some factors which they could not have foreseen but which they now can rely for displacing the bargain which they made.

In the present case in hand, it can be said that what was not foreseeable by the plaintiffs was the sudden change and the policy adopted by the defendants who gave threats to the plaintiffs to discontinue their feed, while actually not doing so. The ingenuity in making their threats public to the knowledge of the prospective

advertisers in the market, resulted in depriving the plaintiffs of their profits which were expected out of the entire bargain. This had a cascading effect whereby the hopes of the plaintiffs of getting a windfall out of the profits from pouring advertisements allegedly came crashing down. The defendants were guaranteed of the assured sum which they were bound to get in any case. They, therefore, had nothing to worry about but the windfall that was expected to the plaintiffs did not come by because of the advertisers shying away because of the uncertainty of the event who then approached the rival channel. Thus, there was actually no breach of contract which was 'foreseeable'. The foreseeable breach from the defendants side would have been if they had discontinued the feed. That they very cleverly did not do. They continued the feed. Thus there was observance of the contract in letter but not in spirit in as much as the defendants saw to it that they got their guaranteed amount but the plaintiffs would not get their windfall which was expected out of the event.

This appears to be the scenario at this prima facie stage. No doubt the parties had agreed to a forum which was chosen by them but this attitude of the defendants was certainly not foreseeable by the plaintiffs. The contention of the plaintiffs that the claim in the Court in England, if continued, would be oppressive and vexatious, has got substance. As rightly submitted by the plaintiffs, if the plaintiffs have to prove their case by examining their prospective advertisers who initially showed interest in advertising their product through Doordarshan and who subsequently approached the rival channel because of the threats allegedly given by the defendants, then, procuring their presence in England for the purpose of trial would be enormously expensive. The Doordarshan officials who would depose about the wider footprint of the satellite and the capacity of PASA and INSAT 2E, so also the spill-over which could not be controlled by them would be required to be brought from India to England if the plaintiffs have to prove their case. If the plaintiffs fail to procure these witnesses, they would fail in establishing their case. All this process is indeed oppressive and vexatious. The plaintiffs case, as made out before this Court, does not appear to be as weak or as bad or so hopeless that it should be thrown out at the threshold by this Court at the ad interim stage. Certainly the plaintiffs have made out a very strong prima facie case to grant injunction restraining the defendants from proceeding or taking any steps in the

claim filed by them in England.

Mr. Chagla fairly stated that the jurisdiction/authority of this Court to pass such an injunction is not doubted. He, however, submitted that this is an extraordinary discretion and the Court should not exercise it lightly. In my opinion, this is a fit case where this discretion should be exercised by this Court in favour of the plaintiffs for the reasons stated above. The plaintiffs conduct, as pointed out by the defendants, does not appear to be fraudulent, at least, at this stage. That the defendants were giving such threats and the consequence that followed these threats is evidence from the letters annexed to the plaint as Exhibits D-1, D-2, D-3 and D-4. It is not that the plaintiffs did not earn any money at all. They did earn substantial amount of money and also paid over the same as per their commitment to the defendants. Whether there are lapses on the part of the plaintiffs in making prompt payment, what are these lapses, how much they are to be blamed for it and how much the defendants are to be blamed for it, whether the factors involved in Clause 12 of the agreement were 'eminently foreseeable' at the time the agreement was entered into or not (again to use the phraseology used by Mr. Justice Waller in *British Aerospace Plc v. Dee Howard Co.* (supra) can be ascertained and decided at a later stage. At this ad interim stage, however, the plaintiffs' interest needs to be protected by not allowing the defendants to take any steps in the claim filed by them in the Court in England. Hence following order:

ORDER

Ad interim relief is granted in terms of prayer Clause (a) of the Notice of Motion.

Notice of Motion made returnable after six weeks.

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