IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 23.03.2023	***Delivered on 18.04.2023***

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B.BALAJI

OSA.Nos.229 & 230/2014

Advantage Strategic Consulting Singapore
Private Limited, 101, Cecil Street,
Tong Eng Building, No.23-12
Singapore-069533
through its Principal Common Director
Mr.Chinna Bala Reddy Nageswara Reddy .. Appellant / 2nd Defendant

Versus

1.Dr.Subramanian Swamy .. R1 / Plaintiff

2.Advantage Strategic Consulting Private
Limited, Flat 3-B 3rd Floor, Bajaj Apartment
7/14, Nandanam Extension Main Road
Nandanam, Chennai 600 035.
Through its Principal Common Director
Mr.Chinna Bala Reddy Nageswara Reddy .. R2 / 1st Defendan

Common Prayer:- Original Side Appeals Suit filed under Section 96 and Order 36 Rule 9 of the Original Side Rules read with Clause 15 of Letters Patent against the order dated 08.08.2014 passed by a learned Single Judge of this Court in Application No.5002/2013 in CS.No.703/2013 and OA.No.796/2013 in CS.No.703/2013.

For Appellant in both Appeals	:	Mr.Satish Parasaran Senior counsel assisted by Mr.Rahul Balaji
For R1 in both Appeals	:	Dr.Subramanian Swamy assisted by Mr.R.Ravi
R2	:	Served. No appearance

COMMON JUDGMENT

S.S.SUNDAR, J.,

(1)The above two Original Side Appeals arise out of the common order of the learned Single Judge dated 08.08.2014 made in A.No.5002/2013 and OA.No.796/2013 in CS.No.703/2013. Both appeals are filed by the 2nd defendant in the suit in CS.No.703/2013. Since the appeals arise out of the common order confirming the order of injunction and dismissing the application to vacate the interim order, the appeals are disposed of by this common judgment.

(2)The parties are generally referred to by their litigating status in the suit in CS.No.703/2013. The appellant is either referred to as the appellant or the 2nd defendant. The 1st respondent is either referred to as the plaintiff or the 1st respondent.

(3)Brief facts that are necessary for the disposal of the above two Original Side Appeals are as follows:

(4)The plaintiff/1st respondent is a nationally known public figure being active in politics and public affairs. The plaintiff is a senior politician, a Member of Parliament for five terms and has been a Senior Cabinet Minister in the Central Government holding the portfolios of Commerce, Law and Justice. The plaintiff was the Chairman of the Commission for Labour Standards. He has obtained his Doctorate in Economics from Harvard University in USA. The plaintiff stated in his plaint in CS.No.703/2013 that he has authored a number of books and ranked among the leading scholars in the subjects of Mathematical Economics and the economy of China.

(5)The 1st defendant in the suit is in the business of providing business consultancy services and investments in India. The 2nd defendant is stated to be wholly owned and a subsidiary Company of 1st defendant, however, incorporated in Singapore and having business in Singapore.

(6)The plaintiff has held a press conference in New Delhi, which according to him was to bring out the illegalities in the 'Aircel-Maxis' deal. It is the case of the appellant that several defamatory allegations and remarks were made by the plaintiff against the appellant/Company and its operations in Singapore to impress that the appellant is a completely illegal Company with the sole intention of defaming the appellant. Alleging that such defamatory statements had caused damage to its reputation and loss of business in Singapore, a suit in Suit No.581/2012 has been filed by the appellant before the Hon'ble High Court of Singapore. Immediately after the filing of the said suit, the plaintiff filed a contempt petition in cont.P.[Crl].No.4/2012 before Hon'ble Supreme Court. In the proceedings in I.A.No.36/2012, filed by the plaintiff as intervenor in Civil Appeal.No.10660/2010, the above contempt petition

in Cont.P.[Crl.].No.4/2012 is filed on the allegation that the defamation suit is filed before the Singapore High Court to prejudice or interfere with the plaintiff's zeal to prosecute with vigour and determine the due course of judicial proceedings pending before the Hon'ble Supreme Court. In other words, filing of suit itself in Singapore is described as an attempt to interfere with or obstruct the administration of justice attracting criminal contempt under Section 2[c] of the Contempt of Courts Act, 1971. The said contempt petition filed by the plaintiff was dismissed as the plaintiff failed to establish any nexus between the cases filed by him before the Hon'ble Supreme Court and the appellant herein. It is thereafter, the plaintiff filed the suit in CS.No.703/2013 before this Court seeking the following reliefs:-

> *(a) declaring that the initiation and continuation of the action brought by the defendant No.1 and the defendant No.1's subsidiary defendant No.2 before the High Court of Singapore styled as Suit No.581 of 2012 is mala fide, oppressive, vexatious and contrary to the principles of justice insofar as the plaintiff is concerned;*

(b) declaring that the defendant No.1 and the defendant No.1's subsidiary defendant No.2 are not entitled to institute any legal proceedings before any Court outside Chennai, India against the plaintiff or affecting the plaintiff on the basis of or as a consequence of or pursuant to the Press Conference dated 26.04.2012;

(c) Consequently granting a permanent injunction restraining the defendant No.1 and more particularly defendant No.2 the defendant No.1's subsidiary from continuing with the legal proceedings against the plaintiff in the High Court of Singapore in Suit No.581/2012;

(d) granting a permanent injunction restraining the defendant No.1 and more particularly defendant No.2 the defendant No.1's subsidiary from filing or maintaining any other suit or legal proceedings against the plaintiff at the High Court of Singapore, or at any place other than Chennai, India in any manner whatsoever ; and

(e) award costs of the suit to the plaintiff, and pass such further or other orders as this Hon'ble

Court may deem proper and necessary in the circumstances of the case and thus render justice.

(7)It is the case of the plaintiff that the plaintiff has done the seminal work in unearthing and prosecuting 2G spectrum scam and is following up the ramifications of the 2G spectrum scam to ensure its proper prosecution by the investigating/prosecuting agencies of the Government. It is stated that he stood by what was published in the Indian Press and he is prepared for Court litigation if necessary on the truth of every remark he has made against others. However, the plaintiff's further case in the plaint is that the Press Conference was called by him on 26.04.2012 at New Delhi which was covered by the National television and print media widely and the same cannot give rise to an action for filing a suit in Singapore based on the availability of content in the internet as the plaintiff is not responsible for the publication of any content in social media. The plaintiff in the suit has further stated that the appellant/2nd defendant who is acting at the behest of the 1st defendant, is the subsidiary of the 1st defendant who is the Holding Company. Further, it

is stated in the plaint that Chennai is the most obvious common place where the litigation has to be pursued and the institution of suit in Singapore High Court is against the well established principle '*Forum Conveniens'*.

(8)In the suit filed by the plaintiff in CS.No.703/2013, an original application in OA.No.796/2013 is filed by plaintiff for ad-interim injunction restraining the appellant and 1st defendant either directly or through its agents from filing / prosecuting any suit in a foreign Forum more particularly prosecuting the defamation suit in Suit No.581/2012 pending before the High Court of Singapore. An order of injunction was granted and thereafter, the appellant filed an application A.No.5002/2013 for vacating interim injunction.

(9)In the counter affidavit filed by the appellant/2nd defendant in the suit, apart from projecting factual issues, the appellant has raised the following issues:-

[a]The suit in CS.No.703/2013 is barred by principles of *res judicata* in view of the decision of the Hon'ble Supreme Court dismissing the

Contempt Petition on the ground that the plaintiff has failed to establish any nexus between the cases filed by plaintiff before the Hon'ble Supreme Court and the appellant who is the 2nd defendant in the suit.

[b]The 2nd defendant is not personally amenable to the jurisdiction of this Court as it is a Company registered in Singapore and has no business or other activities in India.

[c]The suit in CS.No.703/2013 is liable to be dismissed on the ground of laches as the same was instituted nearly one year after the suit was filed in Singapore.

[d]The suit in CS.No.703/2013 is barred as the plaintiff has submitted to the jurisdiction of Singapore Court by responding to the summons.

[e]No cause of action arises within the jurisdiction of this Court and the entire cause of action for filing the suit in Singapore arose only in Singapore. Hence, the plea of *forum non-conveniens* is unsustainable.

[f]Since the Singapore Court is not oppressive or vexatious and does not lack inherent jurisdiction to entertain a suit, the anti-suit injunction before this High Court is not legally maintainable.

(10)A learned Single Judge of this Court disposed of OA.No.796/2013 and A.No.5002/2013 vide common order dated 08.08.2014. Considering the pleadings, the learned Single Judge framed the following issues:-

> *[1]Whether the High Court of Singapore has got jurisdiction to decide the defamation suit No.581/2012 before the High Court of Singapore?*
>
> *[2]Whether the suit is barred by principles of res judicata?*
>
> *[3]Whether the plaintiff has submitted to the jurisdiction of Hon'ble Supreme Court?*
>
> *[4]Whether an anti-suit injunction can be granted against the person who is not amenable to the jurisdiction of this Court?*

(11)On the first issue, the learned Single Judge has held that High Court of Singapore has no jurisdiction to entertain the defamation suit filed by the

appellant. The learned Single Judge also held that the plaintiff never submitted himself to the jurisdiction of the High Court of Singapore. In view of the conclusions reached by the learned Single Judge on all the issues, the learned Single Judge held that an anti-suit injunction can be granted against the 2nd defendant since the 2nd defendant is only a subsidiary of the 1st defendant Company. The learned Single Judge also accepted the legal position that anti-suit injunction can be granted only if the person against whom the relief is prayed for is amenable to the jurisdiction to the Court in which the suit is filed. However, relying upon the judgment of the Hon'ble Supreme Court in the case of ***Vodafone International Holdings Vs. Union of India and Another*** reported in ***2012 [6] SCC 613,*** the learned Judge came to a *prima facie* conclusion that the appellant is acting at the behest of the 1st defendant the Holding Company and is only a subsidiary company of Indian Company and hence, appellant is amenable to the jurisdiction of this Court. Aggrieved by the order of the learned Single Judge confirming the order of injunction granted and dismissing the application filed to vacate the

interim order, the above two Original Side Appeals have been preferred by the 2nd defendant in the suit in CS.No.703/2013.

(12)Mr.Satish Parasaran, learned Senior counsel appearing for the appellant/2nd defendant made the following submissions:-

[a]The anit-suit injunction cannot be granted against the appellant who is not amenable to the jurisdiction of this Court.

[b]The suit in CS.NO.703/2013 is barred by principles of *res judicata.*

[c]The anti suit injunction is barred because of laches.

[d]The High Court of Singapore alone has the natural jurisdiction to decide the defamation suit in S.No.581/2012 even while applying the principle of '*Forum Conveniens*'.

[e]The plaintiff having submitted himself to the jurisdiction of High Court of Singapore, is precluded by principles of waiver to seek anti-suit injunction.

[f]The declaratory relief sought for in the suit is on the ground that the High Court of Singapore is oppressive and that the appellant herein is not

entitled to seek legal remedy in any Court outside Chennai and that such a declaratory relief without making any averments to demonstrate that the judgment that may be delivered by the Singapore Court would fall under any of the exceptions referred to in Section 13 of CPC is not sustainable.

[g]The learned Single Judge has not considered whether the essential requirements are satisfied by the plaintiff for grant of anti suit injunction.

(13)***Per contra,*** Dr.Subramanian Swamy, the 1st respondent/plaintiff in CS.No.703/2013 during his arguments and in his written submissions, reiterated the following points:-

[i]The Press Conference was held at New Delhi and the 1st respondent/plaintiff is residing in Chennai and New Delhi and the parent company is having its registered office at Chennai. No cause of action has arisen in Singapore by reason of access of defamatory article through internet by the appellant company at Singapore. He relied on a judgment of Delhi High Court in ***Banyan Tree Holding Private Limited Vs. A.Murali Krishna Reddy and Another*** in ***CS [OS] No.894/2008*** dated 23.11.2009, wherein the Delhi High Court has held that mere accessibility of the

defendants' website in New Delhi would not enable the High Court to exercise jurisdiction.

[ii]The High Court of Singapore has no jurisdiction to entertain the suit merely on the ground that the appellant had access to the defamatory article published through internet. The plaintiff/1st respondent herein did not put any statement in the internet and it was done by some unknown persons.

[iii]The appellant being a subsidiary company which is wholly under the control of Chennai based Indian Holding Company, the 2nd defendant can be held to be amenable to the jurisdiction of High Court as the Hon'ble Supreme Court in ***Vodafone case [cited supra],*** has expressed in unequivocal terms that in proper cases by lifting of corporate veil, it can be said that the parent company and subsidiary company form one entity.

[iv]On the issue of *res judicata,* it is contended by the 1st respondent that the scope of contempt petition filed by the 1st respondent before the Hon'ble Supreme Court and the plaint filed in CS.No.703/2013 arise out of different cause of action and the relief prayed for are entirely different, [one

is not connected with the other] and hence, there is no scope for applying the principle of *res judicata.* It is pointed out that the issue decided by the Hon'ble Supreme Court in contempt petition is not essential or relevant for considering whether the plaintiff is entitled to the relief of declaration and consequential injunction in CS.No.703/2013.

[v]On the issue whether the 1st respondent/plaintiff has submitted himself to the jurisdiction of High Court of Singapore, it is contended by the 1st respondent that merely because the 1st respondent sought for time to file Vakalat and counter in the Interlocutory Application, it cannot be said that he had submitted to the jurisdiction to the Court in Singapore. The 1st respondent reiterated that he is questioning the very jurisdiction of Singapore Court to entertain a defamation suit against the plaintiff in Singapore and that the participation of the 1st respondent/plaintiff without prejudice to his defence, cannot be taken as if he has submitted to the jurisdiction of the Hon'ble High Court of Singapore.

[vi]Finally, the plaintiff/1st respondent reiterated his submission that the High Court of Madras will be a Forum Convenient by referring to the

fact that the plaintiff and the 1st defendant are having official residence and registered office respectively in Chennai. It is further submitted that driving the plaintiff/1st respondent to Singapore will be against the principles of equity and good conscience apart from the fact that the proceedings in Singapore is oppressive and vexatious in nature. He also submitted that to avoid injustice, the proper Forum to sue for defamation by the appellant is Chennai.

(14)Considering the rival submissions made on either side, this Court is of the view that the appeals can be disposed of finding answers to the following issues:-

[A]Whether an anti suit injunction can be granted against the appellant when the appellant is not personally amenable to the jurisdiction of this Court and whether by virtue of the fact that the appellant, a Singapore Company, being a subsidiary of Indian Company, the 1st defendant in the suit is amenable to the jurisdiction of this Court?

[B]Whether the suit in CS.No.703/2013 is barred by principles of res judicata in view of the decision of the Hon'ble Supreme Court in the contempt petition filed by the plaintiff/1st respondent.

[C]Whether the Court can refuse to grant ad-interim injunction on the ground of laches?

[D]Whether the Court in Singapore alone has natural jurisdiction for entertaining the defamation suit?

[E]Whether the plaintiff/1st respondent herein has submitted himself to the jurisdiction of Singapore Court and whether the appellant has submitted itself to the jurisdiction of this Court?

[F]Whether the plaintiff/1st respondent is entitled to the declaratory relief sought for in the suit?

[G]Whether the plaintiff/1st respondent has satisfied the requirements for grant of anti-suit injunction in the facts of this case?

POINT [A]:-

(15)Learned Senior counsel appearing for the appellant submitted that the appellant Company has no assets or operations within the jurisdiction of

this court. The appellant's place of business and presence is only in Singapore. Hence, the appellant is not personally amenable to the jurisdiction of this Court and an anti-suit injunction cannot be granted by this Court to prevent a foreign company to prosecute a suit in a foreign Court. Learned Senior counsel for the appellant as well as the 1st respondent/plaintiff relied upon the judgment of the Hon'ble Supreme Court in the case of ***Modi Entertainment Network Vs. WSG Credit Private Limited*** reported in ***2003 [4] SCC 341.*** The Hon'ble Supreme Court considered the question whether the Division Bench of Bombay High Court erred in vacating the anti-suit injunction granted by the learned Single Judge restraining the respondents therein from proceeding with the action between the same parties pending in the Indian Court, the Forum of their choice. Incidentally, the Hon'ble Supreme Court considered the principles governing the grant of anti-suit injunction by a Court of natural jurisdiction against a party to a suit before restraining him from instituting and/or prosecuting the suit, between the same parties, if instituted, in a Foreign Court of choice of the parties. The

Hon'ble Supreme Court, after considering several judgments on the principles governing grant of an anti-suit injunction, has formulated the principles that emerge from the judgments referred to by the Hon'ble Supreme Court in paragraph No.24. For convenience, the principles set out by the Hon'ble Supreme Court are as follows:-

> ***"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."

(16)From the reading of the judgment of the Hon'ble Supreme Court in ***Modi Entertainment Network case*** [cited supra], the Hon'ble Supreme Court, in unambiguous terms, held that the appropriate Courts in India have power to issue anti-suit injunction to a party over whom it has personal jurisdiction, in an appropriate case. Therefore, the reading of the whole judgment leaves no doubt that unless the person against whom an anti-suit injunction is sought, is amenable to the jurisdiction of High Court, it cannot grant anti-suit injunction. Even when the Court has personal jurisdiction against a person, having regard to the rule of comity,

the power to grant anti-suit injunction can be exercised sparingly. In other words, only when the Court is convinced that the Court has personal jurisdiction to reach the person against whom anti-suit injunction is sought, that is, the person is amenable to the personal jurisdiction of the Court, the Court may consider having regard to the convenience of the parties and on satisfying that the proceedings in the other Court are oppressive or vexatious or in a *Forum non conveniens*, to grant anti-suit injunction.

(17)Learned Senior counsel appearing for the appellant/2nd defendant relied upon another judgment of the Hon'ble Supreme Court in the case of ***World Tanker Carrier Corporation [WTCC] Vs. SNB Shipping Services Private Limited*** reported in ***1998 [5] SCC 310.*** The facts of the case are relevant to understand the ratio. The appellant before the Hon'ble Supreme Court, a Foreign company, owning a vessel 'New World' registered in Hong Kong, was involved in a collision in international waters of the Coast of Portugal with another vessel 'Ya Mawlaya' registered in Cyprus and was owned by a company, by name M/s.Kara

Mara Shipping Company Limited also registered in Cyprus. As a result of collision, 8 crew members of the vessel 'New World' died. There were injuries to some of the crew members and there was damage to both the vessels. There was also damage to the cargo of soya beans belonging to an Italian Firm which had been loaded on the vessel, in New Orleans, USA. M/s.Kara Mara, the owner of the vessel 'Ya Mawlaya' entered into a Management Agreement with the respondent therein, a company registered in India for management of the vessel 'Ya Mawlaya'. Thereafter, M/s.Kara Mara sold the vessel to another foreign Company known as 'Vestman Shipping Company Limited' and became the bare boat Charterers of the vessels. Several proceedings were initiated by various claimants against the owners of the vessel 'Ya Mawlaya' in the District Court of New Orleans, USA, including the proceedings initiated by the appellant therein M/s.WTCC for recovery of damages on account of the damage caused to their ship 'New World'. The legal heirs of some of the crew members who died in the collision also filed civil actions for various amounts against M/s.Kara Mara. M/s.Kara Mara initiated

proceedings in Lisbon, Portugal, in which the vessel 'New World' was arrested. M/s.Kara Mara filed an action for limitation of liability in the Supreme Court of Hong Kong against M/s.WTCC and all possible claimants. It also made an application for limitation of its liability before the District Court of New Orleans, USA. During pendency of these proceedings, the respondent therein filed an Admiralty suit in Bombay High Court for limitation of respondent's liability in respect of the said collision. Interim reliefs were also prayed for restraining the defendants in the Admiralty suit who had instituted suits in U.S. Courts or elsewhere from, in any manner proceeding with the pre-trial proceedings or hearing of the complaints/civil action instituted by them in the U.S. Courts or elsewhere (anti-suit injunctions). Much after filing of the Admiraty suit before Bombay High Court, the vessel 'Ya Mawlaya' was brought to the Court of Bombay under Ballast and it was arrested. Later, M/s.Kara Mara the erstwhile owner of the ship 'Ya Mawlaya' filed an Admiralty suit seeking limitation of their liability and setting up of a limitation fund in respect of their liability arising from the collision of their vessel.

Although M/s.WTCC the owner of 'New World' did not appear in the suits initially, later appeared under protest to contest the issue of jurisdiction of Bombay High Court to entertain the admiralty suits to be tried as a preliminary issue. In the two admiralty suits, Bombay High Court granted anti suit injunction against M/s.WTCC restraining it from proceeding against its clients in the Court at New Orleans, USA. Contempt proceedings were also initiated for breach of the orders passed by the Bombay High Court in this connection. By an order of the Bombay High Court in the contempt proceedings, the defence of M/s.WTCC, the owner of 'New World' was ordered to be struck off. A Division Bench of the High Court ultimately held that M/s.WTCC would be given one more chance to defend the proceedings on condition that in future it would comply with all the orders of the Court. It was also held that the High Court of Bombay had jurisdiction to entertain and try the suits. Pursuant to the motions filed by M/s.Kara Mara and the respondent, the High Court also passed an order directing WTCC to deposit in the Bombay High Court US $ 15 Million and the interest

accrued thereon to secure compliance by WTCC of orders of the Bombay High Court.

(18)As against the order of the Division Bench, the Hon'ble Supreme Court entertained the appeal filed by M/s.WTCC and has held as follows:

> ***38.*** *Moreover, when the right to set up a limitation fund is a right which is common to all persons coming within the category of "owner" under Section 352-F and a common limitation fund has to be set up, an act of management only by one of the "owners" when all the other owners are outside the jurisdiction of the Bombay High Court and all their acts are outside the jurisdiction of the Bombay High Court, will not be sufficient to confer jurisdiction. It is difficult to consider the Bombay High Court as the domiciliary court of the owners of YA Mawlaya when the persons/companies to whom the vessel belongs are domiciled outside India and out of the entire body of persons/companies falling within the term "owner" under Section 352-F, only one manager is an Indian company, and the vessel is registered in a foreign country.*

39. *The entire course of conduct appears to be a deliberate attempt on the part of the plaintiffs to bring the limitation action in Bombay with a view to obtain anti-suit injunctions against all the claimants who have filed proceedings against the owners and YA Mawlaya in the courts of the United States prior to the filing of the admiralty suit here. The Bombay High Court, therefore, ought not to have entertained Admiralty Suit No. 26 of 1995 brought by SNP and others.*

40. *Admiralty Suit No. 28 of 1996 is filed by Kara Mara for the purpose of setting up a limitation fund and to obtain an anti-suit injunction in respect of all pending litigations against it in foreign courts. In the case of Kara Mara which is a foreign company registered in Cyprus, no part of the cause of action has arisen within the jurisdiction of the Bombay High Court. The vessel which met with the collision giving rise to liability is a foreign vessel. The collision took place in the high seas off the port of Portugal. All the claims against Kara Mara have been filed in foreign courts and the claims which have now been filed before*

the Bombay High Court are not the claims which can be subjected to limitation.

41. *Kara Mara, however, claims jurisdiction on the ground that its vessel YA Mawlaya was in the Bombay harbour at the time when it filed its suit for limitation. Reliance is placed on Section 2(2) of the Merchant Shipping Act for this purpose. Section 2(2), however, has no application to a limitation action per se, as stated earlier. A limitation action is not directed against the ship nor can the action be instituted by the arrest of the foreign vessel present in the territorial waters of the country where the action is instituted. It is an action by the owner acting personally against his claimants who are seeking damages in respect of the loss or injury caused by the owner's vessel. Therefore, the presence of a foreign vessel in the territorial waters will not give the court jurisdiction to entertain a limitation action by its owner unless the presence of the foreign vessel has given rise to an admiralty action by a claimant in that court, which claim is subject to limitation, or the presence of the vessel has created a likelihood of such action being taken there, or the court is a domiciliary court of the owner attracting such*

claims there. That is not the case here. In fact, at the time when Kara Mara filed the suit all claims were already filed against it in the foreign court at New Orleans, U.S.A. No doubt Kara Mara had challenged the jurisdiction of that court and had succeeded in the first round. But that was by no means a final adjudication. Nor can one legitimately conclude from this the likelihood of claims being filed in Bombay. In the present case, the Bombay High Court is not the domiciliary court of Kara Mara or its vessel. Nor is any claim for liability which can be limited, filed against Kara Mara in the Bombay High Court. None of the defendants to the suit is within the jurisdiction of the Bombay High Court. The fortuitous presence of the ship in the Bombay harbour will not entitle the owner to file a limitation action in the Bombay High Court in the absence of any claim being made or apprehended against him or the vessel in that court.

42. *Therefore, bringing the ship to the Bombay port, in order to confer jurisdiction on the Bombay High Court, has the character of forum-shopping, rather than anything else.*

> ***43.*** *The presence of a foreign defendant who appears under protest to contest jurisdiction, cannot be considered as conferring jurisdiction on the court to take action. Unless a foreign defendant either resides within jurisdiction or voluntarily appears or has contracted to submit to the jurisdiction of the court, it is not possible to hold that the court will have jurisdiction against a foreign defendant. See in this connection R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid [AIR 1963 SC 1 : (1963) 3 SCR 22] (SCR at p. 51) and Raj Rajendra Sardar Moloji Nar Singh Rao Shitole v. Shankar Saran [AIR 1962 SC 1737 : (1963) 2 SCR 577] (SCR at pp. 587-588). This factor also, therefore, is against the respondents in the present appeals."*

(19)From the two judgments above referred, there cannot be an anti suit injunction against a foreign company or foreign person unless the person or foreign company is amenable to the personal jurisdiction of the Court in which such anti suit injunction is filed. In the present case, the specific contention of the appellant that it is a foreign company and it has no place of business or business activities or assets in India, is not disputed. The

learned Single Judge also has not held that the appellant has some assets or business interest in this Country. However, the learned Judge proceeded to hold that the appellant being a subsidiary and fully owned and controlled by the 1st defendant in the suit which is an Indian company, held that it is amenable to the jurisdiction of this Court. Learned Judge relied upon the judgment of the Hon'ble Supreme Court in the case of ***Vodafone International Holdings Vs. Union of India and Others*** reported in ***2012 [6] SCC 613.*** The learned Single Judge, while referring to the judgment of the Hon'ble Supreme Court in ***Vodafone's case*** [cited supra], though accepted the position that a subsidiary company has got separate legal existence and it is not a puppet in the hands of the parent or the Holding Company, observed that the decisive criteria is whether the parent Company's Management has such steering interference with the subsidiary's core activities that the subsidiary can no longer be regarded to perform those activities on the authority of its own executive directors. The learned Judge then relied upon the judgment in ***Vodafone's case*** for the proposition that the Court should look upon

things after lifting the corporate veil to find whether the parent company and subsidiary company form one unit or entity ignoring the context in which the Hon'ble Supreme Court expressed and the ratio decidendi. It is well settled that a decision is an authority for what it actually decides and not every observation found therein or what logically flows from the observations made in the judgment. First of all, in ***Vodafone's case*** the Court was examining the tax liability in relation to an offshore tranaction between the foreign countries, one of which has a representative interest through the appellant. Even then, the Hon'ble Supreme Court has held that a Holding Company and a wholly owned subsidiary are two distinct legal persons and the holding company does not own the assets of the subsidiary. Therefore, the learned Judge has erroneously applied an observation of Hon'ble Supreme Court ignoring the principle reiterated in ***Vodafone case.*** The learned Judge then found that sufficient allegations are made in the complaint by the 1st respondent/plaintiff in the instant case that the 2nd defendant had acted at the behest of the 1st defendant Indian Company and that *prima facie* the 2nd defendant is acting only at

the behest of the 1st defendant Indian company. It is pertinent to point out that the learned Judge is not even conclusive on his decision whether the appellant herein/2nd defendant is acting at the behest of the 1st defendant or whether the appellant has got separate legal existence and is acting on its own and not depending upon the 1st defendant company [Indian company / Holding company] as the issue was relegated to be decided finally after trial of the suit. The learned Judge is convinced that there is *prima facie* case to hold that the foreign Company which has filed the suit against the plaintiff is controlled by the Indian company and therefore, the foreign company is amenable to the jurisdiction of this Court. We are unable to agree with such a finding in view of the decision of the Hon'ble Supreme Court in the case of ***Vodafone case [cited supra].***

(20)The question arose before the Hon'ble Supreme Court in ***Vodafone case [cited supra]*** is whether a foreign company which is also a subsidiary of another company having business in India, is liable to pay tax in relation to the transaction of outrate sale between two non residents of a capital

asset [assets outside India]. On the question whether a subsidiary of a Holding Company is distinct in relation to all the transactions, the Hon'ble Supreme Court reiterated that the subsidiary company fully owned by a parent or Holding company does not lose its identity as a separate legal entity and that, it is not just a puppet of a parent company merely because the administration of the company is under the influence of a Holding Company. The Hon'ble Supreme Court held that the Companies Act in India and all over the world have statutorily recognised subsidiary company as a separate legal entity. A holding company is one which owns sufficient shares in the subsidiary company to determine who shall be its directors and how its affairs shall be conducted and it cannot be said that a subsidiary company is an agent or puppet of the Holding company as they have different business interest. Independent existence and independent identity is reiterated by the Hon'ble Supreme Court subject to the only limitation as seen in paragraph No.259. It is relevant to extract the relevant paragraphs of the judgment, namely, paragraphs 257 to 260, which are as under:-

257. *The legal relationship between a holding company and WOS is that they are two distinct legal persons and the holding company does not own the assets of the subsidiary and, in law, the management of the business of the subsidiary also vests in its Board of Directors. In Bacha F. Guzdar v. CIT [AIR 1955 SC 74] , this Court held that shareholders' only right is to get dividend if and when the company declares it, to participate in the liquidation proceeds and to vote at the shareholders' meeting. Refer also to Carew and Co. Ltd. v. Union of India [(1975) 2 SCC 791] and Carrasco Investments Ltd. v. Directorate of Enforcement [(1994) 79 Comp Cas 631 (Del)] .*

258. *Holding company, of course, if the subsidiary is a WOS, may appoint or remove any Director if it so desires by a resolution in the general body meeting of the subsidiary. Holding companies and subsidiaries can be considered as single economic entity and consolidated balance sheet is the accounting relationship between the holding company and subsidiary company, which shows the status of the*

entire business enterprises. Shares of stock in the subsidiary company are held as assets on the books of the parent company and can be issued as collateral for additional debt financing. Holding company and subsidiary company are, however, considered as separate legal entities, and subsidiary is allowed decentralised management. Each subsidiary can reform its own management personnel and holding company may also provide expert, efficient and competent services for the benefit of the subsidiaries.

259. *The US Supreme Court in United States v. Bestfoods [141 L Ed 2d 43 : 524 US 51 (1998)] explained that it is a general principle of corporate law and legal systems that a parent corporation is not liable for the acts of its subsidiary, but the Court went on to explain that corporate veil can be pierced and the parent company can be held liable for the conduct of its subsidiary, if the corporal form is misused to accomplish certain wrongful purposes, when the parent company is directly a participant in the wrong complained of. Mere ownership, parental control, management, etc. of a subsidiary is not sufficient to pierce the status of their*

relationship and, to hold parent company liable. In Adams v. Cape Industries Plc. [1990 Ch 433 : (1990) 2 WLR 657 : (1991) 1 All ER 929 (CA)] , the Court of Appeal emphasised that it is appropriate to pierce the corporate veil where special circumstances exist indicating that it is mere facade concealing true facts.

260.*Courts, however, will not allow the separate corporate entities to be used as a means to carry out fraud or to evade tax. Parent company of a WOS, is not responsible, legally for the unlawful activities of the subsidiary save in exceptional circumstances, such as a company is a sham or the agent of the shareholder, the parent company is regarded as a shareholder. Multinational companies, by setting up complex vertical pyramid-like structures, would be able to distance themselves and separate the parent from operating companies, thereby protecting the multinational companies from legal liabilities."*

(21)In the judgment in ***Adams and Others Vs. Cape Industries PLC and another*** reported in ***[1990] CH 433,*** the Court of Appeal has considered the position whether the subsidiary company which has business

operation in a foreign company is amenable to the territorial jurisdiction of U.S.Courts, in the following lines:

> *In my opinion, however, this approach is not suitable to a resolution of the question with which I am faced. The question in the present case is not whether the economic reality of the activities of ,the Cape group justifies the conclusion that Cape, the parent, was trading in the United States. Perhaps it was. But trading in a country is insufficient, by the standards of English law, to entitle the courts of the country to take in personam jurisdiction over the trader: see the Littauer Glove Corporation case, 44 T.L.R. 746. The trading must be reinforced by some residential feature, be it a branch office or a resident agent with power to contract.*
>
> *Mr. Morison pointed out that the economic function being discharged by N.A.A.C. from its Illinois office served, in the context of the trading activities of the Cape group as a whole, the same function as could have been discharged by a branch office at the same address. Since in the latter case Cape would have been resident in Illinois, why should it not be held to*

be resident in the former case? In my opinion, however, this argument overlooks the nature of the fundamental question at issue. The fundamental question is whether the United States court was entitled, on territorial grounds, to take jurisdiction over Cape. Cape was entitled, if it wished, to organise its group activities so as to avoid being present in the United States of America. The group traded in the United States through subsidiaries, Egnep, Casap, N.A.A.C. and Capasco. Each discharged a function relevant to the group business in the United States, but N.A.A.C. was the only one with a United States office. If Cape had been an individual, it would not, in my view, have been arguable that in trading in such a fashion Cape had subjected itself to the territorial jurisdiction of the United States' courts. Why should Cape's corporate character justify any different conclusion? The approach to be adopted to parent companies trading through subsidiaries was considered by Roskill L.J. in The Albazero [1977] A.C. 774. He said, at p. 807:

> *"each company in a group of companies (a relatively modern co:ept) is a separate legal*

> *entity possessed of separate legal rights and liabilities so that the rights of one company in a group cannot be exercised by another company in that group even though the ultimate benefit of the exercise of those rights would enure beneficially to the same person or corporate body irrespective of the person or body in whom those rights were vested in law."*
>
> *He referred to this principle as one of the "fundamental principles of English law long established." The decision of the Court of Appeal was reversed by the House of Lords, but nothing was said to detract from the principle referred to by Roskill L.J."*

Therefore, we are convinced that the appellant, a foreign company, even though fully owned by the 1st defendant is not amenable to the jurisdiction of this Court.

POINT [B]:

(22)It is seen that the Contempt Petition [Crl] No.4/2012 is filed before the Hon'ble Supreme Court on the allegation that the suit filed in Singapore

is filed deliberately to prejudice or to interfere with the 1st respondent's zeal to prosecute with vigor and determination of the due course of judicial proceedings pending before the Hon'ble Supreme Court in relation to the 2G Spectrum cases and the Aircel Maxis scam and therefore the suit is filed to interfere and obstruct the administration of justice. The Hon'ble Supreme Court dismissed the contempt petition filed by the plaintiff for the following reasons:-

> *"We have heard Dr.Subramanian Swamy, who has appeared in person and Dr.A.M.Singhvi and Shri Mukul Rohatgi, Senior Advocates appearing for the respondent Nos.4 and 5 and carefully perused the record. We have also gone through the judgments in* ***Attorney General Vs. Butterworth and Others 1962 [3] AER 73*** *and* ***Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar 1993 [Suppl.] 1 SCC 529*** *relied upon by Dr.Subramanian Swamy.*
>
> *Since the petitioner has failed to establish any nexus between the cases filed by him before this Court and respondent No.5, which has instituted suit in*

Singapore, we do not find any valid ground to take action against respondent Nos.4 and 5 under the Contempt of Courts Act,1971.

The contempt petitions are accordingly dismissed.

As a sequel to dismissal of the contempt petitions, all the pending applications are also disposed of."

(23)In CS.No.703/2013, in the cause of action paragraph, it is stated as follows:-

*"**25.**The cause of action, i.e., lexause, arose from the "Press Conference" which was held in New Delhi, India, on 26.04.2012, on 30.04.2012 when the 1st defendant issued a Legal Notice to the plaintiff which was given very wide media circulation, on 13.07.2012 when the 1st defendant company filed a suit for defamation No.5811 of 2012 in the High Court of Singapore, on 04.08.2012 when the Singapore High Court Notice was served on the plaintiff at New Delhi just before the expiration of the 21 days' time and subsequently. Further, the 1st defendants reside and*

carries on business in Chennai within the territorial jurisdiction of this Hon'ble Court. The 2nd defendant though registered at Singapore is a wholly owned subsidiary of 1st defendant and have common director. Hence, this Hon'ble Court has jurisdiction to entertain and try the present suit filed by the plaintiff."

(24)The preliminary issues raised by the appellant herein do not arise for consideration before the Hon'ble Supreme Court. No issue was raised or a decision was given by the Hon'ble Supreme Court in relation to the maintainability of the defamation suit before the Hon'ble High Court of Singapore or the jurisdiction of this Court, either granting a declaratory relief or the consequential anti suit injunction as prayed for. None of the issues that arise for consideration in the suit in CS.No.703/2013 is considered either directly or indirectly. Except identity of parties, this Court is unable to find any identity in cause of action or similarity in the prayers to apply the principle of *res judicata*. Having regard to the nature of pleadings and the prayer that was sought for by the plaintiff/1st respondent before the Hon'ble Supreme Court in the contempt petition and the cause of action alleged for the relief that was sought for in this

suit, this Court has no hesitation to hold that the decision of the Hon'ble Supreme Court in the contempt petition filed by the 1st respondent/plaintiff will not operate as *res judicata* to bar the suit in CS.No.703/2013.

POINT [C]:-

(25)The learned Senior counsel appearing for the appellant / 2nd defendant relied upon a judgment in the case of ***Toepfer Vs. Molino Bashi*** reported in ***1966-1-Lloyd's Rep 510.*** The Doctrine of laches or laches as a ground to non suit the plaintiff is understood and interpreted by all Courts of this country differently from the English Courts. The appellant has submitted that the 1st respondent has waited for more than a year after receiving notice from the Hon'ble High Court of Singapore and the institution of present suit is liable to be dismissed on the ground of laches. This Court is unable to agree with the submission of the learned Senior counsel appearing for the appellant. First of all, the Doctrine of laches or delay has been recognised by our Courts and is considered as a lapse or negligence to do something which a man of prudence is obliged

to do. The plaintiff/1st respondent has three years time to file a suit for declaration and consequential injunction from the date of cause of action. Only in a case where the willful negligence of one party in approaching the Court is proved to have caused some irreparable damage or an injury to the other side or such unexplained delay is likely to affect the interest of third parties, a delay can be cited as a reason to non suit the plaintiff on the ground that the plaintiff has waived his right to seek remedy. May be in a case where there is no limitation applicable and the plaintiff has abandoned his right to seek remedy by his conduct, the Court may entertain the plea of laches and may not exercise its discretion. Applying the doctrine of laches or treating the delay as a conduct of waiver or acquiescence, the appellant has not pleaded any special circumstances, that would disentitle the plaintiff/1st respondent to file the suit in CS.No.703/2013. In this case, though the suit for declaration and injunction falls under Specific Relief Act and the Court has discretionary power, that alone may not justify this Court to throw the suit on the ground of laches. The question whether a delay is fatal to the suit or not

need not be considered at this stage even before recording evidence.

POINT [D]:-

(26)It is the case of the appellant that it has built its reputation over years as a reputable business concern in Singapore. It is further contended that the plaintiff/1st respondent by his unsubstantiated and scurrilous allegations published through media, the reputation of the appellant Company was directly affected and therefore, the Court in singapore alone is competent to assess the damages caused to the appellant's reputation there in Singapore. The submission of the learned Senior counsel of the appellant that the appellant has no business interest or business in India and that the appellant has no assets in India are not specifically denied by the 1st respondent. The question whether the Court in Singapore has jurisdiction or not, cannot be decided by a foreign Court. When this Court is examining the jurisdiction of the Court in Chennai to grant an anti-suit injunction restraining a Singapore Company from prosecuting and proceeding further with the suit in Singapore, it will be better if this Court expresses no opinion on the issue whether the

Court in Singapore alone has the exclusive jurisdiction to decide the issue especially when the plaintiff has raised the jurisdiction issue on the ground that no cause of action arose in Singapore and that the defamatory statements were neither made nor published by the 1st respondent in Singapore. The contention of the learned Senior Counsel appearing for the appellant that the High Court at Singapore has the natural jurisdiction will be subject to the preliminary objection that is raised by the plaintiff/1st respondent. Hence, it will be only proper for the High Court of Singapore to decide the jurisdictional issue in the defamation suit.

POINT [E]:-

(27)When a suit is filed by a person or a counter claim is made by the defendant in the suit, it may be said that the party has submitted to the jurisdiction of the Court. It is well settled that even by consent, jurisdiction of a Court cannot be conferred. However, every objection as to the jurisdiction is expected to be raised at the initial stage. Normally, a resident of a foreign country or a foreign company is not amenable to the jurisdiction of a Court in India. However, the parties to a contract can

agree that the law of a particular country should apply to a transaction and even that may not amount to submission to the jurisdiction of Court of that country. Where the defendant voluntarily appears in the Court without any protest as to the jurisdiction or without any such protest until a later stage of the case, his conduct may amount to the submission to the jurisdiction of the Court. Therefore, only when a defendant appears in a suit and files a written statement and participates in the proceedings for getting a decision on merits, it may be said that a party has submitted to the jurisdiction of the Court. In the present case, neither the appellant nor the plaintiff can be said to have submitted themselves to the jurisdiction of this Court or the High Court at Singapore respectively and therefore, this Court is unable to find any merit in the submissions of learned Senior counsel appearing for the appellant and the 1st respondent/plaintiff that the other has submitted to the jurisdiction of either the Singapore Court or the Court in Chennai as the case may be. It is evident from the points raised by the contesting parties that none of them have submitted to the Court in which they are defendants. In other words, the appellant has not

submitted to the jurisdiction of this Court merely because he has contested the contempt petition before the Hon'ble Supreme Court of India. Similarly, the fact that the plaintiff has taken time for reply and appearance in the defamation suit filed before Singapore Court, cannot be taken as submission to the Singapore Court's jurisdiction. The Hon'ble Supreme Court in ***World Tanker Carrier Corporation case*** reported in ***1998 [5] SCC 310*** has held as follows:-

> *"**43.** The presence of a foreign defendant who appears under protest to contest jurisdiction, cannot be considered as conferring jurisdiction on the court to take action. Unless a foreign defendant either resides within jurisdiction or voluntarily appears or has contracted to submit to the jurisdiction of the court, it is not possible to hold that the court will have jurisdiction against a foreign defendant....."*

Therefore, the contentions of both sides are rejected.

POINTS [F] AND [G]:-

(28) When the plaintiff is not entitled to anti-suit injunction against a person who is not amenable to the personal jurisdiction of this Court, what follows is that declaratory relief namely Prayer [b] in the suit is unsustainable. Every declaratory relief falls under Section 34 of the Specific Relief Act and the Court may at its discretion grant a declaratory relief if a person is entitled. However, the person should prove his right. When the suit is held to be not maintainable as against 2nd defendant who is not amenable to the jurisdiction of this Court, there cannot be a declaratory relief which is in the nature of anti-suit injunction. Unless the Court is *prima facie* satisfied that it can exercise its jurisdiction and grant relief against 2nd defendant, the Court will be reluctant to grant the consequential relief of permanent injunction which is in the nature of anti-suit injunction. As seen from the judgment of the Hon'ble Supreme Court in the case of ***Modi Entertainment case [cited supra]*** reported in ***2003 [4] SCC 341,*** even after holding that the person against whom anti suit injunction is sought for is amenable to the personal jurisdiction of the Court, there are other circumstances which are to be considered before

granting ani-suit injunction. In the instant case, the declaratory relief [i.e., prayer [b]] is in the nature of anti-suit injunction. If the cause of action has arisen in Singapore and the 1st respondent is amenable to the jurisdiction of Singapore Court, the Singapore Court is the Court which will have natural jurisdiction to decide the defamation suit. This Court cannot decide whether the Singapore High Court has jurisdiction or 1st respondent is amenable to the jurisdiction of Singapore Court in a suit which is filed in a court which does not have inherent jurisdiction to decide the jurisdiction of a foreign Court. If this Court finds jurisdiction of this Court to entertain the suit to grant anti suit injunction, it may be open to this Court to consider various aspects and can decide on the questions whether the suit in Singapore is against the principles of equity and good conscience, whether the anti suit injunction is to avoid injustice and whether the suit filed in Singapore Court is oppressive or vexatious. In this case, we find that there is no averment in the plaint to hold that the appellant/2nd defendant is amenable to the jurisdiction of this Court and hence, the anti-suit injunction filed in CS.No.703/2013 is not

maintainable.

(29)In view of our above findings on all the issues, we are of the view that there is no *prima facie* case in favour of the 1st respondent/plaintiff to grant any interim order as this Court has no jurisdiction to grant anti suit injunction restraining a foreign company from prosecuting the defamation suit in a foreign country. We find balance of convenience in favour of the appellant/2nd defendant. The 1st respondent relied upon a judgment of the Hon'ble Supreme Court in the case of ***Mohd.Mehtab Khan and Others Vs. Khushnuma Ibrahim Khan and Others*** reported in ***2013 [9] SCC 221*** for the proposition that the Appellate Court will not interfere with the discretion exercised by the Trial court unless the exercise of discretion by the Trial Court is palpably incorrect or untenable. This Court finds that the judgment of the learned Single Judge cannot be approved for the simple reason that the learned Single Judge has simply presumed that the appellant is amenable to the jurisdiction of this Court as it is a subsidiary of the 1st defendant, a company in India.

(30)In view of our specific finding on the lack of jurisdiction of Court to

grant anti suit injunction against a foreign company, we need not elaborate the principles governing grant of interim injunction as noticed in the present factual context.

(31)In the result, the Original Side Appeals are allowed and the common order dated 08.08.2014 made in A.No.5002/2013 and OA.No.796/2013 in CS.No.703/2013. are set aside.

[SSSRJ] [PBBJ]
18.04.2023

AP
Internet : Yes
Index : Yes/ No

To

The Section Officer
VR Section, High Court
Madras.

S.S.SUNDAR, J.,
and
P.B.BALAJI, J.,

AP

Common Judgment in
OSA.Nos.229 & 230/2014

18.04.2023