

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

% **Date of decision: 18th May, 2020**

+ **CS(OS) No.196/2018, IA No.2291/2019 (of the plaintiff u/O XI R-12&14 CPC) & IA No.5775/2018 (of the plaintiff u/O XXXIX R-1&2 CPC).**

INOX LEISURE LIMITED

.... Plaintiff

Through: Mr. Amit Sibal, Sr. Adv. with Mr. Saransh Kumar, Ms. Riddhi Jad, Mr. Sahil Narang and Mr. Ambar Bhushan, Advs.

Versus

PVR LIMITED

.... Defendant

Through: Mr. Arvind K. Nigam, Sr. Adv. with Mr. Ajit Warriar, Mr. Angad Kochhar, Mr. Abhishek Sharma, Mr. Pratisht Kaushal, Mr. Vaibhav Aggarwal and Mr. Mehtaab Singh Sandhu, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The sole plaintiff has instituted this suit against the sole defendant, for (i) permanent injunction, to restrain the defendant from attempting to procure and/or attempting to induce a breach/termination of any agreement/arrangement between the third parties and the plaintiff in respect of non-functional properties of the plaintiff across India; (ii) permanent injunction, to restrain the defendant from entering into any agreement or arrangement with any third party in relation to any

right/interest of the defendant with respect to non-functional properties across India i.e. where an agreement/arrangement for grant of property rights to the plaintiff has been executed but multiplex operations have not commenced; and, (iii) recovery of nominal damages of Rs.2,25,00,000/-.

2. It is *inter alia* the case of the plaintiff, (i) that the plaintiff is engaged in the business of running and operating multiplex cinemas at various locations in India and the defendant is a competitor of the plaintiff; (ii) that the plaintiff has been expanding its footprint to new locations, where the market of multiplex cinema is maturing and is thus presenting viable business opportunities for the plaintiff; (iii) that the plaintiff, on learning of development underway of a property by the name of Suraj Chanda Tara Cinemas in Amritsar, undertook a feasibility study of running a multiplex in the said locality and found it to be a financially profitable business opportunity; (iv) accordingly in or about July, 2017, the plaintiff entered into negotiations with the developer of the said property at Amritsar, for a long term agreement with respect to the property and held various meetings with the said developer; (v) the defendant was also negotiating with the said developer for entering into an agreement/arrangement with respect to the property under development; (vi) however subsequently it was the plaintiff which entered into a binding term sheet with the developer whereunder the developer agreed to lease the said property to the plaintiff for a period of

15 years; (vii) though the said term sheet provided for a main Transaction Document to be subsequently executed, but the same was a mere formality and the term sheet was otherwise binding on the plaintiff and the developer and the plaintiff also paid security deposit to the developer; (viii) the plaintiff thereafter, besides proceeding with drawing up of the main Transaction Document, also started to make investments in the project; (ix) the plaintiff learnt that the defendant was actively pursuing the developer for the purposes of entering into an agreement for the same property, despite the fact that the plaintiff had already executed a binding term sheet therefor; (x) though the plaintiff informed the defendant of having executed a binding term sheet with the developer at Amritsar and also asked the defendant to desist from pursuing the developer but the defendant did not respond and continued to induce the developer to breach the binding term sheet with the plaintiff; (xi) the defendant, in the past also had indulged in similar acts of interfering in agreements entered into or proposed to be entered into by the plaintiff with others, especially with respect to (a) property at Madurai and with respect whereto the plaintiff had also instituted a suit in New Delhi District Court and which suit was pending adjudication; and, (b) property at Juhu, Mumbai with respect whereto also the plaintiff had entered into a term sheet and paid security deposit and was in the process of obtaining possession when the defendant starting influencing and inducing the owner thereof to renege from its binding obligations under

the term sheet executed with the plaintiff and of which also the plaintiff had informed the defendant and called upon the defendant to desist from interfering; (xii) that at the time when the plaintiff had started negotiating with respect to the property at Amritsar, neither the defendant nor the developer thereof had informed the plaintiff of any agreement already entered into by the defendant with the developer with respect thereto and the plaintiff learnt of the same from market sources much later; (xiii) that immediately after the plaintiff learnt of the agreement entered into by the developer at Amritsar with respect to the same property, with the defendant, the developer who had been remaining quite since the signing of the term sheet with the plaintiff, informed the plaintiff that the term sheet stood automatically terminated on account of plaintiff's failure to execute the main Transaction Document within the stipulated time; (xiv) the plaintiff believes that it was the defendant which illegally induced the developer at Amritsar to terminate the term sheet executed with the plaintiff; (xv) but for the defendant, the developer at Amritsar could not have terminated the term sheet with the plaintiff; (xvi) the defendant has thus interfered in the contractual relationship of the plaintiff with others, inspite of being aware of such contractual relationship; (xvii) the defendant is attempting to piggyback on the success of the plaintiff in identifying and procuring the agreements with respect to properties of others across India; (xviii) the conduct of the defendant has resulted in grave injury to the plaintiff,

as a multiplex space is not substitutable and the plaintiff in each of the cases had already initiated steps for procuring manpower and equipment required for the proposed multiplex; (xix) the plaintiff has apprehension that the defendant would interfere with the legal rights of the plaintiff with respect to the non-functional property of the plaintiff at Juhu, Mumbai also; and, (xx) the plaintiff has also reliably learnt that the defendant is also attempting to procure breach of other existing agreements between the plaintiff and owners of various other properties of the plaintiff.

3. The suit, accompanied with an application for interim relief came up first before this Court on 1st May, 2018 when the defendant, on seeing the matter in the cause list appeared; though summons of the suit were issued but after hearing the counsels and giving detailed reasons, *ad interim* relief sought was declined.

4. The defendant has since filed a written statement and to which a replication has been filed by the plaintiff.

5. The suit, ripe for framing of issues, came up before the undersigned on 5th February, 2019. On understanding the nature of the claim in the suit from the senior counsel for the plaintiff, *inter alia* the following order was passed:-

“3. I have enquired from the senior counsel for the plaintiff, how such an injunction restraining the defendant from attempting to acquire the same

property which the plaintiff intends to acquire and/or with respect to which the plaintiff may have also entered into an agreement, can be granted. It appears that if the agreement entered into by the plaintiff is specifically enforceable, the remedy of the plaintiff would be of specific performance of such agreement against the other party thereto. Conversely, if the agreement is not specifically enforceable, the right, neither of the defendant nor of the other party to the agreement, to enter into an agreement can be curtailed. Merely by entering into agreement/arrangement, competition cannot be curtailed.

4. The senior counsel for the plaintiff contends that inducement to breach a contract is a recognised tort and has in this regard referred to **Aasia Industrial Technologies Ltd. Vs. Ambience Space Sellers Ltd.** 1997 SCC OnLine Bom 681 (DB).

5. However, the same was a case of injunction against the other party to the agreement and was not a case of injuncting a third party from inducing a party to a contract to breach it vis-à-vis the other party thereto.

6. Though the plaintiff in the plaint, in addition to injunction, has also claimed the relief of recovery of damages but it appears that if the plaintiff were to have no right, the question of recovering damages would not arise.

7. Though the senior counsel for the plaintiff states that he has some other judgments vis-à-vis third parties but also states that since this issue had not arisen till now and this Court desires it to be addressed at this stage, the suit be posted for hearing on the said aspect.

8. List on 9th May, 2019.”

The senior counsel for the plaintiff and the senior counsel for the defendant were thereafter heard on 9th May, 2019 and 13th May, 2019 and orders as to the maintainability of the suit reserved

6. This order/judgment being on the maintainability of the suit and which has to be judged as per averments contained in the plaint only and at which stage the defence of the defendant is not to be looked at, the need to record the same is not felt.

7. The senior counsel for the plaintiff, in his arguments took me through the contents of the term sheet entered into by the plaintiff with the developer at Amritsar, to contend that the same constituted a binding enforceable agreement. It was also suggested that the prior agreement entered into by the said developer, with the defendant and of which the plaintiff learnt later, was not a binding agreement. Reliance was placed on *Kollipara Sriramulu Vs. T. Aswatha Narayana* AIR 1968 SC 1028 holding that if all the essential terms of a contract are contained in the document which also provides for signing of a further formal agreement, it is not always that without the formal agreement being signed, the document already signed is not enforceable. Reference was also made to *V.B. Dharmyat Vs. Shree Jagadguru Tontadrya* (1999) 6 SCC 15 holding that an agreement agreeing to lease immovable property is not itself compulsorily registrable and that it is merely a promise to execute a lease deed in future and is specifically enforceable.

8. It was however enquired from the senior counsel for the plaintiff, how the judgments aforesaid were relevant, inasmuch as neither the developer of the Amritsar property nor the owner of the Juhu, Mumbai property, with respect whereto only the averments in the plaint are confined (inasmuch as with respect to Madurai property a separate suit is stated to be pending), are not parties to the present suit and in their absence it cannot be determined whether the plaintiff had a binding agreement with respect to the Amritsar and the Juhu, Mumbai properties. It was further enquired, whether not as per *V.B. Dharmyat* supra also, an agreement to do something in future i.e. to grant lease or license, is itself not a lease or license, and only entitles specific performance thereof. It was yet further enquired, whether not the remedy of the plaintiff, in the event of having binding agreements with respect to Amritsar and/or the Juhu, Mumbai properties, was to sue for specific performance of the said agreements and if the said developer/owner had already transferred the property to the defendant, to implead the defendant also as a party to the said suit and to claim specific performance against the defendant also, under Section 19(b) of the Specific Relief Act, 1963,

9. It was then, that the senior counsel for the plaintiff on 5th February, 2019, dropping the aforesaid line of arguments, had turned to *Aasia Industrial Technologies Ltd.* supra dealt with in the order of that date reproduced above.

10. The senior counsel for the plaintiff thereafter, in support of maintainability of the suit, referred to:-

- A. *Balailal Mookerjee & Co. (P) Ltd. Vs. Sea Traders Private Ltd.* 1990 SCC OnLine Cal 55, where at the stage of deciding an application under Order XXXIX Rules 1&2 of the Code of Civil Procedure, 1908 (CPC), it was held (i) in English Law, 'A' commits a tort, if without lawful justification, he intentionally interferes with the contract between 'B' and 'C', by persuading 'B' to break his contract with 'C' or by some other act prevents 'B' from performing its contract; and, (ii) though a member of the family carrying on business is entitled in law to, after leaving the family business, establish a rival business, but is not entitled to interfere in the family business or to procure a breach of agreements of the family business with others;
- B. "Tortious Interference with Contract: A Reassertion of Society's Interest in Commercial Stability and Contractual Integrity" authored by John Danforth, *Colombia Law Review*, Volume 81, No.7 (1981) pp. 1491-1524 opining that tort liability for interference with contract is well established; that the motive of the interferer is irrelevant; that it is in the interest of society that there is integrity of contracts; contractual remedies only promise broad

commercial stability to the extent that they reflect and protect the measurable interest of particular contracting party; tort protection against interference with the contract promotes society's interest in commercial stability in two areas not adequately protected by the existence of traditional remedy against breach; tortious interference liability provides a threshold level of anti competitive protection, without which some contracts would not be formed; contract breaches may have a ripple effect that can undermine the economic efficiency and disrupt the expectations of persons far removed from contracting parties; it is the formation of the contracts that the tort seeks to facilitate – if the tort is to enhance to reliability of contracts, it cannot require close initial scrutiny of the enforceability of a given contract; so long as the contract contracting parties had arguably intended to bind themselves, had believed themselves to be bound, and that formally expressed an intention to perform, society's interest in the formal integrity of contract should be protected by creating potential tort liability for third party interference;

- C. *Ambience Space Sellers Ltd. Vs. Asia Industrial Technology Pvt. Ltd.* 1996 SCC OnLine Bom 586 noticing

that tort of inducing breach of contract, as now developed in England, is that if the act of third party, either by persuasion, inducement or procurement results in breach of a contract, the third party would have committed an actionable interference with the contract; the act of the third party may be against the will of both and without the knowledge of either; it must however be with the knowledge of the contract;

- D. ***Tata Sons Ltd. Vs. Mastech Corpn.*** 1995 SCC Online Mad 368, where injunction restraining the defendant from inducing employees of the plaintiff to leave their employment was granted;
- E. ***Pepsi Foods Ltd. Vs. Bharat Coca-Cola Holdings Pvt. Ltd.*** 1999 SCC Online Del 530, where injunction restraining the defendant from inducing the employees of the plaintiff to leave their employment was refused reasoning that the injunction if granted would certainly curtail the freedom of employees for improving their future prospects and service conditions by changing their employment and that a situation of once a Pepsi employee always a Pepsi employee, of bonded labour, could not be created;

F. *Zimmerman Vs. Bank of America* 191 Cal. App. 2d 55, where the Court of Appeal of California held that a tort of interference with an advantageous relationship or with a contract does not, however disintegrate because it relates to a contract not written or an advantageous relation not articulated in a contract; actionable wrong lies in the inducement to break the contract or to sever the relationship, not in the kind of contract or relationship so disrupted, whether it is written or oral, enforceable or not enforceable.

11. Per contra the senior counsel for the defendant contended, (i) that though the plaint contains averments qua the property at Juhu, Mumbai but no mention is made thereof in the cause of action paragraph of the plaint; thus the same is not to be considered; (ii) that the documents filed by the plaintiff itself show that the developer of the property at Amritsar, vide letter dated 31st January, 2018 to the plaintiff informed the plaintiff that the term sheet had automatically lapsed and refunded the security deposit received from the plaintiff; the plaintiff accepted the said refund without any demur and did not impugn such termination and once has done so, there ceased to be any binding contract between the plaintiff and the developer of the property at Amritsar and the plaintiff is not entitled to seek relief with respect thereto in this Court; (iii) that across India, the defendant has 767 screens in 164 properties as against 583

screens in 145 properties of the plaintiff – it thus cannot be stated that the defendant is in any dominating position or is capable of indulging in any anti competitive practice; (iv) that the defendant had a term sheet of a date earlier than the date when the plaintiff signed the term sheet with the owner of the property at Juhu, Mumbai and the owner, even otherwise in law, had the discretion to enter into the agreement with whomsoever he desired and the plaintiff cannot claim any exclusivity; (v) attention was drawn to the term sheet signed by the plaintiff with respect to the property at Amritsar and as filed by the plaintiff along with its documents to contend that the same was not a binding agreement; (vi) attention was similarly invited to the term sheet filed by the plaintiff with respect to the property at Juhu, Mumbai to show that the same was also not binding and had no mutuality; (vii) that it is the plaintiff who has filed this suit and the suit at New Delhi District Court, with a view to stifle competition; (viii) that the relief of injunction claimed in the suit is barred by Sections 41(e) and (j) of the Specific Relief Act; (ix) that the plaintiff, in the suit is seeking a blanket order all across India, without even producing any agreements with respect to specific property and in an attempt to stifle the defendant's choice as a competitor of the plaintiff; (x) that the damages claimed in the suit are only for Amritsar property but termination of term sheet with respect whereto the plaintiff has accepted; and, (xi) if the claim of the plaintiff is thereunder, the foras constituted thereunder have to be approached.

12. The senior counsel for the defendant handed over a compilation of:
- A. *Pepsi Foods Ltd.* supra to contend that injunctive relief cannot be obtained by a party in order to curtail competition and freedom in a free economy;
 - B. *The Indian Performing Right Society Vs. Badal Dhar Chowdhry* 2010 SCC OnLine Del 1361 to contend that vague and general injunction of anticipatory nature cannot be granted;
 - C. *Mirabai Films Pvt. Ltd. Vs. Hathway Cable and Datacom Pvt. Ltd.* (2003) 103 DLT 698 to contend that unfounded and baseless allegations cannot form the basis of claiming an equitable relief before a Court of Law;
 - D. *Pharmasivam Vs. T.N. Electricity Board* 1999 SCC Online Mad 623 to contend that injunctive relief cannot be granted merely on the basis of an apprehension;
 - E. *S.P. Chengalvaraya Naidu Vs. Jagannath* (1994) 1 SCC 1 to contend that a person whose case is based on falsehood, has no right to approach the Court and his case is to be summarily thrown out;
 - F. *Speech and Software Technologies (India) Private Limited Vs. Neos Interactive Ltd.* (2009) 1 SCC 475, *Dresser Rand*

- S.A. Vs. Bindal Agro Chem Ltd.* (2006) 1 SCC 751 and *Hansa V. Gandhi Vs. Deep Shankar Roy* (2013) 12 SCC 776, to contend that an agreement to enter into an agreement is neither enforceable nor confers any right upon the parties, including the right to seek specific performance;
- G. *Jagir Singh Vs. Ranbir Singh* (1979) 1 SCC 560 to contend that what may not be done directly cannot be allowed to be done indirectly;
- H. *Lindsay International Pvt. Ltd. Vs. Laxmi Niwas Mittal* 2017 SCC OnLine Cal 14920 to contend that a breach of an existing contract is a *sine qua non* for the tort of inducement;
- I. *Bimal Chandra Sen (Dr.) Vs. Kamla Mathur* 1982 SCC OnLine Del 153 (DB) to contend that in the absence of principal offender having been found guilty of the offence, the question of an aider and abettor being guilty of the said offence does not arise;
- J. *J.S. Yadav Vs. State of Uttar Pradesh* (2011) 6 SCC 570 and *Mumbai International Airport Private Limited Vs. Regency Convention Centre & Hotels Private Limited* (2010) 7 SCC 417 to contend that impleadment of a necessary party is mandatory and in the case of non-joinder

of necessary party, the plaintiff may not be entitled to the relief sought;

- K. ***West Bengal Housing Board Vs. Pramila Sanfui*** (2016) 1 SCC 743 to contend that if the effect of an injunction would be to restrain the free choice and will of a third party, who is not a party to the proceeding, then such an injunction would not be granted lightly; and,
- L. ***I.S. Sikandar Vs. K. Subramani*** (2013) 15 SCC 27 to contend that where an agreement has been terminated, in the absence of a prayer to declare the termination illegal, an action for specific performance cannot be held to be maintainable.

13. The senior counsel for the plaintiff, in rejoinder referred to ***Gujarat Bottling Co. Ltd. Vs. Coca Cola Co.*** (1995) 5 SCC 545 where injunction against termination of contract was granted and contended that it is thus not as if the remedy for breach of contract is specific performance and/or damages only. Attention was invited to the order dated 1st February, 2018 when the suit had come up first before this Court and when senior counsel for the defendant had appeared on seeing the matter in the cause list, to contend that the same records the admission of the senior counsel for the defendant with respect to the principle of law involved and as argued by the senior counsel for the plaintiff relying on ***Tata Sons Ltd.*** and ***Aasia Industrial Technologies***

Ltd. supra and the defendant is thus bound by such admission. It was further argued that the factum of the developer of the property at Amritsar sending a termination notice to the plaintiff itself, it is evident that there was a binding agreement. It was however admitted that security deposit refunded was accepted. It was contended that for suing the defendant for the tort of interference with contract, impleadment of the developer of the property at Amritsar or the owner of the property at Juhu, Mumbai is not necessary and if at all necessary, the suit cannot be defeated for the said reason and the Court always as held in *Yusuf Mohamed Lakdawala Vs. Sudhakar Kashinath Bokade* 2007 SCC OnLine Bom 939 (DB) has discretion to add any party to the *lis*. It was also informed that the defendant entered into the agreement with respect to the Amritsar property, within one month of the date of issuance of the termination notice to the plaintiff. Attention is invited to the documents filed by the defendant to contend that the same disclose the defendant to have also paid the same amount of security deposit to the developer of the property at Amritsar, as paid by the plaintiff. With respect to the contention of the senior counsel for the defendant, of freedom of contract, it is contended that after entering into a contract, there is no freedom left. It was informed that in *Balailal Mookerjee & Co. (P) Ltd.* Supra, injunction was granted inspite of termination having been effected and the plaintiff was not compelled to sue for specific performance. With respect to *Pepsi Foods Ltd.* supra, it was contended

that what has been held therein applies only with respect to employees and not with respect to competitors. It was controverted that the relief with respect to Mumbai is speculative and it was contended that it is by way of *quia timet* action and it was informed that the owner of the property at Mumbai is in liquidation/insolvency. It was also argued that all the said questions as to maintainability, as has been raised, are a matter of trial. With respect to the argument of remedy if any of the plaintiff being under the competition law, it was contended that there is a competition law in United Kingdom (UK) and United States of America (USA) also but inspite thereof the courts there have held liability under the tort to exist. With respect to *I.S. Sikandar* supra, it is contended that what has been held therein has been diluted in the subsequent judgments.

14. Having heard the senior counsels for the parties, the doubt expressed in the order dated 5th February, 2019 with respect to the maintainability of the suit, remains. No merit is found in the contention of the senior counsel for the plaintiff, of the defendant being bound by any admission contained in the order dated 1st February, 2018 and admission of law does not bind any party to a *lis* less a counsel. Rather it appears that the suit as framed, is directed not only against the defendant but also against others who have not been impleaded. During the hearing it emerged that besides the plaintiff and the defendant there are only one or two others carrying on same business but on a much smaller scale than the plaintiff and the defendant. The effect of granting injunction as

sought against the defendant, would be that the defendant even if has entered into agreements with the developer/owner of the Amritsar and Juhu, Mumbai properties, would be unable to proceed under the said agreements, leaving the developer/owner aforesaid in a lurch with respect to their properties meant for running and operating multiplex cinemas and who will have no option but to accept whatever commercial terms the plaintiff offers. Such damage is also sought to be inflicted on the owners of other multiplex properties across India, without affording them even an opportunity to be heard. It is not for the Court to make out a case for the plaintiff by impleading such owners as parties to this suit. In fact this Court would not have territorial jurisdiction also over them. Reliance on *Gujarat Bottling Co. Ltd.* also is not apposite. The contention that the question as has been raised with respect to maintainability of the suit is subject matter of trial is also meritless.

15. The case of the plaintiff in a nutshell is, that it had binding contracts with the developer/owner of the properties at Amritsar and Juhu, Mumbai and which contracts were breached/broken or are threatened to be breached/broken, by the developer/owner of the said properties, at the instance of the defendant. The defendant is sought to be restrained from doing so and also from doing so with respect to other properties with respect whereto the plaintiff has existing contracts or may have contracts in future. In my opinion the plaintiff even if believed to be having existing binding contracts and even if the defendant is

indeed interfering therein or causing breach thereof, is not entitled to so restrain the defendant. No trial is required in this regard inasmuch as the same is purely a question of law.

16. The law with respect to contracts, immovable property and specific performance, as far as India is concerned is codified in the Indian Contract Act, 1872, Transfer of Property Act, 1882 and the Specific Relief Act. Interpreting the said law, it has been held, (i) that any right in immovable property, whether by way of sale or lease, can be transferred or created only by a registered document and in the absence of registration, the deed of sale even if executed, at best constitutes an agreement to sell and the deed of lease even if executed with delivery of possession, at best is a lease from month to month, terminable by a 15 days' notice; a deed of lease even if executed and registered, but without delivery of possession, entitles the lessee only to sue for possession; an unregistered deed of lease, even if executed, till delivery of possession does not constitute a month to month lease even and at best can be construed as an agreement to lease; (ii) an agreement to, in future, create a right in immovable property by way of sale or lease, confers on the agreement purchaser or the proposed lessee, only a right to seek specific performance and does not confer any right in the immovable property subject matter thereof; reference in this regard can be made to ***Jiwan Dass Rawal Vs. Narain Dass*** AIR 1981 Del 291, ***Sunil Kapoor Vs. Himmat Singh*** (2010) 167 DLT 806, ***Satish Kapoor Vs. Km. Ishwari***

Assudani 2012 SCC OnLine Del 1808 (DB) [SLP (Civil) 21561/2012 preferred whereagainst was dismissed on 3rd August, 2012], *Cement Corporation of India Ltd. Vs. Life Insurance Corporation of India Ltd.* 2014 SCC OnLine Del 4536 (DB), *Chander Dutt Sharma Vs. Prem Chand* 2018 SCC OnLine Del 9903 and *Ravinder Singh Vs. Suresh Chand Punj* 2019 SCC OnLine Del 8112; and, (iii) that specific performance may be claimed not only against the agreement seller/lessor but also against any other person claiming under him by a title arising subsequently to the contract of which specific performance is sought.

17. Applying the aforesaid law, (i) if according to the plaintiff, it had a binding lease with the developer/owner of the properties at Amritsar and Juhu, Mumbai and had not been put into possession of the property, the remedy of the plaintiff in law was to seek to be put into possession of the property; (ii) on the contrary if according to the plaintiff it did not have a binding agreement or a lease but only an agreement to lease, the remedy of the plaintiff was to sue for specific performance thereof; (iii) yet further, if according to the plaintiff the plaintiff only had a promise from the developer/owner of the said properties to grant a license to the plaintiff of the said properties and the developer/owner were in violation thereof, the remedy of the plaintiff was to claim damages from them, as held by me in *Keventer Agro Limited Vs. Kalyan Vyapar Pvt. Ltd.* MANU/DE/1479/2013, *Gesture Hotels and Food Pvt. Limited Vs. The New Delhi Municipal Council* AIR 2014 Del 143 (DB), *Mohd. Haroon*

Vs. New Delhi Municipal Council 2016 SCC OnLine Del 2616 and *A.N. Kaul Vs. Neerja Kaul* MANU/DE/2303/2018 [SLP No.13083/2019 preferred whereagainst was dismissed vide order dated 2nd August, 2019]; (iv) the plaintiff did neither; (v) on the contrary the plaintiff, without any demur accepted refund of the security deposit paid with respect to the Amritsar property, signifying its acceptance of the termination of the arrangement, whatsoever it was with the developer of the said property; (vi) in the absence of the developer/owner of the properties at Amritsar and Juhu, Mumbai, it cannot also be determined whether it was the plaintiff who was in breach/violation of its obligations under the agreement entered into with respect to the said properties or it was the said developer/owner; (vii) the said parties were necessary parties to the suit considering the nature thereof and the plaintiff cannot hide behind the plea of the Court being always entitled to implead any party; the Court once finds the necessary party and in whose absence there can be no adjudication, to have been not impleaded, is not required to do the work of the plaintiff and has no option but to dismiss the suit; (viii) the reliefs claimed with respect to other properties across India are indeed vague and there can be no general injunction as sought; though the Courts have recognized a *quia timet* action but against a specific party and with respect to specific facts and not in vacuum; and, (ix) there is a merit in the contention of the senior counsel for the defendant, that considering that the fact that the plaintiff and the defendant are perhaps

the only two major players in the country with respect to the business of multiplexes, the relief as claimed is designed to not only drive the defendant out of competition but also to the prejudice of owners of certain kinds of properties of which the plaintiff and the defendant are the only dominant consumers in the country and who on grant of injunction as sought by the plaintiff would be left with no option but to deal with their respective properties with the plaintiff only, enabling the plaintiff to beat down the prices.

18. As far as the claim of the plaintiff on the basis of tort of, liability for unlawful interference in business and contracts of others is concerned, I have recently in *Modicare Limited Vs. Gautam Bali* 2019 SCC OnLine Del 10511 had an occasion to deal with the claim of the plaintiff therein for injunction restraining its ex-employees from enticing the customers and consultants in the marketing network of the plaintiff. It was the argument therein also that interference with contractual relations has been identified as a tort and the relief of injunction and damages claimed by the plaintiff were for the said tort. Reliance as here, there also was placed on the English judgments. It was however enquired from the senior counsel for the plaintiff therein, whether there is any equivalent of Section 27 of the Indian Contract Act in the law in UK inasmuch as once the law of this country is that there can be no restraint by contract against an employee, from competing with the ex-employer, the effect thereof cannot be whittled down by holding that the said

employee, while carrying on his competing business, would not be entitled to offer terms to other employees or the customers of the ex-employer which would attract him to enter into a contract with the employee and break the existing contracts with the ex-employer. The senior counsel therein was also reminded that Section 27 of the Indian Contract Act had been held to be within the domain of Article 21 of the Constitution of India and would thus have a better claim for enforcement than of a tort of interference with contractual relations. After hearing the counsels therein it was held:

“29. Section 27 of the Contract Act makes void i.e. unenforceable, every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind. Thus, even if the defendants or any of them, under their agreement with the plaintiff, had undertaken not to carry on or be involved in any capacity in any business competing with the business of the plaintiff, even after leaving employment with/association of the plaintiff, the said agreement, owing to Section 27 supra, would be void and unenforceable and the plaintiff on the basis thereof could not have restrained any of the defendants from carrying on any business or vocation, even if the one which the defendant had agreed not to carry on. I find it incongruous that the law, on the one hand would disable a plaintiff from enforcing a contract where the defendant had voluntarily agreed not to do something, by going to the extent of declaring such contract void, but on the other hand, enable the same plaintiff to the same relief under the law of tort. To hold so, would make the law look like an ass.

30. Section 27, in *Taprogge Gesellschaft MBH Vs. IAEC India Ltd.* AIR 1988 Bom 157, *Sharp Business System Vs. The Commissioner of Income Tax 2012 SCC OnLine Del 5639*, and *Pepsi Foods Ltd. supra* has been held to have been enacted as a matter of public policy of India, and does not create any personal right, which can be waived. If it is the public policy of India that there can be no restraint on any one exercising a lawful profession, trade or business, not even when such person has voluntarily agreed not to, it belies logic that such public policy would not apply when the mischief sought to be prevented is sought to be practiced invoking law of torts. It is not as if different reliefs are being claimed, in enforcement of contract on the one hand and invoking the law of torts on the other hand. The reliefs are the same. In my opinion, what is not contractually enforceable is also not enforceable invoking law of torts.

31. In spite of specific query, whether there is equivalent in UK, of Section 27 of the Contract Act, no response has come. I find Supreme Court in *Gujarat Bottling Co. Ltd. supra* (referred to by the senior counsel for the plaintiff herein also) to have held that while under the common law in England, restraints of trade, whether general or partial, may be good if they are reasonable or reasonably necessary with reference to public policy or for protection of interest of covenantee, in India, agreements in restraint of trade are governed by Section 27 and the question of reasonableness of restraint is outside the purview of Section 27. This explains, the law of tort of unlawful interference in business, in UK. However the same, in my view, has no place in India, at least in the context of present facts. I find the Supreme Court, in *Superintendence Company of India (P) Ltd. supra*, to have also held that principles of English Law cannot be

imported once the Parliament has codified the said principles in the Contract Act; it is the language of the statute which alone has to be considered to ascertain its true meaning and scope.

32. *Section 27, contained in a legislation of the year 1872, on promulgation of the Constitution of India in the year 1950, conferring the right to practice any profession or to carry on any occupation, trade or business, the status of a Fundamental Right, under Article 19(1)(g) thereof, today has a different connotation. Article 19(6) only clarifies that nothing contained in Clause (g) shall affect the operation of any existing law or prevent the State from making any law, imposing in the interest of general public, reasonable restrictions on the exercise of right conferred by the said clause. Thus, restrictions, in the interest of general public and if reasonable, to the Fundamental Right to practice any profession or to carry on any occupation, trade or business, can be imposed only by law. The law of tort of unreasonable interference in carrying on business, in view of Section 27 of the Contract Act in force since 1872, was not the existing law within the meaning of Article 19 (6) of the Constitution.*

33. *I have in **Independent News Service Pvt. Ltd. Vs. Sucherita Kukreti** (2019) 257 DLT 426, in the context of Section 27 of the Contract Act held the right saved thereby to be a facet of Article 21 of the Constitution of India. The judgment of the Division Bench of Allahabad High Court of the year 1930 [**Bholanath Shankar Das Vs. Lachmi Narain** AIR 1931 All 83 (DB)], after the right sought to be curtailed has been conferred the status of a Fundamental Right and a facet of Article 21 of the Constitution of India, does not persuade me to hold that such Fundamental Right of the defendants can be subject to the law of tort of*

enticement to commit breach of contract or of unlawful interference with business.

34. *After the coming into force of the Constitution of India, the restriction if any on the fundamental right to carry on any trade or business or to practice any profession can be imposed only by making a law i.e. a law prohibiting unlawful interference in business and enticing another to commit breach of existing contractual obligations, and the constitutionality of which law if challenged would be tested on the anvil of Article 19(6) of the Constitution of India.*

36. *Else, I find a Full Bench of the High Court of Hyderabad to have in **Holloor Gopal Rao Vs War Nasi Shiv Ramiah** AIR 1953 Hyd 1 held that a suit for establishing exclusive right to 'purohitgiri' in a village, axiomatically prohibiting others from acting as purohits, could no longer continue after coming into force on 26th January, 1950 of the Constitution of India. It was held that any order declaring the exclusive right of the plaintiff would amount to laying a restraint upon others to carry on the same profession in the village.*

37. *In fact, during the hearing on both days, I have also been asking the senior counsel for the plaintiff, that even if the argument of the senior counsel for the plaintiff were to be accepted, where should the Court draw the line, between what constitutes enticement to commit breach of contract and unlawful interference in business on the one hand and competition on the other hand. Any new entrant in the market, to be able to create a niche for itself, in spite of the existing players, has to compete with the existing players, by approaching the same customers and the same cache of employees who over the years have acquired expertise in that particular field. When launching the same product/service, the new entrant to the business cannot*

possibly create a new set of customers for that product or service. Thus, the consumers to be approached by the new entrant would be the same who were earlier having contractual relationships with the existing players. Similarly, a new entrant cannot possibly compete if does not have the requisite expertise/finesse, required for launching a particular product or service and to be able to provide the same class or quality of service, has to necessarily have with it, hands which have been making the subject product and/or providing the said service in the past, may be under contract with the existing players. In my view, it is practically impossible to draw a line between such persons, on their own approaching the new entrant, and the new entrant approaching them. The process is quite complex and no precise rules can be made with respect thereto. The Courts would not lay down the law in the name of being a matter of evidence, in respect of matters which are incapable of determination by Courts.

38. Attention of the senior counsel for the plaintiff has also been drawn to the widespread business of headhunters and employment brokers, who sometimes are approached by employees/customers and sometimes by the new entrant and also sometimes on their own make the two meet. I have enquired from the senior counsel for the plaintiff, whether it will make any difference, that the new entrant in the market approaches a headhunter for hiring employees with the specialty and instead of the new entrant, it is the headhunter who approaches employees having contracts with existing players. It is virtually impossible, even if evidence were permitted to be led to draw a line, as to what caused the employee to breach an existing contract of employment and enter into a new contract i.e. whether it was on own violation or on being enticed by the new entrant in the market.

39. *No line which can be drawn in this respect has been suggested.*

40. *A new entrant obviously has to offer better terms to employees having expertise and having contract with other players, to woo them to itself. I have wondered, whether offering such better terms would amount to the tort of enticement to commit breach of contract and unlawful interference with the business of an existing player. Again no clarity has emerged.*

41. *I thus hold that a claim founded on unlawful interference with business or of enticement to commit a breach of contract with the plaintiff is not enforceable in a court of law, neither contractually nor invoking the law of tort. Such a claim is thus not required to be put to trial.”*

19. What was held in *Modicare Limited* supra, in a suit by an employer against an ex-employee, to restrain the ex-employee from interfering in the contractual relationships of the employer with its customers, clients and associates, though was held in the context of a contractual relationship between an employer and ex-employee but would apply equally to competitors. Once Section 27 of the Indian Contract Act declares agreement in restraint of exercising lawful profession, trade or business of any kind to be void, it would be incomprehensible to say that while inspite of entering into a contract with the ex-employer to not practice the trade or profession which the employer is practicing, an employee is still entitled to do so owing to the law declaring such a contract to be void, but a person who does not have any contractual relationship with his competitor, is not entitled to, in

advancement of its own trade and business, not approach the prospective clients, customers and associates approached by the competitor. The tort recognized in England, of unlawful interference in contractual relationships would equally not be available in the present situation also.

20. The Division Bench of this Court in *Akuate Internet Services Pvt. Ltd. Vs. Star India Pvt. Ltd.* 2013 SCC OnLine Del 3344 (DB), in the context of a claim for injunction restraining the defendants from disseminating contemporaneous match information in the form of ball by ball account or minute to minute score updates/match alerts, for a premium and without obtaining licence from plaintiff, rejected the argument, of defendants unfairly competing with the plaintiffs, holding (i) that in doing so, the Courts would be granting protection to certain intangibles not covered by the specific statutory regimes; (ii) the basic economic rule is that competition is not only lawful but a mainspring of the economy; (iii) the legislature has recognized that there should be exceptions-it has laid down the rules for these; the laws of patents, trademarks, copyrights and designs have all been fashioned for the purpose; each of them have rules for their existence... each has their own justification; (iv) it is not for the judges to step in and legislate into existence new categories of intellectual property; (v) it is not open for the Courts to create such judicial remedies to remedy what the Courts consider unfair; it is not open to the Court to legislate in this way; (vi) recognition of a general action for "unfair competition" involves not

more than recognition of the fact that the existence of such an action is inconsistent with the established limits of the traditional and statutory causes of action which are available to a trader in respect of damage caused or threatened by a competitor; those limits, which define the boundary between the area of legal or equitable restraint and protection and the area of untrammelled competition, increasingly reflect what the Parliament has determined to be the appropriate balance between competing claims and policies; (vii) neither legal principle nor social utility requires or warrants the obliteration of that boundary by the importation of cause of action whose main characteristic is the scope it allows, under high-sounding generalizations for judicial indulgence of idiosyncratic notions of what is fair in the market place; (viii) the recent trend internationally to accord protection to rights in information in varying degrees or to accept the doctrine of unfair competition, especially in the European Union, is pursuant to legislative action by the European Council, and not as a judicial extension; (ix) once we recognize that mere information cannot be the subject matter of protection under common law, it becomes apparent that other means continue to remain available to protect such information: by way of an action for breach of the common law duty of confidence, which is a right in personam against an individual who has come across such information under confidence, and crucially, is distinct from a propriety right in such information itself, opposable in rem; (x) there exists another cogent

reason for denying the existence of any general misappropriation or unfair competition theory - i.e. that it would create a non-existent distinction between copying which is actionable under the Copyright Act and appropriation or misappropriation which is actionable under the doctrine of unfair competition; (xi) under the Copyright Act, the copying or reproduction of match information is permitted; to say that the doctrine of unfair competition prohibits the misappropriation of match information would either mean that misappropriation under common law can supplant the Copyright Act or that copying and misappropriation refer to two distinct acts, which would be a distinction without a difference; (xii) claims based on alternate common law remedies in respect of what is in the domain of a statute cannot be permitted; and, (xiii) claim on the basis of unjust enrichment is the same as a claim on basis of the doctrine of unfair competition.

21. Mention may also be made of another judgment of this Court in *Emergent Genetics India Pvt. Ltd. Vs. Shailendra Shivam* 2011 SCC OnLine Del 3188. Therein, in the context of a suit brought by the plaintiff against its ex-employees/ex-directors for permanent injunction to restrain them from selling similar seeds as the plaintiff was involved in breeding during the term of employment of the defendants, and after finding the invention claimed by the plaintiff to be not falling in the ambit of the Copyright Act, 1957 or Patents Act, 1970 or the Protection of Plant Varieties and Farmers' Rights Act, 2001, while denying interim

injunction it was held (i) the danger of enclosing as a monopoly, under the umbrella of trade secret or confidential information, what is clearly commonly shared information and resources, in the absence of a statutory regime is, that the Courts of law would at one fell stroke, not only make policy choices which would impact livelihoods of millions, but would be ordaining, unwittingly, legislation, which cannot be tested for its reasonableness; (ii) an inventor or innovator undoubtedly should be provided a fair regime which protects his creative efforts and rewards him but in the absence of thought out policies, which weigh the advantages as well as the drawbacks, that may manifest in the unhindered enforcement of such impulses, there is a danger of imperiling the right to occupation, guaranteed by Article 19 (1) (g) of the Constitution of India and the right to livelihood, so emphatically held to be an intrinsic part of Article 21; and, (iii) another broader perspective cannot be lost sight of; the Courts are enjoined to interpret the law and the Constitution keeping in view the directive principles of State Policy embodied in the Constitution of India and which is *inter alia* require the State to ensure that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; if this Court, without any statutory regime were to accept the plaintiffs' blanket assumption that it is possessed of confidential information in something, which plainly is part of the material resource

of the community, the Court would overstep the mandate of the Constitution, in its anxiety to protect such a perceived right.

22. I may mention, that the claim of the plaintiff herein also is, to monopolize land and buildings thereon, across India, and just like agricultural produce was held to be natural resource, so is land a natural resource. Moreover yet another directive principle is, that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment and the monopoly sought to be created by the plaintiff by seeking the injunction in this suit, to exclude the defendant from its forays to procure real estate for its business across India, would be against the said directive principle of State Policy. I have in *Independent News Service Pvt. Ltd.* supra, in the context of a suit filed, again by a television channel to prevent its news presenter from leaving its employment and becoming a news presenter of a rival television channel, held that the injunction sought was against the right of the said news presenter to advance her career and grant of such injunction by the Court would be in violation of the directive principles of State Policy.

23. I reiterate that the grant of injunction claimed by the plaintiff on the premise of the actions of the defendant comprising a tortious act of interference with contractual relations of the plaintiff, would be in violation of the fundamental right of the defendant, its promoters and directors to carry on trade and business, without any law having been

enacted by the State in this respect in the interest of general public, within the meaning of Article 19 (5) of the Constitution of India. The law as enacted entitles the plaintiff in such case to the reliefs of specific performance if entitled thereto against those with whom the plaintiff has contractual relationship and with which contractual relationship the defendant is alleged to be interfering. The plaintiff cannot be permitted to expand its remedies beyond that provided for in law.

24. Resultantly I hold, that the plaintiff, on the averments contained in the plaint, had no cause of action for the relief claimed against the defendant and the relief claimed by the plaintiff against the defendant is barred by law.

25. Axiomatically the suit is dismissed. The plaintiff having indulged in judicial adventurism, is also burdened with costs of Rs.5,00,000/-, payable to the defendant within 90 days hereof.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J.

MAY 18, 2020

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