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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 6th October, 2020

Pronounced on : 9th October, 2020

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I.A. 8772/2020 in CS(COMM) 295/2020

INTERDIGITAL TECHNOLOGY

CORPORATION & ORS.

..... Plaintiffs

Through: Mr. Gourab Banerji, Sr. Adv.
with Mr. Pravin Anand, Ms. Vaishali Mittal,
Mr. Siddhant Chamola, Ms. Manisha Singh
and Ms. Pallavi Bhatnagar, Advs.

versus

XIAOMI CORPORATION & ORS.

..... Defendants

Through: Mr. Saikrishna Rajagopal, Mr.
Siddharth Chopra, Ms. Sneha Jain, Ms.
Garima Sahney, Ms. Anu Paarcha, Dr.
Victor Vaibhav Tandon, Mr. Arjun
Gadhoke, Ms. Stuti Dhyani and Ms. Charu
Grover, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

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I.A. 8772/2020 in CS(COMM) 295/2020

1. In a standard essential patent (SEP) royalty rate-setting suit, preferred against the plaintiff before the Wuhan Intermediate People's

Court (hereinafter referred to as “the Wuhan Court”), the defendant moved an application, on 4th August, 2020, seeking an anti-suit injunction, restraining the plaintiffs from prosecuting the present suit before this Court. In the said application, the Wuhan Court has, *vide* order dated 23rd September, 2020, issued the following directions:

“1. Upon service of this ruling, the Respondents InterDigital, Inc. and InterDigital Holdings, Inc. as well as the affiliates thereof shall immediately withdraw or suspend their application for any temporary injunction before the High Court of Delhi at New Delhi of India against the Applicants Xiaomi Communications Co., Ltd., Xiaomi Home Commercial Co., Ltd., and Beijing Xiaomi Mobile Software Co., Ltd. as well as its affiliates in terms of the 3G and 4G SEPs involved in the present case;

2. Upon service of this ruling, the Respondents InterDigital, Inc. and InterDigital Holdings, Inc. as well as the affiliates thereof shall immediately withdraw or suspend their application for any permanent injunction before the High Court of Delhi at New Delhi of India against Applicants Xiaomi Communications Co., Ltd., Xiaomi Home Commercial Co., Ltd., and Beijing Xiaomi Mobile Software Co., Ltd. as well as its affiliates in terms of the 3G and 4G SEPs involved in the present case;

3. The Respondents InterDigital, Inc. and InterDigital Holdings, Inc. as well as the affiliates thereof shall not, during the trial of the present case, apply for any temporary or permanent injunction before any courts in either China or any other countries and regions against the Applicants Xiaomi Communications Co., Ltd., Xiaomi Home Commercial Co., Ltd., and Beijing Xiaomi Mobile Software Co., Ltd. as well as its affiliates in terms of the 3G and 4G SEPs involved in the present case;

4. The Respondents InterDigital, Inc. and InterDigital Holdings, Inc. as well as the affiliates thereof shall not, during the trial of the present case, apply for enforcing any temporary or permanent injunction that has been granted or is likely to be granted by any courts in either China or any other

countries and regions against the Applicants Xiaomi Communications Co., Ltd., Xiaomi Home Commercial Co., Ltd., and Beijing Xiaomi Mobile Software Co., Ltd. as well as its affiliates in terms of the 3G and 4G SEPs involved in the present case;

5. The Respondents InterDigital, Inc. and InterDigital Holdings, Inc. as well as the affiliates thereof shall not, during the trial of the present case, file lawsuits before any courts in either China or any other countries and regions requesting to adjudicate the royalty rate of the royalty disputes in terms of the 3G and 4G SEPs involved in the present case against the Applicant's Xiaomi Communications Co., Ltd., Xiaomi Homecare commercial Co., Ltd., and Beijing Xiaomi Mobile Software Co., Ltd. as well as its affiliates;

6. Frozen the guarantee fund, RMB 10 million yuan, provided by the Applicants Xiaomi Communications Co., Ltd., Xiaomi Homecare commercial Co., Ltd., and Beijing Xiaomi Mobile Software Co., Ltd. for the behaviour preservation application;

7. Other claims in the behaviour preservation application of the Applicant's Xiaomi Communications Co., Ltd., Xiaomi Home Commercial Co., Ltd., and Beijing Xiaomi Mobile Software Co., Ltd. shall be rejected.

In the event of the Respondents InterDigital, Inc. and InterDigital Holdings, Inc. violating this ruling a fine of RMB 1 million yuan per day shall be imposed, calculated cumulatively from the date of the violation.”

Though there are more than one plaintiff, the reference to “the plaintiff”, hereinafter, shall be understood as a reference to Plaintiff No. 1, as the holder of the suit patents.

2. Understandably aggrieved by this order of the Wuhan Court, the plaintiffs have moved the present application before this Court.

Para 33 of the application, which contains the payers made therein, reads thus:

“33. In light of the above, it is most humbly and respectfully prayed before this Hon’ble Court that it may be pleased to pass the following orders:

(i) Grant an injunction against the Defendant Nos. 1-8 in the present proceedings, restraining them from pursuing or enforcing the anti-suit injunction order dated September 23, 2020 passed by the Wuhan Intermediate People’s Court until the final disposal of the present proceedings;

(ii) Direct the Defendants and their affiliates to immediately withdraw the suit filed by them for ‘determination of global royalty rates of the range for the licensing of all standard essential patents (“SEPs”) and patent application of the Plaintiffs 3G, 4G patent portfolios on FRANTIC terms, being Case No.: (2020) E 01 Zhi Min Chu No. 169.1 before the Wuhan Intermediate People’s Court;

(iii) Direct the Defendants and their affiliates to immediately withdraw their claim on the suit before the Wuhan Intermediate People’s Court, Case No.: (2020) E 01 Zhi Min Chu No. 169.1 seeking an anti-suit injunction against the Plaintiffs restraining them from pursuing their claim for injunctive relief for the 3G, 4G SEPs against the Defendants;

(iv) Impose heavy costs upon the Defendants for the above-mentioned mala fide activities, being at least equivalent to the costs that are likely to be imposed on the Plaintiffs before the Wuhan Intermediate People’s Court

and pass any other order as this Hon’ble Court may deem fit in the facts and circumstances of the present proceedings.”

3. Notice was issued, on this application, returnable on 25th November, 2020. Mr. Gaurab Banerjee, learned Senior Counsel appearing for the plaintiffs-applicants, however, pressed for ad interim

relief in terms of prayer (i) in the application. Short notice, returnable on 5th October, 2020, qua this prayer made on behalf of the plaintiffs was, therefore, issued, and response was invited, from the defendant, thereon. The defendant has filed a reply to the application, albeit by way of email to the Court Master, which is taken on record. Documents have also been filed, with the reply, which are treated as annexures to the reply, and are also taken on record.

4. Though, given the fact that a detailed reply, to prayer (i) in this application, has been filed by the defendants, and lengthy arguments, over three days, were addressed by learned Counsel, prayer (i) in the application could finally be disposed of, there is no consensus, *ad idem*, by learned Counsel, to that effect. This order is, therefore, restricted to the prayer, of learned counsel for the plaintiffs, for *ad interim* relief, in terms of prayer (i) in the application.

5. Before proceeding to address the concerns of the plaintiffs, a brief factual overview of the litigation thus far, leading to the passing of the order, dated 23rd September, 2020, by the Wuhan Court, may be noticed.

6. The dispute between the plaintiff and the defendants, whether in India or in Wuhan, relates to certain Standard Essential Patents (SEPs), held by the plaintiff, and of which the plaintiff alleges infringement by the defendants. That the plaintiff holds the SEPs in question, and the SEPs are registered in that plaintiff's name, is not seriously in doubt. The plaintiff alleges that the cellular handsets,

manufactured by the defendants, are compliant with 3G and 4G standards, which make use of the technology contained in the SEPs, held by the plaintiff. This, contends the plaintiff, is permissible only if the defendants enter into a licensing agreement, with the plaintiff, containing fair, reasonable and non-discriminatory (FRAND) terms. The plaintiff, therefore, prays, inter alia, for issuance of a decree of permanent injunction, restraining the defendants from dealing in their devices, or any other product, infringing the Indian Patents IN 262910, IN 295912, IN 298719, IN 313036 and IN 320182, whereunder the SEPs of the plaintiff have been registered. In the alternative, the plaintiff prays for permitting the defendants to take license, from the plaintiff, for using the plaintiff's patented technology, on FRAND terms, set out in the prayer clause or otherwise to be determined by the Court.

7. The present suit was filed by the plaintiff, before this Court, on 29th July, 2020.

8. Prior thereto, on 9th June, 2020, the defendant filed a SEP royalty rate-setting suit (hereinafter referred to as "the Wuhan suit"), against the plaintiff, before the Wuhan Court. A reading of the order, dated 23rd September, 2020, passed by the Wuhan Court, discloses that no issue of infringement of patent was involved, in the said proceedings, which essentially sought fixation of FRAND-compliant royalty rates, between the plaintiff and the defendants, in order to enable the defendants to utilise the plaintiff's patented SEP technology.

9. Along with the present suit, the plaintiff preferred IA 6441/2020, under Rule 17 of Chapter 7 of the Delhi High Court (Original Side) Rules, 2018, for setting up a confidentiality club, and IA 6440/2020, under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC), for interim reliefs.

10. Summons, in the present suit, and notice, in IA 6440/2020 (returnable on 29th September, 2020) and IA 6441/2020 (returnable on 26th August, 2020) were issued, by this Court, on 4th August, 2020.

11. On the very same day, i.e. 4th August, 2020, the defendant filed an application, before the Wuhan Court, seeking an anti-suit injunction, restraining the plaintiff from pursuing and prosecuting the present suit before this Court.

12. Despite the present proceedings having come up before this Court, after 4th August, 2020, on 17th August, 2020, 26th August, 2020, 28 August, 2020, 31st August, 2020, 1st September, 2020, 3rd September, 2020 and 29th September, 2020, the defendants never thought it appropriate to inform this Court of the pendency of the anti-suit injunction application, filed by them before the Wuhan Court, or of the issuance of notice, thereon, to the plaintiffs. The order, dated 23rd September, 2020, of the Wuhan Court, discloses that the process of serving of the summons, by the Wuhan Court on the plaintiff, is still under progress; nevertheless, the Wuhan Court has proceeded to

issue an anti-suit injunction, in the terms already set out hereinabove, “in a sense of behaviour preservation”.

13. Two issues, seminally, arise for consideration, viz.

- (i) whether this Court *can* grant of the relief sought, and
- (ii) if so, whether this Court *should* grant the relief sought.

14. Arguing for the plaintiff-applicant, Mr. Gourab Banerjee, learned Senior Counsel, would submit that both these questions are required to be answered in the affirmative.

15. On the competence, of this Court, to grant the relief sought by the plaintiff, Mr. Banerjee submits that the power, of Indian courts, to grant anti-suit injunctions, against proceedings pending in foreign jurisdictions, stands recognised by the Supreme Court in *Modi Entertainment Network v. W. S. G. Cricket Pte Ltd*¹. Though the prayer of the plaintiff, in the present application, essentially seeks an anti-anti-suit injunction, regarding which Mr. Banerjee acknowledges that there is no direct authority in India, he submits that the competence of Indian courts, to grant anti-anti-suit injunctions stands recognised by a Division Bench of the High Court of Calcutta in *Devi Resources Ltd v. Ambo Exports Ltd*². Mr. Banerjee submits that, in the facts of the present case, grant of such an anti-anti-suit injunction would be necessary in order to do complete justice, as the subject matter of the proceedings, in the present suit, and in the Wuhan suit, are different. The present suit addresses the issue of infringement, by

¹ (2003) 4 SCC 341

² (2019) 2 Cal LT 50 : 2019 SCC OnLine Cal 7774

the defendants, of the plaintiff's registered SEPs, whereas no question of infringement has been agitated before the Wuhan Court. Mr. Banerjee points out that, if the injunction granted by the Wuhan Court is allowed to remain in place, not only would the plaintiff be enjoined from prosecuting the present proceedings; no court, in the world, would be entitled to adjudicate on the issue of infringement of the plaintiff SEPs. This, he submits, would result in stark injustice to the plaintiff, eminently deserving of an anti-anti-suit injunction. By way of examples of cases in which such anti-anti-suit injunctions had been granted by Courts, Mr. Banerjee has cited the decision of a learned Single Judge of the High Court of UK in *IPCom GmbH & Co. KG v. Lenovo Technology (United Kingdom) Ltd*³ (refer to, for the sake of convenience, hereinafter, as "*IPCom v. Lenovo*") and of the Queen's Bench Division of the High Court of UK in *Ecom Agroindustrial Corp. Ltd v. Mosharaf Composite Textile Mill Ltd*⁴, as well as to the decision, dated 8th November, 2019, of the Paris Court of Appeal in *Lenovo (United States) Inc v. IPCom GmbH & Co. Kg* (referred to, for the sake of convenience, hereinafter, as "*Lenovo v. IPCom*").

16. Mr. Saikrishna Rajagopal, learned Counsel for the defendants, opposed the application. To a query, from the bench, as to whether he was opposing the continuance of the present proceedings before this Court, Mr. Rajagopal answered in the affirmative, pointing out that the order, dated 23rd September, 2020, of the Wuhan Court, had so directed. He, however, sought to submit that the Wuhan Court had not mandated withdrawal, by the plaintiff, of the present proceedings,

³ (2019) EWHC 3030 (Pat)

⁴ (2013) EWHC 1276 (Comm)

but had given the plaintiff the option to either “withdraw or suspend” the prosecution of the present proceedings. As such, submits Mr. Rajagopal, the order of the Wuhan Court does not directly interfere with the proceedings before this Court.

17. Mr. Rajagopal submits, further, that the plaintiff is, in the present application, seeking neither an anti-suit injunction, nor an anti-anti-suit injunction, but is seeking, instead, an anti-enforcement injunction, restraining the enforcement of an order passed by a foreign court. He acknowledges, candidly, that this Court has the power to grant such an injunction, but submits that the said power has to be exercised in extraordinary, and in extremely rare circumstances. One of the considerations which, according to Mr. Rajagopal, would militate against the grant of any ad interim relief, in the present application, is the conduct of the plaintiff.

18. Mr. Rajagopal submits that anti-execution injunction, restraining execution of enforcement of an order passed by a foreign Court, is granted only where the order is obtained by fraud, or, after the order has been passed, the parties agree not to enforce the order, and there is a breach of the said agreement, or the petitioner had no means of knowing that the order would possibly be passed, so as to pre-empt it by way of an anti-suit injunction application. If, however, the plaintiff, owing to his own negligence and lack of due diligence, has allowed the anti-suit injunction proceedings, in the foreign Court, to proceed and culminate in the issuance of an anti-suit injunction order, Mr. Rajagopal would submit that the plaintiff cannot, at that

stage, seek stay of enforcement of such an order. Mr. Rajagopal has invited my attention, in this context, to an affidavit, dated 29th July, 2020, of Mr. Stephen J. Akerley, Vice President, Litigation, at the office of the plaintiff at Delaware, USA, which, in paras 3 and 4(i) and (ii), are as under:

“3. I state that, I have learned from my colleague, Ms. Eeva Hakoranta, who is the Executive Vice President, Chief Licensing Officer at IntelDigital Inc., (Plaintiff No. 2) that a telephone conversation took place between her and Mr. Paul Lin, Vice President of Global Business Development and IP Strategy of Defendant No. 1, Xiaomi Corporation.

4. I state that after her telephone conversation with Mr. Lin, Ms. Hakoranta informed me:

(i) That Mr. Paul Lin informed her that the Defendant had filed a case against one or more of the Plaintiffs in China, seeking a determination of FRAND terms for a license with respect to an unspecified portion of Plaintiffs’ portfolio of Standard Essential Patents (SEPs); Mr. Lin did not indicate whether this involved Plaintiffs’ cellular SEPs or what generation of cellular SEPs, whether the requested FRAND determination was in relation to Plaintiffs’ Chinese SEPs or broader portfolio, in what court in China the action was filed; or the specific claims being made by Defendants against Plaintiffs;

(ii) That Mr. Lin informed her that although the abovementioned case has been filed in China, it was yet to be officially served upon the Plaintiffs;”

19. This affidavit, contends Mr. Rajagopal, makes it clear that, at least on the date of execution of the affidavit, i.e. 29th July, 2020, the plaintiff was aware of a proceeding, in China, filed by the defendants against the plaintiff, seeking fixation of FRAND-compliant royalty

rates, in respect of the plaintiff's SEPs. Mr. Rajagopal submits that the suit filed by the defendants against the plaintiff, in China, being prior in point of time to the present suit, the preferring of an application, by the defendants, in China, seeking an anti-suit injunction against prosecution, by the plaintiff, of the present suit in India, was a foregone conclusion. Filing of such anti-suit injunction applications, submits Mr. Rajagopal, are a matter of common practice and common knowledge, among patent litigators, and, had the plaintiff exercised basic due diligence, following on the information communicated to Ms. Hakoranta by Mr Lin, the plaintiff would have come to know of the filing of the anti-suit injunction application, by the defendants in Wuhan. Being itself guilty of indifference, if not conscious negligence, the plaintiff cannot seek to take advantage of its own wrong, by asking for an injunction against the enforcement, by the defendant, of the order passed by the Wuhan Court in its favour. Mr. Rajagopal submits that the plaintiff, in fact, having been negligent throughout, rushed to this Court at the last minute, after the Wuhan Court had passed the order of injunction on 23rd September, 2020 and that, even for this reason, the present application deserves to be dismissed.

20. Mr. Rajagopal has, thereafter, drawn my attention to the following paragraph, from the order, dated 23rd September, 2020, of the Wuhan Court, dealing with the aspect of service of notice and summons, by the Wuhan Court, on the plaintiff:

“On June 9, 2020, after accepting the case, this Court served the Respondents with the complaint, evidence materials, court

summons and other procedural documents. On July 28, 2020, the Applicants also informed the Respondents that it had requested this Court to solve the royalty rate dispute between them and the case had been accepted the litigation of it had started. However, on the next day, the Respondent sued the Applicants and their affiliates before the Delhi High Court of India on the grounds that their No. 262910, No. 295912, No. 298719, No. 313036 and No. 320182 India patents were influenced by the Applicants and their affiliates and applied for the Court to grant a temporary injunction and permanent injunction on the Applicants and their affiliates to prohibit them from producing and selling the infringing products including REDMI NOTE8, REDMI K20 and other wireless communication terminal products (handsets). After learning about the Respondent's application for a temporary injunction and permanent injunction in Delhi High Court of India, the Applicants filed an application for anti-suit injunction at this Court on August 4, 2020, *to prevent the Respondents from interfering and impeding this case through its injunction application against the Applicants and their affiliates in India*. On August 11, this Court sent the respondents the copies of the complaint, evidence materials and court summons and other procedural documents by emails. After these emails were successfully sent, however, the Respondents refused to give a reply. On September 2, this Court sent again the copies of the complaint, evidence materials, procedural documents and court summons to the Respondents by Express Mail Service. According to the express tracking information, the aforementioned litigation documents arrived in the United States on September 14, and they were successfully delivered on September 19. However, the Respondents still did not sign the proof of service and responded to this Court. On September 23, after the Applicants had fulfilled the procedural requirement for the application for injunction, this Court accepted its application and initiated the examination process for the application.

The above shows that: first, the Respondent has learned that the information about this case after this Court accepted the case. Nevertheless, instead of respecting and coordinating with this Court to proceed with the litigation procedures, the Respondents started the emergency initiation of temporary and permanent injunction procedures before High Court of Delhi at New Delhi of India to exclude the jurisdiction of this

Court and counteract the present case, which has interfered with the present case deliberately.”

Relying on these findings, Mr. Rajagopal submits that the plaintiff deliberately – or, at the very least, with callous negligence – avoided responding to the summons issued by the Wuhan Court, or participating in the proceedings there. It was solely because of its own indifference, therefore submits Mr. Rajagopal, that the plaintiff allowed the chance to oppose the issuance of the possible order of anti-suit injunction, which would be passed by the Wuhan Court, to go abegging. The globally recognised tests, for grant of anti-enforcement injunction, by a court in one country, of an order passed by a court in another, he submits, did not allow for grant of such injunction at the instance of a party who, willy-nilly, demurred from participating in the proceedings before the latter forum. Reliance was placed, by Mr. Rajagopal, for this proposition, on the decisions of the Queen’s Bench Division of the Court of Appeal in *Ecobank Transnational Incorporated v. Thierry Tanoh*⁵ and of the Court of Appeal of the Republic of Singapore in *Sun Travels & Tours Pvt Ltd v. Hilton International Manage (Maldives) Pvt Ltd*⁶, through the relevant passages of which Mr. Rajagopal took me. Mr. Rajagopal also sought to point out that, in *Deutsche Bank AG v. Highland Crusader Offshore Partners LP*⁷ (cited, with approval, in *IPCom v. Lenovo*³, on which Mr. Banerjee relied), the following principle had been enunciated:

⁵ (2015) EWHC 1874 (Comm)

⁶ (2019) SGCA 10

⁷ (2010) 1 WLR 1023

“An anti-suit injunction always requires caution because by definition it involves interference with the process of potential process of a foreign court. An injunction to enforce an exclusive jurisdiction clause governed by English law is not regarded as a breach of comity, because it merely requires a party to honour his contract. *In other cases, the principle of comity requires the court to recognise that, in deciding questions of weight to be attached to different factors, different judges operating under different legal systems with different legal policies may legitimately arrive at different answers, without occasioning a breach of customary international law or manifest injustice, and that in such circumstances it is not for an English court to arrogate to itself the decision how a foreign court should determine the matter. The stronger the connection of the foreign court with the parties and the subject matter of the dispute, the stronger the argument against intervention.*”

(Emphasis supplied)

21. Mr. Rajagopal further sought to submit, on facts, that the “China connect”, of the parties, was greater than the “India connect”. He pointed out that the plaintiff had negotiated, with the defendant, in China, not in India, and also invited my attention to the list of patents, to which the plaintiff had alluded in its communications with the defendant, all of which were either Chinese patents or US patents, without any Indian patent. Besides, the Wuhan suit was prior in point of time. The judgement of the Wuhan Court, submits Mr. Rajagopal is, moreover, well reasoned, and does not brook interference, least of all by a foreign Court. The reasoning, of the Wuhan Court, proceeds thus:

“Nevertheless, instead of respecting and coordinating with this Court to proceed with the litigation procedures, the Respondents started the emergency initiation of temporary and permanent injunction procedures before High Court of

Delhi at New Delhi of India to exclude the jurisdiction of this Court and counteract the present case, which has interfered with the present case deliberately. Second, no matter what offers and counter offers provided by the Applicants and the Respondents during their SEP licensing negotiation, the injunction procedures initiated by the Respondents against the Applicants before High Court of Delhi at New Delhi of India might result in an adjudication conflict with the adjudication of the present case. This result will impact the conclusion of a SEP license agreement between the Applicant and the Respondent and lead to the difficulties of enforcing the effective adjudication of the present case as well, which allegedly abuse of right relief procedures of SEP licensing negotiation. Third, the temporary and permanent injunction initiated by the Respondent against the Applicant before High Court of Delhi at New Delhi of India will necessarily have impact on the operation of the Applicant's and their affiliated companies in Indian market, result in a great harm to the interests of the Applicant and the harm is irreparable, the harm to expansion will become reality. If this Court does not stop it in time, it might imperil the positive development of the licensing negotiation between the parties, which will further harm the interest of the Applicant. Fourth, the purpose of the application for issuing the antisuit injunction filed by the Applicants to this Court is to exclude the Respondent's interference to this Court's hearing of the present case by abuse of injunction relief procedures and ensure the enforcement of the effective adjudication regarding the global royalty rate dispute between the parties issued by this Court. The Respondents are NPEs, which do not produce and manufacture SEP related products, seeking profits by FRAND licensing negotiation and litigations. The antisuit injunction issued by this Court will not give rise to any substantive harm to the SEPs held or managed by the Respondents except the delay for the Respondent's relief after the breakdown of the licensing negotiation between the parties, and will not affect the public interest as well. Therefore, this Court approves the Applicant's application for issuing an antisuit injunction against the Respondent after weighing the interests of each party and the whole case."

The principle of comity of courts, submits Mr. Rajagopal, proscribes interference, by this Court, with the above reasoning, of the Wuhan Court.

22. Mr. Rajagopal submits that the concerns, expressed by the Wuhan Court, were real and genuine, as there was a possibility of this Court granting injunction on pain of taking a license, from the petitioner, at a FRAND rate to be stipulated by this Court. Any such rate, if fixed, would be without the benefit of expert economic advice, and would also affect the proceedings in the Wuhan Court.

23. Finally, Mr. Rajagopal submits that the application, of the plaintiff, was not maintainable, as there was no prayer, in the suit, for anti-suit injunction. The relief sought, in an interlocutory application under Order XXXIX of the CPC, submits Mr. Rajagopal, cannot travelled beyond the reliefs sought in the main suit, in view of Order VII Rule 7 of the CPC and Section 34 of the Specific Relief Act, 1963 (hereinafter referred to as “the Specific Relief Act”). Mr. Rajagopal points out that, till date, the plaintiff has not chosen to amend the suit, incorporating any prayer for grant of anti-suit injunction. On the proposition that interim relief cannot be sought in excess of the prayer in the main suit, Mr. Rajagopal relies on the judgements of this Court, in *The Computeronics International Ltd v. Infinite Computer Solutions (I) Pvt Ltd*⁸ [authored by Gita Mittal, J (as she then was)] and *Bharat Petroleum Corporation Ltd v. Hari Chand Sachdeva*⁹

⁸ 2007 (34) PTC 189 (Del)

⁹ 2001 SCC OnLine Del 111

and of the High Court of Madras in *K. P. M. Aboobacker v. K. Kunhamoo*¹⁰.

24. Additionally, submits Mr. Rajagopal, the present application ought not to be entertained by this Court, as the applicant-plaintiff has already moved the Wuhan Court for reconsideration of its order. Mr. Rajagopal submits that the plaintiff cannot be permitted to prosecute two proceedings, simultaneously, for the same relief.

25. Arguing in rejoinder, Mr. Gaurab Banerjee, learned Senior Counsel for the applicant-plaintiff, submits that, while taking a decision on this application, the only consideration that ought to weigh with this Court, is that it should act *ex debito justitiae*. Mr. Banerjee submits that this case is one of its kind, and cannot be equated with a normal application for anti-suit injunction. Rather, submits Mr. Banerjee, the Wuhan Court has issued an unjustified anti-suit injunction order against the plaintiff, and the plaintiff has moved this Court to protect itself, in the present proceedings, against the said order.

26. Mr. Banerjee submits, further, that no issue of any anti-enforcement injunction arises in the present case. Besides the fact that the concept of anti-enforcement injunction is unknown to Indian Law, Mr. Banerjee submits that, even in foreign jurisdictions, the concept of anti-enforcement injunction arises where a party seeks a restraint against the enforcement of a final judgement, determining the rights

¹⁰ AIR 1958 Mad 287

of the parties and concluding the lis. No such final judgement has, in the submission of Mr. Banerjee, been passed by the Wuhan Court. Rather, an interlocutory order, interfering, without due justification, with the proceedings before this Court, has been issued by the Wuhan Court, and the plaintiff seeks an injunction against the enforcement of that order. The prayer of the plaintiff is not, therefore, submits Mr. Banerjee, for anti-enforcement injunction, as understood in global parlance. All decisions, on which Mr. Rajagopal relies, he points out, are cases where a final judgement has been passed by a court in one jurisdiction, concluding the litigation between the parties and determining their rights, and injunction, against the enforcement of the judgement, was sought in another jurisdiction. There can be no comparison, submits Mr. Banerjee, with such a case, and the present.

27. Further, submits Mr. Banerjee, the suit in the Wuhan Court (referred to, in the order of the Wuhan Court, as a “complaint”), was filed on 9th June, 2020, and was for determination of global royalty rates on FRAND basis. The present suit, before this Court, has been initiated by the plaintiff to injunct infringement of its SEP, by the defendant. No issue of infringement of patent is involved in the proceedings before the Wuhan Court. It would be erroneous, therefore, submits Mr. Banerjee, to treat the issue, before the Wuhan Court, as overlapping with that before this Court. The overlap, if any, he submits is, at any rate, minimal and inconsequential.

28. Mr. Banerjee submits, further, that all developments, till 29th July, 2020, i.e., the filing of the complaint, by the defendants, before

the Wuhan Court, on 9th June, 2020, the affirmation of the affidavit, by Mr. Akerley, on 27th July, 2020, the telephonic conversation between Ms. Hakoranta and Mr. Lin on 28th July, 2020, and the filing of the affidavit of Mr. Akerley, before this Court, on 29th July, 2020, along with the present suit, are entirely irrelevant, as they have nothing to do with any knowledge, on the part of the plaintiffs, regarding the anti-suit injunction application, preferred by the defendants before the Wuhan Court, which was filed only on 4th August, 2020. The reliance, by Mr. Rajagopal, on these developments is, therefore, submits Mr. Banerjee, entirely tangential to the issue at hand.

29. Proceeding to 4th August, 2020, Mr. Banerjee submits that, on the said date, this Court directed that IA 6440/2020, preferred by the plaintiff under Order XXXIX Rules 1 and 2 of the CPC, be listed for hearing on 29th September, 2020. On the very same day, he points out, the defendants moved the anti-suit injunction application before the Wuhan Court. There was no reason, submits Mr. Banerjee, for the plaintiff to have ever anticipated the filing of such an application.

30. On the issue of service of the anti-suit injunction application, filed by the defendants before the Wuhan Court on 4th August, 2020, Mr. Banerjee submits, categorically and on instructions, that, till date, no copy of the said application has been received by the plaintiff. He points out that, even in the paragraph, extracted in para 20 *supra*, of the order of the Wuhan Court, dealing with service, it is categorically stated that, on 11th August, 2020, the Wuhan Court sent “copies of the

complaint, evidence materials, and Court summons and other procedural documents”, to the respondent before it, by e-mail. There is no reference to any copy of the anti-suit injunction having been sent, by the Wuhan Court, to the plaintiff. Again, on 2nd September, 2020, the order of the Wuhan Court records that copies of “the complaint, evidence materials, procedural documents and Court summons” were sent to the respondents before the said Court. These documents, according to the judgement of the Wuhan Court, were delivered, at the US office of the plaintiff, on 19 September, 2020. Apart from the fact that these documents did not include the anti-suit injunction application, or any other document on the basis whereof the plaintiff could be made aware of the fact that such an application had been preferred by the defendants before the Wuhan Court, Mr. Banerjee points out that the person, to whom the documents were sent by email – and, later, by Express Mail – was not an authorised representative of the plaintiff. Such service, submits Mr. Banerjee, was no “service” as understood in law. A mere four days after the above documents – which did not include the anti-suit injunction application – were purportedly served at the US office of the plaintiff, Mr. Banerjee points out that, on 23rd September, 2020, the Wuhan Court proceeded to hear the anti-suit injunction application, and dispose of it, on the very same day. Mr. Banerjee further points out that, in its order, the Wuhan Court has recorded its awareness of the fact that service, on the plaintiffs, was as yet incomplete. The para, in the said order, to this effect, reads thus:

“The complaint, evidence, procedural materials, court summons of the present case is still in the serving process and

the Respondents had not signed for the Proof of Service or reply to this Court yet. This Court issued the antisuit injunction ruling directly, in a sense of behaviour preservation. However, this ruling will not prevent the Respondents from exercising remedy of procedural rights i.e. submitting the evidence or expressing its opinions through reconsideration procedures.”

(Emphasis supplied)

31. Mr. Banerjee further draws attention to the fact that, even with the reply, filed on 25th August, 2020, by the defendants, to IA 6440/2020, they chose to annex only the complaint filed before the Wuhan Court, and made no mention of the filing of the anti-suit injunction application. The case, therefore, Mr. Banerjee would submit, is a classical example of *suppressio veri suggestio falsi*.

32. The issue of infringement of the suit patents in the present case, submits Mr. Banerjee, is not pending before any forum, except this Court. The Wuhan Court was not concerned with the infringement of the suit patent. The only appropriate forum, to decide on the validity of the Indian patent, granted to the plaintiffs, he points out, is an Indian court. If, on the other hand, the order, dated 23rd September, 2020, of the Wuhan Court, is permitted to operate, it would completely extinguish the right of the plaintiff to agitate against infringement of the suit patents, effectively forever, resulting in irreparable loss to it. The issue of infringement of the plaintiff's suit patents would remain forever undecided, as the Wuhan Court has enjoined the plaintiff from agitating the issue, not merely before this Court, but globally and, in any case, territorial jurisdiction, to adjudicate on the infringement of the Indian patents, vests only with

Indian courts. As such, he submits that the interference, by the Wuhan Court, with the present proceedings, amounts to manifestly unlawful disturbance to the plaintiff's right to property.

33. The reliefs sought in this application, submits Mr. Banerjee, do not seriously impact the proceedings in the complaint pending before the Wuhan Court; on the other hand, if the order of the Wuhan Court is allowed to prevail, the plaintiffs would be precluded, forever, from agitating the issue of infringement of its suit patents. The order of the Wuhan Court, therefore, visited the plaintiffs with "vexatious and oppressive" consequences. Mr. Banerjee submits that, realistically, the only realistic means for an SEP holder to move things forward, is by way of an infringement action. If, on the other hand, these proceedings are brought to a halt, the means for applying pressure on the defendants, not to infringe the plaintiff's patents, would vanish altogether.

34. Insofar as the aspect of delay is concerned, Mr. Banerjee submits that it cannot be said, by any stretch of imagination, that the plaintiff was guilty of such unconscionable delay, as would disentitle it to the reliefs sought in this application. The fact that the complaint, before the Wuhan Court, may have been preferred before the present suit was filed in this Court cannot, therefore, he submits, be of any consequence.

35. Inasmuch as the reliefs sought, by the plaintiffs, in this application, do not interfere with the prosecution of the proceedings,

in Wuhan, by the defendants, to any appreciable extent, Mr. Banerjee submits that this Court should not feel inhibited, in granting relief, by the principle of comity of courts. Comity, moreover, submits Mr. Banerjee, is a two-way street.

36. Mr. Banerjee also sought to distinguish the decisions in *Ecobank*⁵ and *Sun Travels*⁶. He submitted that these were cases in which the party, seeking injunction, had participated, throughout, in the proceedings before the foreign court, and had sought stay of execution after the final decree had been passed. The fact situation in those cases, therefore, in his submission, are completely distinct from that which obtains in the present case. Mr. Banerjee has also sought to place reliance on a recent decision, of the Queen's Bench division of the Court of Appeal in *SAS Institute Inc. v. World Programming Ltd*¹¹, which explains *Ecobank*⁵, and of the Supreme Court of the UK in *Sabah Shipyard (Pakistan) Ltd v. The Islamic Republic of Pakistan*¹².

37. Mr. Banerjee has, finally, addressed the issue of maintainability, as raised by Mr. Rajagopal, premised on the principle that interim relief cannot be sought, in excess of the final reliefs sought in the suit. Mr. Banerjee submits that, while there can be no cavil with this proposition, it has no application, whatsoever, in the facts of the present case. He submits that the prayer, in the present suit, is for permanent injunction against patent infringement. The order of the Wuhan Court has interdicted the plaintiff from pursuing

¹¹ (2020) EWCA Civ 599

¹² (2002) EWCA Civ 1643

the suit. By seeking stay of the said interdiction, the plaintiff is only seeking an opportunity to prosecute its suit, towards attainment of the final reliefs sought therein. As such, the reliefs sought in this application, submits Mr. Banerjee, are a step towards obtaining the final relief in the suit. He relies, in this context, on para 63 of the report in *Devi Resources*².

38. The decisions cited by Mr. Rajagopal, to advance this proposition, submits Mr. Banerjee, deal with cases where relief was sought by the parties who were strangers to the suit, and are readily distinguishable.

39. Emphasising, in conclusion, the fact that this Court has, at all times, to further the cause of justice, and ensure that parties are not prevented, by unlawful means, from prosecuting legitimate causes before judicial fora, Mr. Banerjee submits that the interests of justice would eminently justify grant of *ad interim* relief, restraining the defendant from seeking to enforce the order, dated 23rd September, 2020, of the Wuhan Court.

Analysis

40. I am, presently, concerned with the issue of whether *ad interim* relief ought, or ought not, to be granted. The most important consideration, which is to guide the Court, in dealing with a prayer for *ad interim* relief, is whether there is a necessity to preserve the *status quo*, till the application for interim relief is decided, so that the prayer

for interim relief is not rendered a futility. At the same time, if there is some fundamental lack of jurisdiction, or if the prayer for interim relief is, *prima facie*, devoid of merit, then the Court would be justified in declining *ad interim* relief. Just as the prayer for interim relief is a step towards the main relief, sought in the suit, or petition, the prayer for *ad interim* relief has to be a step towards the prayer for interim relief.

Certain preliminary observations

41. It is common ground, between learned Counsel, that, in these proceedings, we are traversing largely uncharted territory. Apparently, there is no judicial pronouncement, emanating from this country, on the issue of injunctions against the enforcement of an order passed by a foreign Court. Globally, too, such instances appear to be few and far between, though certain commentators have chosen to expatiate on the subject. Mr. Rajagopal sought to rely on what, according to him, were the settled principles, for grant of anti-enforcement injunctions in such cases. Mr. Banerjee submitted, *per contra*, that the cases, on which Mr. Rajagopal relies, deal with anti-enforcement injunctions, restraining enforcement of a final decree, determining the *lis* between the parties. He submitted that such cases are clearly different from a case such as the present, where, even while the proceedings relating to the *lis*, between the parties, in China, as well as in India, are still at a preliminary stage, the Wuhan Court has brought the proceedings, before the Indian court, to a grinding halt. A prayer for injunction, against the defendants enforcing such an

order, submits Mr. Banerjee, is clearly distinguishable from a situation in which, consequent on a protracted and complete trial, the *lis* between the parties is determined by a foreign court, a decree is passed and, thereafter, one of the parties seeks to stay the enforcement of that decree, in another foreign jurisdiction. I shall deal with that dispute presently; either which way, the decisions, on which Mr. Rajagopal relies, or are of two to three years vintage, and no more. In my view, *prima facie*, this Court cannot afford to feel inhibited by the pronouncements in these cases, but has to approach the issue treating it, largely, as *res integra*.

42. The highest that law can aspire to, is justice. Every court, at all instances, is bound to act *ex debito justitiae*. Law, which does not attain to justice, is stillborn, impotent, and unworthy of invocation. It is justice, and not law, that constitutes a preambular goal of our Constitution. Attainment of justice, and upholding of all efforts that aspire to that end, have, therefore, to remain the cherished objectives of every judicial forum in this country. In *Dinesh Dutt Joshi v. State of Rajasthan*¹³, the Supreme Court observed thus:

“It is well established principle of law that every court has inherent power to act *ex debito justitiae* – to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court.”

43. With greatest deference to the views of Courts in other jurisdictions, therefore, I, *prima facie*, am of the opinion that this Court cannot regard itself as restrained, in its approach, by the principles enunciated in such decisions. An order, passed by a Court

¹³ (2001) 8 SCC 570

outside the territory of India, which results in substantial injustice to the right of an Indian citizen to prosecute a cause which, according to Indian Law, is maintainable and capable of being prosecuted, may justifiably be interdicted, *to the extent that the defendant, in India, who seeks to enforce such an injunction against the plaintiff, in India, can be restrained from doing so.* The principle of comity of Courts, though hallowed and deserving of implicit adherence, cannot extend to allowing a defendant in a suit, being prosecuted in India, to employ the order of the Court, passed outside the territory of India, as a means to non-suit the plaintiff, who has instituted a plaint which, according to Indian Law, is capable of being maintained and prosecuted.

44. It is necessary, however, to qualify this proposition. If party A and party B are litigating in Country X, and party B is, simultaneously, prosecuting a proceeding in Country Y, the prosecution of which is inimical to the rightful interest of party A in Country X, or unconscionably interferes with the prosecution of the proceeding in Country X, the court in Country X may legitimately restrain party B from continuing to prosecute the proceeding in Country Y. In fact, the Wuhan court has, apparently, proceeded on the basis of this premise, by observing, in so many words, that the continuance of the present suit before this Court is likely to interfere with the proceedings before the Wuhan Court. If, however, this apprehension, by the Wuhan Court is, even as per the recitals in the order dated 23rd September, 2020, found to be unjustified, this Court would be failing in its duty, if it were to allow the order of the Wuhan Court to halt, midway, the prosecution of the present proceedings, by

the plaintiff, in this Court. If the principle of comity of courts is hallowed, equally treasured is the principle that a citizen, in this Country, is constitutionally entitled to invoke the jurisdiction of a competent judicial forum, in this country, to ventilate his legitimate rights. A party, who is entitled to file a proceeding before an Indian court, is also, of necessity, entitled to prosecute the proceeding. The proceeding may, conceivably, not survive beyond even a single day of hearing; in an appropriate case, it is open to the Court to dismiss the proceeding on the very first day. That, however, is entirely different from restraining the parties, who has filed the proceeding, from prosecuting it. There is no law, in this country, which can restrain the parties from prosecuting a proceeding, which has been preferred before a judicial forum. Nor can any Court, in India, compel a party to withdraw or “suspend” a proceeding, once filed, though, if the Court feels that the proceeding is, on its face, vexatious or an abuse of the process of law, it has ample jurisdiction to subject the party, who is prosecuting the proceeding, to rigorous terms, while dismissing the proceeding. Courts in this country do not compel parties, under pain of costs, to withdraw or suspend proceedings preferred by them, before competent judicial fora.

45. Access to justice is one of the pillars, on which the constitutional edifice of the legal system in this country stands, and has been elevated, by the Constitution Bench of the Supreme Court, to the status of a fundamental right, relatable to Articles 14 and 21 of the Constitution of India.¹⁴ In his celebrated decision in *Marbury v.*

¹⁴ Refer *Anita Kushwaha v. Pushap Sudan*, (2016) 8 SCC 509

*Madison*¹⁵ which established, globally, the principle of judicial review over two centuries ago, Chief Justice Marshall, of the United States Supreme Court described the right, to obtain civil redress as “the very essence of civil liberty”. Justice, social, economic and political, is a preambular goal of our Constitution. Any decree, which puts a petitioner, before a Court in this country, to punitive costs, for prosecuting proceedings instituted by him, strikes at the very root of the administration of justice, in the Indian legal system.

46. With these prefatory thoughts, I propose to address, *prima facie*, the issues raised before me.

Nature of the present proceedings – anti-suit injunction, anti-anti-suit injunction or anti-enforcement injunction?

47. Mr. Banerjee contended, initially, that the present proceedings were in the nature of an anti-anti-suit injunction. As against this, Mr. Rajagopal sought to contend that they were in the nature of an anti-enforcement injunction, and not an anti-anti-suit injunction. Mr. Banerjee rejoined, to submit that this country did not recognise any concept of anti-enforcement injunctions and that, in any case, as the suit – or, rather, the “complaint” – before the Wuhan Court was still pending, and was, in fact, at a very incipient stage, no *lis* between the parties had been determined and no decree passed, by the Wuhan Court, so that it could never be said that the plaintiff was seeking an anti-enforcement injunction from this Court.

¹⁵ 5 U.S. (1 Cranch.) 137 (1803)

48. The distinction, sought to be drawn by Mr. Rajagopal, between an anti-suit injunction (or an anti-anti-suit injunction) and an anti-enforcement injunction, appears, at first blush, to be attractive but is revealed, on a deeper analysis, to be somewhat superfluous. The order, of which the plaintiff seeks restraint on enforcement, is an order passed in the application, of the defendants, for anti-suit injunction. An application before a court, and the order passed by the court thereon, obviously, cohabit together, and it would be futile to attempt a divorce between them. One inexorably follows the other. Expressed otherwise, if the anti-suit injunction application, filed by the defendants, before the Wuhan Court, is to be considered as misconceived, or if the prosecution of the said application is, on the anvil of the defining criteria postulated, in that regard, by the Supreme Court, found to be deserving of injunction, the inevitable sequitur would be that the enforcement or execution of any order, passed in such proceeding, which, if allowed to be implemented, would lead to a like deleterious result, would also have to be similarly enjoined.

49. Mr. Rajagopal sought to submit, on instructions, that the anti-suit injunction application, filed by his client before the Wuhan Court, had been disposed of, so that there could be no question of any injunction, restraining the defendants from prosecuting the said application. In my view, this makes no difference. If this Court is to come to the finding that the defendants ought to be restrained from enforcing the anti-suit injunction order, dated 23rd September, 2020, of the Wuhan Court, that finding cannot be dependent on the pendency, or the disposal, of the application in which the order was

passed. If the enforcement of the order, dated 23rd September, 2020, by the defendants, deserves to be enjoined, an order to that effect has necessarily to follow, irrespective of the present status of the anti-suit injunction application before the Wuhan Court.

50. In issuing such an injunction, the court in India does not interfere with the sovereign jurisdiction of a foreign judicial authority. It merely enjoins such enforcement, within its territories, of the order passed by the foreign judicial authority, by one of the parties before it, which divests the other party of a constitutional right, available to such other party under the laws of this country. The conditions under which anti-suit injunction, of proceedings pending in a foreign Court, can be granted by an Indian court, stand delineated by the Supreme Court, in *Modi Entertainment Network*¹ which has been followed, later, in *Dinesh Singh Thakur v. Sonal Thakur*¹⁶. If, on the anvil of these conditions, the party, before the Indian court, deserves to be enjoined from prosecuting the proceedings in the foreign Court, then, per sequitur, the injunction has necessarily to extend to enforcement of orders passed in the said proceedings, as well. This is elementary, and a matter of pure common sense.

51. The distinction that Mr. Rajagopal seeks to draw, between anti-suit injunctions and anti-enforcement injunctions appears, therefore, *prima facie*, to be a distinction more of form and less of substance. The latter is an inevitable corollary to the former; without the former, the latter cannot exist.

¹⁶ (2018) 17 SCC 12

Assuming this is an application for anti-enforcement injunction –

52. Even if, *arguendo*, the present application were to be assumed to be one for anti-enforcement injunction, as a distinct litigative category, as distinguished from anti-suit injunctions, the opening submissions of Mr. Rajagopal, seen in the backdrop of the facts of the present case (as clearly highlighted by Mr. Banerjee in his rejoinder submissions) are by themselves sufficient to make out a *prima facie* case for grant of ad interim relief. Mr. Rajagopal submitted that three circumstances, in which anti-enforcement injunctions were granted by courts, against enforcement of orders passed in foreign jurisdictions, were (i) where the order of the foreign Court was obtained by fraud, (ii) where, after the passing of the order, the parties had entered into an agreement not to enforce it, and were in breach thereof, and (iii) where the affected plaintiff had no means of knowing that such an injunction order was going to be passed, so as to enable him to approach the court and obtained a pre-emptive anti-suit injunction. Even in such cases, submits Mr. Rajagopal, the plaintiff, seeking anti-execution injunction, may be disentitled to such relief, on account of his conduct. Mr. Rajagopal submitted that none of the aforesaid three criteria were fulfilled in the present case. Additionally, submits Mr. Rajagopal, the conduct of the plaintiff has rendered him ineligible to grant of interim, or *ad interim* relief, as sought in this application.

53. I have my reservations on whether anti-enforcement injunctions can be granted only in these three select categories of cases. Even if,

however, the submission of Mr. Rajagopal is to be accepted, I am still of the opinion that, even on that touchstone, a case for granting anti-enforcement injunction exists.

54. Adverting, first, to circumstance (iii) in which, even according to Mr. Rajagopal, anti-enforcement injunction may be granted, the observations, regarding service, as returned by the Wuhan Court and extracted in para 30 *supra*, in fact, militates against the stand of the defendants before me. The observations of the Wuhan Court establish, *prima facie*, that no copy of the anti-suit injunction application, filed by the defendants, before that Court, was ever supplied to the plaintiff, before the order, dated 23rd September, 2020, came to be passed. Apparently, what was served, if at all, were the complaint, evidence materials, court summons and other procedural documents. There is no recording, by the Wuhan Court, of any service, of the anti-suit injunction application filed by the defendants, having ever been effected on the plaintiff. In fact, the order, dated 23rd September, 2020, expressly records that “the complaint, evidence, procedural materials, court summons of the present case is still in the serving process”, but that the anti-suit injunction ruling was being issued “directly, in a sense of behaviour preservation”. *Prima facie*, therefore, the submission, of Mr. Banerjee, that the order, dated 23rd September, 2020, was passed by the Wuhan Court *ex parte*, and without due opportunity, to the plaintiff, to intervene before the order was passed, merits acceptance.

55. Mr. Rajagopal also sought to submit that, once the plaintiff was aware of the filing of the complaint, for the fixation of FRAND rates, by the defendants, in the Wuhan Court, the plaintiff ought to have exercised due diligence, and entered appearance in the Wuhan Court, in which case the plaintiffs would have become aware of the filing of the anti-suit injunction application by the defendants. It is also submitted, by Mr. Rajagopal, that the filing of the suit, for the fixation of FRAND rates, or dealing with infringement of SEPs, is almost inevitably followed by the filing of an anti-suit injunction application, to halt proceedings before other fora, in foreign jurisdictions, where similar proceedings may be pending. Mr. Banerjee emphatically refutes this contention, submitting that there is no such recognised practice. No material, justifying his submission, has been shown, to me, by Mr. Rajagopal, and I am unable, *prima facie*, therefore, to subscribe to the view that, having become aware of the fact that a royalty rate fixation suit had been preferred, by the defendants before the Wuhan Court, the plaintiffs should have divined that an anti-suit injunction application would follow in its inevitable wake. The litigant cannot be presumed to be, additionally, a soothsayer.

56. In fact, the manner in which the defendant has obtained – and I use the word consciously – the order, dated 23rd September, 2020, from the Wuhan Court, is rather disturbing. By using the expression “obtained”, I do not intend to cast any aspersions on the Wuhan Court, or criticise the manner in which it has functioned. The defendants, however, appear to have been less than fair, not only to the plaintiff, but also to this Court. The affidavit of Mr. Akerley, on which Mr.

Rajagopal seeks to place reliance, specifically avers that, during the telephonic conversation, between the executive Vice President of Plaintiff No. 2 and the Vice President of the defendants (Mr. Paul Lin), the plaintiff was only informed that a case had been filed, by the defendants, against the plaintiff, in China, seeking determination of FRAND terms for a license. The affidavit specifically states that Mr. Lin chose not to specify the portion of the plaintiff's portfolio of SEPs, in respect of which the complaint had been filed in the Chinese court, whether it involved the plaintiff's cellular SEPs and, if so, the generation of such SEPs, the specific claims made by the defendants against the plaintiff, and even the identity of the court in which the action had been filed. A clear intent, to keep the plaintiff unaware of the exact specifics of the litigation preferred by the defendants against the plaintiff in China, *prima facie*, is apparent. This impression is strengthened by the fact that (i) no copy, of the anti-suit injunction application, preferred by them before the Wuhan Court, was ever furnished, by the defendants to the plaintiff, (ii) the reply, filed on 25th August, 2020, before this Court, by the defendants, in response to I.A. 6440/2020, too, conspicuously annexes only the complaint filed before the Wuhan Court, and makes no mention of the anti-suit injunction application and (iii) despite the present proceedings having been listed before this Court on six occasions, after the filing of the anti-suit injunction application, the defendants never thought it appropriate even to inform this Court of such an application having been filed. *Prima facie*, the defendants have acted with impunity, and with scant regard to this Court, or to the requirement of maintaining fairness in the proceedings before it.

57. The want of fairness, on the part of the client was, however, mitigated, to some extent, by Mr. Saikrishna Rajagopal who, with his customary candour and forthrightness, acknowledged that he had no ready justification for his client having demurred from having disclosed, even to this Court, the fact of pendency of the anti-suit injunction application before the Wuhan Court. Even so, he submits, there was lack of forthrightness, not just on the part of his client, but also on the part of the plaintiff and, the present application having been instituted by the plaintiff, the conduct of the plaintiff does not entitle it to any relief therein. I am unable to agree. I agree with the submission, of Mr. Banerjee, that, as the plaintiff does not seek to interdict the suit proceedings initiated by the defendants before the Wuhan Court, no occasion arose for the plaintiff to take any action in that regard. Insofar as the anti-suit injunction application, filed by the defendants before the Wuhan Court, is concerned, the plaintiff having been kept in the dark, throughout, regarding the filing of the application, as well as the proceedings consequent on such filing, no want of diligence could be attributed to the plaintiffs, at any stage. The defendants, on the other hand, have resorted to suppression of material fact, both from the plaintiff as well as from this Court.

58. Fraud, in the matter of obtaining the injunction order from the court, acknowledges Mr. Rajagopal, is a legitimate ground for grant of an injunction, against enforcement of the order. He has, however, chosen to contend that fraud has not been pleaded, by the plaintiffs, in their application. Fraud, when perpetrated on a party to a litigation,

undoubtedly has to be pleaded and proved, and cannot be presumed. However, where fraud is practised on a court, the court is entitled to take judicial notice thereof, and there is no question of any pleading, by any party, in that regard. In the present case, the acts of the defendants, in concealing, even in the reply filed by them in response to IA 6440/2020, the fact of filing of the anti-suit injunction application in the Wuhan Court, and in keeping the matter concealed, further, despite these proceedings having come up, before this Court on six occasions thereafter, borders, perilously, on fraud. This, additionally, constitutes a ground for grant of *ad interim* relief to the plaintiffs, even on the anvil of the criteria which, according to Mr. Rajagopal, determine the circumstances in which anti-execution injunctions may be granted.

Further considerations

59. *Modi Entertainment Network¹ and Dinesh Singh Thakur¹⁶* envisage, essentially, two considerations, which would govern grant, or refusal, of anti-suit injunctions, in respect of proceedings pending in a foreign clime. These are, firstly, that the defendant, who is sought to be enjoined, is amenable to the jurisdiction of the Indian court issuing the injunction, and, secondly, that refusal of the prayer for injunction would result in defeating the ends of justice and perpetuating injustice. The relief, fundamentally, has to be equitable in nature. While applying these twin considerations, the Supreme Court cautions that the principle of comity of courts, pre-eminent in private international law, has to be scrupulously borne in mind.

Needless to say, anti-suit injunctions, in respect of proceedings pending in foreign courts, restraining parties from prosecuting proceedings pending in foreign courts, are not to be granted as a matter of course.

60. Even applying these principles, on merits, I am of the opinion that, *prima facie*, a case for grant of ad interim relief, in terms of prayer (i) in the application, is clearly made out. There is no dispute about the fact that the defendant is amenable to the jurisdiction of this Court and, indeed, the defendant does not, and cannot, contend otherwise. Nor, in my view, can it be said that denial of the request for *ad interim* injunction would not result in perpetuating injustice, on the plaintiff before this Court, for the following reasons:

(i) The plaintiff is pursuing a cause, and ventilating a right which, *de hors* the merits thereof, it is clearly within his authority to pursue, and within the jurisdiction of this Court to adjudicate upon. The proceedings initiated by the plaintiff are maintainable in law, in that the plaintiff was entitled to file his suit, before this Court. Allowing the defendant to enforce the decree, within the jurisdiction of this Court, would in fact defeat this right of the plaintiff, and would, consequently, clearly defeat the ends of justice and perpetuate injustice.

(ii) The order, dated 23rd September, 2020, of the Wuhan Court, completely forecloses the plaintiff's right to agitate the issue of infringement of the suit patents, which had legally been

granted to them and continue to remain valid. No question, of infringement of the suit patents, is involved in the proceedings before the Wuhan Court. Mr. Banerjee is, *prima facie*, correct in his submission that, were the consideration of the plaintiffs' plaint, before this Court, and the application for interlocutory injunction, preferred therewith, even to remain "suspended", the respondent would be emboldened to infringe the plaintiffs' patents, without obtaining a license from the plaintiffs at FRAND rates. Even assuming the fixation of FRAND rates is under consideration before the Wuhan Court, the plaintiffs would be constrained to await the outcome of the said proceedings, with no remedy to restrain infringement of the suit patents, in the interregnum.

(iii) The apprehensions, expressed by the Wuhan Court, in the order dated 23rd September, 2020, do not appear, *prima facie*, to be justified. The concerns, expressed by the Wuhan Court, are that (a) instead of "respecting and coordinating with" the Wuhan Court to proceed with the litigative process initiated in that Court, the plaintiffs "started in the emergency initiation of temporary and permanent injunction procedures" before this Court, "to exclude the jurisdiction of" the Wuhan Court "and counteract" the proceedings pending before it, (b) the proceedings before this Court "have interfered with" the proceedings before the Wuhan Court, (c) the proceedings initiated before this Court "might result in an adjudication conflict" with the proceedings before the Wuhan Court, (d) this

would impact the conclusion of an SEP license agreement between the defendants and the plaintiffs, leading “to the difficulties of enforcing the effective adjudication of” the case before the Wuhan Court, which allegedly abused the injunction relief procedures of SEP licensing negotiation, (e) the proceedings for permanent and temporary injunction, initiated by the plaintiffs before this Court, had an impact on the operation of the defendants and their affiliated companies in the Indian market, resulting in great harm to the interests of the defendants, which was irreparable, and could imperil the positive development of the licensing negotiation between the parties, which would further harm the interests of the defendants, (f) the purpose of institution, by the defendants, of the anti-suit injunction application before the Wuhan Court, was to exclude the plaintiffs interference, to the hearing of the complaint by the Wuhan Court, by abusing injunction relief procedures, and to ensure enforcement of an effective adjudication regarding the global royalty rate dispute between the parties, and (g) the anti-suit injunction order of the Wuhan Court would “not give rise to any substantive harm to the SEPs held or managed” by the plaintiffs, except delay in obtaining of relief, by the plaintiffs, after the breakdown of the licensing negotiation between the parties. With greatest respect to the Wuhan Court, these reasons do not, *prima facie*, commend themselves for acceptance as sufficient to interdict, practically permanently, the consideration of the plaintiffs’ suit by this Court. Without adverting, seriatim, to each of these

considerations, the main concern, of the Wuhan Court, appears to have been that the continuance of the present proceedings, before this Court, would interfere with the proceedings before the Wuhan Court. Mr. Banerjee points out that this apprehension was misguided and, *prima facie*, I am inclined to accept the proposition. The litigation before this Court essentially seeks to injunct infringement, by the defendants, of the plaintiff's SEPs. Permission to operate the patents, by payment of royalty to the plaintiffs at FRAND rates, has been sought only as an alternative relief. Mr. Banerjee points out that, even on the aspect of fixation of FRAND rates, on the basis of which the defendants could operate the plaintiffs' SEPs, the proceedings in this Court do not interfere, to any substantial extent, with the proceedings before the Wuhan Court, and I am inclined to agree. As Mr. Banerjee submits, in case the defendants persist in employing the plaintiffs' SEPs, and the issue of FRAND rates would, only then, become relevant and, if the FRAND rates are fixed by the Wuhan Court, the only consequence would be that the present proceedings would not survive for consideration, and the plaintiffs would, then, have to seek their remedy against the fixation of rates by the Wuhan Court, if they are aggrieved thereby. I may also take judicial notice, in this regard, of the fact that fixation of FRAND rates by this Court, being the final relief sought in the suit, is not likely to take place in the near future. (Quite possibly, the Wuhan Court may not be aware of the time taken, in courts in India, for commercial litigations to attain fruition.)

Of course, Mr. Rajagopal has expressed concern at the possibility of provisional FRAND rates being fixed by this Court at an intermediate stage; this submission, however, is purely in the realm of hypothesis, and cannot possibly constitute a justifiable basis to obstruct the plaintiff's application. Besides, such a concern has not even been expressed by the Wuhan Court, in its order. Mr. Rajagopal has sought to submit that provisional FRAND rates, if fixed at the interlocutory stage by this Court, would be without the assistance of experts and may, therefore, prejudice his clients. This submission is predicated – though not, advisedly, in so many words – on a presumption that this Court may pass its order without due application of mind, and without taking all considerations into account. Obviously unfounded, while, such an apprehension is, the defendants would, in any event, be entitled to challenge any provisional FRAND rate fixation by this Court, if any such fixation takes place, by resorting to effective appellate procedures, provided in that regard. To say the least, the defendants cannot seek to obtain a pre-emptive protection, against a hypothetical arbitrary fixation of provisional FRAND rates, by this Court, by way of an anti-suit injunction order passed by the Wuhan Court. The observations, by the Wuhan Court, regarding “abuse”, by the plaintiffs, of “injunction relief procedures”, before this Court are, with respect, *prima facie* unjustified. In any event, if the plaintiffs are abusing the process of this Court, the defendants are always at liberty to so contend and, if the contention is found to be

meritorious, this Court has the jurisdiction and authority to non-suit the plaintiffs. Protection, against abuse of process, by a litigant before this Court, is essentially a matter to be addressed by this Court, and cannot be granted, *prima facie*, by a court in a foreign jurisdiction.

(iv) I am also, *prima facie*, not in agreement with the observation, of the Wuhan Court, that the anti-suit injunction issued by it would not give rise to any harm to the SEPs held by the plaintiffs. As I have already observed hereinabove, the order, dated 23rd September, 2020, of the Wuhan Court, operates to bring, to a grinding halt, the proceedings initiated by the plaintiffs for protection against infringement of the suit patents, even though such an issue is not even pending before the Wuhan Court. Besides, this interdiction applies, not only to India, but globally. *Prima facie*, therefore, I agree with the submission of Mr. Banerjee, that the prejudice caused to the plaintiffs, by the order of the Wuhan Court, is not only incalculable but also, possibly, irreversible and irreparable.

(v) An anti-suit injunction, as understood in this country, is a judicial order restraining one party from prosecuting a case in another court outside its jurisdiction.¹⁷ It does not extend to directing the party to withdraw the proceeding initiated before the foreign Court. If the petitioner, before a court in this country, desires to withdraw the petition, leave to do so, has to

¹⁷ Ref. *Dinesh Singh Thakur (supra)*

be obtained from the court before which the petition is pending, and it would be for that court to decide whether to permit the petitioner to withdraw the petition, or not. A foreign court cannot, *prima facie*, compel the petitioner to withdraw proceedings legally instituted in an Indian court. The Wuhan Court has not merely restrained the plaintiff from prosecuting the present proceedings before this Court; it has mandated withdrawal, by the plaintiff, of these proceedings. In the event of non-withdrawal, the Wuhan Court has mulcted the plaintiff with punitive costs, on a daily basis. Effectively, therefore, albeit without expressing it in so many words, the Wuhan Court has injuncted this Court from proceeding with the suit initiated by the plaintiff. Allowing such an order to operate would amount to recognising the jurisdiction of a foreign Court to remove a proceeding, from the docket of a judicial forum in India, before which the proceeding has been instituted.

(vi) To a specific query posed in this regard, Mr. Rajagopal points out that the Wuhan Court has granted the plaintiffs the option either to “withdraw” or to “suspend” the present proceedings. They need not, therefore, according to Mr. Rajagopal, withdraw these proceedings; they may, as well, suspend them. I, for one, am completely clueless as to how the plaintiffs can “suspend” the present proceedings. Suspension of proceedings – assuming “suspension” implies keeping the proceedings in abeyance – is, as I understand it, the job of the court, and not of the litigant. The only option available to the

plaintiff, were the order of the Wuhan Court to be enforced against it, would, therefore, be to withdraw the present proceedings. That, as I have already opined hereinabove, is a direction which the Wuhan Court could not have passed. Besides, the laws of this country do not permit compelling a litigator, perforce, to withdraw, or even to “suspend”, his litigation. No principle of private international law permits a court, in one country, to pass an order, to be implemented in another country, if the implementation of the directive would infract the law as it obtains in the latter country.

(vii) The SEPs, constituting subject matter of the present proceedings, are Indian patents. Plaintiff No. 1, the patent holder, is also located in India. Mr. Banerjee points out that, in fact, Plaintiff No. 1 has no presence in China – though, as the defendants are located in China, Plaintiff No. 1 may have transacted with them in that country. Mr. Rajagopal does not dispute the fact that any action, seeking a restraint against infringement of the suit patents, would have been instituted only in India, and in no other jurisdiction. *Prima facie*, therefore, it would not be permissible for the respondents to invoke a directive issued by a court, outside India, to restrain the prosecution, by the plaintiffs, of the present proceedings, which can be maintained only in India, and in no other territory.

(viii) The order, dated 23rd September, 2020, of the Wuhan Court, provides no reasonable justification for the directions

issued by it. The direction, to the plaintiff, to pay punitive costs, for prosecuting the present proceedings before this Court, is, apparently, the *ipse dixit* of the Wuhan Court, which has not provided, in the impugned order, any authority, statutory or otherwise, which could justify the imposition of such a direction.

61. In examining these aspects, I am necessarily required to be guided by the principles, governing grant of anti-suit injunctions, of proceedings in foreign jurisdictions, as enunciated by the Supreme Court. The hyperfine distinction, between anti-suit injunctions, anti-anti-suit injunctions and anti-enforcement injunctions, as sought to be drawn by Mr. Rajagopal, *prima facie* fails to impress. At the end of the day, as correctly contended by Mr. Banerjee, the Court acts *ex debito justitiae*, and, where injustice is found to exist, the Court has necessarily to step in and provide succour.

62. There are only two decisions, which instruct on the aspect of anti-suit injunctions, namely *Modi Entertainment Network¹* and *Dinesh Singh Thakur¹⁶*. The principles that emanate from these decisions, regarding grant of anti-suit injunctions, may be enumerated thus:

- (a) The principles governing grant of injunction, are also applicable to the grant of anti-suit injunction.
- (b) Grant of injunction is essentially guided by equity.

(c) The power to grant anti-suit injunction is required to be exercised sparingly “because such an injunction though directed against a person, in effect causes interference in the exercise of jurisdiction by another court”. This aspect is underscored where the order would restrain the parties from instituting or continuing a case in a foreign court.

(d) Anti-suit injunction cannot be granted, where any of the inhibiting factors, enumerated in Section 41 of the Specific Relief Act, 1963, applies.

(e) The enjoined defendant must be amenable to the jurisdiction of the Indian court granting anti-suit injunction.

(f) Declining of an anti-suit injunction would result in defeating the ends of justice, and would perpetuate injustice.

(g) While granting anti-suit injunctions, the principle of comity of courts is required to be borne in mind.

63. The positive factors, which persuade me to hold that a case for grant of *ad interim* relief exists, have already been set out *supra*. They also conform to the principles contained in *Modi Entertainment Network¹* and *Dinesh Singh Thakur¹⁶*. The defendants are, undisputedly, amenable to the jurisdiction of this Court. Both on the principles of equity, as well as the necessity to permit the plaintiffs to

prosecute a cause, which is amenable only to the jurisdiction of this Court, and which is maintainable within the laws as it obtains in this country, grant of *ad interim* injunction is eminently justified. Allowing the defendants to take advantage of the order, dated 23rd September, 2020, of the Wuhan Court, would clearly place them at an unfair advantage over the plaintiffs, as they would have effectively non-suited the plaintiffs from prosecuting their infringement suit, practically for all times to come. The issue of infringement would remain permanently unaddressed, by any forum. The right, of the plaintiffs, to seek protection of the SEPs held by them would also, thereby, be irrevocably foreclosed, practically permanently.

64. The Supreme Court has cautioned that anti-suit injunctions should be rarely granted, as they amount to interference with the jurisdiction being exercised by a foreign Court. No such eventuality exists in the present case, as the anti-suit injunction application, preferred by the defendants before the Wuhan Court, stands disposed of, as stated by Mr. Rajagopal. The present *ad interim* injunction, being granted by this Court, does not, therefore, interfere with the proceedings before the Wuhan Court, in any respect. The plaintiffs are not seeking any injunction against the prosecution, by the defendants, of the FRAND rate fixation complaint, preferred by them before the Wuhan Court, and this Court is not passing any order, to that effect, either. The defendants would, therefore, be perfectly at liberty to prosecute the said proceedings and, at least at this stage, no interdiction, thereof, is being granted by this Court. The caution, administered by the Supreme Court, in the matter of grant of anti-suit

injunctions, by Indian courts, in respect of proceedings pending before foreign jurisdictions does not, therefore, inhibit this Court, in passing the present order. If this Court is to abide by its duty to act *ex debito justitiae*, in my opinion, the present order is inevitable.

Authorities cited at the Bar

65. I proceed, now, to deal with some the authorities cited at the Bar by both sides.

66. *IPCom v Lenovo*³ and *Lenovo v IPCom*:

66.1 These two litigations arose, essentially, out of the same bundle of facts.

*IPCom v Lenovo*³

66.2 IPCom owned a European Patent EP ‘268, which was an SEP, relating to the operation of mobile phones, and expressed its willingness to license out the said patents on FRAND terms. IPCom offered the licenses, on what it considered to be FRAND terms, to Lenovo. Lenovo disputed the offer, stating that the terms were not FRAND.

66.3 In this backdrop, the following litigations ensued:

(i) On 14th March, 2019, Lenovo filed proceedings, in the US District Court for the Northern District of California (hereinafter referred to as “the California District Court”), seeking fixation of FRAND terms for the ICom portfolio of patents, and for a declaration that Lenovo was not infringing two of the said patents.

(ii) On 2nd July, 2019, ICom filed a suit, before the Patents Court in the UK (hereinafter referred to as “the UK Court”) alleging that Lenovo was infringing EP ‘268. Lenovo filed its response, thereto, on 23rd September, 2019, denying the allegation of infringement.

(iii) On 18th September, 2019, Lenovo filed an anti-suit injunction application, in the California District Court, seeking injunction against ICom prosecuting its suit before the UK Court, as well as elsewhere.

(iv) On 25th October, 2019, ICom filed an anti-anti-suit injunction application, before the UK Court, seeking an injunction against Lenovo prosecuting any application, before any court, which would prevent the conducting of the proceedings, by ICom, before the UK Court.

66.4 This anti-anti-suit injunction application, filed by ICom before the UK Court, came to be decided by a learned Single Judge of the Patents Court, in the decision³ on which Mr. Banerjee relies.

66.5 The UK Court observed, at its jurisdiction, to grant an anti-anti-suit injunction, was not disputed by either side. The principles for grant of anti-anti-suit injunction were, it was held, broadly the same as those which applied to grant of an anti-suit injunction, but were required to be applied with greater caution. The Court, thereafter, summarised the principles, enunciated in *Deutsche Bank AG*⁷, for grant of anti-suit injunction and proceeded, further, in that regard, to cite the decisions in *Michael Wilson & Partners Ltd v. Emmott*¹⁸ and *Société Nationale Industrielle Aerospatiale v. Lee Kui Jak*¹⁹. These decisions, essentially, elucidate the same principles, for grant of anti-suit injunction, as find place in *Modi Entertainment Network*¹ and *Dinesh Singh Thakur*¹⁶, and do not, therefore, need to be separately alluded to. On the principle of comity, however, the following passage, from the opinion of Toulson, LJ, merits reproduction:

“An anti-suit injunction always requires caution because by definition it involves interference with the process of potential process of a foreign court. An injunction to enforce an exclusive jurisdiction clause governed by English law is not regarded as a breach of comity, because it merely requires a party to honour his contract. In other cases, the principle of comity requires the court to recognise that, in deciding questions of weight to be attached to different factors, different judges operating under different legal systems with different legal policies may legitimately arrive at different answers, without occasioning a breach of customary international law *or manifest injustice*, and that in such circumstances it is not for an English court to arrogate to itself the decision *how a foreign court should determine the matter*. The stronger the connection of the foreign court with

¹⁸ (2018) EWCA Civ 51

¹⁹ (1987) 3 All ER 510

the parties and *the subject matter of the dispute*, the stronger the argument against intervention.”

(Emphasis supplied)

The words that I have chosen to italicise, in the above extracted passage, are extremely instructive. The principle of comity requires that one court should not impinge on the jurisdiction of another, foreign, court, *to determine the matter before it*, and decide *the subject matter of the dispute with which it is concerned*. This principle, however, has no application, where the order of the foreign court breaches customary international law, *or results in manifest injustice*. This is an aspect commonly understood in international relations; one sovereign nation does not violate the sovereignty of another, unless its own sovereignty is threatened. In the judicial firmament, this sentiment adopts the *avatar* of “comity of courts”. Comity, therefore, being predicated on mutual respect, has, necessarily, to take a backseat, where the directives issued by a judicial authority in one country, even if unintentionally, violates due process of law in another, resulting in manifest injustice to the litigator in the latter country.

66.6 Also, the guiding philosophy, behind the principle of comity of courts, is that a court has a right to determine the dispute, before it, in the manner in which it thinks most appropriate. This independence cannot, readily, be violated by a judicial authority in another country. It is here that Mr. Banerjee seeks to draw the distinction – and I agree with him, *prima facie* – that, by granting the reliefs sought in this application, this Court is not interfering with the discretion, or authority, of the Wuhan Court, to decide and determine the complaint,

filed before it by the defendants, in the manner it chooses and thinks best. The order, dated 23rd September, 2020, of the Wuhan Court, however, does precisely that. It interdicts the process of this Court, by permanently disentitling the plaintiff from prosecuting its infringement action. This, in my respectful opinion, is not in harmony with the principle of comity of courts, and, if this Court protects the plaintiffs, before it, from the effect of such an interdiction, it does not violate the principle of comity, either.

66.7 In the background of the issue involved in this application, paras 45, 46, 51, 52, 53, 54 and 58 of the decision of the UK Court merit reproduction:

“45. In resolving this matter, I think it is important to keep in mind the relief that IPCom is seeking. *Often an anti-suit injunction (or an anti-anti-suit injunction) would affect the entirety of the proceedings brought or contemplated in another jurisdiction. In the present instance, that would not be the case if I were to make the order sought.*

46. The substantive action before the US court has been brought by US Companies and *it concerns only the settlement of a global FRAND license and two US patents. It does not directly concern the issues in the present action, namely the infringement and validity of the UK designation of EP ‘268.*

51. *The only realistic means a patentee of a standard essential patent has to move things forward is to bring an action for infringement. That is what IPCom has done in this court in relation to EP ‘268. If the present action were to be brought to a halt, that means of bringing pressure would vanish altogether. Other potential advantages to IPCom of the action, referred to by Mr. Vanhegan, would also fall away.*

52. *I take the view that it would be vexatious and oppressive to IPCom if it were deprived entirely of its right to litigate infringement and validity of EP '268 and thereby be deprived of those advantages.*

53. That by itself does not establish that any behaviour of the UK Companies has been, or threatens to be, unconscionable. However, I am satisfied from what the US Companies have said in their motion in support the anti-suit injunction and from what Mr. Damerell said in his evidence, that the judge in the United States is very likely to obtain the impression that the anti-suit injunction sought has the approval and support of the UK Companies. That is liable to lead to the motion brought by the US Companies going forward. As I have said, *to the extent that motion would affect the proceedings in this Court, in my view it is positive outcome would be vexatious and oppressive. Therefore acts done by the UK Companies which may lead to the extinction of IPCom's right to have the issues of infringement and validity of EP '268 ever being decided would be unconscionable.*

54. It follows that it would not be conscionable for the UK Companies to endorse the impression already given to the US court that they sanction the US anti-suit motion insofar as it affects proceedings in this court. *The requirements for an anti-anti-suit injunction are met.*

58. *I also think it is significant that the principle of comity would not be significantly infringed by the granting of the injunction sought. It would in no way interfere with the bulk of the issues before the US Court."*

(Emphasis supplied)

66.8 These observations and findings apply, *mutatis mutandis*, to the present proceedings before me.

Lenovo v ICom

66.9 This was a ruling, handed down by the Paris Court of Appeal, emanating from the same dispute, which formed subject matter of the proceedings in the UK Court.

66.10 Consequent to the filing, by Lenovo, before the California Court, of the anti-suit injunction application on 18th September, 2019, ICom moved a motion before the President of the Paris Court of First Instance, seeking a direction to Lenovo to withdraw the anti-suit injunction application, filed before the California Court and to prohibit Lenovo from initiating any proceedings, which could restrict the right of ICom to prosecute, in the UK Court, its suit for infringement. By order dated 8th November, 2019, the President of the Paris Court of First Instance directed Lenovo to immediately withdraw the motion for anti-suit injunction, filed by it, on 18th September, 2019, before the California Court, to the extent it related to proceedings ICom had initiated, or was likely to initiate, before courts having jurisdiction in respect of infringement of the French part of the EP '268 patent, on account of acts committed on French territory by Lenovo group entities.

66.11 On 14th November, 2019, ICom sued Lenovo, before the Paris Court of First Instance, for infringement of the EP '268 patent.

66.12 Lenovo, in the meanwhile, appealed against the order, dated 8th November, 2019, of the President of the Paris Court of First Instance.

It is this appeal, which came to be decided by the Paris Court of Appeal, by the judgement in *Lenovo v. ICom*, on which Mr. Banerjee relies.

66.13 The view expressed by the UK Court was, largely, echoed by the Paris Court of Appeal, and the following observations and findings, from the ruling of the Paris Court of Appeal may, in this context, be reproduced:

“52. It should be recalled that *any disturbance resulting from a material or legal fact which, directly or indirectly, is an obvious violation of the rule of law, can constitute a manifestly unlawful disturbance.*

53. In the present case, it is common ground that the purpose of the anti-suit injunction filed before the American Court on September 18, 2019 was *to prohibit ICom, on the one hand, from continuing the action for patent infringement filed in the United Kingdom against the affiliated companies of the American companies Lenovo in the United Kingdom but also, on the other hand, to prohibit ICom from bringing claims against the applicants (the American companies Lenovo), the affiliated companies of the applicants or one of their clients, all actions alleging infringement of essential patents claimed by ICom and this during the action pending before the Californian court.*

54. The purpose of the motion for anti-suit injunction was thus also to prevent initiating and/or continuing any infringement action against companies of the Lenovo group, including those likely to be brought before a French court.

56. Thus, on the date the first judge ruled, *ICom was likely to see itself prohibited by the Californian judge, with regard to the faculty offered by its law, to initiate and/or to pursue any action for patent infringement against the companies of Lenovo group and/or their customers to protect*

the French part of the EP 268 patent, that it owns and particularly before the French courts.

57. *Such an impediment characterizes a manifestly unlawful disturbance as long as it infringes the right for the holder of an industrial patent to access the only judge competent to rule on the infringement of its title...*

58. If the Lenovo companies maintain that this prohibiting measure is only temporary and only lasts for the time of the proceedings before the American judge, such a state, having regard to the duration thereof which might take several years, but also of its uncertain outcome, compared to the limited duration of protection granted to the owner of a patent, which in this case expired in February 15, 2020, *amounts to a concrete deprivation of the right for its holder to avail and protect his industrial property title before its expiration, knowing that it is not disputed that the Californian judge is not seized and could not in any event rule on such an action for infringement which is of the exclusive jurisdiction of the Paris Court of First Instance.*

59. Thus, the only appropriate way to put an end to the manifestly unlawful disturbance was indeed to order the Lenovo companies to withdraw under penalty the “anti-suit” motion filed before the Californian judge, being moreover observed that it in no way prejudices the continuation of the lawsuit initiated by the Lenovo companies before the Californian court, *the subject of which is distinct since it does not relate to the infringement of the patent in dispute* and that the outcome of the infringement action in France is not without interest for the Californian judge, supposing that he recognizes himself finally competent to rule on the responsibility of ICom and the fixing of a FRAND license.

60. Consequently, it shall be held, regardless of the assessment whether the motion for anti-suit injunction filed by Lenovo companies before the Californian judge complies with the French concept of international public policy, that *this measure characterizes a manifestly unlawful disturbance within the meaning of Article 835 of the Code of Civil Procedure, in view of the disturbance it generates by infringing a fundamental right, so that the first judge has, rightly and within the framework of the powers it derives*

from this article, ordered the Lenovo companies to withdraw under penalty the disputed motion for anti-trial injunction and that it is order shall therefore be upheld.”

(Emphasis and underscoring supplied)

67. These observations, too, directly cover the case of the plaintiffs, in the application before me.

68. *Ecom Agroindustrial Corp. Ltd⁴*

68.1 This case assumes importance because, unlike the case before me, what was sought was an injunction of the operation of an order of anti-suit injunction already passed by a foreign Court, and the Queen’s Bench Division of the High Court of the UK (referred to, hereinafter, for the sake of convenience, as “the High Court”) specifically addressed the issue of whether the passing of the anti-suit injunction order, by the foreign Court, would act as an inhibiting factor.

68.2 The facts were simple. On 31st January, 2011, a contract was executed, between Ecom Agroindustrial Corp. Ltd (hereinafter referred to as “Ecom”) and Mosharaf Composite Textile Mill Ltd (hereinafter referred to as “Mosharaf”), whereunder Ecom agreed to sell Brazilian Raw Cotton to Mosharaf. Mosharaf was required to open a Letter of Credit, for the first shipment of cotton, by 20th June, 2011, but failed to do so. The dispute culminated in an arbitration, initiated by Ecom against Mosharaf, on 28th November, 2011, in accordance with the rules of the International Cotton Association

(ICA), claiming damages. Without participating in the arbitration, Mosharaf moved the First Court of Joint District Judge, Dhaka (hereinafter referred to as “the Bangladeshi court”), seeking, *inter alia*, a permanent injunction, restraining Ecom from pursuing any claim or proceedings, in respect of the contract, before the ICA or elsewhere. On 19th January, 2012, the Bangladeshi court passed an order of anti-suit injunction, restraining Ecom from pursuing any claim in relation to the contract. Though Ecom appealed, against the said decision, in Bangladesh, the appeal was never taken up for hearing.

68.3 On 22nd January, 2013, Ecom instituted Commercial Court proceedings, before the High Court, in which, *inter alia*, Ecom sought for an injunction, prohibiting Mosharaf from taking any further steps in the Bangladeshi proceedings or from commencing any further proceedings in relation to the contract, and for a declaration that the Bangladeshi proceedings constituted a breach of the contract.

68.4 The High Court initially examined the law relating to anti-suit injunctions, which hardly needs to be recapitulated, in view of the observations already entered by me hereinabove. The decision is, however, significant for the reason that it examined, among other issues, the question of whether it was inhibited from granting the injunction sought by Ecom, in the face of the anti-suit injunction order granted by the Bangladeshi court. This is how the High Court addressed the issue:

“Fourth, it might be asked whether comity requires that the English court refuse to grant the injunction in the present

case, in circumstances where the Bangladeshi court has already granted an anti-suit injunction against the Claimant which arguably extends to the present proceedings. This issue was considered by the Court of Appeal in *Sabah v GOP, (2003) 2 Lloyd's Rep 571*, para 40, where Waller LJ said as follows:

“If there was an injunction in place that would clearly be a relevant matter and the English Court would clearly prefer not to be thought to be aiding a contemnor. But when he obtaining of the injunction was itself a breach of contract, *and was seeking to prevent a party exercising its contractual right to bring proceedings in the English Court, the English Court must at least allow the proceedings to be commenced in its Courts.* It does not necessarily follow that the English Court should grant an injunction to prevent proceedings in the foreign Court, but again the existence of the foreign injunction should not prevent it doing so, *if the very obtaining of the injunction can be seen to have abused the rights of the litigant with the contractual right to come to England...*”

(Emphasis supplied)

68.5 I find myself entirely in agreement with the afore-extracted observations. If the anti-suit injunction order, passed by the foreign Court, results in the unfair deprivation of the right, of the plaintiff in this country, to prosecute its suit, which is maintainable as per the laws of this country, and cannot be prosecuted before any other forum, it is the bounden duty of the court, in this country, to protect the plaintiff from the damaging effects of such an injunction. No consideration of comity of courts can stand in the way of the court protecting such a plaintiff. If a litigant, who seeks to prosecute a litigation, maintainable under Indian law, to ventilate his due rights

and entitlements, is to find himself at the mercy of a foreign court, which, though seized of an entirely different issue (even if marginally overlapping), injuncts the Indian litigant, *ex parte*, from prosecuting his litigation in India, we may as well consign the faith of the citizen, in the Indian judicial system, to the graveyard of posterity.

69. Ecobank⁵

69.1 This was a case in which the services of the respondent, before the Court of Appeal, Mr. Thierry Tanoh, who was employed as the Chief Executive Officer and Group Managing Director of Ecobank, were terminated on 11th March, 2014. On 4th April, 2014, Mr. Tanoh petitioned the Labour Court in Togo, assailing the termination of his employment as being in breach of the Togo Labour Code. Ecobank, in its response, sought to contend, *inter alia*, that the petition was not maintainable, as there was an arbitration clause in the agreement between Mr. Tanoh and Ecobank. The Togo Labour Court ruled in favour of Mr. Tanoh, both on the aspect of jurisdiction as well as on merits, and, holding his dismissal to be unfair, awarded him monetary compensation.

69.2 Mr. Tanoh also instituted proceedings, before the Commercial Court in Ivory Coast (hereinafter referred to as “the Ivorian Court”), against Ecobank claiming damages on the ground of defamation. Ecobank raised, *inter alia*, the issue of jurisdiction. The Ivorian Court, however, ruled, in favour of Mr. Tanoh, both on the issue of

jurisdiction as well as on merits, and the appeal, preferred by Ecobank, thereagainst, was also declined by the Court of Appeal.

69.3 On 10th April, 2015, Ecobank instituted an anti-suit injunction proceeding in London, seeking an injunction against Mr. Tanoh from taking any action to secure recognition or enforcement of the judgements of the Togolese and the Ivorian Courts. An *ad interim* injunction was granted, initially, which was, later, vacated by Knowles, J., who ruled against Ecobank. Ecobank appealed.

69.4 The Court of Appeal framed four issues as arising for its consideration, of which the third and fourth issues read thus:

“iii) Does it matter that the party seeking an injunction does not apply for injunctive relief before or at an early stage in the foreign proceedings or at any rate before judgement is given, if that party has always made plain that it disputes the jurisdiction of the foreign court and relies on the arbitration clause?”

iv) What role does the notion of “comity” have in determining the approach of the court to an application for an anti-enforcement injunction?”

69.5 Paras 118 and 119 of the judgement of the Court of Appeal are relevant, and may be reproduced:

“118. In short, the cases in which the English Courts have granted anti-enforcement injunctions are few and far between. Of the two examples to which we were referred, one was based on the fraud of the respondent and the other involved an attempt to execute the judgement when, after it had been obtained, the respondent had promised not to do so. *Knowles, J. suggested another circumstance where an injunction might be granted, namely where the judgement was obtained too*

quickly or too secretly to enable an anti-suit injunction to be obtained, a circumstance far removed from this case. No example has been cited to us of a case where an anti-enforcement injunction has been granted simply on the basis that the proceedings sought to be restrained were commenced in breach of an exclusive jurisdiction or arbitration clause.

119. This dearth of examples is not surprising. If, as has heretofore been thought to be the case, an applicant for anti-suit relief needs to have acted promptly, an applicant who does not apply for an injunction *until after judgement is given in the foreign proceedings* is not likely to succeed. But *he may succeed if, for instance, the respondent has acted fraudulently, or if he could not have sought relief before the judgement was given either because the relevant agreement was reached post judgment or because he had no means of knowing that the judgement was being sought until it was served on him.* That is not this case.”

(Emphasis supplied)

69.6 *Per contra*, in the present case, I may observe, (i) the foreign proceedings are nowhere near the stage of judgement, (ii) the plaintiffs do not seek, in any case, to interdict the suit/complaint, pending before the Wuhan Court, (iii) the manner in which the defendants have acted borders on fraud, not only with the plaintiffs, but also towards this Court and (iv) the material on record does not indicate that the plaintiffs had any means of knowing, till the passing of the impugned order by the Wuhan Court on 23rd September, 2020, that it was in the offing. Far from having been aware that the hair, by which it hung, was about to snap, the plaintiffs could not even be attributed knowledge that the sword of Damocles was hanging over them. Mr. Rajagopal sought to impress, on this Court, that, had the plaintiffs exercised due diligence, they could have remained aware of the filing of the anti-suit injunction application, and, consequently, of

the possibility of an anti-suit injunction order being passed therein. I am unable to agree. To my mind, what Mr. Rajagopal expects, of the plaintiffs, is not due diligence, but clairvoyance.

69.7 The principles enunciated in *Ecobank*⁵, too, would, therefore, justify grant of injunction, as sought by the plaintiffs in this application.

70. In a similar litigation²⁰, the Court of Appeals, Munich, granted an anti-anti-suit injunction, against the prosecution, by M/s Continental AG (hereinafter referred to as “Continental”), of an anti-suit injunction proceeding, initiated by it, against Nokia, in the California District Court. The facts are, again, broadly similar. Ten patent infringement suits, relating to SEPs, were filed, by Nokia, before the Munich Regional Courts on 21st March, 2019, against infringement of the said SEPs by Continental. Continental retaliated, by filing a suit in the California District Court, seeking the right to obtain a license under appropriate, FRAND conditions, to utilise the SEPs of Nokia. On 12th June, 2019, Continental applied, before the California District Court, for an anti-suit injunction, restraining Nokia from continuing its patent infringement suits in Germany, till a decision was taken, by the California District Court, on the FRAND-rate fixation proceedings initiated by Continental. Nokia responded by filing an application, before the Munich District Court, for a restraint against Continental from proceeding with the anti-suit injunction application, filed by it before the California District Court.

²⁰ Final judgement dated 2nd October, 2019, in *Nokia v Commercial AG*

On 11th July, 2019, the Munich District Court granted injunction, to Nokia, as sought, and directed Continental to withdraw the anti-suit injunction application preferred by it before the California District Court. This position was confirmed, in appeal, by the Munich Court of Appeals. Among others, the Munich Court found that the anti-suit injunction, if granted, would prevent the owner of the patent from exercising his right to sue for infringement thereof. It was observed, further, that patent law, which conferred an exclusive right to use the patent, was rendered worthless if the patent owner was deprived of his rights to enforce his exclusive right of monopoly granted by the State, through court proceedings. Access to justice was also, in the process, found to have been jeopardised.

Comity, and conflict of laws; comity of courts versus public policy

71. The necessity of maintaining comity of courts was, predictably, one of the main planks of the submissions of Mr. Rajagopal. While I have already observed why, in my opinion, in a case such as the present, the principle of comity may have only so much of a role to play, and no more, the following passage, from Story, J.'s 'Commentaries on the Conflict of Laws § 28', makes for instructive reading:

“They have attempted to go too far to define and fix that which cannot, in the nature of things, be defined or fixed. They seem to have forgotten that they wrote on a question which touched the comity of nations, and that that comity is, and ever must be, uncertain; that it must necessarily depend on a variety of circumstances which cannot be reduced to any certain rule; that *no nation will suffer the laws of another to*

interfere with her own to the injury of the citizens; that whether they do or not must depend on the condition of the country in which the foreign law is sought to be enforced, the particular nature of the legislation, policy, and the character of the institutions; that in the conflict of laws it must often be a matter of doubt which should prevail, and that, whenever a doubt does exist, the court which decides will prefer the laws of its own country to that of a stranger.”

(Emphasis supplied)

72. Comity of courts, as a consideration, must always cede place to public policy. The US Court of Appeals held, in *Telnikoff v. Matusevitch*²¹, thus:

“Although foreign judgements are entitled to a degree of deference and respect under the doctrine of comity, courts will nonetheless deny recognition and enforcement to those foreign judgements which are inconsistent with the public policies of the forum state. ... As explained by the Supreme Court in *Hilton v. Guyot*, 159 US at 164-165, 40 L. Ed. At 109, quoting Story, Conflict of Laws, § 28,

‘(comity) must necessarily depend on a variety of circumstances which cannot be reduced to any certain rule; that *no nation will suffer the laws of another to interfere with her own to the injury of her citizens;...*’

See *Bank of Augusta v. Earle*, 13 Pet. 519, 589, 10 L. Ed. 274, 308 (1839), where Chief Justice Taney pointed out that the “comity thus extended to other nations... is the voluntary act of the nation by which it is offered; and *is inadmissible when contrary to its policy, or prejudicial to its interests.*”

73. The United States Court of Appeals for the District of Columbia Circuit echoed this view, with matching felicity, in *Laker Airways v. Sabena, Belgian World Airlines*²², thus:

²¹ 347 Md. 561 (Md. 1997), 702 A. 2D 230

²² 731 F. 2d. 909 (DC Cir 1984), 937

“... There are limitations to the application of comity. *When the foreign act is inherently inconsistent with the policies underlying comity, domestic recognition could tend either to legitimise the aberration or to encourage retaliation, undercutting the realization of the goals served by comity. No nation is under an unremitting obligation to enforce foreign interests which are fundamentally prejudicial to those of the domestic forum. Thus, from the earliest times, authorities have recognized that the obligation of comity expires when the strong public policies of the forum are vitiated by the foreign act.*”

(Emphasis supplied)

74. The following observations of the Supreme Court, from *Satya v. Teja Singh*²³, are also of stellar significance, in this context:

“8. The answer to the question as regards the recognition to be accorded to the Nevada decree must depend principally on the Rules of our Private International law. It is a well - recognised principle that “Private International law is not the same in all countries.” [**Cheshire's Private International Law, 8th Edn., (1970), p. 10**] *There is no system of Private International law which can claim universal recognition* and that explains why Cheshire, for example, says that his book is concerned solely with that system which obtains in England, that is to say, with the Rules that guide an English court whenever it is seized of a case that contains some foreign element. The same emphasis can be seen in the works of other celebrated writers like Graveson, Dicey & Morris, and Martin Wolff. Speaking of the “*English conflict of laws*” Graveson says: “*Almost every country in the modern world has not only its own system of municipal law differing materially from those of its neighbours, but also its own system of conflict of laws,....*” [**The Conflict of Laws, R.B. Graveson, 6th Edn., (1969) pp. 3, 5, 6**] ” According to Dicey & Morris, “The conflict of laws exists because there are different system of domestic law. But system of the conflict of laws also differ [**The Conflict of Laws, Dicey &**

²³ (1975) 1 SCC 120

Morris, 8th Edn., (1967) p. 10] .” Martin Wolff advocates the same point of view thus:

“Today undoubtedly Private International law is national law. There exists an English Private International law as distinct from a French, a German, an Italian Private International law. The Rules on the conflict of laws in the various countries differ nearly as much from each other as do those on internal (municipal) law. [**Private International Law, Martin Wolff, 2nd Edn., (1950) p. 11]** ”

It is thus a truism to say that *whether it is a problem of municipal law or of conflict of laws, every case which comes before an Indian court must be decided in accordance with Indian law*. It is another matter that the Indian conflict of laws may require that the law of a foreign country ought to be applied in a given situation for deciding a case which contains a foreign element. Such a recognition is accorded not as an act of courtesy but on considerations of justice [**G. Melville Bigelow's Note to Story's Commentaries on the Conflict of Laws, 8th Edn., (1883) p. 39]** . *It is implicit in that process, that the foreign law must not offend against our public policy.*

9. *We cannot therefore adopt mechanically the Rules of Private International law evolved by other countries. ...*

17. ... The phrase “comity of nations” which owes its origin to the theory of a Dutch Jurist, John Voet, has, however, been widely criticised as “grating to the ear, when it proceeds from a court of justice” [**De Nova, (1964) 8 American Journal of Legal History, pp. 136, 144** citing the early American author, Livermore] . *Comity, as said by Livermore is a matter for Sovereigns, not for Judges required to decide a case according to the rights of parties.*

18. In determining whether a divorce decree will be recognised in another jurisdiction *as a matter of comity, public policy and good morals may be considered. No country is bound by comity to give effect in its courts to divorce laws of another country which are repugnant to its*

own laws and public policy. ... Recognition is denied to such decrees as a matter of public policy.”

(Emphasis supplied)

75. Viewed thus, and in the backdrop of Indian Law, the operation of the order, dated 23rd September, 2020, of the Wuhan Court, would violate public policy in this country. No considerations of comity can, therefore, stand in the way of restraining its enforcement.

Negation of jurisdiction

76. There is, in my view, another, and somewhat more serious, objection, to the order, dated 23rd September, 2020, of the Wuhan Court, which directly involves the principle of comity of courts. By conditioning the continuance of the prosecution, by the plaintiffs, of the proceedings before this Court, with a penalty of about ₹ 1 crore per day, the Wuhan Court has effectively rendered it impossible for the plaintiff to continue to prosecute these proceedings. The inexorable sequitur is that this Court is also divested of the opportunity of adjudicating on the dispute, brought before it by the plaintiffs, which it has, otherwise, the jurisdiction to hear and decide. The order of the Wuhan Court, therefore, directly negates the jurisdiction of this Court, and infringes the authority of this Court to exercise jurisdiction in accordance with the laws of this country. It is not open to any Court to pass an order, prohibiting a court, in another country, to exercise jurisdiction lawfully vested in it. Any such decision would amount to a negation of jurisdiction, which cannot be countenanced.

Re. Maintainability

77. The only issue, raised by Mr. Rajagopal, which remains to be addressed, is the maintainability of the present application. Mr. Rajagopal has sought to contend that the present application seeks relief, at an interlocutory stage, which is in excess of the reliefs sought in the suit and cannot, therefore, survive. Mr. Banerjee has contended, *per contra*, that no such infirmity attaches to the present application, as the prayers, contained in it, are intended to enable the plaintiff to prosecute the suit filed by them, towards attainment of the reliefs sought therein. I am, *prima facie*, in agreement with Mr. Banerjee. Indeed, I do not see how the defendants can even raise such an argument, given that, before the Wuhan Court, the defendants, too, sought anti-suit injunction, against the plaintiffs, by way of an interlocutory application in a FRAND-rate fixation proceeding. What is sauce for the goose, axiomatically, is sauce for the gander. The only response of Mr. Rajagopal is that the goose and the gander happened to be residing under two different jurisdictions and that, perhaps, Chinese law is kinder, to the gander, than Indian law is, to the goose. Without hazarding an opinion on the submission of Mr. Rajagopal, suffice it to state that I am not convinced, *prima facie*, that the present application suffers from want of maintainability.

78. For all the above reasons, I am of the view that a clear case, for grant of *ad interim* injunction, in terms of prayer (i) in para 33 of the present application, is made out.

79. Resultantly, notice shall issue on this application, returnable on 25th November, 2020. The defendants are at liberty, should they so choose, to file any further, or supplementary, response to prayer (i). Pending hearing and decision of the present application, the defendants shall be restrained from enforcing, against the plaintiff, the order, dated 23rd September, 2020, passed by the Wuhan Intermediate People's Court, in the anti-suit injunction application, preferred by the defendants before it.

80. I am uncomfortably aware that, as an order deciding a prayer for *ad interim* relief, this order is considerably prolix. There was, however, no other option, as the injunction, of the enforcement of an order, passed by a court of foreign jurisdiction, in a foreign country, even for a day, is a serious matter. The issue is, moreover, apparently not addressed, earlier, by any Court in this country. I have been fortunate to have the assistance of eminent, and learned, Counsel, appearing for both sides. The precision with which they argued the matter has been of immeasurable assistance, in enabling me to pen this order, within the short time available for the purpose.

81. Howsoever detailed they may appear, all observations and findings, in this order, are intended only for the purpose of grant of *ad interim* relief. It shall be open to the defendants to convince this Court, at the stage of final arguments in the present injunction application, to take a different view, and this Court shall not feel inhibited, in that regard, by any observation contained in this order.

82. The registry is directed to communicate copies of this order, by email, to learned counsel for both sides, as early as possible and, at any rate, within 24 hours of this pronouncement. Efforts would also be made to ensure that this order is uploaded, on the website of this Court, within the said period.

C. HARI SHANKAR, J.

OCTOBER 9, 2020

HJ



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