

INOX vs PVR- The Turf War Intensifies!

written by Gaurav Singh Gaur | June 6, 2020



The Hon'ble High Court of Delhi in its recent judgment dated May 18, 2020 in *INOX LEISURE LIMITED v. PVR LIMITED*,^[1] held that when an action of the defendant merely comprises of a tortuous act of interference with a contractual relationship, then, the grant of an injunction for such alleged interference, in absence of any law, would violate the fundamental right of the defendant to carry on trade and business. The Hon'ble Court while dismissing the suit further imposed costs of INR 5,00,000/- on Inox Leisure Limited for indulging in judicial adventurism.

Clash Intensifies in INOX vs PVR - The Clash Intensifies in INOX LEISURE LIMITED v PVR LIMITED

Factual Matrix

The case of the plaintiff was that Inox Leisure Limited ("plaintiff") being engaged in the business of running and operating multiplex cinemas at various locations in India to expand its footprint to new locations, entered into negotiations with the developer of the property by the name of Suraj Chandra Tara Cinemas in Amritsar ("premises"). PVR Limited ("defendant") being a competitor of the plaintiff was also negotiating with the said developer with respect to the same property.

Thereafter, the plaintiff entered into a binding term sheet with the developer whereby the developer leased the said premises in favour of the plaintiff for 15 years. The term sheet further provided for the main transaction document to be executed subsequently, but as per the plaintiff, the same was a mere formality and that the terms sheet itself was binding on the developer since security deposit had also been paid by the plaintiff to the developer.

The defendant was actively pursuing the developer to induce them to breach the binding term sheet even after the knowledge of the fact that the Plaintiff has already executed the terms sheet with the developer. Similar acts of interference were also carried out by the defendant in past with respect to properties in Madurai and Juhu, Mumbai. Subsequently, the said developer informed the plaintiff that the timesheet automatically stood terminated on account of the plaintiff's failure to execute the main transaction document.

The plaintiff apprehended that the defendant had interfered with the contractual relationship of the plaintiff which resulted in grave injury to the plaintiff. Therefore, the plaintiff approached the Hon'ble High Court, praying to grant an injunction restraining the defendant from attempting to acquire the same property which the plaintiff intended to acquire and/or with respect to property for which an agreement had already been entered into by

the plaintiff.

Contention Of The Parties

Mr. Amit Sibal, senior counsel appearing on behalf of the plaintiff contended that the term sheet entered into by the plaintiff with the developer in respect of the property at Amritsar constitutes a binding enforceable agreement. He further placed reliance on the *Kollipara Sriramulu v. T. Aswatha Narayana*[2] whereby it was held that if a document contains all the essential terms of a contract and further provides for signing of a further formal agreement, then it is not always that without the formal agreement being signed, the already signed document is not enforceable.

He further relied on the decision in *V.B.Dharmyat v. Shree Jagadguru Tontadrya*[3] wherein it was held that it is not compulsory to register an agreement agreeing to lease any immovable property and that the same is merely a promise to execute a lease deed in future and therefore is specifically enforceable.

Mr. Arvind K. Nigam, the learned senior counsel appearing on behalf of the respondent inter alia contended that the plaintiff had not mentioned averments regarding the property at Juhu, Mumbai in the cause of action paragraph and hence the same is not liable to be considered. He further contended in respect of the Amritsar property that the timesheet had already lapsed on account of default of the plaintiff. Hence, the said agreement had already lapsed and the security deposit had also been refunded to the plaintiff by the developer which was accepted by the plaintiff without any objections.

In response to the allegation of anticompetitive practise carried out by the defendant, it was submitted by the learned senior counsel that the defendant has 767 screens across 164 properties and that the plaintiff has 583 screens across 145 properties. In light of the same, he contended, that it cannot be stated that the defendant is in a dominating position in the market or that the defendant is capable of indulging in any anti-competitive practice. It was also contended that in the present suit, the plaintiff was praying for a blanket order across India, with respect to several properties without even producing any relevant agreement with respect to those properties.

This is nothing but an attempt of the plaintiff to stifle the choice of the defendant as a competitor of the plaintiff. The learned senior counsel relied on several precedents to contend that a party cannot obtain an injunctive relieve to curtail competition and freedom in a free economy[4]. He also relied on *The India Performing Right Society v. Badal Dhar Chowdhry*[5] wherein it was held that a vague and general injunction cannot be granted. He further relied on *Lindsay International Pvt. Ltd. v. Laxmi Niwas Mittal*[6] wherein it was held that breach of an existing contract is a sine qua non for the tort of inducement.

Observations Of The Court

The Hon'ble Court after hearing both the parties opined that even in case if the plaintiff had any binding contracts and even if believed that the defendant was indeed interfering or causing breach therein, then also the plaintiff is not entitled to restrain the defendant. Since the same is purely a question of law, no trial was required in respect of the same.

The Court observed that the effect of granting an injunction to the plaintiff against the defendant in the present case would be, that the developers of the Amritsar and Juhu properties even if had entered into agreements with the

defendant would be unable to proceed forward under those agreements. This will leave the developers of these properties in a lurch, with respect to their properties meant to run and operate their multiplex cinemas. It will also create a monopoly sort of position for the plaintiff where these owners will then have to accept all terms and conditions what the plaintiff would then offer. The court further opined that it was also apparent that the court would not have the territorial jurisdiction over the developers/owners of these multiplex cinemas spread across India.

The Hon'ble Court also mentioned in their observation that the claim of the plaintiff in the present case is also to monopolize land and buildings across India. The court further observed that land is also a natural resource just like agricultural produce. Therefore, granting such an injunction in the present case by excluding the defendant from its forays to procure real estate for its business, would also be in violation of the directive principles of state policy.

Judgment

A single bench of Hon'ble Mr. Justice Rajiv Sahai Endlaw held that the injunction which is prayed by the plaintiff in the present case is based on the premise of an alleged tortious act of interference of the defendant with the plaintiff's contractual relations. In absence of any law having been enacted by the State in the interest of general public within the meaning of Article 19(5) of the Constitution of India, granting such an injunction would be in violation of the fundamental right of the defendant to carry on trade and business as guaranteed under Article 19(1)(g).

It was further held that the plaintiff had no cause of action for the relief claimed in the plaint against the defendant and that the same is barred by law. Consequently, the Hon'ble Court held that "Axiomatically the suit is dismissed. The plaintiff having indulged in judicial adventurism *is also burdened with costs of Rs.5,00,000/-, payable to the defendant within 90 days hereof.*"

Conclusion

On the touchstone of the facts and authorities submitted before the Hon'ble Court, the court precisely observed that the plaintiff in the present suit is only desirable of an injunction, in form of a blanket order across India, with an attempt to curtail competition. It is an established principle that injunctive relief cannot be granted merely on basis of an apprehension and thus the Hon'ble Delhi High Court was also correct in its approach to impose costs on the plaintiff. It is of great importance that judicial activism must be exercised sparingly and strictly within the limits of the judicial process. Judicial activism and judicial abdication are both undesirable extremes. Judicial adventurism is the real manifestation of judicial abdication.

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- [1] CS (OS) No.196/2018
 - [2] AIR 1968 SC 1028.
 - [3] (1999) 6 SCC 15.
 - [4] Pepsi Foods Ltd. v. Bharat Coca-Cola Holdings Pvt. Ltd.; 1999 SCC OnLine Del 530
 - [5] 2010 SCC OnLine Del 1361
 - [6] 2017 SCC OnLine Cal 14920

Contributed By - Gaurav Singh Gaur

Designation - Associate

King Stubb & Kasiva,

Advocates & Attorneys

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New Delhi | Mumbai | Bangalore | Chennai | Hyderabad | Kochi

Tel: +91 11 41032969 | Email: info@ksandk.com