Civil Revision
Present: The Hon'ble Mr. Justice Bhaskar Bhattacharya
And
The Hon'ble Mr. Justice Prabhat Kumar Dey
Judgment on: 16th June, 2010
F.M.A.T. No. 533 of 2010
With
C.A.N. 3846 of 2010
Axis Bank Ltd.
Versus
MPS Greenery Developers Ltd.

POINTS

Territorial Jurisdiction – Application for injunction - Ad interim injunction – Direction by court to serve notice – Appeal – Jurisdiction of the Trial Court – Cause of action – Court , if can decide jurisdiction at the stage of granting injunction – Cause of action arising beyond territorial limits, whether court has jurisdiction to grant injunction - Code of Civil Procedure 1908, S 15,20 , O7 R10 , O39 rr1,2 & 4.

FACTS

Plaintiff filed a suit in the City Civil Court at Calcutta inter alia for a declaration that the defendents had no right to issue a letter of reference for permanent and temporary injunctions . The case made out by the plaintiff was that it was engaged in various fields of business and had its registered office at Lake Town ,where it had the principal bank account .
In usual course of business the plaintiff had issued several post dated cheques which were all cleared by a letter dated 4th February 2010 the defendant bank expressed its inability to issue fresh cheques on the ground that a large no of cheques were yet to be presented for payment .the plaintiff by a lawyers letter called upon the defendant to issue bulk cheques to the plaintiff. In the suit that followed the cause of action had been shown to have arisen at the defendants city office at Ganesh Chandra Avenue. In an application for injunction the defendant also prayed for a direction upon the lake town branch of the defendant Bank to issue bulk cheques . The Learned Trial Judge had issued notice upon the appellant to show cause why the prayer of the plaintiff should not be granted and also filed an application for the grant of add interim order . The defendant filed the present appeal and

submitted that the trial court had no territorial jurisdiction to entertain the suit .

HELD

There is no dispute with the proposition of law that an application for temporary injunction, whether at the ad interim stage or at the final hearing stage, is decided on the basis of prima facie case of the applicant to go for trial. If the prima facie case is established, the Court dealing with such application then considers the other two factors, viz. whether the balance of convenience and inconvenience is in favour of granting the injunction and the question of irreparable injury of the applicant if the prayer is not allowed. However , in the absence of proof of prima facie case , the other two factors indicated above are insignificant.

Para 14

The word “prima facie” case does not mean a case proved to the hilt, but is one, which is at least “an arguable one” at the time of trial. At the stage of considering the prima facie case, the Court has, however, a duty to see whether the suit is maintainable before that Court. In other words, the Court at that stage also should be prima facie satisfied with the existence of its jurisdiction to entertain such suit, be it territorial, pecuniary, or inherent.

Para 15

As provided in Order VII Rule 10 of the Code, “the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.” The language employed therein is imperative in nature and the legislature did not permit the Court to unnecessarily be burdened with a suit over which it has no jurisdiction giving the Court the authority of returning the plaint without waiting for trial if it appears from the averments made in the plaint itself that it has no jurisdiction. The effect of an order of return of plaint is that the interim order, if any, passed in the suit automatically is vacated and unless the plaintiff gets the benefit of Section 14 of the Limitation Act, the suit may even be barred by limitation on the date of representation before the appropriate Court.

Para 17

If a Court apparently has no jurisdiction to entertain the suit, even by filing an application for amendment of plaint, the plaintiff cannot pray before the said Court for allowing the same to bring it within its jurisdiction. The Court should, in such a situation, first return the plaint for presentation before the appropriate Court, and the plaintiff should press the application for amendment of plaint before the appropriate Court on representation of the plaint. If the said appropriate Court allows the amendment, it shall then again return the plaint for representation before the original Court, which gets jurisdiction on amendment of the plaint. If the said appropriate court allows the amendment allows the amendment , it shall then again return the plaint for representation before the original court , which gets jurisdiction on amendment of the plaint.

Para 18

The place of business of the plaintiff cannot, on the basis of allegations made in the plaint, be the place where the cause of action could arise.
If statements made in the plaint are accepted to be true, the City Civil Court cannot have any jurisdiction to entertain the suit because there is no allegation in the plaint from which it can be inferred that any part of the cause of action arose within the jurisdiction of the Trial Court. There is not even any special factual allegation for which there can be accrual of any cause of action at the city office of the plaintiff and thus, simply because the plaintiff's city office is situated within the jurisdiction of the Trial Court such fact by itself cannot confer jurisdiction upon the Trial Court.

Para 21

<u>CASES CITED :-</u>

1)Agencia Commercial International Limited & Ors. vs. Custodian of the Branches of Banco Nacional Ultramarino, reported in (1982) 2 SCC 482.

2) M/s. Patel Roadways Limited vs. Prasad Trading Company & Ors. Reported in AIR 1992 SC 1541;

3) Chanana Steel Tubes Pvt. Ltd. vs. M/s. Jaitu Steel Tubes Pvt. Ltd. & Ors. reported in AIR 2000 H P 48;

4) Mayar (H.K.) Ltd. & Ors. vs. Owners & Parties, Vessel M.V. Fortune Express & Ors. reported in (2006) 3 SCC 100.

5)Mst. Zohra Khatoon v Janab Mohammad Jane Alam reported in AIR 1978 Cal 133 (DB)

For the Appellant: Mr. Aniruddha Chatterjee,
Mr. A. Mitra,
Mr. D. Ghosal.

For the Respondent: Mr. S.P. Roychowdhury,
Mr. Bhuddhodeb Ghoshal,
Mr. Santanu Chatterjee.

Bhaskar Bhattacharya, J.:

THE COURT . 1)This first miscellaneous appeal is at the instance of a defendant in a suit for declaration and injunction and is directed against Order No.3 dated 10th March, 2010 passed by the learned Chief Judge, City Civil Court at Calcutta, in Title Suit No.1092 of 2010, thereby issuing a notice upon the appellant to show cause why the prayer of the respondent for temporary injunction should not be granted and also granting an ad interim order of injunction restraining the appellant from giving effect to its letter dated 4th March 2010 mentioned in the application for injunction until further order.

2)Instead of showing cause, or filing an application under Order 39 Rule 4 of the Code of Civil Procedure for vacating the interim order, the defendant has straightway come up with the present appeal.

3)Mr. Chatterjee, the learned advocate appearing on behalf of the appellant, at the very outset, has raised a pure question of law as to the territorial jurisdiction of the learned Trial Judge in entertaining the suit and the application for injunction. Mr. Chatterjee contends that he is quite alive to the position of law that as his client without showing any cause, or without filing any application under Order 39 Rule 4 of the Code has decided to prefer this appeal, he, at this stage, should accept the all the averments made in the plaint and in the application for injunction to be true and his endeavour before us will be to convince us that even if those are assumed to be true, the learned Trial Judge had no territorial jurisdiction to entertain the suit or grant of ad interim order of injunction.

4)In view of the such stance taken by the appellant, we decided to hear out the appeal without passing a direction for filing of a formal paper book and by treating the stay application filed by the appellant as informal paper book where the plaint and the application for injunction filed by the learned Trial Judge were annexed.

5)The respondent before us filed in the City Civil Court at Calcutta the suit being Title Suit No.1092 of 2010 thereby praying for the following relief:
"(a) For declaration that the Defendant had no right to issue the Letter of Reference No.AXISB/LAKE/2009-10/905 dated 04.03.2010 refusing to issue bulk cheques to the plaintiff which virtually amounted to black listing of the plaintiff creating adverse impact on the business and credibility of the Plaintiff.

(b) For permanent injunction restraining the Defendant Bank, their men and agents from giving effect to the letter No. AXISB/LAKE/2009 - 10/905 dated 04.03.2010 in any manner prejudicial to the interest of the Plaintiff.
(c) Temporary injunction with ad-interim order in terms of prayer (b) above.
(d) For an order directing the Lake Town Branch of the Defendant Bank to forthwith issue bulk cheques to the plaintiff without the least delay.
(e) For other relief or reliefs that the plaintiff may be found entitled to in law and in equity."

6)The case made out by the plaintiff may be summed up thus:
(a) The plaintiff is a limited liability concern having diversified `interest in various fields of business and amongst its various offices, the plaintiff has the offices mentioned in the cause title of the plaint being Registered Office at MPS Enclave, P-166, Lake Town, Block-B, Kolkata 700089 and its City

Office at 4, Ganesh Chandra Avenue, Kolkata- 700013. The plaintiff is maintaining its principal bank account with the Lake Town Branch of the defendant for quite sometime, which is a Current Account No.191010200007382.

(b) The business of the plaintiff grew with passage of time and with the increased in the volume of business, the bank transaction of the plaintiff grew manifold. To maintain a healthy business with reputation and success, it became necessary for the plaintiff to issue cheque to various parties from time to time to its commitment to those parties. For the aforesaid reason, the plaintiff required bulk cheques for issuing postdated cheques to various parties. For the past few years, the plaintiff had been receiving bulk cheques from the defendant bank and the plaintiff utilized those cheques for issuing postdated cheques.

(c) Such postdated cheques were honoured as and when those were presented to the bank and there was not problem regarding fund of the plaintiff with the defendant bank.

(d) In usual course of business, the plaintiff had issued several postdated cheques for making payment to various parties for the next few months and those cheques were issued in the month of January and February, 2010, and have been cleared from the current account of the plaintiff with the defendant bank.

(e) By a letter dated 26th February 2010, the plaintiff approached the defendant bank for issue of fresh cheques in bulk. In response to the said letter, the defendant bank by their letter dated 4th March, 2010 regretted their inability to issue fresh cheques on the ground that since a large number of cheques were yet to be presented for payment, no further cheque should be issued. The defendant bank even listed the month wise postdated cheques issued by the plaintiff for the month of February, 2010 to June, 2010. From the said letter dated 4th March, 2010 it was clear that by the time the defendant bank had issued the said letter, the postdated cheques for the month of February, 2010 were ready for payment and the defendant bank could have verified the bank account of the plaintiff with them to point out any discrepancies. The defendant bank neglected and failed to observe that for smooth functioning of the business of the plaintiff, and for keeping its commitment to various parties, the plaintiff needed bulk cheques in advance

for preparing and for issuing those to various parties to maintain its goodwill.

(f) The aforesaid unilateral act of the defendant in refusing to issue bulk cheques had created a potential threat to smooth functioning of the business of the plaintiff and the aforesaid act was discriminatory and opposed to be the public policy.
(g) The plaintiff by their advocate's letter dated 5th March, 2010, called upon the defendant bank to forthwith issue bulk cheques to the plaintiff. The defendant received the said letter by hand at their office under their seal and signature but neglected and failed to respond to such letter.

(h) The plaintiff was, therefore, entitled to get a decree for declaration that the defendant has no right to issue the letter dated 4th March, 2010 refusing to issue bulk cheques to the plaintiff which virtually amounted to black listing the plaintiff creating adverse impact on the business and credibility of the plaintiff.

(i)The plaintiff was further entitled to a decree for permanent injunction restraining the defendant bank, their men and agents from giving effect to the said letter dated 4th March, 2010 in any manner prejudicial to the interest of the plaintiff. The plaintiff was also entitled to an order directing the Lake Town Branch of the defendant to issue forthwith bulk cheques to the plaintiff without the least delay.

(j) Cause of action of the suit arose on 4th March, 2010 upon refusal by the defendant bank to issue bulk cheques to the plaintiff against their current account and the cause of action arose at the City Office at 4, Ganesh Chandra Avenue, P.S. Bowbazar, Kol-700013.

7)On the selfsame allegations made in the plaint, the plaintiff came up with an application for temporary injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure thereby praying for an order of temporary injunction restraining the bank, their men and agents from giving effect to the letter dated 4th March, 2010 and for directing the Lake Town Branch of the defendant bank to forthwith issue bulk cheques to the plaintiff against their Current Account No.191010200007382 maintained with the defendant bank.

8)As indicated earlier, the learned Trial Judge has issued notice upon the appellant to show cause why the prayer of the plaintiff should not be granted and also granted ad interim order of injunction.

9)Mr. Chatterjee, the learned advocate appearing on behalf of the appellant, has taken us through the entire averments made in the plaint as well as in the application for temporary injunction and points out that the defendant has been described as one who carries on business in the Lake Town, which is beyond the territorial limit of the City Civil Court at Calcutta. At the same time, the demand letter written by the learned advocate for the plaintiff was also received by the bank at its own office in Lake Town. Mr. Chatterjee submits that no part of cause of action had arisen within the jurisdiction of the City Civil Court at Calcutta. Mr. Chatterjee contends that the cause of action of such a suit cannot accrue at the address of the City Office of the plaintiff, namely No 4, Ganesh Chandra Avenue, which is the alleged place of accrual of the cause of action for the purpose of jurisdiction, indicated in the plaint. In other words, Mr. Chatterjee contends that even if for the sake of argument, all the statements of fact made in the plaint and in the application for temporary injunction are treated to be true, the City Civil Court had no jurisdiction to entertain the suit and grant of ad interim order of injunction. He, therefore, prays for setting aside the order impugned only on the ground of want of territorial jurisdiction of the City Civil Court at Calcutta.

10)In support of his contention, Mr. Chatterjee relies upon the following decision:

1. Agencia Commercial International Limited & Ors. vs. Custodian of the Branches of Banco Nacional Ultramarino, reported in (1982) 2 SCC 482.

11)Mr. Roy Chowdhury, the learned senior advocate appearing on behalf of the respondent-plaintiff, on the other hand, has arduously opposed the aforesaid contention of Mr. Chatterjee and has contended that at this stage, this Court should not interfere with the discretion exercised by the learned Trial Judge holding prima facie case and granting ad interim order of injunction. Mr. Roychowdhury contends that at the stage of grant of ad interim order of injunction, the Court should proceed on the basis of prima facie case, which means, an arguable case to go at the time of trial, and, therefore, even the question of territorial jurisdiction should not be gone into by this Court at this stage. Mr. Roychowdhury submits that even if we hold

that the learned Trial Judge had no territorial jurisdiction to entertain the suit, such finding must be held to be a prima facie finding, and that will not be binding upon the learned Trial Judge at the time of trial. Mr. Roychowdhury, therefore, contends that at this stage, there is no scope of holding that the City Civil Court has no jurisdiction to entertain the suit. Mr. Roychowdhury further contends that when the defendant in a suit is a bank, the cause of action of the suit should be treated to have arisen in all places where the bank has a branch office. Mr. Roychowdhury, consequently, prays for dismissal of the appeal.

12)In support of his contention, Mr. Roychowdhury relies upon the following decisions:
1. M/s. Patel Roadways Limited vs. Prasad Trading Company & Ors. Reported in AIR 1992 SC 1541;

2. Chanana Steel Tubes Pvt. Ltd. vs. M/s. Jaitu Steel Tubes Pvt. Ltd. & Ors. reported in AIR 2000 H P 48;

3. Mayar (H.K.) Ltd. & Ors. vs. Owners & Parties, Vessel M.V. Fortune Express & Ors. reported in (2006) 3 SCC 100.

13)Therefore, the question that falls for determination in this appeal is whether this appeal should be allowed and the order impugned should be set aside on the ground of want of territorial jurisdiction of the learned Trial Judge to entertain the suit on basis of averments made in the plaint.

14)There is no dispute with the proposition of law that an application for temporary injunction, whether at the ad interim stage or at the final hearing stage, is decided on the basis of prima facie case of the applicant to go for trial. If the prima facie case is established, the Court dealing with such application then considers the other two factors, viz. whether the balance of convenience and inconvenience is in favour of granting the injunction and the question of irreparable injury of the applicant if the prayer is not allowed. However, in the absence of proof of prima facie case, the other two factors indicated above are insignificant.

15)We are quite conscious that the word “prima facie” case does not mean a case proved to the hilt, but is one, which is at least “an arguable one” at the time of trial. At the stage of considering the prima facie case, the Court has, however, a duty to see whether the suit is maintainable before that Court. In

other words, the Court at that stage also should be prima facie satisfied with the existence of its jurisdiction to entertain such suit, be it territorial, pecuniary, or inherent.

16)If at that stage, the Court prima facie finds that from the averments made in the plaint itself, the Court has no territorial jurisdiction to entertain the suit in accordance with law, it should not consider the other two factors and reject the application on the ground of absence of prima facie jurisdiction of the Court to give the ultimate relief to the plaintiff.

17)We are unable to accept the extreme submission of Mr. Roychowdhury that at the stage of grant of ad interim injunction, the Court is not required to see the prima facie jurisdiction of the Court to entertain the suit until the other side appears and complains about such lack of jurisdiction. As provided in Order VII Rule 10 of the Code, "the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted." The language employed therein is imperative in nature and the legislature did not permit the Court to unnecessarily be burdened with a suit over which it has no jurisdiction giving the Court the authority of returning the plaint without waiting for trial if it appears from the averments made in the plaint itself that it has no jurisdiction. The effect of an order of return of plaint is that the interim order, if any, passed in the suit automatically is vacated and unless the plaintiff gets the benefit of Section 14 of the Limitation Act, the suit may even be barred by limitation on the date of representation before the appropriate Court.

18)If a Court apparently has no jurisdiction to entertain the suit, even by filing an application for amendment of plaint, the plaintiff cannot pray before the said Court for allowing the same to bring it within its jurisdiction. The Court should, in such a situation, first return the plaint for presentation before the appropriate Court, and the plaintiff should press the application for amendment of plaint before the appropriate Court on representation of the plaint. If the said appropriate Court allows the amendment, it shall then again return the plaint for representation before the original Court, which gets jurisdiction on amendment of the plaint. (See Mst. Zohra Khatoon v Janab Mohammad Jane Alam reported in AIR 1978 Cal 133 (DB) at Paragraph 8 of the judgement for detailed discussion on the subject).

19)We, therefore, propose to consider whether even if all the averments made in the plaint are treated to be true, the learned Trial Judge had the territorial jurisdiction to entertain the suit.

20)In the plaint, the plaintiff has been described as a company incorporated in India under the Companies Act, 1956 having its registered office at Lake Town admittedly situated beyond the territorial limit of the Trial Court and its city office at 4, Ganesh Chandra Avenue, Calcutta- 700013 within the jurisdiction of the Trial Court. The defendant has been described as a limited liability concern, incorporated in India under the Companies Act, having its Lake Town Branch office at Manshabari, Block- B, Lake Town, Kolkata- 700089 admittedly outside the jurisdiction of the Trial Court. The bank account of the plaintiff with the defendant is stated in the plaint to be lying in the Lake Town Branch outside the territorial limit of the Court. Similarly, the letter dated March 4, 2010 was also issued from the Lake Town Branch of the defendant. Even the letter written by the learned Advocate for the plaintiff demanding justice was also stated to be received by the bank at the branch office at Lake Town. In paragraph 12, of the plaint, the plaintiff has averred that the cause of action had arisen at the city branch of the plaintiff at No. 4, Ganesh Chandra Avenue within the jurisdiction of the Trial Court.

21)Therefore, the place of business of the plaintiff cannot, on the basis of allegations made in the plaint, be the place where the cause of action could arise. In this case, even if we accept all statements made in the plaint to be true, the City Civil Court cannot have any jurisdiction to entertain the suit because there is no allegation in the plaint from which it can be inferred that any part of the cause of action arose within the jurisdiction of the Trial Court. There is not even any special factual allegation for which there can be accrual of any cause of action at the city office of the plaintiff and thus, simply because the plaintiff's city office is situated within the jurisdiction of the Trial Court such fact by itself cannot confer jurisdiction upon the Trial Court.

22)So far as the law relating to banking transactions are concerned, the following observations of the Supreme Court in the case of Delhi Cloth and General Mills Co. Ltd. vs. Harnam Singh and others reported in AIR 1955 SC 590 which was quoted with approval in the subsequent case of that Court in the case of Agencia Commercial International Limited and others vs. Custodian of the branches of Banco Nacional Ultramarino reported in (1982) 2 SCC 482 are relevant and quoted below:

"In banking transactions the following rules are now settled: (1) the obligation of a bank to pay the cheques of a customer rests 'primarily' on the branch at which he keeps his account and the bank can rightly refuse to cash a cheque at any other branch: 1912 AC 212 at p. 219 (E); AIR 1942 PC 6 at pp. 7-8 (C) and 1924-2 Ch 101 at p. 117 (D) (2) a customer must make a demand for payment at the branch where his current account is kept before he has a cause of action against the bank: -'Joachimson v. Swiss Bank Corporation', 1921-3 KB 110 (F), quoted with approval by Lord Reid in - Arab Bank Ltd. v. Barclays Bank 1954 AC 495 at p. 531 (G). The rule is the same whether the account is a current account or whether it is a case of deposit. The last two cases refer to a current account; the Privy Council case AIR 1942 PC 6 (C) was a case of deposit. Either way, there must be a demand by the customer at the branch where the current account is kept or where the deposit a made and kept, before the bank need pay, and for three reasons the English Courts hold that the 'situs' of the debt is at the place where the current account is kept and where the demand must be made."

23)We have already pointed out that in this case, even according to the plaintiff, the demand for justice was addressed to the defendant at its Lake Town Branch in tune with the law mentioned above and thus, cause of action has arisen at the Lake Town Branch of the defendant, which is beyond the jurisdiction of the Trial Court.

24)We now propose to deal with the decisions cited by Mr. Roychowdhury.

25)In the case of Chanana Steel Tubes Pvt. Ltd (supra), the Cheques were payable only at certain branches of a Bank located in Delhi but the Cheques were deposited into the account of the plaintiff located in certain other place. Those Cheques in turn were sent to the bank where they were payable viz. Delhi and the Cheques were dishonoured. In such a case, it was held that the Court within whose jurisdiction Cheques were dishonoured will have jurisdiction to entertain suit and not the Court within whose jurisdiction the Cheques was delivered. The facts of the case are quite different. Even if we accept the proposition laid down therein, it is the address of the Lake Town Branch of the defendant where the cause of action arose because the plaintiff has the account in that branch and difference between the parties has accrued therein. Thus, the said decision does not help the respondent in anyway.

26)In the case of M/s. Patel Roadways Limited (supra), the Supreme Court interpreted Section 20 of the Code of Civil Procedure including its explanation in the following way:

"Clauses (a) and (b) of S. 20 inter alia refer to a court within the local limits of whose jurisdiction the defendant inter alia "carries on business". Clause(c) on the other hand refers to a court within the local limits of whose jurisdiction the cause of action wholly or in part arises. It has not been urged before us on behalf of the appellant that the cause of action wholly or in part arose in Bombay. Consequently Cl. © is not attracted to the facts of these cases. What has been urged with the aid of the Explanation to S. 20 of the Code is that since the appellant has its principal office in Bombay it shall be deemed to carry on business at Bombay and consequently the courts at Bombay will also have jurisdiction. On a plain reading of the Explanation to S. 20 of the Code we find an apparent fallacy in the aforesaid argument. The Explanation is in two parts, one before the word "or" occurring between the words "office in India" and the words "in respect of" and the other thereafter. The Explanation applies to a defendant which is a corporation which term, as seen above, would include even a company such as the appellant in the instant case. The first part of the Explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event the courts within whose jurisdiction the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place, it will "be deemed to carry on business" at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The words "at such place" occurring at the end of the Explanation and the word "or" referred to above which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation, it is not the Court within whose jurisdiction the. Principal office of the defendant is situate but the Court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office"."

27)If we apply the said principle to the facts of the present case, the branch office of the appellant at Lake Town is the place where the cause of action has arisen and the city office of the plaintiff at No.4, Ganesh Chandra Avenue is inconsequential for determining the place of cause of action. Thus, the said decision rather supports the appellant.

28)In the case of Mayar (H. K.) Ltd. and Ors. vs. Owners and Parties, Vessel M. V. Fortune Express and Ors. (supra), the Supreme Court was hearing an appeal against an order of the Division Bench of this Court whereby the plaintiffs' suit filed in Admiralty jurisdiction was directed to remain permanently stayed and the bank guarantee furnished by the defendant-respondents in the suit was directed to stand immediately discharged. The plaintiff-appellants were also directed to pay the costs. In dealing with such an appeal, the Apex Court held that for the purpose of getting an order of stay of a suit on the ground of abuse of process, the applicant must show that the plaintiff would not succeed. In other words, the defendant would be required to show very strong case in his favour. The power would be exercised by the Court if defendant could show to the Court that the action impugned was frivolous, vexatious or was taken simply to harass the defendant or where there was no cause of action in law or in equity. The power of the Court restraining the proceedings, the Supreme Court proceeded, was to be exercised sparingly or only in exceptional cases. The stay of proceedings, the Supreme Court held, was a serious interruption in the right of a litigant and the Court before exercising the power to stay the proceedings was required to keep in mind that the positive case had been made out by the defendant whereby the Court could reach the conclusion that proceedings indicated an abuse of the process of Court. According to the Supreme Court, in that case, the defendants failed to make out the case that the plaintiffs were guilty of suppression of jurisdictional clause of Bill of Lading and that the plaintiffs had no case on merits, and, therefore, it would be an abuse of process of the Court unless the plaintiffs were permitted to go ahead with the trial in Calcutta Court. Thus, the order of the High Court staying the proceedings in suit and discharging the bank guarantee were held to be illegal. We fail to appreciate, how the principles required to be followed in staying an Admiralty suit can have any application to a proceeding for temporary injunction where the plaint, prima facie, indicates absence of territorial jurisdiction of the Trial Court. Thus, said decision has no application to the facts of the present case.

29)We, therefore, find that the decisions cited by Mr. Roychowdhury do not help his client in anyway.

30)On consideration of the entire materials on record, we hold that the learned Trial Judge erred in law in entertaining the application for temporary injunction and granting ad interim injunction on such application

notwithstanding the fact that prima facie, the learned Trial Judge lacked territorial jurisdiction to entertain the suit even on the basis of allegations made in the plaint.

31)We, accordingly, set aside the order impugned and reject the application for temporary injunction only on the ground that the learned Trial Judge prima facie lacked territorial jurisdiction to entertain the suit on the basis of averments made in the plaint.

32) We have otherwise not gone into the merit of the case. Appeal, thus, is allowed.

33)In the facts and circumstances, there will be, however, no order as to costs.

(Bhaskar Bhattacharya, J.)

I agree.
(Prabhat Kumar Dey, J.)