(1987) 10 BOM CK 0020

In the Bombay High Court

Case No : Notice of Motion No. 2647 of 1986 in Suit No. 3034 of 1986

Taprogge Gesellschaft MBH APPELLANT

Vs

IAEC India Ltd. RESPONDENT

Date of Decision : 15-10-1987

Acts Referred:

- Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
- Constitution of India, 1950 — Article 51
- Contract Act, 1872 — Section 27
- Specific Relief Act, 1963 — Section 42

Citation : AIR 1988 Bom 157

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : V.V. Tulzapurkar and Dharmadhikari, for the Appellant; Cooper and H. Seervai, for the Respondent

Judgement

1. The plaintiff company, engaged in the business of manufacturing cooling water filters and allied products, incorporated under the laws of the Federal Republic of Germany, seeks a declaration that the defendants, an Indian Company and the plaintiffs erstwhile agents in India, are not entitled to sell or offer for sale two of the plaintiffs'' products known as Taprogge Cooling Water Filters and Taprogge Condenser Tube Clearing systems, hereinafter referred to as the "covered products". This Notice of Motion is for interim injunction restraining the defendants from recommending, offering for sale or selling any of the covered products for a period of five years from 27th Aug. 1985.

(i) THE FACTS

The undisputed facts are, as set out in paras 2, 3, 4 and 5 below.

2. On or about 1st Mar. 1979 Ludwig Taprogge, an individual whose name the plaintiff company bears and the defendant entered into an agreement of agency whereunder the latter was to sell in India the covered products manufactured by Taprogge Ludwig. Clause 13.1 of the contract of agency which imposes trade

restriction on the defendant reads as under :--

"The agent must not recommend, offer, sell or represent products in competition with the covered products. The same applies to the introduction of own products and/or other industrial activities of the agent as well as to indirect or direct participation in third enterprises or companies inside or outside of the agency territory".

Under this clause the products to which the restriction applies include "own products" meaning thereby the products manufactured by the defendant.

3. Owing to certain differences Taprogge cancelled the "agency agreement concluded on 1st Mar, 1979" and informed the defendant that "from Jan. 1986 you will no longer be our representative".

The defendants replied by letter dt. 27th Aug. 1985. In para 2 of this letter, the defendant asserted that-it was always ready and willing to discuss the matter at Bombay. After accusing Taprogge of "wrongful conduct", the defendant declared "we are..... hereby terminating the agency agreement with immediate effect....". The termination of the agency agreement was based on two reasons. The first reason was that the defendant had, under Clause 17.3 of the agreement the right to terminate the agreement for "important reasons". The second reason was the existence of such "important" reason. Thus, the defendant acted under the agreement of agency.

4. The plaintiffs claim that the drawings listed at Ex.B to the plaint and at Ex.6 to t he affidavit-in-reply were handed over to the defendants by plaintiffs'' letter at Ex.C-1, dt. 23-10-1984 which was acknowledged by the defendant by their letters at Exs.C-2 to C-4. The defendants have deposited these drawings with the Prothonotary and Senior Master of this Court, pursuant to the ad interim order made by this Court in this very Notice of Motion. The defendants do not desire to take them back. Therefore, no relief in respect of these drawings need be granted at this stage. However, there is a controversy between the parties as to whether the drawings were handed over to the defendants under letter Ex.C-1. It is recorded in the letters that the documents were given "for Taprogge I.A.E.C. Ltd." and not to the defendants. The defendant claims that the documents were received for and on behalf of "Taprogge IAEC Ltd." and not for its own purpose. However, nothing turns on this controversy.

5. The only relief claimed in the notice of motion that has to be considered is the injunction restraining the defendants from recommending, offering or selling any of the covered products for a period of five years. The plaintiffs seek to enforce the negative covenant embodied in Clause 13.1 which has been quoted in para 2 above.

(ii) THE DEFENDANTS'' CASE

6. The defendants urged three points :--

(i) The negative covenant embodied in Clause 13.1 of the contract sought to be enforced by the injunction is in restraint of trade and therefore void u/s 27 of the Contract Act.

(ii) The plaintiff is a company incorporated under the laws of Federal Republic of Germany. By virtue of Clause 20.1 of the Contract, the contract is, no doubt, governed by the German Laws. The creation and validity of the contract is governed by the German laws, but its performance has to take place in India. The performance of the contract is illegal as it offends Section 27 of the Indian Contract Act. Having regard to the rules of conflict of Laws the Negative covenant, even if valid under the German Laws, cannot be enforced in _____ India as it is opposed to Section 27 of the Contract Act and the public policy of Indian Law manifested by Section 27 of the Contract Act.

(iii) The contract on which the suit is based, was entered into with an individual by name Ludwig Taprogge. The suit is filed by a company named Taprogge Gesellschft MBH with whom the defendants have no privity of contract. No assignment of the contract in favour of the plaintiff is pleaded. Even if such an assignment were pleaded, the contract, in law, cannot be assigned and, therefore, the plaintiffs have no cause of action against the defendants.

(iii) TRADING RESTRICTION - VALIDITY

7. Even if performance of a positive or affirmative agreement cannot be specifically enforced, a negative covenant can be enforced by an injunction. The defendant who has bound itself not to sell the covered products can, therefore, be restrained from doing so. Based on the observations of the Supreme Court In Niranjan Shankar Golikari Vs. The Century Spinning and Mfg. Co. Ltd., . (Hereinafter referred to as Niranjan Golikari), the plaintiffs contend that the restraint imposed by Clause 13.1 is reasonable as it (a) is limited in point of time to 5 years, (b) is restricted only to two products and (c) does not prevent the defendants from earning income by pursuing its business or trade. Therefore, according to the plaintiffs, since the restraint is reasonable, it is not void u/s 27 of the Act.

8. Counsel for the defendant asserts that Niranjan Golikari arose out of a restraint operative during the term of the contract whereas in the present case the plaintiffs seek to impose a trading restriction after the contract has been terminated. This distinction being of a fundamental character, the ratio of Niranjan Golikari has no application. In view of the decision in Superintendence Company of India (P) Ltd. Vs. Sh. Krishan Murgai, (hereinafter referred to as Krishan Murgai), the restraint which operates after the termination of the contract is absolutely void unless saved by the exception to section 27 of the Act.

9. Niranjan Shankar Golikari Vs. The Century Spinning and Mfg. Co. Ltd., was a unanimous decision of a bench of two judges. In Superintendence Company of India (P) Ltd. Vs. Sh. Krishan Murgai, , two out of the three judges on the bench declined to consider the validity of the negative covenant. The question was

decided by a single Judge (A.P. Sen, J.) who held that all agreements in restraint of trade are absolutely void unless saved by the exception to Section 27 of the Act. Counsel for the plaintiffs who discerns a conflict between the decisions in Niranjan Golikari and Krishan Murgai urged me to follow the decision of the larger bench in Niranjan Golikari, as ruled by the Karnataka High Court in Govindanaik G. Kalaghatigi Vs. West Patent Press Co. Ltd. and Another, .

10. The distinction between the restraints imposed by a Contract, operative during the subsistence of the contract and those operative after the lifetime of the contract is of a fundamental character. The purpose, incidents and consequences of the two types of restraints need to be borne in mind before proceeding to determine the validity of the restraint sought to be enforced in this notice of motion. While guarding jealously the freedom of contract to engage in any trade, business or profession as one wills, the law abhors monopoly which prohibit a person from pursuing a lawful trade, business or profession. This being the policy of law, any restraint on the freedom of trade, business or profession, is considered void. The law enacted by Section 27 of the Act is founded on the public policy which disapproves and negates the restraints on trade, business or profession. Though this is the general rule of law, all corners are not alike, and the restraints imposed by them are varied in their nature and effect. The contracts between the vendor and purchaser of business are generally marked by equality of strength and bargaining power. In the contracts between Master and servant, this may not be so.

Again, the purpose which a restraint is expected to serve determines the character of the restraint. For instance the restraints which operate during the term of the contract have to fulfil one kind of purpose viz. furthering the contract. On the other hand, the restraints operative after the termination of the contract strive to secure freedom from competition from a person who no longer works within the contract. There is, thus, a natural difference which marks the restraints which tend to further the contract as in Gaumont British Picture Corpn. Ltd. v. Alexander (1936) 2 All ER 1686 or Brahamputra Tea Co. v. Scarth ILR (1885) Cal 545. An implied covenant in such exclusive agreements preventing an employee from serving anywhere else during the term of the contract is intended to ensure the fulfilment of the contract and, therefore is not in restraint of trade, business or profession Gaumont British Picture Corp. v. Alexander (1936) 2 All ER 1686, unless the contract is unconscionable, excessively harsh or onesided.

11. The law laid down by Niranjan Shankar Golikari Vs. The Century Spinning and Mfg. Co. Ltd., and Superintendence Company of India (P) Ltd. Vs. Sh. Krishan Murgai, will have to be considered against the background of the rules summarised in para 10 above.

Section 27 of the Act makes every agreement by which one is restrained from exercising lawful trade, business or profession, to that extent void. Exception 1 to the section -- which is the solitary exception -- takes out of the rule, the contracts of sale of goodwill of a business by which the buyer agrees to refrain from carrying on similar business within the specified local limits, provided that such limits are reasonable.

12. Niranjan Shankar Golikari Vs. The Century Spinning and Mfg. Co. Ltd., arose out of a contract of employment for five years. Niranjan Golikari left the services four years before the expiry of his contract, whereupon the Century Spinning & Mfg. Co. Ltd. filed a suit for enforcing the negative covenant. Clause 6 of the contract obliged the defendant, Niranjan Golikari, to devote whole of his time and energy to the business of the plaintiff "during the period of his employment", Clause 17 restrained him from engaging in or carrying on competing business or serving in any capacity with an employer engaged in competing business. The Judgment of Supreme Court in Niranjan Golikari case reveals following facts : --

(i) The injunction sought by the plaintiff was confined to the period ending on 15th March 1968 which was the last day of the five years'' term of the contract (Paragraph 5 of the report page 1100).

(ii) The Supreme Court was considering the restraint of trade during the term of the contract. (Para 6 page 1100)

(iii) The Supreme Court observed that the restraints, if reasonable, are valid.

13. These observations of the Supreme Court have been strongly relied upon by counsel for the plaintiff in support of his argument. But a closer look at the facts of the case and the judgment of the Supreme Court will reveal that the Supreme Court was considering a case which was very much different from the present case. The result of the discussion of the Supreme Court has been summarised in para 15 of the Report at page 1104 :

(i) The considerations against the restrictive covenants are different in cases where the restraint is applied after termination of the contract.

(ii) The restraints during the period of the contract "are generally not regarded as restraints on trade" and, therefore, are outside S. 27.

(iii) The restrictions operating during the term of the contract may be void if they are excessively harsh or unconscionable;

(iv) The negative covenant "in the present case restricted as it is to the period of employment"..... was unreasonable.

14. The Supreme Court was examining the considerations relevant for determining the validity of the restraints during the period of the contract. For instance, in para 11 the distinction between the "the restraints applicable during the term of the contract of employment and those which apply after its cessation" was clearly recognised. Then in the same para after referring to English case Gaumont British Picture Corporation Ltd. v. Alexander (1936) 2 All ER 1686, the observations of Porter J. applicable only to the period "during the period of contract" were quoted. Para 12 of the Supreme Court''s Judgment embodies its conclusion that in India too the restraints operative during and after

the term of the contract are viewed differently. After referring to Brahamputra Tea Co. v. Scarth ILR (1885) Cal 545, a case of restraint during the term of contract, the Supreme Court concluded that the negative covenant which was essential to the fulfilment of the contract was valid. In para 13, the Supreme Court rejected the cases Mason v. Provident Clothing & Supplying Co. Ltd. 1913 AC 724 and Herbert Morris Ltd. v. Sexelby (1916) I AC 688 as the negative covenants in these cases were to operate after the termination of the contract. It is, therefore, clear that the Supreme Court was considering the validity of a negative covenant operative during the term of the contract. That is why the Supreme Court rejected the cases of Mason v. Provident Clothing & Supplying Co. Ltd. and Herbert Morris Ltd. v. Sexelby.

15. What the Supreme Court laid down was that Clause 17 of the contract between Niranjan Golikari and his employer was valid. As already stated, Clause 17 of the contract, which the Supreme Court was called upon to construe, embodied a negative covenant operative during the term of the contract. The following sentence in para 15 of the judgment makes this clear :

".....There is, therefore, no validity in the contention that the negative covenant contained in Clause 17 amounted to a restraint of trade and, therefore, against public policy".

This means that the negative covenant which restrained Niranjan Golikari "before the expiry of the said period of five years" was valid. I have, therefore, no doubt that the Supreme Court was dealing with a case of negative covenant operative during the period of the contract and not a covenant operative after the termination of the contract. What was considered was the validity of service restriction applicable while the contract was alive. The contract to serve an employer exclusively during the specific period necessarily means that during such period the employee shall not serve elsewhere and, therefore, such a negative covenant is not in restraint of trade but in in furtherance of the trade or profession. Therefore, the considerations relevant for determining the validity of such covenants are different from those relevant to cases like the one which I am called upon to decide. Generally speaking, the negative covenants operative during the term of the contract are not hit by Section 27 of the Contract Act because they are designed to fulfil the contract and not to restrict them. On the other hand, when a restriction applies after the contract is terminated, the restriction on freedom of trade, business or profession takes the form of restraint on trade, business or profession. This distinction which is of a fundamental nature has to be borne in mind; otherwise the perspective will be lost.

16. I will, now, examine whether the Judgment of the Supreme Court in Superintendence Company of India (P) Ltd. Vs. Sh. Krishan Murgai, conflicts with Niranjan Shankar Golikari Vs. The Century Spinning and Mfg. Co. Ltd., .

Clause 10 of the Contract of employment placed the employee Krishna Murgai under post-service restraint that he shall not serve in any other competing firm for two years at the place of his last posting. Clause 10 was operative for a period of two years "after you left the company". The services of the employee were terminated by the employee The single Judge of the Delhi High Court held that the restraint of two years after the service was reasonable. Mr. Justice A. P. Sen in para 18 of his judgment concluded that the negative covenant against working during the term of the contract is not in restraint of trade and that the doctrine of restraint on trade never applies during the continuance of the contract. In paras 19 and 20 his Lordship considered Niranjan Golikari''s case and finally in para 23, held that Niranjan Golikari''s case was not applicable. The reason was this : In Niranjan Shankar Golikari Vs. The Century Spinning and Mfg. Co. Ltd., , the negative covenant was operative during the term of the contract; in Superintendence Company of India (P) Ltd. Vs. Sh. Krishan Murgai, , the negative covenant operative after cessation of the contract was sought to be enforced.

17. The substance of the decision of Mr. Justice A. P. Sen on the question of validity of post-service restraint is this.

(a) Section 27 of the Indian Contract Act is a statutory recognition of the English doctrine of restraint on trade.

(b) Once statutorily enacted, the rule must be interpreted on the basis of the language of the statute uninfluenced by "the manner in which the analogous provision comes to be construed..... in order to bring the construction within the scope and limitations of the rule governing the English doctrine of restraint of trade".

(c) Whether an agreement is void u/s 27 of the Contract Act must be decided upon the wording of that section. All agreements in restraint of trade are void. The only exception is in exception No. 1.

(d) Section 27 of the Contract Act does not admit of the test of reasonableness unless the case falls within the exception.

(e) Section 27 has wiped out the distinction between partial and total restraint and declares all restraints void unless covered by the exception.

18. The question, therefore, is : Is there any conflict between the Judgments of Supreme Court in the case of Niranjan Shankar Golikari Vs. The Century Spinning and Mfg. Co. Ltd., and Superintendence Company of India (P) Ltd. Vs. Sh. Krishan Murgai, ?

The Judgment of Supreme Court in Niranjan Golikari was in respect of the period covered by the contract of employment. The Judgment in Krishan Murgai arose, on the other hand, out of the facts which show that it applied to the period after the termination of the contract. The two decisions apply in different spheres and to different situations. There is no conflict at all between the two decisions. In Niranjan Golikari''s case the Supreme Court did not hold that the post-employment restrictive covenant was valid. All that it was concerned was whether the implied negative covenant which applied during the term of employment could be enforced. Since there is no conflict at all, the question of choosing one of the two judgments by the subordinate courts does not arise. Consequently, the conditions necessary for application of the Judgment in Govindanaik G. Kalaghatigi Vs. West Patent Press Co. Ltd. and Another, of Karnataka High Court do not exist. It is clear to me that the nature of the transaction does not fall within the exception to Section 27 of the Contract Act. It is not the plaintiffs case that it does. In the result, therefore, the restrictive covenant which the plaintiff seeks to enforce in this suit clearly falls within the prohibition of Section 27 of the Act. I am bound to follow the judgment of the Supreme Court in Krishan Murgai as its ratio applies to this case. Having regard to the rule kid down in Krishan Murgai (Para 17 of this Judgment), the negative covenant embodied in Clause 13.1 of the contract is void.

(iv) ENFORCEABILITY OF THE NEGATIVE COVENANT -- CONFLICT OF LAWS.

19. I will now examine the second point urged by the defendants.

While conceding that the creation of the contract may be valid, the defendant has seriously questioned the legality of the performance of the negative covenant embodied in Clause 13.1 of the Contract. The argument based on conflict of laws rules is that the performance of a validly created contract cannot be permitted in India, if such performance is opposed to the public policy of Indian law or to a statutory enactment.

20. In order to identify and apply the correct conflict of laws principles, the proper law of the contract needs to be determined. The proper law of contract means the system of law by which the parties intend the contract to be governed or where such intention is not clear, the system of law with which the transaction has its closest and most real connection. There are three ways of determining the proper law of contract : --

(i) by express selection by the parties,

(ii) by inferred selection from the circumstances; or failing either of these,

(iii) by judicial determination of the system of law with which the transaction has the closest and most real connection.

However by Clause 20.1 of the Contract, the parties have chosen the German Law as the proper law of the contract. The validity of the contract is, thus, governed by German Law. The arguments proceeded on the assumption that the contract in both its aspects the making and the performance -- is valid under the German Law. Ordinarily the formation and validity of the contract, its performance, discharge and interpretation are all governed by the same law, which governs the creation and performance of the contract. This means that the German Law governs the making and performance of the contract. This general rule, however, is subject to exceptions.

21. It is, therefore, necessary to find out whether the facts and the context of this case attract any exceptions under the conflict of laws rules. The rule applicable in England is this. The validity of the contract must be determined according to the English Law -- independently of the law of any foreign country, if the application of the foreign law, would be opposed to the public policy of English Law or the provisions of an Act of Parliament which applies to the contract. Thus, the making of the contract between the plaintiff and the defendants is valid under the German Law. Its performance in Gerrnany may also be valid. But if the application of the German Law, that is to say, enforcement of the negative covenant, would be opposed to the public policy of Indian Law or the provisions of the Indian Statute, a choice of law governing the performance of the negative covenant may have to be made. This is inevitable if there is a conflict between the German law which created the contract and the laws of India where the contract has to be performed.

In the event the performance of a contract valid under a foreign law is opposed to the fundamental policy of Indian Law, the appropriate rule of conflict of laws would govern the judicial determination of the conflict. The courts in England have refused to enforce a foreign law if its enforcement in England would be opposed to the fundamental policy of English Law. In certain cases they have refused to apply such laws if such application would be contrary to the interests of the United Kingdom or contrary to justice or morality. Thus, the contracts valid under the foreign law are not enforced if they are entered into under duress, are champertous or in restraint of trade and so on.

22. The principle that emerges is that a contract, valid by the proper law, cannot be enforced in the country where it has to be performed if its performance would be opposed to the fundamental principles of public policy or a statute of that country. It is a general principle of the Conflict of Laws that the Courts of a country will not apply any foreign law, if and in so far as its application would lead to results contrary to the fundamental principles of public policy of the lex fori.

23. In applying the principles stated above, it is of the essence of the matter that there should be a conflict between the foreign law and its enforcement in the country where it has to be performed. In other words, the foreign law must conflict with a part of the lex loci solutionis. What is relevant is not the character of the foreign contract in the abstract but the result of its enforcement in the concrete cases.

The rule which applies to contracts opposed to fundamental principles of the public policy also applies to contracts, the performance of which is forbidden by the statutory Law. For example, if the contract has to be performed in India, Indian statute will govern the legality of the performance. Thus, if the rules established by English Courts are followed in India, Indian Courts will not enforce the proper law of a contract if its making or performance involves the violation of an Act of the legislature. In a nutshell, the rule is that, a contract, whether lawful by its proper law or not, is invalid in so far as its performance is unlawful by Lex Loci Solutionis. The conflict of laws principles enunciated by Dicey & Morris have been affirmed by Cheshire and North also.

24. International breach of a foreign law and its effect on the validity of the performance of the contract were considered by English courts. Regazzani v. K. C. Sethia 1958 AC 301 directly involved breach of Indian Law. Jute was sold by an Indian seller cif European Port. To the knowledge of both buyer and seller the goods were to be delivered in Genoa with the intention of shipping them to South Africa. The sale of jute to South Africa had been made illegal by the Indian Law. The House of Lords refused to enforce the contract in England on grounds of "public policy and international Comity".

In Foster v. Driscoll (1929) 1 KB 470 several persons combined to sell and ship whisky intended to be sold in the United States at a time when the import and sale of alcoholic drinks was illegal in that country. The English Court refused to enforce the contract as it involved breach of American Law.

Ralli Bros. v. Compania Naviera Sola Y. Aznar (1920) 2 KB 287 went ahead to enunciate the fundamental principle underlying the rule on foreign illegality : where a contract requires an act to be done in a foreign country, it is, in the absence of very special circumstances, an implied term, of the continuing validity of such provision that the Act to be done in the foreign country shall not be illegal by the law of that country (1920) 2 KB 287.

25. Private International Law Jurisprudence deals with the application of a foreign law for the determination of an issue raised in the Courts of another country. Every country has its national or municipal jurisprudence. So, too, it has its own system of Private International Law Jurisprudence The proper law of contract if enforced in India conflicts with Section 27 of the Indian Contract Act. The English system resolves this conflict by applying the rule set out in paragraphs 21-24 above. Must the same rule govern India''s jurisprudence of Conflict of Laws? There are critics of the wholesale application of English rules to Indian situations. However, I see no impediment in adopting a well settled rule if it accords best with our sense of justice, equity and good conscience.

26. The growing interdependence of nations, the increase in international trade and commerce, the inevitable inter-action of different legal systems and the resultant conflict of laws underscore the necessity and expediency of evolving or adopting an appropriate rule of conflict of laws. Once it is realised that the proper law of contract may not be consistent with the law of the forum, it becomes necessary to resolve the conflict in such a manner that the law of the country where the contract has to be performed is not violated. This is entirely consistent with the general principles not only of Indian jurisprudence but the jurisprudence of all civilized countries. Moreover, adoption of well accepted rules of national jurisprudence in International sphere is an accepted practice.

On the reasoning of Ralli Brothers (1920) 2 KB 287 it is reasonable to hold that in order that the contract continues to be valid, it is an implied term of the contract between the plaintiff and the defendant that its performance in India shall not be illegal by the Indian Law. In other words, if the performance of the negative covenant is illegal by the Indian Law -- as indeed it is -- the contract ceases to be valid.

27. No Indian judicial decision on the application of the conflict of laws principles to cases of contracts in restraint of trade was cited. However, the conflict of laws rules set out in this part of the judgment have been judicially accepted, in cases arising out of foreign arbitration award. In S. Mohd. Naim Mohd. Alam Vs. Rouraffic and Far Eastern Ltd., the Calcutta High Court refused to enforce the awards made in London on the ground that the umpire had acted contrary to the fundamental principles of fair play. In Se Se Oil Vs. Gorakhram Gokalchand, and in Societa Anonmina Lucchesse Qlii E. Vini Lucca Vs. Gorakharam Gokalchand, this Court and the Madras High Court respectively refused to enforce foreign awards as the contracts out of which arbitration proceedings arose contravened the provisions of the Vegetable Oils and Oilcakes (Forward Contracts Prohibition) Order, 1944.

28. It is thus clear that the principle of Private International Law enunciated by Diecy and Cheshire and laid down by the English decisions referred to earlier have been judicially adopted and assimilated in the Indian law. No doubt, the cases decided by the Indian High Courts arose out of arbitration suits. But the principles that emerges from these decisions is that a contract made in a foreign country cannot be enforced in India if it contravenes the provisions of Indian statute or fundamental principles of jurisprudence. It is, therefore, reasonable to conclude that the rules of conflict of laws set out in paras 21 to 24 of this judgment are also the rules of Indian Conflict of Laws Jurisprudence.

29. It is, therefore, clear that the negative covenant embodied in Clause 13.1 of the Contract between the parties to this suit, even if it is valid under the German Law, cannot be enforced in India. For this reason also the plaintiff cannot be granted the injunction that has been prayed for.

(v) CAUSE OF ACTION

30. The contract with the defendant was entered into by the individual by name Ludwig Taprogge. The suit is instituted by the company named Taprogge Gesellschft MBH. The plaintiffs have not pleaded as to how they are entitled to sue the defendants on the contract executed by the individual Ludwig Taprogge. It cannot, therefore, be said that the plaintiffs have any cause of action against the defendants. Assuming however that the plaintiffs are the assignees of the contract from Ludwig Taprogge, such assignment has not been pleaded. Therefore, the plaintiffs do not have any right to sue the defendants on this contract.

(vi) ORDER

Having regard to what I have stated in the foregoing paras of this Judgment, I hold that (a) the negative covenant sought to be enforced in this suit is absolutely void, (b) the negative covenant even if it is valid under the proper law of contract cannot be enforced in India and (c) the plaintiffs have no cause of action against the defendants. For all these reasons, the plaintiffs'' Notice of Motion is dismissed with costs.

