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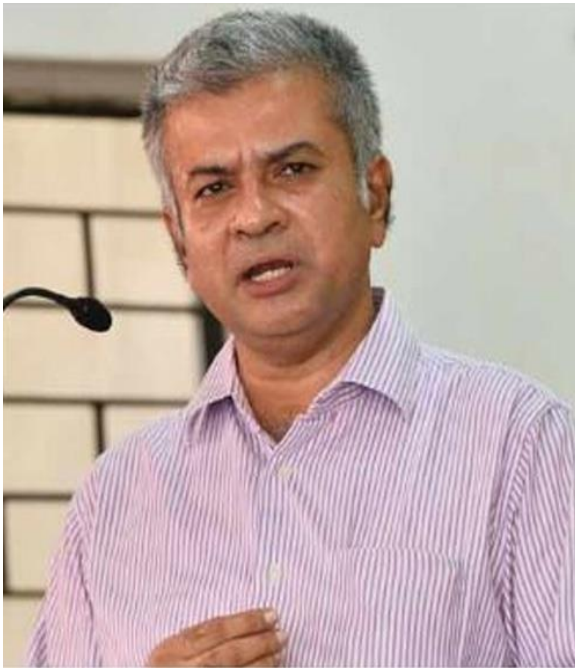
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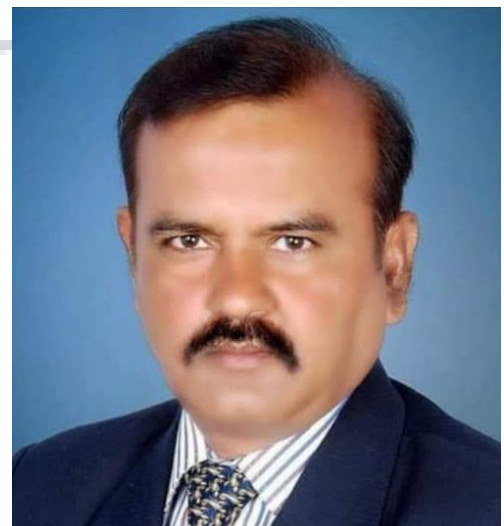
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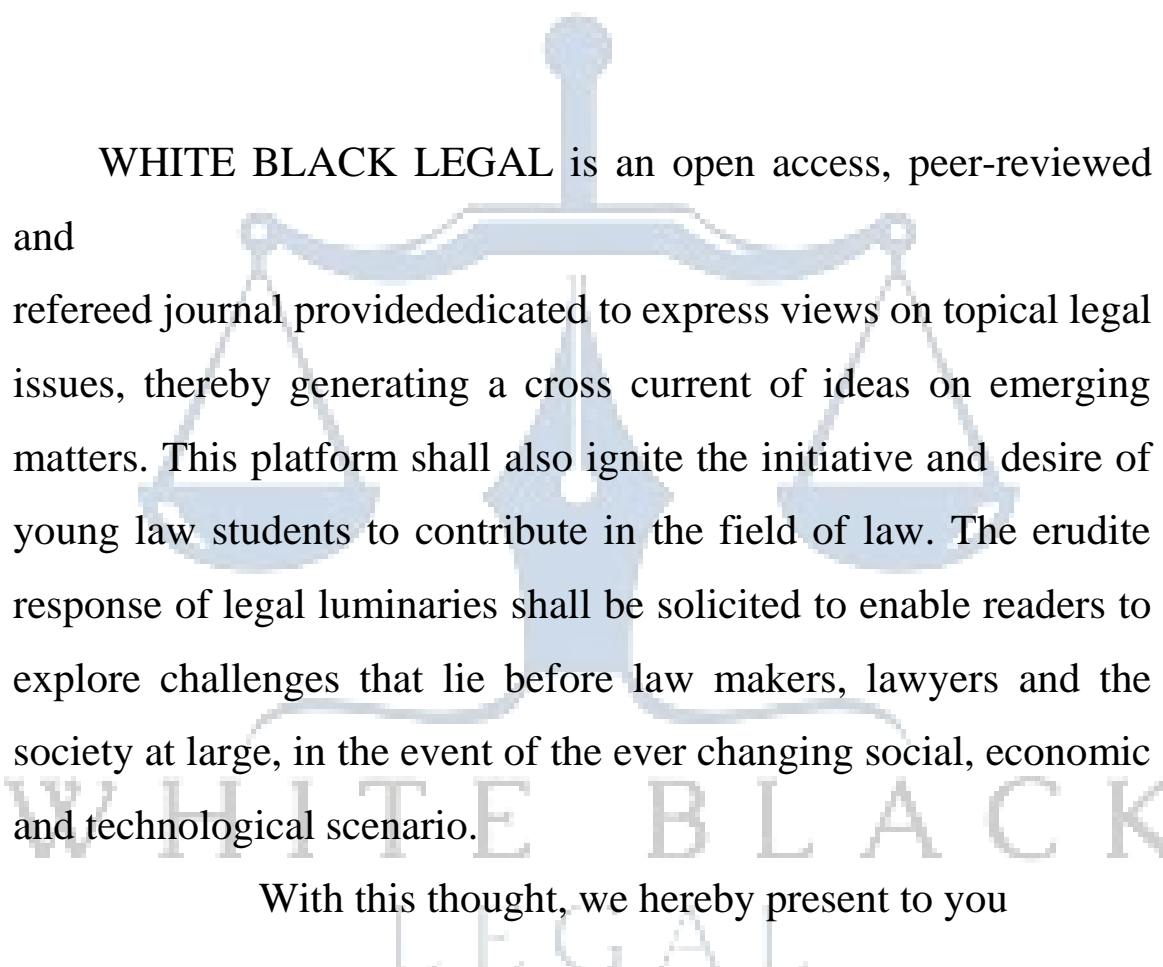


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With this thought, we hereby present to you

# **PROBLEM OF JURISDICTION IN PRIVATE INTERNATIONAL LAW AND STAY OF ACTIONS**

AUTHORED BY: SURYANSH TIWARI

## **INTRODUCTION**

Generally speaking, Jurisdiction denotes the extent of power of a court to entertain suits and applications. It implies authority and competency of the court to adjudicate disputes presented before it.<sup>1</sup> For a Court to have Jurisdiction to adjudicate a particular controversy, it must not only have Jurisdiction to try the matter but also have the authority to decide the questions in issue and pass appropriate orders.<sup>2</sup> There could be three kinds of Jurisdiction of Courts, that is, Territorial, Pecuniary and Subject-matter jurisdiction. However, Jurisdiction may also be classified as Original or Appellate.

The problem of Jurisdiction in Private International Law arises as the case involves a 'foreign element'. This implies that a court has come across a case in which one or the other element is connected with a foreign country, that is, the case involves the application of different system of law of another country. The foreign element could be anything as the parties may be of different nationality<sup>3</sup> or the property may be situated in some other country or the tort may have been committed in some other country etc.

## **Problem of Jurisdiction**

The first ques that arises in conflict of laws cases is whether the forum or the court has the power to decide the case in hand.<sup>4</sup> The question of Jurisdiction also arises when the question before the court is of recognition or enforcement of foreign judgement, wherein the court has to decide that whether the foreign judgement was given by the court of competent jurisdiction. Generally, the Procedural laws of the country specify that in what matters will the court have jurisdiction. The problem of Jurisdiction shall be discussed both under Indian<sup>5</sup> and English

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<sup>1</sup> Mulla, *The Key to Indian Practice: A Summary of Code of Civil Procedure* 7 (Lexis Nexis, Haryana, 12<sup>th</sup> edn.)

<sup>2</sup> Official Trustee, West Bengal v. Sachindra Nath Chatterjee AIR 1969 SC 823.

<sup>3</sup> Private International Laws and Recognition of foreign judgements, available at: <https://blog.iplayers.in/private-international-laws-recognition-foreign-judgements> (last visited on Dec 10, 2021).

<sup>4</sup> Jurisdiction of commercial courts in private international law, available at: <https://www.sconline.com/blog/post/2021/03/09/commercial-contract> (last visited on Dec 18, 2021)

<sup>5</sup> The principal law dealing with the question of Jurisdiction in India is Code of Civil Procedure, 1908.

principles.

The topic can be discussed under three broad heads-

- a) Against whom actions may be filed?
- b) Who may file a suit?
- c) Actions in respect of the property

As for the question that what type of actions may be filed, they may be personal actions like breach of contract, tort etc. or may be related to property or may be related to status like suits in adoption, custody, matrimonial cases etc.

### **Against whom the action may be filed**

**English Law:** In English law, the rule for personal actions (an action *inter partes*) is that the court has jurisdiction if the process is served on the defendant when he is present in England even if he is on a fleeting visit or he is in transit.<sup>6</sup> It is immaterial if the defendant is foreigner or the subject-matter of the suit is not connected to England. Once the process is served on the defendant while he is present in England, the court has jurisdiction to try the suit.

The English court may also have jurisdiction when-

- a) The court assumes jurisdiction against an absentee defendant<sup>7</sup>, or
- b) The defendant submits to the Jurisdiction.<sup>8</sup>

### **Defendant Present within the Jurisdiction**

It is noteworthy that if the defendant is brought within the jurisdiction by fraud or force then the service summons on him shall be quashed.<sup>9</sup>

**Maharanees of Baroda v. Wildenstein**<sup>10</sup>, In this case Maharanees of Baroda purchased a painting, which was believed to be 'La Poesie' by Francois Boucher, from Mr. Wildenstein,

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<sup>6</sup> Basic Principles of Jurisdiction in Private International Law: The European Union, The United States and England, available at: <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/basic-principles-of-jurisdiction-in-private-international-law-the-european-union-the-united-states-and-england> (last visited on Dec 22, 2021).

<sup>7</sup> The rules have been incorporated in Order 11, Supreme Court Rules.

<sup>8</sup> Choice of Jurisdiction, available at: <https://www.legalserviceindia.com/legal/article-4394-choice-of-jurisdiction.html> (last visited on Dec 22, 2021)

<sup>9</sup> Watkins v. North American Land Co (1904) 20 T.L.R. 534 (H.L.).

<sup>10</sup> (1972) 2 All E.R. 689.



who was an art dealer, in Paris. The Maharanee got the painting formally evaluated in England and it was found that the painting was not a work of Boucher.<sup>11</sup>

A suit was filed by Maharanee and the process was served upon the defendant in 1970 when he was in England visiting the Ascot races. The defendant objected to the court's jurisdiction. The court observed that since the summons was properly served on the defendant, while he was in England, though on a short visit, the plaintiff was entitled to continue the proceedings and the case could be tried in England.

Substituted service: In English law, the process must be served personally on each defendant, though substituted service is permitted in certain cases. Lord Reading pointed out following two circumstances- (a). when the defendant went outside the jurisdiction to evade the service, or (b). Defendant went outside the jurisdiction with some other motive but he had the knowledge of the issue of process before he went out of the jurisdiction.<sup>12</sup>

Assumed Jurisdiction:

The above general rule of jurisdiction posed problems in those cases where the defendant was outside the jurisdiction. To counter this problem certain rules were developed which were then consolidated as Order 11 of the Supreme Court Rules. The rules contained herein authorised the English courts to order service out of the jurisdiction, on a defendant who is neither present within the jurisdiction and nor has submitted to the jurisdiction.

The court assumes jurisdiction:

- (i) Where the subject-matter is land situated within the jurisdiction.
- (ii) Where any act, deed, contract or liability affecting land within the jurisdiction is sought to be set aside or enforced in an action.
- (iii) Where the person/corporation against whom any relief is sought is domiciled or ordinarily resident within the jurisdiction.

In **Levene v. Inland Revenue Commissioner**<sup>13</sup> it was held that residence here

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<sup>11</sup> Maharanee of Baroda v. Wildenstein, available at: <https://ww.en.freejournal.org/52847984/1/maharanee-of-baroda-wildenstein.html> (last visited on Dec 25, 2021).

<sup>12</sup> Paras Diwan and Peeyushi Diwan, *Private International Law* 84 (Deep and Deep, New Delhi, 4<sup>th</sup> edn.).

<sup>13</sup> (1928) A.C. 217.

signifies habitual residence and not temporary.

- (iv) If the defendant is not domiciled or ordinarily resident in Scotland-
  - (a). When an action is brought against a defendant to rescind/dissolve/annul a contract or recover damages for breach of contract which was either-
    - made in England, or
    - made by an agent trading/residing in England, or
    - by its terms or by implication is to be governed by English Law.
  - (b). In case of breach of contract made in or out of England, if the performance of the contract has to happen in England.
- (v) Action based on Tort committed in England.
- (vi) Injunction to order defendant to do or refrain from doing something in England. It is immaterial whether or not the damages are sought in respect thereof.

In **Rosler vs Hilbery**<sup>14</sup> it was observed that the main relief sought should be injunction and shouldn't be incidental to the main relief.

**Indian Position:** In India, Section 19 and Section 20 of the Code of Civil Procedure incorporate rules relating to jurisdiction. A suit for wrong to movable property may be brought either at a place where cause of action arose or where the defendant resides, carries on business or personally works for gain.<sup>15</sup>

Thus, an Indian court has jurisdiction in any of the above case. This section is confined to torts committed in India and to defendants residing in India. It does not include in its purview suits in respect of foreign torts.<sup>16</sup>

The defendant must reside in India at the time of institution of suit and if he resided outside India at that particular time, the court has no jurisdiction irrespective of the fact that subsequently he resides within the jurisdiction of court.<sup>17</sup>

Section 20 deals with all suits not covered by any of the foregoing rules. In such suits following courts have jurisdiction-

- a) where the cause of action arises, wholly or in part

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<sup>14</sup> (1925) 1 Ch. 250.

<sup>15</sup> C.K. Takwani, *Civil Procedure with Limitation Act, 1963* 143 (EBC, Lucknow, 8th edn.)

<sup>16</sup> Govindan Nair v. Achutha Menon (1916) 39 Mad. 433.

<sup>17</sup> Mohankumaran Nair v. Vijayakumaran Nair AIR 2008 SC 213.

- b) where the defendant resides, carries on business or personally works for gain, or
- c) In case of two or more defendants, where any of them resides or carries on business or personally works for gain, provided either- (i) the leave of court is obtained, or (ii) the defendants who do not reside/ carry on business/ personally work for gain acquiesce in such institution.<sup>18</sup>

The factors relating to foreign torts and other inter-partes suits are covered in section 20 of CPC. In **Kasinath vs Anant**<sup>19</sup>, a question came before the Bombay High Court that whether defendant's presence within jurisdiction is enough to confer jurisdiction. In this case the defendant refused to give plaintiff's share to him to which he was entitled under a contract. Under the contract both plaintiff and defendant were entitled to share the income from the property situated outside the jurisdiction. The defendant was not residing within the jurisdiction though he was present at the time of the suit.

It was held that the court has jurisdiction as it follows English legal system.

Clause 12 of the Letters Patent also confer jurisdiction on the High Courts on the basis of residence of defendant within the jurisdiction.

**Service of summons outside India (Order 5 of CPC):** Where the defendant resides outside India and has no agent to accept service the summons shall be served by post or courier or fax or electronically. If the defendant resides in Bangladesh or Pakistan then the summons may be sent to any court (not being a High Court) in that country for service on the defendant.<sup>20</sup>

### **SUBMISSION TO JURISDICTION**

Parties may submit to the jurisdiction of the court. In this regard, the concept of forum shopping may be referred here.

**Forum Shopping-** It refers to the practice of choosing the court or jurisdiction that has the most favourable rules or laws for the position being advocated. A party has this prerogative when more than one court has jurisdiction over the dispute choosing the court which gives it an

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<sup>18</sup> *Supra* note 15 at 144.

<sup>19</sup> (1899) Bom. 407.

<sup>20</sup> The Code of Civil Procedure (Act 5 of 1908), Order V rule 25.

advantage over the other party.<sup>21</sup> The party considers the right forum and the law which would best protect its interests.

**English Law:** If a defendant who is outside the jurisdiction of the court submits to the jurisdiction of the court, under an express agreement or by conduct, the court gets the jurisdiction to try the case. It is noteworthy that submission to jurisdiction will not confer jurisdiction upon the court in those cases which are otherwise outside the jurisdiction.

**Submission by Contract:** The parties in advance, by way of an express stipulation in the contract, submit to the jurisdiction. It is noteworthy that for submission by contract, the stipulation must be express and cannot be implied.<sup>22</sup>

**Implied by Conduct:** This may be in different forms. Some of the illustrations are-

-A person who voluntarily appears as a defendant submits to the jurisdiction of court even if he was out of jurisdiction at the time of issue of writ.

- The court has jurisdiction to entertain counter-claim against a foreigner who appears before the court as plaintiff. It is noteworthy that an action on an independent ground can't be entertained.<sup>23</sup>

In **Boyle vs Sacker**<sup>24</sup>, defendant's lawyer made oral submission on the merits.<sup>25</sup> It was observed that when a foreigner-defendant files an affidavit and appears through counsel to argue the case on merit, it amounts to submission to jurisdiction.

**Indian Law:** Indian Law closely follows English Law on submission. In **Hiralal vs Kalinath**<sup>26</sup>, the Apex Court observed that when a party to the suit consents to refer the case to arbitration through the court system, it is believed to have waived their objection to the territorial jurisdiction of the court.<sup>27</sup> It amounts to submission.

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<sup>21</sup> What is Forum Shopping? Laying the Foundation- Wiley Rein LLP, available at: [https://www.wiley.law/media/publication/116\\_Weslow--INTABulletin--05\\_01\\_11.pdf](https://www.wiley.law/media/publication/116_Weslow--INTABulletin--05_01_11.pdf) (last visited on Jan 2, 2022).

<sup>22</sup> *Vogal vs R&A Kohnstamm Ltd.* (1971) 2 All E.R. 428.

<sup>23</sup> *Factories Insurance Co. v. Anglo-Scottish Insurance Co.* (1913) 29 T.L.R.

<sup>24</sup> (1888) 39 Ch. D. 249.

<sup>25</sup> Cases on submission, available at: <https://s3studentvip.com.au/notes/19905-sample.pdf> (last visited on Jan 2, 2022)

<sup>26</sup> 1962 S.C. 199.

<sup>27</sup> Place of suing under the Code of Civil Procedure, 1908: An insight through case laws, available at: <https://blog.ipleaders.in/place-of-suing-under-the-code-of-civil-procedure-1908-an-insight-through-case-laws/> (last visited on Jan 3, 2022).

## **JURISDICTIONAL IMMUNITY**

There are certain persons who enjoy jurisdictional immunity and therefore suits cannot be filed against them

**English Position:** Earlier, the theory of Absolute Sovereign immunity was recognised at common law. In **The Christina**<sup>28</sup>, it was observed that the courts shall neither implead a foreign sovereign nor shall seize any property which is his or of which he is in possession or control. The decision expressed the absolute theory of sovereign immunity and was applied in many cases. Immunity to the Sovereign extended to both *Acta Imperii* (Governmental Acts of Sovereign State) and *Acta Gestionis* (Acts of commercial nature). However, as the States started engaging in commercial activities on a larger scale, the courts started distinguishing between *acta imperii*, where the State enjoyed immunity and *acta gestionis*, where there was no immunity. This was the theory of 'Restricted Immunity'

This theory was recognised by the Privy Council in **The Phillipine Admiral**<sup>29</sup>. Later, in **Trendtex Trading Corp v. Central Bank of Nigeria**<sup>30</sup>, it was observed that the restrictive theory should be applied in England and there was no immunity in respect of commercial activities of a foreign state. This was accepted as correct position in common law.

Currently, the position is regulated by the (English) State Immunity Act, 1978. Under this Act, sovereign immunity applies to governmental act of a foreign state but does not extend to several situations like where the State submits to jurisdiction or acts of commercial nature, or in matters related to contract entered into or to be performed in England etc.<sup>31</sup>

The Foreign Head of State, Officers of Foreign States (for their acts in official capacity), Foreign State entities, Property of Foreign States, Foreign Diplomats, Foreign Consuls, International Organisations and its officers enjoy immunity.<sup>32</sup>

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<sup>28</sup> (1938) AC 485

<sup>29</sup> (1977) AC 373

<sup>30</sup> (1977) QB 529

<sup>31</sup> Setalvad, *Conflict of Laws* 130 (Lexis Nexis, Haryana, 3<sup>rd</sup> edn.)

<sup>32</sup> *Ibid* at 131-132

### **Indian Position:**

In India, the question is governed by section 86 of the Code of Civil Procedure, 1908 which confers immunity upon a foreign State from being sued except with the consent of Central Government, the United Nations (Privileges and Immunities) Act, 1947 which confers immunity upon United Nations and its agencies, and Diplomatic Relations (Vienna Convention) Act, 1972 under which specified diplomats enjoy immunity from suits in India.

### **Who may File a Suit**

**English Law:** Any person other than an alien enemy can file an action in English Court. In **Porter vs Freudenberg**<sup>33</sup>, it was observed that an alien enemy is a person, of whatever nationality, who voluntarily resides or carries on business in enemy territory, or in territory in enemy occupation. He cannot sue but may be sued and then can appear and be heard in his defence.<sup>34</sup>

**Indian Law:** Any person, except alien enemy, can file a suit in an Indian court. As per section 83 of the CPC, alien enemies residing in India, with the permission of the Central Government, may sue in any court otherwise competent to try a suit.<sup>35</sup> Explanation to the section states that every person residing and carrying on business in a foreign country at war with India shall be deemed to be an alien enemy.

If a suit has been filed against an alien enemy, he has a right of defence.<sup>36</sup>

### **Actions in Respect of Property**

#### **English Law**

**(i). Actions in rem:** Broadly, these are of three types, that is, those which determine the title or right to possess property, admiralty actions relating to ships within English territorial waters, and actions affecting personal states. After the passing of Common Law Procedure Act, 1852 all actions in Queen's Bench division of High Court are *in personam* and the only action *in rem* that survives is action in Admiralty division of High Court against a ship or other res.

To give effect to the Brussels Convention of 1952, the Administration of Justice Act, 1956 was

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<sup>33</sup> (1915) 1 K.B. 857

<sup>34</sup> Porter vs Freudenberg, available at: <https://legaldictionary.lawin.org/porter-v-freudenberg/> (last visited on Jan 8, 2022)

<sup>35</sup> *Supra* note 15 at 432.

<sup>36</sup> Prem Pratap Singh v. Jagat Pratap Kunwar 1944 All. 97

passed. Section 3 of the Act lays down cases in which admiralty jurisdiction of court be exercised in action *in rem*. Section 4 provides for the jurisdiction of the court in actions in actions *in personam* for damage, loss of life or personal injury arising out of a collision between two ships.

**(ii). Immovable Property:** Courts in England exercise jurisdiction over property situated in the country. Cases in which the Courts won't assume jurisdiction are suits for partition of foreign land, to recover possession of foreign land etc. The basis of the rule was that if the court could not make its order effective, it would be futile to pass it. The rule was extended to suits for trespass to foreign land by **British South Africa Co v. Comapanhia de Mocambique**<sup>37</sup>. Through a statutory change made in England, suits for trespass or other torts relating to foreign land can be entertained in an English court.<sup>38</sup>

### **Indian Law**

Indian Law doesn't speak of an action *in rem*. However, Section 41 of the Indian Evidence Act, 1872 speaks about judgement *in rem*.

**Immovable Property:** The law is broadly same as England. The proviso to section 16 of CPC provides that if relief in a suit (relating to immovable property) can be obtained entirely by personal obedience of the defendant, the suit can be filed either within whose local limits the property is situated or defendant actually or voluntarily resides or carries on business or works for gain.

Courts in India, following English Law, will not entertain suits in respect of property outside India.<sup>39</sup> However, courts in India will entertain suits if the defendant is within the jurisdiction of the court and relief can be granted by an order against him.<sup>40</sup> This was done in a suit for recovery of a one-third share of the income from property outside India<sup>41</sup> and in certain other cases.

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<sup>37</sup> (1893) AC 602

<sup>38</sup> *Supra* note 31 at 147.

<sup>39</sup> *Raja Setrucherla vs Maharaja of Jeypore* (1918-19) LR 46 IA 151

<sup>40</sup> *Ibid* at 149.

<sup>41</sup> *Kashinath Govind v. Anant Sitaramboa*, (1899) 2 Bom LR 47

## **Stay of Actions**

The litigant is free to choose a country as a forum of his action and can also pursue his remedy in more than one jurisdiction. Therefore, to avoid multiplicity of suits and chances of conflicting judgements, most countries have provisions for stay of actions.

**English Law:** *Lis alibi Pendens* is a latin term that means action on the same cause of action is pending elsewhere. The doctrine comes into application when two simultaneous actions are pending, one in an English court and other in a foreign court, when both the actions are between same parties and when same or similar issues are involved and same relief is sought in both the actions.<sup>42</sup>

Under the English law, the defendant can raise a plea of *lis alibi pendens* whereby the court, in its discretion, may order the plaintiff to discontinue the foreign suit at the expense of forfeiting his claim in the forum court in case he disobeys the order.<sup>43</sup>

**Indian Law:** Under the CPC, section 10 deals with the stay of suits. This application of this section is confined to domestic suits. In respect of international disputes, explanation to section 10 lays down that the pendency of suit in a foreign court does not preclude the courts in India from trying a suit based on same cause of action.

In **Jethabhai Versey and Co. v. Amarchand**<sup>44</sup>, the court used inherent powers under section 151 CPC to exercise the power of staying domestic suit when a suit is pending in foreign court. The Indian courts exercise jurisdiction for stay of actions in those cases where under the terms of the contract parties have consented to refer their disputes to courts of a particular country (not being India) and in contravention to the stipulation institute a proceeding in another country.

## **Conclusion**

Jurisdiction is concerned with the competence of the court to determine a dispute. An English Court has jurisdiction if the process is served on the defendant while he is present in England, even if on a fleeting visit, or the defendant submits to the jurisdiction. Under Order 11 of the Supreme Court rules, the English court may also assume jurisdiction in certain cases when the

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<sup>42</sup> *Supra* note 12 at 588

<sup>43</sup> Private International law and the doctrine of *Lis Alibi Pendens*, available at: <https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=2963914> (last visited on Jan 9, 2022)

<sup>44</sup> 1924 Bom. 90



defendant is outside the jurisdiction. The Indian law, in this regard, is governed by section 19 and section 20 of the Code of Civil Procedure.

There are certain persons against whom the suit can't be instituted. In this regard the English Law has developed from theory of absolute sovereign immunity to theory of restrictive immunity. In India, the question is governed by section 86 of the Code of Civil Procedure, 1908, the United Nations (Privileges and Immunities) Act, 1947 and Diplomatic Relations (Vienna Convention) Act, 1972.

As regards jurisdiction over immovable property, Courts in England and India exercise jurisdiction over immovable property situated in the country and courts of neither country exercise jurisdiction directly over property located outside the country.



## **BIBLIOGRAPHY**

### **STATUTE REFERRED**

- (i). The Code of Civil Procedure, 1908 (Act 5 of 1908)

### **BOOKS REFERRED**

- (i). Paras Diwan and Peeyushi Diwan, Private International Law (Deep and Deep, New Delhi, 4<sup>th</sup> edn.)
- (ii). Setalvad, Conflict of Laws (Lexis Nexis, Haryana, 3<sup>rd</sup> edn.)
- (iii). Mulla, The Key to Indian Practice: A Summary of Code of Civil Procedure (Lexis Nexis, Haryana, 12<sup>th</sup> edn)
- (iv). C.K. Takwani, Civil Procedure with Limitation Act, 1963 (EBC, Lucknow, 8th edn.)

### **ONLINE ARTICLES/WEBSITES ACCESSED**

- (i). Private International Laws and Recognition of foreign judgements, *available at:* <https://blog.iplayers.in/private-international-laws-recognition-foreign-judgements> (last visited on Dec 10, 2021)
- (ii). Jurisdiction of commercial courts in private international law, *available at:* <https://www.sconline.com/blog/post/2021/03/09/commercial-contract> (last visited on Dec 18, 2021).
- (iii). Basic Principles of Jurisdiction in Private International Law: The European Union, The

United States and England, available at:

<https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/basic-principles-of-jurisdiction-in-private-international-law-the-european-union-the-united-states-and-england> (last visited on Dec 22, 2021)

(iv). Choice of Jurisdiction, available at: <https://www.legalserviceindia.com/legal/article-4394-choice-of-jurisdiction.html> (last visited on Dec 22, 2021)

(v). Maharanee of Baroda v. Wildenstein, available at: <https://ww.en.freejournal.org/52847984/1/maharanee-of-baroda-wildenstein.html> (last visited on Dec 25, 2021)

(vi). What is Forum Shopping? Laying the Foundation- Wiley Rein LLP, available at: [https://www.wiley.law/media/publication/116\\_Weslow--INTABulletin--05\\_01\\_11.pdf](https://www.wiley.law/media/publication/116_Weslow--INTABulletin--05_01_11.pdf) (last visited on Jan 2, 2022)

(vii). Cases on submission, available at: <https://s3studentvip.com.au/notes/19905-sample.pdf> (last visited on Jan 2, 2022)

(viii). Place of suing under the Code of Civil Procedure, 1908: An insight through case laws, available at: <https://blog.iplayers.in/place-of-suing-under-the-code-of-civil-procedure-1908-an-insight-through-case-laws/> (last visited on Jan 3, 2022)

(ix). Porter vs Freudenberg, available at: <https://legaldictionary.lawin.org/porter-v-freudenberg/> (last visited on Jan 8, 2022)

(x). Private International law and the doctrine of Lis Alibi Pendens, available at: <https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=2963914> (last visited on Jan 9, 2022)

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