CHAPTER 6
JURISDICTIONAL ISSUES IN INDIA

6.1 Introduction

India is the second largest democracy in the world. It is multi-cultural and multi-linguistic county with over 29 states and 7 union territories. There are two types of governments in India; the Central Government or the Union Government and the State Government. The central government has three branches; the legislative, executive and the judiciary. The first branch, namely, legislative branch or the legislature also known as the parliament of India make laws for the whole of the country but subject to the limits laid down by the Constitution of India. 1 Part XI of the constitution contains three lists on which the central and the state governments can make the laws. List one is the union list containing 97 subjects giving exclusive power to the central government to make laws on those subjects. List two is the state list containing 66 subjects giving exclusive power to the state governments in India to make laws. The third list known as concurrent list has 47 subjects giving power to both the central and the state government to make laws. 2 The executive branch of the central government headed by the president of India executes the laws made by the parliament of India. 3 The third branch, the judiciary, has the function to see that any law made by the parliament is not beyond the permissible limits of constitution of India. The constitution of India is grundnorm. Any law which violates the basic structure of the constitution can be struck down by the Supreme Court of India declaring it to be ultra-virus the limits of the constitution of India. 4 In India, the Supreme Court is the highest judicial court which hear appeals from the State High Courts. At the state level, the state governments rule the states with the chief minister being the head of the council of ministers of the state. There are also three branches at

1 Constitution of India, articles, 79-122.
3 Constitution of India, articles, 52-78 & 123.
4 Ibid., articles 32 & 124-147.
the state level; the legislative, the executive and the judiciary. The legislative has the power to make laws for the whole of the state,\(^5\) the executive branch headed by the governor of the state has the responsibility to implement the laws passed by the state government\(^6\) and the State High court has the power to struck down any law passed by the legislature on the grounds of unconstitutionality under its power of judicial review.\(^7\) In the states, the High Courts of each state is the second highest court of appeal which hears appeals from the subordinate civil or criminal courts from within the state.

6.2 **Types of Jurisdiction under the Indian Judicial System**

1. **Jurisdiction of Civil Courts under the Code of Civil Procedure**

Section 9 of the code of civil procedure lay down provisions as to the civil jurisdiction of courts in India. According to the section all courts in India shall have jurisdiction to try the suits of civil nature, except for the suits whose cognizance is expressly or impliedly barred by the said code. The code lays down two types of jurisdiction; the pecuniary jurisdiction and the territorial Jurisdiction. The pecuniary jurisdiction is laid down in section 6 of the Act. It refers to the value of the suit which a court in India is authorized to try under the law. Section 6 of the code states that except where expressly laid down in the code, no court can exercise jurisdiction over the suits the amount or value of the subject matter, exceeds the pecuniary limits of its ordinary jurisdiction. For eg. The consumer courts in India have pecuniary limitation on their jurisdiction depending upon the amount of the suit and the position in the hierarchy of the consumer forums. A district court under the consumer protection act is entitled to entertain suits where the claim value does not exceed more than twenty lakh.\(^8\) The territorial jurisdiction is provided under section 16, 17, 18, 19 and 20 of the code. It refers to the place within whose jurisdiction the courts are entitled to try the case against the defendant.

---


\(^7\) *Ibid*, articles 214-237.

\(^8\) The Consumer Protection Act, 1986, s.11
2. **Jurisdiction based on the agreement between the parties**

Under the Indian law it is well established principle that a party’s consent to submit itself to the jurisdiction of a court which does not have jurisdiction to try the case, cannot confer jurisdiction on such court. Consent can neither confer nor take away jurisdiction of a court. In the case of *Bahrein Petroleum Co. Ltd. v. P.J. Pappu*, the Supreme Court has held that, “neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well-settled and needs no authority that 'where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing.' A decree passed by a court having no jurisdiction is non-est and its validity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non judice”. Any judgment passed by such court cannot be taken to be valid and could be challenged at any stage of the suit. A defect in the jurisdiction goes to the root of the matter which cannot be cured by the consent of the parties. Such judgment would be regarded as null and void. At the international level, where the transaction is covered under the Private International Law, and the parties agree to submit to the jurisdiction of a court which is neutral forum, meaning thereby neither party has any sort of connection with the forum of neutral court, then in such a case the agreement is absolutely valid. But, where a case is between domestic defendants within the domestic jurisdiction of Indian Courts and two or more courts have inherent jurisdiction to try the suit and the parties to a contract make an agreement that a particular court among them, should have

---

9 1966 AIR (SC) 634.
11 *Modi Entertainment Network & Ans. V. W.S.G. Cricket Pte. Ltd.*, (2003) 4 SCC 341., at para 11, “It is a well-settled principle that by agreement the parties cannot confer jurisdiction, where none exists, on a court to which CPC applies, but this principle does not apply when the parties agree to submit to the exclusive or non-exclusive jurisdiction of a foreign court; indeed in such cases the English Courts do permit invoking their jurisdiction. Thus, it is clear that the parties to a contract may agree to have their disputes resolved by a Foreign Court termed as a 'neutral court' or 'court of choice' creating exclusive or non-exclusive jurisdiction in it”.

245
jurisdiction to try the case, then in such a case the agreement is not void per se. Such an agreement is not opposed to public policy. Such an agreement is completely, legal, valid and enforceable in the court of law even though it is ousting the jurisdiction of all other courts having equal jurisdiction to try the same case. However, such an agreement is possible only for the cases arising within the domestic jurisdiction of Indian Courts.\(^\text{12}\)

3. **Jurisdiction based on the submission of the defendant**

If the defendant voluntarily submit himself to the jurisdiction of the court in India, that court is entitled to assert jurisdiction over him. The rule applies both to domestic as well as foreign defendant. However, where a case is of domestic nature between domestic defendants, the court before whom the defendant submits should actually have jurisdiction to try the case, because, the law in India is clear that a party’s consent to submit itself to the jurisdiction of a court which does not have jurisdiction to try the case, cannot confer jurisdiction on such court. Consent can neither confer nor take away jurisdiction of a court. But, in the international cases, the parties may contract between themselves to submit their dispute to the jurisdiction of the court which is unrelated to either of the parties and so if in such case the defendant makes an unconditional appearance before such court, it will amount to submission. Similarly, where a defendant appears before the court and contest the jurisdiction of the court on merits, instructs its solicitor to accept the service of summons or himself acknowledging the service of summons, waiving the objection as to jurisdiction etc., then in all such cases it shall be deemed that he has submitted himself to the jurisdiction of that court. But, where the defendant merely makes an appearance to protest that the court does not have jurisdiction, then his appearance will not constitute submission, even if the defendant also seeks stay of proceedings pending the outcome of proceedings abroad.\(^\text{13}\)


\(^{13}\) *British India Steam Navigation v. Shanmughavelas Cashew*, 1990 SCR (1) 884, 1990 SCC (3) 481.
4. **Presence, domicile or Residence based jurisdiction over the defendant**

Indian law is born out of English law. It follows the footprints of the law laid down by English law maker. As prevalent in England, one of the common law principles relating the assumption of jurisdiction over the defendant is that if the defendant is physically present within the territory of the court, that court has direct right over such defendant due to his physical presence within the jurisdiction of the court. The question whether the defendant has any nexuses with the court in which the dispute has arisen becomes secondary. Jurisdiction based on the presence or residence of the defendant in India has long been settled by the Indian courts in the very old case of *Kasinath v. Anant.*\(^{14}\) The case related to some property dispute between the plaintiff and the defendant, which they inherited under a contract and usage. The property situated outside the jurisdiction of the court. The defendant refused to part with the income that the defendant collected from the property with the plaintiff. Hence, the plaintiff filed the present suit to recover the amount from the defendant. The defendant was not residing within the jurisdiction of the court, though he was present there at the time of the institution of the court. The court held that, though the court had no jurisdiction over the defendant under the Civil Procedure Code, but nevertheless, since the Indian courts follow the English law in such matters, hence the court has jurisdiction over the defendant based on his presence within the territory of the court when the suit was instituted. Similarly, where the person is domicile in India, the courts in India have territorial jurisdiction over him. The India law recognises one domicile viz. domicile of India. There is no notion of state domicile.\(^{15}\)

---


\(^{15}\) *Pradeep Jain v. Union of India*, AIR 1984 SC 142.
5. **Jurisdiction under the Hague Convention on the Service Abroad of Judicial and Extra Judicial documents in Civil and Commercial matters**

India is a party to Hague Convention on the Service Abroad of Judicial and Extra Judicial documents in Civil and commercial matters. India ratified the said convention on 23rd November 2006 and the convention came into force on 1st August 2007. Under the convention the state parties can serve the process of their judicial or extra judicial documents from their own state to another state without following any consular or diplomatic channels. The convention primarily deals with the transmission of documents. It does not address or comprise substantive rules relating to the actual service of process. Article 2 of the Convention requires the member states to appoint a central authority to receive Letters of Request from a judicial authority of another Contracting State and to transmit them to the authority competent to execute them. The Central Authority designated by India for this purpose is the Ministry of Law and Justice and the High Courts in all states and union territories in India.

The convention applies only when the following conditions are fulfilled.

1. The document is to be transmitted from one state party to the convention to another state party for service in the latter. The law of the forum state determines whether or not a document has to be transmitted abroad for service in the other state the convention is non mandatory.

2. An address for the person to be served is known. If the address is not available service cannot be made under the convention.

3. The document to be served is a judicial or extra judicial document, and

4. The document to be served relates to a civil or commercial matter.

Under the Convention the main channel of transmitting the documents is that, the authority or judicial officer competent under the law of the state in which the

---

16 Available at: http://www.mondaq.com/india. (last visited on April 2, 2015).
17 Available at: https://www.hcch.net (last visited on April 5, 2015).
document to be served originates shall transmit the document to the central Authority of the requested state (state where the service is to occur). Apart from this main channel of transmission, there are also several alternative channels of transmission which are provided under the Convention 18-

(1) Service through direct diplomatic channels or through consular without any compulsion.
(2) Indirect consular channels to forward documents
(3) In case of exceptional circumstances, use of indirect diplomatic channel.
(4) Direct communication between judicial officers, officials or other competent persons.
(5) Direct communication between any interested person and judicial officers, officials or other competent persons.
(6) Postal channels for sending judicial documents directly to the person abroad.
(7) Service of judicial documents directly through the judicial officers, officials or other competent persons of other state of destination by judicial offices, officers or other competent persons of the state of origin.
(8) Service of Judicial documents directly by any person interested in a judicial proceeding to affect service of Judicial documents directly through the judicial officers, officials or other competent persons of the state of Destination or through Derogatory channels by entering into agreements between two or more state to permit service of Judicial documents by any other channels in particular the direct communication between their respective authorities or the internal law of a contracting state can permit other method of transmission.

India has spelt certain conditions for the enforcement of convention in India. These reservations are:-19:-

---

18 Available at: http://www.helplinelaw.com/ (last visited on April 5, 2015).
19 Available at: www.hcch.net (last visited on April 5, 2015).
1. All requests under the Convention shall be in the English language, or accompanied with an English translation.

2. Subject to prior authorization of the Central Authority and the concerned court, members of the judicial personnel of the requesting Contracting Party may be present at the execution of a letter of request.

3. Evidence by diplomatic officers or consular agents of Indian nationals or nationals of a third State under Article 16 of the Convention can be taken with the prior permission of the Central Authority.

4. In accordance with Article 18, a diplomatic or consular officer or a commissioner authorized under Article 15, 16 and 17 may apply for

---

20 Hague Convention on the Service Abroad of Judicial and Extra Judicial documents in Civil and Commercial matters., art. 16, available at: www.hcch.net (last visited on April 5, 2015). It reads thus:- “When a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled -

a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and

b) the defendant has disclosed a prima facie defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each Contracting State may declare that the application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.

This Article shall not apply to judgments concerning status or capacity of persons.

21 Ibid, art. 18. It reads thus:- “Each Contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence. The applicant shall, however, in all cases, have the right to address a request directly to the Central Authority. Federal States shall be free to designate more than one Central Authority.

22 Ibid, art. 15. It reads thus:- “Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that -

a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or

b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled -

a) the document was transmitted by one of the methods provided for in this Convention,

b) a period of time of not less than six months, considered adequate by the judge in the
appropriate assistance to obtain the evidence by compulsion to the District Court within whose territory the evidence is to be taken.

5. The Republic of India will not execute Letters of Request issued in pursuance of Article 23 of the Convention for the purpose of obtaining pre-trial discovery of documents, which requires a person to produce any documents other than particular documents specified in the Letter of Request, which are likely to be in his possession, custody or power.

For any treaty or convention to take effect the Indian parliament has to pass a law for that purpose. Since no law has been passed till date to give effect to the convention, the provisions of the Indian Civil Procedure Code apply to act on Letters of Request.

6.3 General Provisions regarding Jurisdiction in India under the Indian Code of Civil Procedure

For the purpose of exercising jurisdiction two important factors are required under the Indian law. The first is the identification of place of suing or place of filing the suit which will enable the court of that area to assume jurisdiction over the defendant and the second is the issue of summons which serves as a process to bring the defendant before the court of that place. Under the Indian Civil Procedure Code there are different provisions regarding place of suing and issue of summons. The particular case, has elapsed since the date of the transmission of the document, c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed. Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

\[\text{Ibid, art.17. It reads thus:}\] Extrajudicial documents emanating from authorities and judicial officers of a Contracting State may be transmitted for the purpose of service in another Contracting State by the methods and under the provisions of the present Convention”.

\[\text{Ibid, art.23. It reads thus:}\] The present Convention shall not affect the application of Article 23 of the Convention on civil procedure signed at The Hague on 17th July 1905, or of Article 24 of the Convention on civil procedure signed at The Hague on 1st March 1954. These Articles shall, however, apply only if methods of communication, identical to those provided for in these Conventions, are used”.

Constitution of India, art. 246, Seventh Sch., list 1, entries 10 & 14.

Code of Civil Procedure,1908 (Act 5 of 1908), o.XXVI,rs. 19-22.
provisions regarding place of suing falls under the heading ‘section’ and the provisions regarding issue of summons fall under the heading ‘order and rules’.

6.3.1 Institution of suits and place of suing under the Indian Code of Civil Procedure for the purpose of assuming jurisdiction over the defendant

Section 9 Part 1 of the Civil Procedure Code lay down general provision regarding the institution of suits in India. As per Section 9, the courts in India shall have jurisdiction to try all suits of a civil nature subject to the condition that if the cognizance of any suit or suits is expressly or impliedly barred by the statute, then in such case the court cannot take cognizance of that case. Section 15 of the Code states that the institution of civil suits in India shall proceed from the lowest court among the hierarchy of courts in India. Every suit shall be instituted in the court of the lowest grade competent to try it. Section 16 deals with the place of suing of suit where the subject matter of the suit is situated. Section 17 deals with place of suing

---

27 The Code of Civil Procedure, 1908 (Act 5 of 1908), s.15.
28 Ibid, s.6. It reads thus- “Suits to be instituted where subject matter situate.-
Subject to the pecuniary or other limitations prescribed by any law, suits-
(a) for the recovery of immovable property with or without rent or profits,
(b) for the partition of immovable property,
(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
(d) for the determination of any other right to or interest in immovable property,
(e) for compensation for wrong to immovable property,
(f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:
Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.
Explanation.—In this section "property" means property situate in [Subs. by Act 2 of 1951, s.3, for "the States".]

29 Ibid, s.17. It reads thus:-“ Suits for immovable property situate within jurisdiction of different Courts-
Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:
Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court".
of suits relating to immovable property. Section 18 deals with place of suing where the jurisdiction of the courts are uncertain in suit relating to immovable property. Section 19 deals with the place of suing of suits relating to compensation for the wrongs done to persons or movable property. Section 20 deals with place of suing of all other suits. Section 20 is an important section for the suits relating to commercial contracts as all the commercial cases are dealt under this section. As per section 20 of the Code, if the suits are not of the nature described under section 16, 17, 18 or 19, the suit shall be instituted where the defendant resides or cause of action arises. Every such suit shall be instituted in a court within the local limits of whose jurisdiction.

30 Ibid, s. 18. It reads thus:- “Place of institution of suit where local limits of jurisdiction of Courts are uncertain.-

(1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect, and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as the property were situate within the local limits of its jurisdiction:

Provided that the suit is one with respect to which the Court competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an Appellate or Revisional Court at a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the Appellate or Revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of Justice”.

31 Ibid, s.19. It reads thus:- “Suits for compensation for wrongs to person or movables.- Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts”.

32 Ibid, s.20. It reads thus:- “Other suits to be instituted where defendants reside or cause of action arises, “Subject to the limitations aforesaid, every suit shall be instituted in Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.
(a) The defendant, or each of the defendant where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business or personally works for gain, or

(b) Any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that is such a case either the leave of the court is given, or the defendant who do not reside, or carry on business, or personally work for gain as aforesaid, acquire in such institution; or

(c) The cause of action, wholly or in part arises.

An explanation is also attached with the section regarding deemed place of business of a corporation. As per the explanation, “a corporation shall be deemed to carry in business at its sole or principal office in India, in respect of any cause of action arising at any place where it has also a subordinate office, at such place”.

The term “business’ as used in the aforesaid section is of both wide and narrow connotation. In wider sense it is a purposeful activity extended over a period of time directed towards achieving some results or end. In narrow sense it means an activity of a commercial nature with a profit motive. So, the concept of business has variant meaning and senses. However, in India, the term does not included functions carried on by the Union government in discharge of its execution power. Any activity carried on by Union of India in exercise of it sovereign power is not a business activity.

It is to be noted that section 20(b) requires that when there are more than one defendants and one of them carries on business or resides etc. within the jurisdiction of the court, then the said court will have jurisdiction to entertain the proceedings provided the defendants who do not reside or carry on business or personally work for

[Explanation].-A corporation shall be deemed to carry on business at its sole or principal office in [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place”.
gain within the jurisdiction of that court, acquiesce in such situation or the plaintiff obtains the leave of the court to proceed against such defendant or defendants who do not agree or object to the institution of the suit within the jurisdiction of the court where one of their fellow defendant carries on business or resides. If the court gives the leave or the other defendants acquiesce the institution of the trial of the suit at one place, the plaintiff is entitled to proceed with the case.

After the filing of the plaint and written statement, the court begins to find out the cause of action on the basis of averments made in the plaint and the written statement. It is the duty of the court to ascertain the cause of action while scrutinizing the averments made in the plaint. When the court derives facts from the given case and then apply the relevant law on it, which gives the plaintiff the relief desired by such plaintiff, is termed as the cause of action. So, it is necessary for the plaintiff to set in clear terms the facts of the case required to be proved before the court in order to get the desired relief. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. The expression has not been defined in the Indian Code of Civil Procedure, but the meaning of it has been well defined in the judicial pronouncement of the country. From the earliest time and in most of the cases under the Indian Judicial system, the cause of action has been held to mean every fact which is material to entitle the plaintiff to succeed every fact which the defendant would have a right to transverse.  

In the case of A.B.C Laminart Pvt. Ltd & Anr v. A.P. Agencies, the Supreme Court explained the meaning of cause of Action in the following terms, “A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.”

It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to be defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff”.

Cause of action in cases of contract-

The Indian Code of Civil Procedure does not contain any special category of provisions dealing exclusive with the jurisdictional disputes arising out of commercial contract cases. In general all the commercial disputes are dealt by section 20 (c) of the code.\(^ {35} \) The special grounds on the basis of which jurisdiction are assumed in commercial contract disputes are to be extracted from the case laws. The Indian Contract Act does not deal with questions of procedure as the Code of Civil Procedure does. But, where the suit falls under section 20 (c) of the Indian Civil Procedure Code and the question for determination is to find out the place where the contract has taken place either in whole or in part, the determination of the question should be decided in the light of principles governing the Indian Contract Law.

In \textit{A.B.C Laminart v. A.P. Agencies},\(^ {36} \) the Hon’ble Supreme Court of India has tried to explain what kind of actions would constitute ‘cause of action’ in contractual disputes. According to the court –

1. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made.

\(^ {35} \) \textit{Supra} note 32.

\(^ {36} \) 1989 AIR 1239, 1989 SCR (2) 1.
The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated.

2. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have (been) performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else.

3. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract.

4. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors.

In the case of *South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises Pvt. Ltd. & others*, the Apex court held that in a case where a contract was executed in Bombay within the jurisdiction of the Bombay High Court and the performance of the contract was to be made in the same jurisdiction, the mere fact that bank guarantee was executed at Delhi and transmitted for performance to Bombay does not give the High Court of Delhi the jurisdiction to try the suit. No part of the cause of action can be said to have arisen in the jurisdiction of the Delhi High Court.

---

In the case of *Mohanakumaran Nair v. VijayaKumaran Nair,*\(^{38}\) the Supreme Court held that section 20 of the Civil Procedure Code embodies, that the question in regard to the jurisdiction is required to be determined with reference to the date on which the suits is filed and entertained and not with reference to a future date. The material date to invoke territorial jurisdiction under section 20 of the Civil Procedure Code is the one of the institution of the suit and not the subsequent change of residence. Change of residence subsequent to decision of the court would not confer territorial jurisdiction in the court which it did not have.

In the case of *A.V.M Sales Corporation v. M/S Anuradha Chemicals Pvt. Ltd,*\(^{39}\) parties entered into agreement at Calcutta in the year 1988 for the supply of Chemicals manufactured by the Respondent to the petitioner. The parties then arrived at a mutual understanding, which was later reduced into writing in an agreement executed at Calcutta on August 5, 1989, regarding the adjustment of advance laying with the Respondent and exclusive supply to the petitioner of its two products, namely, Sodium Chromate and Sodium Dichromate in West Bengal, Bihar, Orissa and Assam. The agreement contained an additional clause stating that, “Any dispute arising out of this agreement will be subject to Calcutta Jurisdiction only.” In the year 1991 certain dispute arose between the two parties. The petitioner filed suit against the Respondent in the High Court of Calcutta. A counter claim was also filled by the respondent against the petitioner at Vijayawada. The petitioner contested the suit filed by Respondent. Out of the several issues raised by the petitioner, one of the issues were related to the jurisdiction of the Vijayawada court to entertain the suit against him. As per the agreement between both the parties Calcutta Court was entitled to have jurisdiction in case of any dispute arisen between the parties. But the Principal Senior Civil Judge, Vijayawada rejected the objection of the petitioner, and decreed the Respondent suit with cost. The petitioner then filed first appeal before the Andhra Pradesh High Court against the judgment of the lower court of Vijayawada. But the

\(^{38}\) 2008 AIR (SC) 213.

\(^{39}\) (2012 (2) SCC 315).
learned single judge of the High Court of Andhra Pradesh also dismissed the appeal of the petitioner. Hence the present special leave appeal is before the Hon’ble Supreme Court. It is to be noted that before the principal Senior Civil Judge, one of the first issue was whether the court at Vijayawada had territorial jurisdiction to try the case. The answer was given in affirmation by the learned judge. It was held by the court that ‘part of the cause of action’ for the suit also arose in the territorial jurisdiction of the Vijayawada court. Also, in the first appeal before the learned single judge of the Andhra Pradesh High Court, the issue of territorial jurisdiction was sorted out in the favour of the respondent. The petitioner’s argument was that no ‘part of cause of action’ had ever arisen in Vijayawada. According to him the agreement between both the parties was entered into in Calcutta. The place of business of the petitioner is at Calcutta, the goods were to be delivered at Calcutta and payment in respect thereof was to be made at Calcutta. There was mutual agreement between the parties that in the event of any dispute between them, the court of Calcutta will have exclusive jurisdiction. The exclusive jurisdiction was clause incorporated in the agreement too. So, according to them taking into account all these facts, territorial jurisdiction of the Vijayawada court cannot be made out. The question before the Hon’ble Apex Court is:

Whether the parties to an agreement can violate Section 2340 and 2841 of the Indian contract Act?

40. The Indian Contract Act, 1872 (Act 9 of 1872), s.23. It reads thus:—“What consideration and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless—The consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void”.

41. The Indian contract Act, 1872 (Act 9 of 1872), s.28. It reads thus:—“Agreements in restraint of legal proceedings, void. [Every agreement,— (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or (b) which extinguishes the rights of any party thereto, or discharges any
Whether the parties who have entered into an agreement, mutually exclude the jurisdiction of one of the courts, where two courts have jurisdiction to try a suit in preference to the other? And whether this mutual arrangement to exclude the jurisdiction of one of the two courts between the parties amounts to the violation of section 23 and 28 of the Indian contract Act, 1872?

The Hon’ble court found the following facts:

(A) In favour of the respondent-
1. That the invoices for the goods in question were raised at Vijayawada.
2. That the goods were dispatched from Vijayawada.
3. That the money was payable to the Respondent or its nominee at Vijayawada.

(B) In favour petitioner:--
1. That the petitioner had its place of business at Calcutta.
2. That the agreement for supply of the goods was entered into at Calcutta.
3. That the goods were to be delivered at Calcutta.

After comparing the facts favouring both the respondent and the petitioner, the court found that a ‘part of the cause of action arose’ both at Vijayawada and Calcutta.

Coming on to the question whether mutually exclude the jurisdiction of one of the courts, where two courts have jurisdiction to try a suit in preference to the other, the court Citing the case of A.B.C. Laminart Pvt. Ltd and Anr v. A.P. Agencies (1989 AIR 1239, 1989 SCR (2) 1), held that “It is now a settled principle that where there may be two or more competent courts which can entertain a suit consequent upon a part of the cause of the action having arisen there within, if the parties to the contract party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.

Exception 1.— Saving of contract to refer to arbitration dispute that may arise. —This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.18 [***] Exception 2.—Saving of contract to refer questions that have already arisen. —Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration”.

260
agreed to vest jurisdiction in one such to try the dispute which might arise as between themselves, the agreement would be valid. If such a contract is clear, unambiguous and explicit and not vague, it is not hit by sections 23 and 28 of the Indian Contract Act and cannot be understood as parties contacting against the statute”.

The Apex Court stated that it has consistently taken the same view in subsequent cases. The court allowed the special leave petition of the petitioner and set aside the judgment passed by the High Court of Andhra Pradesh.

6.3.2 Issue of Summons-order V

A summon is a document which is issued by the office of the court of justice, calling upon the person to whom it is directed to attend before a judge or an officer of the court for a certain purpose. It is a written order issued from the court which makes the person to whom it is issued to legally oblige it so as to mandatory secure the attendance of that person before the court issue it.\(^{42}\) The summons are issued to the defendant after filling of the plaint by the plaintiff, to make him appear before that hon’ble court on the date specified and file a written statement in his defense within thirty days from the date when the service of summons was made on such defendant. It is not necessary for the court to issue the summons if the defendant appears before the court at the time when the plaintiff has filled the plaint in the court and admitted the claim of the plaintiff.\(^{43}\)

If the defendant chooses not to admit and appear before the court to admit the claim of the plaintiff at the time of the presentation of the plaint, then he has the following option to make appearance in the court\(^{44}\)-

1. The defendant may appear in person, or
2. He may appear through pleader who is able to answer all the material question relating to the suit filed against him, or
3. He may appear by a pleader who is accompanied by some person who is able to all such questions.

\(^{42}\) Supra note 10 at 36.
\(^{43}\) The Code of Civil Procedure, 1908 (Act 5 of 1908) ,o. V, r.1.
\(^{44}\) Ibid, o. V, r.2.
A judge of the court or any such officer appointed by him shall sign the summons before they are issued to the defendant. The summons shall bear the seal of the court. A copy of the plaint shall be annexed to the summons while serving on the defendant.

If the court has for some reason to believe that the personal appearance of the defendant is required in the court regarding the suit filed against him, it shall then fix the date of the personal appearance of the defendant on the summons issued against him. If the court feels same for the plaintiff that his personal appearance is also required on the same day when the defendant is to make an appearance in the court, then in such case the court may make an order for the appearance of the plaintiff also.45

But the court can only make an order for the appearance of a party in person before it only if (a) the party resides within the local limits of the Court's ordinary original jurisdiction, or (b) without such limits but at place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.46

6.3.2.1 Mode of Service of Summons on the Defendant

Under the civil procedure code, service of summons shall be made on every defendant personally, associated with the case, unless service on each defendant has been exempted under the code of civil procedure47. Every summons shall be signed by the judge of the court or any officer duly empowered by him to sign on his behalf. The summons shall bear the seal of the court issuing it. In practice service of summons should be made on the defendant in person, but where he has an agent empowered to accept service on his behalf, in such case service on such agent shall be sufficient service on the defendant.48

45 The Code of Civil Procedure, 1908 (Act 5 of 1908), o. V, r. 3.
46 Ibid, r. 4.
47 Ibid, r.11.
48 Ibid, r.12.
6.3.2.2 Service on the pleader of the defendant

Order 3, rule 5 of the code of civil procedure provides for service of summons on the pleader of the defendant. Pledger of the defendant may be served with the process of the court at his office or ordinary residence on behalf of his client, provided he is duly authorized to act in the court. Service on such pleader shall be presumed to be valid service on the party whom the pleader is representing. The service shall be presumed to be effectual for all purpose as if the same has been given to or served on the party in person.\(^49\)

6.3.2.3 Service on the recognized agent of the defendant

The Indian Code of Civil Procedure also authorizes the recognized agents of the defendant to accept service on behalf of them. In literal sense a recognized agent is the person who is authorized by the principal to act on his behalf. Before the court of law, the authority of the recognized agent includes his power to speak and conduct the proceedings on behalf of his principal.\(^50\) Rule 1 of order 3 states that the recognized agents or the pleaders, can, subject to the express provisions of law, make an appearance, application or act before the court on behalf of the party. Rule 2 of order 3 provides the list of the following persons who are considered as recognized agents in the eyes of law:

1. Persons holding powers- of –attorney which authorizes them to make and do appearances, applications and to act on behalf of the parties.

2. Persons carrying on business or trade for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

\(^{49}\) The Code of Civil Procedure, 1908 (Act 5 of 1908), o.III,r. 5.

\(^{50}\) Supra note 10 at 231.
6.3.2.4 Where the defendant has Agent by whom he carries on business- Order v Rule 13

In case where the court issuing the summons cannot assume jurisdiction over the defendant over a suit filed against him in that court, due to his being at some other place, then in such case that court has the power to issue summons on his behalf on the manager or agent carrying on business on the behalf of such defendant, within the jurisdiction of the court issuing such summons under order v rule 13 of Civil Procedure Rules. It shall be deemed that service on the actually defendant has been made. What is important in such case is that the manager or the agent should be personally working or carrying on business for the defendant, when such summons was issued on them. Such service on the manager or the agent will be deemed to be a good service.

6.3.2.5 Service where defendant is absent from his residence

Order V rule 15 of the Civil Procedure Rules allows service of summons on any adult family member of the defendant residing with him, not being a servant, if the defendant absents himself from his residence and there is likelihood of his not being found out within a reasonable time at his residence, at the time of the issuance of summons and also he has no agent who is authorised by him to accept service on his behalf.

All the persons whether the defendant himself, or his agent or any person served on his behalf with the summons shall acknowledge the summons by signing it. The serving officer shall endorse or annex, or cause to be endorsed or annexed on the original summons served on the defendant, or his agent or other person on his behalf, a return stating the time and the manner in which those summons were served. The officer shall also mention the name and address of the persons identifying the person served and witnessing the delivery or tendering of the summons on the defendant, or his agent or other person authorised to accept the

---

51 The Code of Civil Procedure, 1908 (Act 5 of 1908),o.V, r.16.
summons on his behalf. If however, all these persons mentioned above refuses to acknowledge the service of summons or where the defendant cannot be found in his residence within reasonable time for affecting service on him by the serving officer after taking due and reasonable diligence, or there is no adult person or agent of the defendant on whom service can be made, then in such cases the service shall be made by the serving officer by:-

1. By affixing a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides, or
2. By affixing a copy of the summons on the outer door or some other conspicuous part of the place where the defendant carries on business or personally works for gain.

The serving officer shall after affixing the copy of the summons as aforesaid, return the original summons to the court by making an endorsement on it that he has affixed the copy and must also state the names and addresses of the persons who identified the house of the defendant and witnessed the affixing of copy of summons. The court to whom the summons is returned under the above rule (17), shall cause the serving officer to verify by an affidavit in case he has not verified the return of the summons and may examine him on the oath in case he has verified the return, may declare that the summons has been served duly or make an order as it deem fit. The court which issued the summons may cause the serving officer to be examined by another court for the same.

6.3.2.6 Service on the defendant residing within another court’s jurisdiction

If the defendant resides within the jurisdiction of another court, the court within whose jurisdiction a suit has been filed against such defendant may send the summons on such defendant, through the court, not being the High Court, having jurisdiction over the place where the defendant is residing. The court sending the

---

52 Ibid, r.18.
54 Ibid, r.19.
summons may send it through any of its officer, by post, by courier service as approved by the High Court, by electronic mail, by a fax message, or by any other method provided in the rules made by the High Court.\textsuperscript{55}

6.3.2.7 Extra-Territorial service of summons on the foreign defendant under the code of Civil Procedure

Where the defendant is outside India, but the cause of action arose within India against him, he may be served with the summons under the Indian Code of Civil Procedure, outside Indian Territory ex-juris. Order v rule 25 of the civil procedure code provides service of summons on defendant outside the territory of India. The rule is useful in the situations when the defendant has no agent in India to accept service on his behalf and he himself is residing outside Indian, in such situation rule 25 of the Civil Procedure Code provides for the service of summons ex-juris by the following methods for serving him outside the territory of India:-

1. Summons may be sent at the place of his residential address through post, where postal communication is effective between the place where the foreign defendant is residing and the place in which the High Court is situated, or,

2. They may be sent through courier service approve by the High court of state in India in which the suit is filled, or,

3. Summons may sent by fax message or by an Electronic mail service on the ID of the foreign defendant, or,

4. By any other means which may be approved by the concerned High Court\textsuperscript{56} by the rules made on this behalf.

\textsuperscript{55} Ibid, r. 21.
\textsuperscript{56} High Court of Punjab and Haryana Rules, Vol. IV 1, ch. 7-F, pt. It reads thus:- “Service of the Processes of the Courts in India in Places Beyond India and Vice Versa- Order V, Rule 25, of the Code of Civil Procedure provides, generally, that if the defendant resides out of India, and has no agent in India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post, if there be postal communication between such place and the place where the Court is situate. In practice, all summonses so sent should, where possible, be sent by registered post, and should
Where the defendant resides out of India and has no agent in India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post if there is postal communication between such place and the place where the Court is situate or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court.

Special rules have been made for the defendant residing in the country of Pakistan and Bangladesh. If the defendant is residing in any of those two counties then summon may be served over them through any court in those countries, having jurisdiction over the defendant’s residence. Any court does not include High Court of those countries. A copy of the summons must also be send together with the

Provided that where any such defendant resides in Bangladesh or Pakistan, the summons, together with a copy thereof, may be sent for service on the defendant, to any Court in that country but not being the High Court, having jurisdiction in the place where the defendant resides. Although public officers do not enter into private contacts, yet provision of service of summons on the public officers is made under the code of civil procedure in other cases for the Countries of Pakistan and Bangladesh. Service of such summons together with a copy may be sent on such defendants residing in Pakistan or Bangladesh, according to the rules made by the central governments in the Official Gazette of India. These rules are for defendants who are public officers in Bangladesh or Pakistan but does not belong to the

be “registered acknowledgement due.” The letter containing the summons which should always be sent in an envelope should be properly and fully addressed and prepaid. A copy of the address on the letter should also kept on the judicial record and care should be taken that the certificate given by the Postal authorities also contains the full address on the letter. 2. If it is not possible to effect service under Order V, rule 25, advantage may be taken of the provisions of Order V, rule 26. As regards clause (a) of this rule, no Political Agent has, so far, been appointed or a Court established with power to serve in any foreign country in which the defendant resides, a summons issued by a Court in India under the provisions of the Code. It is for the State Government to take the necessary action under clause (b) of this rule. 3. Where service by post has been tried and has failed and the mode of service, if any, provided by Order V, rule 26 have been availed of, action may be taken under Order V, rule 20 of the Code of Civil Procedure”.

267
Bangladesh or the Pakistan military, naval or air forces or is a servant of a railway company or local authority in those countries.

### 6.3.2.8 Substituted Service - Order V Rule 20

A court may effect substituted service of summons on a defendant in one of two circumstances:

1. Where the defendant is purposely avoiding the service of summons on him and the court issuing the summons believes that the defendant is doing such an deliberately, or
2. Due to some reason the summons cannot be served on the defendant in the way it is ordinary served,

The court shall make the order for the substituted service. Substituted service is effected by affixing the copy of the summons in some conspicuous place in the Court-house and a copy of such summons must also be affixed upon some conspicuous part of the house (if any) of the defendant, where such defendant has last known to have been resided or have last carried on business or have worked personally for gain. In addition to these methods if the court finds that there are such other effective methods of serving the substituted summons it make an order to that effect.

If the court decides to serve the summons by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

### 6.3.2.9 Effect of substituted service

Where the court makes an order for substituted service it shall have the same effect as that of personal service. It shall be deemed that the defendant has been served personally. Where the court makes an order for substituted service, the time for the appearance of the defendant should be prefixed in the substituted summons.\(^{57}\)

---

\(^{57}\) The Code of Civil Procedure, 1908 (Act 5 of 1908), o. V, r. 20.
In the case of *Solaiman Moosaji v. Jatindra Nath*, the Hon’ble court has held that, “substituted service is not to be used in any way which is unbusinesslike and ridiculous”.

There are numerous ways of effecting substituted service on the defendant provided under the Code of Civil Procedure. In addition to it the court has been given wide discretion to effect substituted service in ‘any other such manner as the court thinks’, which may by notice in a newspaper or by a registered letter or in any other mode the Court may seem just. However the manner chosen for substituted service should not be absurdity. For example, For example a person living abroad can properly be served by registered post. It would be an absurdity to have substituted service against him by putting up a notice in the Court-house or by publishing it in any local newspaper. The main aim of effecting service of summon on the defendant is to let him know that a claim has been initiated against him in the court. When, therefore, the substituted service on the defendant is not effective, that is to say where it does not give the defendant information of the suit filed against him, it cannot be said that the defendant was duly served within the meaning of Order 5, Rule 20 (1) of Civil Procedure Code.

6.3.2.10 **Objection as to jurisdiction- section 21 of the Indian Civil Procedure Code**

The general rule in India is that a judgment passed by a court having no jurisdiction to try the case is nullity. If there is any doubt regarding the local, territorial or pecuniary jurisdiction of the court to assume jurisdiction against the defendant, then the defendant should object to such jurisdiction at the earliest in the Court of First Instance. Defendant would not be allowed to take objection in the Appellant or the Revisitional Court or when the issues got settled. However, section 21 of the code carves out an exception to the general rule. The object of section 21 is to protect the litigants from harassment who have bonafide and in good faith

---

58 AIR 1929 Cal 553.
commenced the proceedings in a court which is later on found to be wanting in jurisdiction.\textsuperscript{61} As per section 21 where there is a complete failure of justice due to not taking of objection at the earliest stage, such an objection may be allowed at the subsequent stage. The jurisdictional defects if any under section 15 to 20 of the civil procedure code are covered by section 21. If the defendant fails to take any objection regarding the jurisdictional defect falling under any of the provisions of section 15 to 20 of the civil procedure, it shall be deemed to have been waived by the defendant. However, it is to be remembered that where there jurisdictional defect as to the competency of a court to try the case, it goes to the very root of the jurisdiction and it cannot be corrected. It will be a case of inherent lack of jurisdiction.\textsuperscript{62}

## 6.4 Assumption of Jurisdiction over different juristic entities in India

### 6.4.1 Jurisdiction over Individual

The Indian Law is outcome of the British Law. There are many similarities between the English law and the Indian law on the subject of Private International law as well. Under the common law as applicable in India the Indian courts are entitled to assume jurisdiction over an individual if he is present within the territory of the court. Presence of defendant within the territory of the court gives that court an unrestricted right over such defendant provided he has been served well by the process of the court. Similarly residence of the defendant within the territorial jurisdiction of the court authorizes the court to entertain a suit against such defendant. If there is jurisdictional agreement by the defendant to submit to the jurisdiction of a particular court or the defendant voluntary makes submission before a particular court, then in such case that court will have jurisdiction over such defendant.\textsuperscript{63} The Indian Code of Civil Procedure provides rules for exercising territorial jurisdiction over the defendant. These rules discussed in detail in para 6.3 of the chapter.

\textsuperscript{61} Supra note 10 at 145.

\textsuperscript{62} Id. 146.

\textsuperscript{63} For details see para 6.2 of the Chapter.
6.4. 2. Jurisdiction over Companies in India

In India, jurisdiction over the companies can be assumed either under the Indian Code of Civil Procedure or under the Indian Companies Act.

6.4.2.1 Jurisdiction under the Code of Civil Procedure

The suits by or against the corporation are dealt under Order XXIX of the code of civil procedure 1908. Rule 1 of the order lays down that secretary or any director or principle officer of the corporation who is able to depose to the facts of the case may sign and verify on behalf of the corporation any pleadings in case of suits filed by or against the corporation. Rule 2 deals with the service of process on the corporations. The rule is subject to the statutory provisions regulating the service of process on the corporations. So, subject to such provisions, where the suit is filed against the corporation, the summons may be served on the secretary, or any director, or other principle officer of the corporation. The second way of serving the summons on the corporation is by leaving the summons or sending it by post on the address of the corporation at its registered office. But where there is no registered office then the summons may be served at the place where the corporation carries on business. In the case of All India General Transport v. Shri Raghunath Sahay And Anr, it has been held by the Patna High Court that although Order 29 of the Civil Procedure Code uses the word ‘corporation’ and not ‘company’, the provisions aptly apply to the companies as well when it comes to service of summons. In para 5 of the above case the court held that, “The word 'Corporation' has been used in the Code of Civil Procedure with reference to Section 34 of the Indian Companies Act. Under that section when a company is registered, the Registrar of Companies certifies under his hand the fact of such registration. The effect of incorporation is that the company becomes a body corporate having perpetual succession and a common seal. It also refers to corporations established by the Act of Parliament. This

---

64 The Code of Civil Procedure, 1908 (Act 5 of 1908), o. XXIX, r. 2 (a).
65 Ibid, r.2 (b).
66 AIR 1969 Pat 246.
is obvious because Order 29 of the Code of Civil Procedure refers to corporations while Order 30 of the Code of Civil Procedure refers to firms and there is no specific provision for the companies registered under the Indian Companies Act”. Since this case is of year 1964, here reference to Indian Companies Act is also reference to the old companies Act.

It has been clearly mentioned in order 29 of the code of civil procedure that service of summons on the corporation under rule 2 of the said order is subject to any other statutory provision made for serving summons on the corporation, since the said statutory provision is contained under the Indian companies act, so service of summon on the company made under the provisions of companies act would prevail over the provisions of the code of civil procedure. In the case of *Harendra Nath Ghosal v. Superfoam Pvt. Ltd.* 67 The court has held that in case of limited company registered under the companies Act having registered office, the summons have to be served under the provisions of the Indian companies Act dealing with the service of documents on the company. Under para 14 of the said case the Hon’ble court held that, “We are of the view that Rule 2 of Order 29 provides for service of summons and notices upon corporations. Even though a company governed by the Companies Act includes within its definition a corporation, as the legal concept of a company is a corporation aggregate, the expression "corporation" has not been defined in the Civil Procedure Code. Therefore, the dictionary meaning of corporation would have to be used in interpreting Rule 2. Apart from corporation aggregate, there is the legal concept of corporation sole constituting a single individual. Moreover, the expression "corporation" could also include a statutory corporation established by any law for the time being in force in India. Therefore, in respect of such types of corporations, there may not be a registered office and the second part of Clause (b) contemplates the service of summons or notices upon such a corporation having no registered office. In respect of such corporations, summons at the place where the corporation carries on business would be sufficient compliance under Rule 2 of Order 29, Civil 67 1992 74 CompCas 740 Cal. 95 CWN 888.
Procedure Code. But, so far as a limited company is concerned, the service of summons has to be effected in terms of Section 51 of the Companies Act and, in this case, when, admittedly, there was no service of summons upon the registered office of the opposite party, there was no valid service of summons upon the opposite party”.

In *Shalimar Rope Works Ltd. v. Abdul Hussain H.M. Hasan Bhai Rassiwala and Ors.*,\(^68\) the Supreme Court dealing with the mode of service on a company held that, "The words "leaving the summons at the registered office" under Clause (b) do not mean that the summons can be left anywhere uncared for in the registered office of the company. These words have to be read in the background of the provision contained in Order 5, Rule 17 of the Code. In other words, if the serving peon or bailiff is not able to serve the summons on the Secretary or any Director or any other Principal Officer of the Corporation because either he refuses to sign the summons or is not to be found by the serving person even after due diligence then he can leave the summons at the registered office of the company and make a report to that effect."

In the case of *Usy Limited v. Systopic Laboratories Limited*\(^69\) that the address for service on a Corporation cannot be just any place where the products of the defendant are sold but the registered address of the Company or it may be served in the manner laid down in Order 29.

In *Jute and Gunny Brokers Ltd. v. The Union of India and Ors.*,\(^70\) though the case involves government parties, the issue was whether the service of summons on the managing agents of a company was a valid service keeping in view the provisions of order 29 rule 2 (a) of the code of civil procedure. Order XXIX rule (2) of Civil Procedure Rules states service of summons may be made on a corporation by serving the secretary, or any director, or other principle officer of the company. The rule uses

---

\(^{68}\) 1980 AIR 1163, 1980 SCR (3)1028.

\(^{69}\) 2003 (27) PTC 203 Mad.

\(^{70}\) 1961 AIR 1214, 1961 SCR (3) 820.
the word “other principle officer” on which service can be made in a suit against the corporation. So the issue was whether the managing agents fall under the preview of “other principle officer”. The court upheld the validity of service of summons on the managing agents as being the principle officers of the company to accept the service. Under section 2 (II) of the Indian Companies Act of 1913, which was in force at that relevant time, defined the term "officer" to include any director, managing agent, manager or secretary. So, a managing agent is an officer of the corporation. But, it was contended before the Supreme Court that the definition of an ‘officer’ given in the Companies Act of 1913 is an artificial definition and only for the purpose of the Companies Act and not for the Code of Civil Procedure. The Supreme Court observed that, "That Appellate Court did not accept this contention and was of the opinion that the definition of an officer given in the Companies Act can also be utilised for the purpose of the Code of Civil Procedure, and we think that that view is correct.

6.4.2.2 Jurisdiction over the Corporations having subordinate office

Where a company has a principle office at one place and subordinate office at another place and the cause of action arose at the subordinate office, then in such case the plaintiff is entitled to file the suit in the court located at the place of subordinate office. The plea that the principle office of the company is at another place and the court of that place is entitled to have jurisdiction over the defendant cannot be sustained. In M/S Patel Roadways Ltd, Bombay v. M/s Prasad Trading Company,71 the appellant M/s Patel Roadways carries on business of carriers and transport goods on hire. Its principal office is at Bombay and have various subordinate offices at various places. The Respondent M/s Prasad Trading Company is a dealer in Cardamom. The respondent entrusted to the appellant consignment of 850 Kilograms of Cardamom at its subordinate office at Bodinayakanur in Tamil Naidu to be delivered at Delhi. The Appellant transported the goods to Delhi in a Godown, but the goods were destroyed and damaged by fire arose in Delhi Godown. The consignee

71 1992 AIR 1514.
then refused to take the delivery of those goods. The respondent instituted a suit for damages against the appellant on the grounds of negligence and carelessness for not taking care of the goods entrusted to them. The suit was instituted in Periakulam within whose jurisdiction the subordinate office of the appellant was situated. The Respondent No. 1, M/s Tropical Agro Systems Private Ltd. insured certain packets of pesticides with respondent No. 2, Oriental Insurance Company Ltd. Respondent No. 1 entrusted those items to the appellant at its subordinate office at Madras for being carried to New Delhi. According to the respondents the aforesaid goods were delivered at New Delhi in a damaged condition. As a result of which the respondent No. 1 suffered loss. They filed a suit for the recovery of damage in the court of the third Assistant Judge, City Civil Court, Madras. The appellant objected to the jurisdiction of two courts of Madras because according to the appellant both the parties to the agreement of contract agreed mutually that in case of any dispute concerning the contract, the Bombay courts will have jurisdiction to decide the matter. However, the trial court of Madras rejected the plea of the appellant, as a result of which the appellant challenged the decision of the trial courts of Madras in the High Court of Judicature at Madras. But the Madras High Court also dismissed the civil appeals of the appellant. So, the appellant filled the current civil appeals in the Hon’ble Supreme Court. The issue before the Hon’ble Supreme Court is whether the Courts at Bombay alone had the jurisdiction to try the suits by virtue of the relevant clause in the contract and whether the jurisdiction of the courts at Madras were barred to take up the case? The argument of the appellant was that apart from the fact that the goods were delivered to him within the territorial jurisdiction of the Bombay Court, the courts at Bombay also had jurisdiction because as per explanation to Section 2072 of CPC, the principal office of the appellant was situated in Bombay and the jurisdiction of Madras Courts were ousted by mutual agreement between the parties to the contract.

72 Supra note 32.
Analysis: The court analysed the case of *Hakram Singh v. M/s Gammon (India) Ltd.* where it was held that “Corporation” referred to in section 20 includes not only a statutory corporation but also a company registered under the Indian Companies Act. A court cannot assume jurisdiction over the parties to the suit which it does not have by the mere fact that the parties have agreed to the jurisdiction of that court by an agreement. But where two courts have jurisdiction to try the case, then agreement between the parties to ouster the jurisdiction of one of the courts and to confer jurisdiction only on one court is not against public policy or section 28 of the Indian Contract Act. The same view has taken in the case of *Globe Transport Corporation v. Triveni Engineering works.* Coming to the question whether the courts at Bombay also had jurisdiction even though the goods were entrusted in the Madras jurisdiction to the appellant for transporting them to Delhi? The court found that as per clause (a) and (b) of section 20 of the Civil Procedure Code the term ‘court’ refers to the jurisdiction of that area where the defendant carries on business. Clause (c) refers to a court within the local limits of whose jurisdiction the cause of action wholly or in part arises. The appellant is relying on the Explanation attached to Section 20 of CPC according to which since the appellant is having its principal office in Bombay it shall be deemed to carry on business at Bombay. Hence, the Bombay courts also have jurisdiction to by the case. But the Hon’ble Court is in disagreement with the argument laid by the appellant. According to the court the Explanation attached to section 20 is in two part one, before the word ‘or’ occurring between the words “office in India” and “in respect of” and the other thereafter. The explanation applies to a defendant which is a corporation which term, would include even a company such as in the present case is appellant. The first part of the Explanation applies only to the defendant which is a corporation which has its sole or principal office at a particular place. In such case the court within whose jurisdiction the sole or principal office of the defendant is situate will also have the jurisdiction even if the defendant may not be actually carrying on business at that place. It will be deemed to carry on business in such case. The second 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 also a subordinate office at another place. The words ‘at such place’ occurring at the end of the explanation and the words ‘or’ referred to above suggests 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, will alone shall have jurisdiction in respect of any cause of action arising at any such place. According to the Hon’ble court the explanation attached to section 20 provides alternative law for the corporation’s place of business and not an additional one. If the cause of action has arisen at the place where the corporation has its subordinate office, then in such a case, the plaintiff has the right to sue the defendant corporation in the court having jurisdiction over its subordinate office and the defendant corporation cannot take the plea that since the corporation does not carry on business in the place where its subordinate office is located, the corporation cannot be sued at that place. A plaintiff will not be allowed to undergo undue hardship by compelling him to first go the place where the corporation has its principle office and sue the corporation there instead of place where it has subordinate office, where the cause of action actually arisen.

Dismissing the two appeals the Apex Court held that clause (c) is not attracted to both the cases to confer jurisdiction on courts at Bombay. The appellant has himself confessed to have subordinate offices at the places where the goods in these two cases were delivered to it for the purpose of transport, before the Hon’ble court. The court at Bombay had no jurisdiction at all to entertain the suits filed by the respondents and the parties could not confer jurisdiction on the courts at Bombay by an agreement.

6.4.2.3 Jurisdiction under the Companies Act, 2013

On September 12, 2013, the old companies Act of 1956 was replaced by the new companies Act of 2013 which not only replaced the old companies act of 1956, but also replaced it. The New Companies Act 2013 bought with itself many new
concept which the old Act lacked such as, the concept of women Directors, one person company, corporate social responsibility, dormant company, registered values, fast tract mergers, rotation of auditors, serious fraud investigation office etc.

Now under the new act, section 20 (1) deals with the service of document on a domestic company. As per the new section jurisdiction may be assumed over the domestic company incorporated in India by serving the court documents on such company or any of its officer in the following ways:- The document may be sent through a registered post, speed post or by a courier service at the registered office address of the company, or,

1. The document may be left at the registered office of the company, or,
2. It may be sent through electronic mode, or,
3. The document may be served through any other mode which may be prescribed by the law or the enactment.

Retrieving back most of the old provision of the old Companies Act of 1956, the new section added additional modes for service of documents, which included service by courier, electronic mode or other mode as may be prescribed. So now the documents may also be served electronically via e-mail on the company.

Section 1(42) of the Act defines the term ‘foreign company’. According to the Section a foreign company means any company or body corporate incorporated outside India which –

(a) Has a place of business in India whether by itself or through an agent physically or through electronic mode; and
(b) Conducts any business activity in India in any other manner.

The section is supplemented by the Companies (Registration of foreign companies) Rules 2014. Rule 2(1)(c) defines what is meant by electronic mode as laid down under section 2(42) of the Companies Act. The rules states that for the purpose
of section 2(42) “electronic mode” means carrying out electronically based main server is installed in India or not including but not limited to –

1. Business to business and business to consumer transactions, data interchange and other digital supply transactions.
2. Offering to accept deposits or inviting deposit or accepting deposits or subscriptions in securities in India or from citizens of India
3. Financial settlements web based marketing advisory and transactional services, database service and products, supply chain management.
4. Online services such as telemarketing, telecommuting, telemedicine, education and information research and
5. All related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Rule 6 states that every foreign company shall along with the financial statement file with the registrar a list of all the places of business which are established by it in India, while filing the balance sheet with the registrar in form FC.3.

Unlike the old Indian companies Act of 1956, the new Companies Act of 2013 is at pace with the new world of electronic technology. Now, business carried on by the foreign companies e.g. Amazon, through electronic media like Internet are also covered under the definition of foreign company. Chapter XXII of the companies Act 2013 lay down provision regarding companies incorporated outside India.

Section 380 of the New Act lists certain documents which are to be delivered to Registrar by foreign companies within 30 days of establishing their place of business in India. The section is important from the view point of jurisdiction as it enables the court to serve the foreign company with the process form for purpose of assuming jurisdiction. Under the section a foreign company is required to give the full address of its company’s registered or principle office, complete address of the place
in India, which such company is deeming to be its principle place of business in India and . As per clause (d) of section 380, the foreign company is required to give to the registrar the name(s) or addresses(s) of the person who is resident in India and authorized to accept the service of process on behalf of the company, issued by any court in India. The service of process on such person(s) shall be deemed to be service on the foreign company. But mere presence of representatives is not enough to make the foreign company amendable to the jurisdiction of Indian courts. A foreign company should be carrying on some business in India so as to be amendable to the jurisdiction of local court. What amounts to carrying on business by a foreign company in India has been laid down in the case of *P.J. Johnson And Sons. v. Astrofiel Armadorn*\(^{73}\) at para 20. As per the Hon’ble court the test whether a foreign company is carrying on business in India is satisfied only “if its business is carried on at a fixed and definite place which is, to a reasonable extent, a permanent place within India. The mere presence of a representative of the foreign corporation is not sufficient if his only authority is to elicit orders from customers, but not to make contracts on behalf of the corporation….. While a company is domiciled where it is incorporated, it is resident where its controlling power and authority is vested. Although dual residence is conceivable where there is division of management and control, it is nevertheless imperative that in some degree, in some measure, to some extent it can be said that the foreign corporation is centrally managed and controlled in India. This test can by no means be satisfied unless the corporation has a fixed place of business in India for sufficiently and reasonably long period of time. Although in *Dunlop Pneumatic Tyre Co. Ltd. v. Actien-Gesellschaft Fur Motor Und Motor-fahrzeunbau Vorm. Cudell & Co.*, (1902) 1 KB 342, a very short period of residence at a fixed place was considered to be sufficient on the special and peculiar facts of that case, it was nevertheless recognised in that case by Romer, L.J. that, in principle, to satisfy the concept of residence the business should be carried on for a

\(^{73}\) AIR 1989 Ker 53, 1990 69 CompCas 619 Ker.
"substantial period of time" (p. 349). These are the essential tests which must be satisfied if a foreign corporation has to be treated as present in India”.

The provisions regarding assumption of jurisdiction over a foreign company by the Indian courts are laid down under section 383 of the new Act.74 As per the said section a foreign company may be served with any process, notice or other document by addressing them on the name and address of the person, registered with the registrar under section 380 of the Act or may be left with that persons or may be send through post or by an electronic mode at the address given by them to the registrar during registration of the company under section 380. As compared to the old section 596 of the Companies Act 1956, the new section 380 is both contemporary and filled with lacuna. It is contemporary in the sense that the section embodies in itself the new ways of securing service of document on the foreign company through electronic media, thereby keeping pace with today’s media technology. There is lacuna in this provision also when compared with the old section 596 to the extent that the section is silent as to how service of document is to effected on the foreign company when the person resident in India who is authorized to accept service on behalf of the foreign company refuses to accept the service or is unavailable or is dead at the time of service. The only implication which could be arrived in such case is that, the service will then be made on the registered office or principle place of business of such foreign company.

In the case of Framroze Rustomji Paymaster v. British Burmah Petroleum Co. Ltd75 (Suit No. 862 of 1970, decided on August 11, 1971), it has been held that when a foreign company deliver documents to the Registrar within the time period prescribed by the Act it gives an indication that in reality the place of business was

74 The Companies Act, 2013,ch.XXII, sec. 383. It reads thus:- “383. Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode”.
75 (1976) 78 BOMLR 642.
already established by such foreign company before the delivery of documents to the Registrar. For the court to assume jurisdiction over the company, two conditions are required to be satisfied, first, that the company must have registered place of business and second, it should have principle office in India, where it carries on business, if provision of section 20 of the code of civil procedure is to be attracted. A person carries on business for the purpose of making profits. Business may be his habitual occupation, profession or trade. No set criteria can be laid down as to what constitute business in strict sense. The court is entitled to assume jurisdiction over the company by virtue of its being carrying on business within the jurisdiction of the court even though such business is ultra vires the object clause in the memorandum of association of the company until such business is neither mala in se nor mala quis prohibita which means until such business is neither wrong in itself i.e. immoral nor wrong because it is prohibited by the law of the land i.e. illegal.

Validity of contracts

Section 393 of the New Act lay down provision regarding the validity of contracts, dealing or transaction entered into by the company or its liability when the company fails to comply with provisions of chapter XXII of this new Act. However, the amount of penalty in the new Act is increased in the cases where foreign companies contravene any of the provision of chapter XII, as compared to the old Act. For contravening any provision of the Chapter XII of the new companies Act, 2013, the foreign company shall be imposed with a fine of not less than one lakh rupees but which may extend up to three lakh rupees. If the foreign company continues to commit the offence, then in such a case an additional fine which may extend upto fifty thousand shall be imposed on such foreign company for each day the offence continues after the first offence. Also, every officer of the foreign company for whose default the offence has been committed, shall also be punishable with imprisonment for a term which may extend to six months or with fine which
shall not be less than twenty five thousand rupees but which may extend to five lakh rupees, or with both.\footnote{The Companies Act, 2013 (Act 18 of 2013), s. 392.}

6.4.2.4 Jurisdiction Under the Letters Patent

In India, the High court of Bombay, Madras and Calcutta were brought into existence by the Letters Patent issued under the High Court’s Act, 1861, by Queen Victoria under the authority of British Parliament, \textit{which provided that the jurisdiction and powers of the High Court were to be defined by Letters Patent. These three High Courts are known as Chartered High Courts and Calcutta High Court being the first High Court set up in India.}\footnote{Available at: http://calcuttahighcourt.nic.in/history.htm (last visited on August 10, 2015).}

The Letters Patent for High Court of Calcutta, Madras and Bombay, have similar provisions regarding Original Jurisdiction as to institution of suits. Clause 12 of the Letters Patent for all these three High Courts state that the High Court shall be empowered to receive, try and determine jurisdiction in the following kind of suits in exercise of their original jurisdiction namely:

1. Suits for land or other immovable property where such land or property is situated within the local limits of the ordinary original civil jurisdiction of these High Courts;

2. In cases other than those mentioned in point 1, the High Court shall have original Jurisdiction, if,
   a. if the cause of action have arisen, either wholly within the local limits of the ordinary original jurisdiction of the said High Court; or
   b. the cause of action has arisen in part only within the said limits and the leave of the court has been obtained first; or
   c. if the defendant at the time of the commencement of the suit shall dwell or carry on business; or Personally work for gain, within such limits.

Whereas section 20 of the Indian civil procedure code 1908, provides that Other suits to be instituted where defendants reside or cause of action arises -Subject to the
limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) The defendant, or each of the defendants where there are more than one, at the time of the commencement of the Suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) Any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.

Explanation: A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Section 20 of the civil procedure code is substantially in pari material but not identical with clause 12 of Letters Patent. Under Section 20 C.P.C., 1908, the suit could be instituted in the Civil Court without obtaining prior leave of the Court to institute the suit, whereas Clause 12 of the Letters Patent require the plaintiff to obtain prior leave of the Court before instituting the suit in the civil court. Under clause 12 of the Letters Patents point 2 (c) categories of cases do not require consideration of the question whether the cause of action has arisen in jurisdiction of Mumbai, Madras and Calcutta High courts, whether in whole or in part or not at all. Under the Letters Patents, clause 12, a clear distinction has been made between carrying on of business and working for gain. In the latter case legislative requirement is that the defendant should personally work for gain, whereas no such requirement is
postulated for the carrying on of business. It means therefore that the defendant may carry on business himself or through an agent or agents.

A very interesting question arose in case of Pratap Singh v. Bank of America,\(^78\) that whether a foreign corporation can be sued in one of the courts in India in respect of a cause of action which has admittedly arisen wholly outside the country of India?. The case was decided in the year 1976. The brief facts of the case are that the plaintiff has profession in medical stream. He filed suit against a corporation incorporated in America by the name of ‘Bank of America, National Trust and savings Association’, which had an office in Bombay. Bombay is also its principal place of business in India as per the records of the Registrar of companies under the old Companies Act, section 592(1) (e) of the Companies Act 1956. The case of plaintiff is that while he was in London he had certificates of deposits of three different amounts each of which was to mature six months after the date when they were issued. He had lost those certificates and requested the defendant bank to issue duplicate copy of those certificates as he was in dire need of money to treat is wife, who was in London, suffering from some ailment. But the defendant bank having its international banking office at San Francisco office informed plaintiff that in lieu of duplicate certificates the plaintiff had to furnish to the Bank an indemnity bond by a ‘corporate bonding company’. Being in need of funds the plaintiff was forced to execute indemnity agreements covering these replacements of the said certificates of deposits. The indemnity agreements contained a clause that they would be enforced legally in Punjab, in India as well as in California, in the United States of America. Aggrieved by the behavior of the Bank, the plaintiff filed the suit in the High Court of Bombay, praying for the relief that the Hon’ble High Court may grant a declaration in his favour that the aforesaid indemnity bonds are not enforceable against him. He has also claimed the amount of compensation and damages against the said bank on the ground that the said bank had insisted him to furnish any indemnity bond for the issuance of duplicate certificates of deposits without any right to do so. The defendant

\(^{78}\) (1976) 78 BOMLR 549.
Bank raised the objection that the High Court of Bombay have no jurisdiction to entertain and try the suit because no cause of action has arisen within the jurisdiction of this High Court. As per the defendant bank it does not carry on business in Bombay with the meaning of clause 12 of the Letters Patent. According to the defendant, the defendant is a corporation incorporated in U.S.A and has no office in Bombay only for the purpose of carrying on business on its banking business and that the branch office in Bombay does not constitute the presence of defendant in Bombay. But the plaintiff intended that since the defendant Bank is having a full-fledged branch at Bombay, which is not separately incorporated and constitutes the defendant in Bombay and also the defendant is found present in Bombay, resides and dwells and carries on business in Bombay, so all these circumstances construe that the Bombay High Court has jurisdiction under clause 12 of the Letters Patent against the defendant. The learned single judge dismissed the suit of the plaintiff with cost on the ground that since no part of action in the suit has arisen within the limits of the ordinary civil jurisdiction of the court of the Bombay, the Bombay High Court has no jurisdiction to try the suit. So, the present appeal is before the division bench of the Hon’ble High Court of Bombay on the preliminary issue of jurisdiction.

The question before the Hon’ble Court of Bombay is whether the High Court has jurisdiction over the defendant bank under clause 12 of the Letters Patent for Bombay High even though no part of cause of action arose in Bombay? Was the learned single judge erred in placing his decision on section 20 of the Civil Procedure Code when Clause 12 of the Letters Patent apply to the Chartered High Courts which includes the High Court of Bombay besides Calcutta and Madras High Courts? Whether the fact that defendant has got registered itself with the Registrar of the companies under the Indian Companies Act of 1956, would confer jurisdiction over the civil courts either under clause 12 of the Letters Patent or under section 20 of the Civil Procedure code?
Analysis of The Hon’ble Court:- The court analyzed clause 12 of the Letters Patent Act of Bombay High Court as well as Section 20 of the Code of Civil Procedure. As per clause 12 of Letters Patent for Bombay High Court, the High Court is empowered to try the following suits in the exercise of their original civil jurisdiction, viz. (i) suits for land or other immoveable property if the land or property is situate within the local limits of the ordinary original civil jurisdiction of the High Court, and (ii) suits other than those for land (a) if the cause of action has arisen wholly within the said limits, or (b) where the cause of action has arisen in part only within the said limits, if the leave of the Court shall have been first obtained; or (c) if at the time of the commencement of the suit the defendant dwells or carries on business or personally works for gain within the said limits.

Section 20. Other suits to be instituted where defendants reside or cause of action arises.

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation I. Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in

287
respect of any cause of action arising at the place where he has such temporary residence.

Explanation II. A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

The Hon’ble court brought down the difference between cause 12 of the Letters Patent and section 20 of the civil procedure code. Section 20 of the code empowers the court to have jurisdiction over the defendant where a part of the cause of action has arisen within its jurisdiction without requiring the plaintiff to obtain the permission of the court before instituting the suit against the defendant whereas under Clause 12 of the Letters Patent leave of court is required to be obtained in case of part of action arisen within the jurisdiction of the court, no such leave is required under section 20 the Civil Procedure Code. Further, ‘part of action’ appearing under clause 12 must be a material part of the cause of action, otherwise leave should ordinarily be refused. Explanation II attached to section 20 of the code is not present under clause 12 of the Letters Patent. Similarly, under the last part of clause 12 of Letters Patent jurisdiction can be found against the defendant if he is ‘dwelling’ within the jurisdiction of the court at the time of the institution of the suit. Under this head, the consideration whether the cause of action has accrued wholly or in part within or without the limits of the said jurisdiction is wholly irrelevant, whereas, Section 20 of the Code requires the defendant to actually and voluntarily reside. Hence, according to the court the High Court of Bombay has the jurisdiction to try the case. According to the court, if the legislation has conferred special jurisdiction for the chartered High Courts in cases of civil cases, that legislation should be respected and provision of civil Procedure Code should be applied in all other High Courts not falling within the preview of special chartered High Courts. Under Section 20 read together with Explanation II, a corporation can be sued only at its principal place of business in India or at all other places of business i.e. where it carries on business provided the
cause of action has arisen at such place does not apply to clause 12 of the Letters Patent. Under the last part of Clause 12 of the Letters Patent a suit can be brought on the Original Side of this Court if the defendant at the time of institution of the suit dwells or carries on business or personally works for gain within the limits of such original jurisdiction of this High Court. For consideration of jurisdiction under this head, the consideration whether the cause of action has accrued wholly or in part within or without the limits of the said jurisdiction is wholly irrelevant.

Dealing with the question on registration of foreign companies under the companies act justifying the assumption of jurisdiction over them, the court held that, where a foreign corporation has made the necessary registration under Section 592 of the Companies Act with all attendant formalities, it would be easy to answer affirmatively the question whether it does carry on business at the place in respect of which the necessary registration has been made under Section 592(1)(e), but apart from this evidentiary value, registration under Section 592 of the Companies Act and in particular the furnishing of the names and addresses of the persons on whom the process may be served, would not confer jurisdiction and cannot be deemed to restrict or enlarge the ambit of jurisdiction of civil Courts either under Clause 12 of the Letters Patent or under Section 20 of the Code of Civil Procedure. Hence, the division bench of the High Court of Bombay, held that the Court has jurisdiction to entertain the case against the defendant.

6.4.2.4.1 Application of section 20 Civil Procedure Code and clause 12 of Letters Patent to issues under Private International Law in India

1. In India the jurisdiction of courts in civil cases are determined by clause 12 of Letters Patents for the High Courts of Bombay, Madras and Calcutta and sections 15 to 20 of the Indian Civil Procedure Code for all other High Courts. It is only this

---

clause and sections which are applied for determination of jurisdiction by the courts in civil cases in India. Clause 12 of the Letters Patent and sections 15 to 20 of the Civil Procedure Code in no way demarcate the jurisdiction of the High Courts and the subordinate Courts within India or the jurisdiction of the courts in international cases.

2. The plain words of Section 20 of the Code of Civil Procedure or Clause 12 of the Letters Patent cannot be restricted or limited (and perhaps also given an enlarged ambit) by recourse to principles of private international law or similar considerations. If these provisions confer jurisdiction expressly or by necessary implication, then it would not be proper for a Court of law not to exercise the same on the ground that the decree passed pursuant to the jurisdiction may not be recognised or given effect to by foreign Courts or even on the ground that such a decree would be a nullity by reason of some principle of private international law. In other words, if the Legislature acting within its admitted sphere of competence and without any conflict with the fundamental law i.e. the constitutional law, enacts legislation, the Courts are bound to give effect to the same and cannot refuse to follow the same on the basis that such legislation is in contravention of the generally accepted principles of private international law. Such considerations can at the highest afford only a useful principle of interpretation when the law enacted by the Legislature, which law the Courts are bound to obey, is ambiguous or capable of more than one interpretation. Judges when attempting to ascertain the meaning to be given to a legislative enactment will ordinarily presume that the Legislature did not intend to violate the doctrine of international law, public or private, and will therefore wherever possible give such interpretation as to make the enactment consistent with such doctrine. Where, however, the language of the statute is clear and does not admit of any ambiguity or more than one interpretation, the Court must give effect to the statutory provision as it stands notwithstanding the fact that these provisions will run against the commonly accepted doctrines of international law.
3. Proper meaning to the word 'defendant' occurring in Clause 12 of the Letters Patent or in Section 20 of the Code of Civil Procedure should be given. The word includes in its ambit both natural as well as artificial persons i.e. living beings as well as corporations. No distinction is to be made in law between corporations that are incorporated in India and corporations that are incorporated outside India i.e. foreign corporations.

4. Under the last part of Clause 12 of the Letters Patent a suit can be brought on the Original Side of this Court if the defendant at the time of institution of the suit dwells or carries on business or personally works for gain within the limits of such original jurisdiction of this High Court. For consideration of jurisdiction under this head, the consideration whether the cause of action has accrued wholly or in part within or without the limits of the said jurisdiction is wholly irrelevant.

5. In last part of Clause 12 of the Letters Patent a clear distinction has been made between carrying on of business and working for gain. In the latter case the legislative requirement is that the defendant should personally work for gain, whereas no such requirement is postulated for the carrying on of business. It means therefore that the defendant may carry on business himself or through an agent or agents. So, where a suit can be brought on the original side of the High Court if the defendant at the time of the institution of suit dwells or carries on business or personally work for gain within the limits of the original jurisdiction of the High Court. For consideration of jurisdiction under this head, the consideration whether the cause of action has accrued wholly or in part within or without the limits of the said jurisdiction is wholly irrelevant.

6. Where the defendant is having branch office within the limits of the jurisdiction of the High Court, the contention that the principle office of the defendant is somewhere else and it is that place where final decisions are taken, so he should be
taken to carry on business at that place and not within the jurisdiction of the High Court, cannot be upheld.

7. It is a question of fact to decide whether the defendant carries on business within the limits of the jurisdiction of a Court or not. The burden of proving that the defendant carries on business within the jurisdiction of the High court is on plaintiff, when this allegation is made in the plaint and properly traversed by the defendant in the written statement, though the defendant would be required to prove the facts as may be deemed to be within his special knowledge. When the defendant clearly denies the allegation of carrying on business within the jurisdiction of the court, then the issue may be resolved on the basis of proper evidence supporting or refuting the claim of both the parties. However, for the purpose of considering this question it is not required that at the place which is within the jurisdiction of the Court there must be some person or agency not subject to supervision or regulation from outside. All that is required is whether within the limits of jurisdiction of the Court the defendant by itself or through its agent is carrying on all or some of the business which it does? For e.g. where there is a branch office within the jurisdiction of the court and that branch is controlled and supervised by the regional office or head office outside the jurisdiction, is sufficient to give the court jurisdiction over it on the ground of carrying on business. The size of the branch in no case matters. It may carry on business in a room, entire flat or entire building.

8. For the purpose of jurisdiction over a foreign company, if a foreign corporation has made the necessary registration under section 380 of the Companies Act with all attendant formalities, it would be easy to answer affirmatively the question whether it does carry on business at the place in respect of which the necessary registration has been made under section 380 (1) (e). As far as the requirement to Section 20 of the Code of Civil Procedure is concerned, such a declaration would appear to be conclusive of the question and normally no question
would arise of any evidence being allowed to be led on the question whether the place indicated in the registration as the principal place of business in India is in fact such principal place or not.

9. As a necessary corollary to what is stated above, apart from this evidentiary value, registration under section 380 of the Companies Act and in particular the furnishing of the names and addresses of the persons on whom the process may be served, would not confer jurisdiction and cannot be deemed to restrict or enlarge the ambit of jurisdiction of civil Courts either under Clause 12 of the Letters Patent or under Section 20 of the Code of Civil Procedure. This is because of the view that, the principle of submission to jurisdiction enunciated by English Courts is not the proper principle to be followed in India. Jurisdiction of the court is always seen in Clause 12 of the Letters Patent or in Section 20 of the Code of Civil Procedure and apart from these provisions the only other aspect required to be considered is whether the defendant can be considered to have waived or abandoned its plea of want of jurisdiction. The latter aspect of the argument would substantially be an aspect of the principle of estoppel.

10. Explanation to Section 20 of the Code of Civil Procedure in no case apply to clause 12 of the Letters Patent because section 120 of the Civil Procedure Code has expressly laid down that section 20 shall not apply to the High Courts exercising their original jurisdiction. The Supreme Court has held that applying explanation in section 20 to the clause 12 of the Letters Patent would render section 120 of the Civil Procedure Code nugatory and otiose since section 120 of the code expressly refers to section 16, 17 and 20 and makes them inapplicable to the Letters Patent. The Letters Patent, is a special charter conferring jurisdiction on the chartered High Courts. So, when there is a special enactment such as Letters Patent, which expressly lays down the criteria on the jurisdiction of the chartered High Court, it is totally unnecessary
and in fact futile to refer to another jurisdiction such as Civil Procedure Code (which is not applicable) to determine the jurisdiction of the chartered High Court.

6.5 Jurisdiction over Partnership firms

Order XXX of the code of civil procedure deals with suits by or against the partnership firms. Rule 1 of the order says that any two or more persons claiming or being liable as partners and carrying on business in India may sue or be sued in the name of the firm of which such persons were partners at the time when the cause of action accrue and any party to a suit may in such case apply to the court for a statement of the names and addresses of the persons who were at the time of accruing of the actions were partners in such firm, to be furnished and verified in such a manner as the court may direct. The proceedings may continue in the name of the firm but in the final judgment the names of the partners are to be disclosed in the decree. Where are summons are served on the partners in the name of the partnership firm, every person on whom such summons are served shall be informed by a notice in writing while serving the summons that in what capacity the notice is served. Whether that person is served as a partner or as a person having the control or management of the partnership business, or whether he is being served in both the characters. Where there is a default in giving such notice, the person shall be deemed to be served as a partner. Even when the partners of the partnership firm are sued in the name of the partnership firm as partners, they appearance before the court will be in the individual names, though the proceedings before the court against them will continue in the partnership firm’s name.

The service of summons upon the partners sued in the name of the partnership firm shall be made:-

(a) upon any one or more of the partners of the firm, or
(b) up on any person who is in the control or management of the business of the partnership firm at the time of the service of the summons at the principal place where such business is carried on in India, as the Court may direct. The above service shall be deemed to be good service upon the partnership firm which is sued, although all or any of the partners of such firm are within or outside India.\textsuperscript{80}

However, in case the partnership firm is dissolved before the commencement of the suit by the plaintiff and such dissolution is within the knowledge of the plaintiff, then in such a case the summons has to be served upon every person who is in India, whom the plaintiff wants to make liable\textsuperscript{81}. While serving summons on the partner or the person having control or management of the business of the partnership firm as laid down in rule 3 Order XXX of the CPC, a notice shall be given in writing to every such person stating in what capacity he is being sued, whether he is sued in the capacity of a partner in the partnership firm or in capacity of a person in the control or management of business of partnership firm being sued or in both of his characters. In the absence of such notice it shall be deemed that he is being sued in the capacity of a partner. In case of persons are sued in the name of the partnership firm, all partners are to appear individually in their own name, nevertheless the proceedings will continue in the name of the partnership firm. But no appearance of the person upon whom the summons are served by fact of him having at the time of service the control or management of the partnership business shall be necessary for by him unless he is a partner of the firm sued.\textsuperscript{82}

Any person on whom the summons is served may enter an appearance under protest denying that he was a partner at any material time. In such case either the plaintiff or the person served with the summons may apply to the court before the date fixed for the hearing and final disposal of the case to determine that whether he

\textsuperscript{80} The Code of Civil Procedure, 1908 (Act 5 of 1908), o. XXX, r. 3.
\textsuperscript{81} Ibid, r. 3, proviso.
\textsuperscript{82} Ibid, rs. 5,6,7.
was a partner of the firm which makes him liable for the claim filed against him. In the case of *Gajendra Narain Singh v. Johrimal Prahlad Rai* 83, the Supreme court has held that where a defendant is served as partner and he appears without protest, his appearance must deemed to be on behalf of the firm and unless the Court permits the defendant to withdraw the appearance initially filed, it continues to be an appearance behalf of the firm."

Where the court finds that the person served was a partner at the material time, such finding shall not preclude the said person from filling a defence denying the liability of the firm in respect of the claim against him. Also, where the court concludes that he was not a partner in the firm on the material time and was not liable as a partner, then in such case the plaintiff is not precluded by the court from otherwise serving the summons on the firm and proceeding with the suit, however, in such a case the plaintiff shall be precluded from proceeding against the defendant found not the partner of the firm by the court84.

### 6.6 Forum Non Convenience in India

The Indian Courts closely follow the English Law on forum non convenience / forum convenience issue in International cases involving foreign element. However, in domestic cases the principle is applicable otherwise. The issue regarding the applicability of principle of forum non convenience in the domestic cases arose in the case of *Horlicks Ltd. and another v. Heinz India (Pvt.) Ltd.* 85 Although the case deals with the issue of injunction and forum non convenience but nevertheless it is important from the view point of commercial disputes as in many of the cases, the issue of forum convenience or non convenience often arises. In this case the appellants applied to the court to grant injunction orders against the respondents for restraining them to continue with certain advertisement degrading their products by showing their own product of respondent more superior in quality. The respondents

---

83 1964 AIR 581.  
84 The Code of Civil Procedure, 1908 (Act 5 of 1908), o. XXX, r.8.  
85 164 (2009) DLT 539.
also filed a suit in the High court of Bombay in the year 2008 in respect of certain advertisements shown by the appellant against them. In the same year, the appellants filed a suit against the respondents in the High court of Delhi alleging that the advertisement shown by the respondent (Heinz) on the Television tend to convey to the customers that Horlicks was a cheap and ineffective product as compared to Heinz (the product of the respondent). Earlier also in the year 2004, the appellants filled two cases against the respondent one in the High Court of Calcutta and other at the High Court of Madras alleging disparaging of their product by the respondent in advertisement on the television. The Single Judge passed an order directing that the plaintiffs to be returned by the appellant and requested giving liberty to the appellants to file fresh suits before the Bombay High Court on the ground that the proceedings before the Bombay High Court and the proceedings before the Bombay High Court and the proceedings now initiated before the Delhi high Court were intertwined and inter related, so it is better for the appellant to pursue the suit in the High Court of Bombay on the principle of forum non convenience stating that Bombay High Court is the correct forum for the proceeding of the suit.

The appellant therefore filled the present appeals against the order of the single judge of the Delhi High Court. The main question before the court is whether the suits could have been returned and rejected on the principle of forum non convenience?

The respondent contended that the Delhi High Court has the power to return or reject a suit on the principle of forum non convenience by resorting to section 151 of the Civil Procedure Code which deals with the residuary power of the court, in the same way when the court grants anti injunction order by virtue of using the same section of the code.

But the counsel for the appellant pleaded that recourse to section 151 cannot be made when specific provisions are contained in the Code of Civil Procedure regarding the place of suing. Section 16 to 20 of the Code lay down the provision regarding to place of suing. The appellants relied on section 20 of the code which
states that suits other than those mentioned in section 16, 17, 18, 19 of the Code can be instituted where the defendant resides or cause of action arises. Section 22 of the Code of Civil Procedure lay down provision relating to the powers of the court to transfer the suits which may be instituted in more than one court. Section 33 deals with the court in which court such an application for transfer would lie. Section 24 of the Code deals with the General power of transfer of any suit, appeal or other proceedings of the High Court or the District Court, which may be pending before them or under any court to transfer suits, appeals or other proceedings in the interest of Justice from a High Court or other Civil Court in one state to a High Court or other Civil court in any other state. Section 151 deals with the inherent powers of the court to make such others which may be necessary to meet the ends of justice or to prevent abuse of the process of the court. Although section 151 of the Code gives the court in India the inherent powers to make such orders as they deem fit in the interest of justice but the court cannot make an order which is in contravention or is to conflict with the specific provisions of law.

The main point of controversy in this case is that, was the learned single judge of the Delhi Court actually exercised the power of transfer of the case by resorting to the principle of forum non convenience by exercising its inherent power under section 151 of the Code of Civil Procedure? Was this power not in conflict with section 22, 23, 24 or 25 of the Code which exhaustively deals with law relating to the transfer of cases? Also, whether the principle of forum non convenience applies to Domestic cases in India?

Held:-

1. That the learned single Judge’s order to return and reject the plaint was impugned for the plaint can be rejected only if it fails to adhere to sub paragraphs (a) to (f) of order 7 Rule 11 of the Code and could only be returned if it fails to adhere to the Rule 10, order 7 of the Code.

2. The Hon’ble Court rejected the contentions of the respondent and the impugned order of the single Judge that since the court has inherent power to
grant anti suit injunction by virtue of Section 151 of the Civil Procedure Code, in the domestic cases, so being the principle anti injunction and forum non convenience the other side of the coin of the doctrine of anti suit injunction the principle of forum non convenience is equally applicable to the domestic courts in India. The Hon’ble Court rejected the impugned order of the learned single judge in refusing the suit on the basis of forum non convenience by applying section 151 of the code.

While going through the law embodying the principle of forum non convenience in the common law countries of UK, Canada, US and Australia, the court found that the doctrine has been embodied in the specific statutes of these very countries which permit the courts of these very countries which permit the courts of these countries to exercise such principles in their domestic forums, where as in India, there is no provision under the Code of Civil Procedure which deals with the principle of forum non convenience. Hence recourse to section 151 of the Code of Civil Procedure cannot be made by the courts for applying the said principle in domestic litigation. An aggrieved party can approach to the Code which is a proper route. The Hon’ble Court allowed the appeal.

So the law relating to forum non convenience in India is that the doctrine applies in International cases, and it has no application to domestic cases in India. Some of the important principles extracted from recent judgments which the Courts should take into consideration while applying the doctrine in the international cases are 86:-

(a) The first and the foremost principle for the grant of stay of proceedings on the ground of forum non conveniens is that stay will only be granted when it is in the interest of all the parties to the proceedings and to meet the ends of justice. For this

first of all, the forum in whose favour the stay is to be granted shall have competent jurisdiction. It should be appropriate forum for the purpose of the trial of the action meaning thereby a forum which could provide justice to both the parties and a decision in interest of both the parties.

(b) The defendant applying for the stay of the proceedings bears the burden of proving that the stay is beneficial in the interest of justice. But, the burden shifts on the plaintiff in case the court finds that there exists another appropriate forum which is prima facie appropriate for the trial of the case, but the plaintiff wants to continue the trial in that court. The plaintiff has to prove that there exists special circumstances by reason of which justice requires that the trail be continued in his country. Both the parties to the proceedings are required to establish the existence of certain matters which will assist them in persuading the court to exercise its discretion in their favour, and that in respect of any such matter the evidential burden will rest on the party who asserts its existence.

(c) The Hon’ble court referring to the number of cases under the English law, has undoubtedly agreed to the fact that where the plaintiff has profound right to the court’s jurisdiction in his country, then the court should not hesitate to refuse to grant stay to the defendant. Under the English law, the courts do not disturb the jurisdictional right of the plaintiff so easily where it has been founded as of right in accordance with the law of the England. Also in cases where there is no particular forum which could be regarded as natural forum for the trial of the case, especially in commercial disputes, in such cases also the English courts refuse to grant stay to the defendant.

(d) For arriving at the conclusion on other clearly more appropriate forum the court has to look on some factors which justify the stay in favour of that other forum. For this the court has to find out the real and substantial connection of the action with the forum. Such a real and substantial connection includes inconvenience of the parties, expenses incurred on the litigation, availability of the witnesses, the law governing the transaction, residence of the parties or the place where the parties carry
on their business, etc. If after considering the above factors the court come to the conclusion that there is no other forum available which is clearly more appropriate for the trail of the action, and then in such case the court will refuse a stay to the defendant. But if however, after considering the above factors finds that the other available forum is prima facie more appropriate for the trial of the action it will grant a stay order to the defendant. But where a plaintiff proves that there are compelling reasons and the justice requires that the stay should not be granted then in such case also the court may refuse to grant a stay. Those compelling reasons should go be beyond the above factors favouring the defendant. The plaintiff owns the burden of proving those circumstances if he takes such a plea.

An important point regarding the applicability of the principle of forum non convenience is that, a court rejecting a matter on the principle of forum non conveniens, must otherwise also have jurisdiction to entertain the same, otherwise it cannot pass an order refusing to hear the matter on the plea of forum non convenience.  

As already discussed earlier, the High Courts of Judicature at Madras, Bombay and Calcutta are created under the Letters Patent issued by the queen Victoria during the British period. These three High Courts are the chartered High Courts and enjoy special status. The provisions of Letters Patent apply on them instead of Indian Civil Procedure Code. The jurisdiction for these High Courts is determined under clause 12 of the Letters Patent applicable to each of these High Courts. Since, it has been settled in the case of Horlicks Ltd. and another v. Heinz India (Pvt.) Ltd, that the principle of forum non convenience has no application to the proceedings governed by the code of civil procedure and is applicable primarily to foreign forums, an interesting question arose for determination in the case of M/S. Duro Flex Pvt. Limited v. M/S. Duroflex Sitting Systems regarding the applicability of principles of forum non convenience or analogous principles to clause

---

87 Moser Baer India Ltd. v. Koninklijke Philips Electronics, 2008 (1) CTLJ 421 Del.
88 164 (2009) DLT 539.
89 2015 AIR (Madras) 30.
12 of the Letters Patent in considering whether leave to sue under clause 12 of the Letters Patent be granted in case part of action arose within the jurisdiction of Chennai (Madras) High Court? Answering the question in affirmative, the Hon’ble High Court held that there is difference between the jurisdictions as envisaged under section 20 of the civil procedure code and clause 12 of the Letters Patent. The considerations which apply for determining jurisdiction under section 20 of the civil procedure code do not apply to clause 12 of the Letters Patent. Under the Letters Patent the plaintiff has no absolute right to bring the proceedings under the High Court, he has to obtain the leave of the court before doing it. So, while deciding whether leave is to be granted or not the court can apply the principle of forum non convenience or the principles akin to it which would enable the court to find out the appropriate or suitable forum for the parties, which will not only be convenient to all the parties in terms of expenses involved, location of witness, law applicable etc., but also justify the granting or refusing of permission to the plaintiff on the ground of balance of convenience. Hence, according to the court the mere fact that a part of cause of action arose within the jurisdiction of the court to which Letters Patent apply will not itself compel the court to assume jurisdiction.

6.6.1 Attitude of foreign courts towards India on the principle of forum non convenience

It has been observed by the Indian Judiciary that the foreign courts are declining the jurisdiction of the Indian court in the cases involving foreign element on the unacceptable reason of longer pendency litigation in India in commercial cases. In the 188th report of Law commission of India on Proposals for Constitution of Hi-Tech Fast-Track Commercial Divisions in High Courts, 2003, the law commission highlighted the prejudice which is caused by the foreign courts towards the Indian courts on the plea of forum non convenience. It has been brought to the notice that the courts of USA and UK are taking up the cases of commercial dispute, even when there is no substantial connection between the dispute and the foreign forum merely on the reason that the India courts take more than twenty five years to
dispose of a case of commercial nature, the fact which in reality does not have any substance in it. As per the law commission, the courts in India take not more than two to three years in disposing of case relating to commercial litigation. Citing the example of Delhi High Court, the Law Commission pointed out that Delhi High Court being the heavy court disposes of the commercial disputes in one or at the most, in two years. As per the report there are anomalies in decision of foreign courts particularly the US and the UK courts while deciding the issue of forum non convenience. The kind of attitude with which the courts in these countries approach their own people and the outsiders in the cases involving forum non convenience issue, reflects the double face attitudes of these courts. A sympathetic approach is taken when plaintiff belongs to these countries and sought a stay against an alien defendant, in such cases these foreign Courts take up the cases immediately on the ground of delay of Courts in the country of the alien. A reverse approach is taken when an alien plaintiff approaches the court against the defendant belonging to these countries, then in such cases the same Courts relegate the plaintiff to the Courts in the country of the alien. These contrasts in the judgments of American and UK Courts have, in fact, been analysed and criticised by several jurists. The commission recommended the establishing of ‘commercial divisions’ with high-tech facilities like video-conferencing, online filing of the cases, fast-track disposal of cases, etc., in the High Courts of the states, to deal with heavy commercial litigation, just to boost the confidence of foreign investors and to remove their doubt regarding the longer delays in judicial process in India. The 245th law commission report of India strongly emphasised the need to have more judges in the Indian judiciary so as to enable the courts to have speedy disposal of cases in India.\textsuperscript{90} In fact the title of the report was ‘Arrears and Backlog: Creating Additional Judicial Manpower’ with the aim to suggest the government to create more additional manpower for optimal utilization in order to ensure fair trial and provide speedy justice to the citizens of India. Realizing the need to speed up the litigation process in India, the 253rd Law

\textsuperscript{90} Available at: http://lawcommissionofindia.nic.in/reports (last visited on October 30, 2015).
Commission of India recommended the establishment of commercial courts in India. Acting on the said report the Indian parliament enacted The Commercial Court, Commercial Division and Commercial Appellate Division of High Court Act, 2015 to remove this weakness of the Indian judicial process. The act aims to deliver speedy justice to the claimants in commercial disputes. The Act enables the creation of commercial divisions and commercial appellate divisions in high courts, and commercial courts at the district level with the aim to expedite the speedy disposal of commercial cases more efficiently in India. In some of the states and union territories such Delhi, Mumbai, Himachal Pradesh, Gujarat and Chandigarh, commercial courts have already started functioning. The key feature of this act is that it steps towards expeditious disposal of commercial cases where the suit value is above 1 crore rupees. The maximum period for filling the written statement is of 120 days from the date of service of summons on the expiry of the said time period, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. There are provisions for summary judgment and case management in the Act. A party can apply the court for summary judgment if it can satisfy the court there are no chances or prospects of other party to succeed in his claim. The court may also if comes to the conclusion that there are no compelling reasons to continue the claim and it can be disposed of without recording of oral evidence, may grant summary judgment in the case. Such judgments aim to shorten the litigation time and to snub the false and frivolous claims of the parties. The provisions relating to case management are contained in order XV-A of the Act. The Court shall hold the first Case Management Hearing, within four weeks from the date of filing of affidavit of admission or denial of documents by all parties to the suit.

91 Available at: http://timesofindia.indiatimes.com (Last Visited on September 2, 2016).
92 The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, NO. 4 Of 2016, sec. 2 (i).
93 Ibid, Chap. VII, sch.
94 Ibid, O. XIII-A.
To conclude, the enactment of commercial courts Acts in India is a stepping stone in the area of providing speedy disposal of commercial disputes in India, which would help in softening the attitude of foreign forms towards its calibre of providing justice on time. From jurisdictional point of view noting much is expected from this Act because the jurisdictional issues are still governed by the Civil Procedure Code only. Hence, at the international level the Act serves to change the perspective of the foreign courts on the issue of forum non convenience towards India.