

Reliabilityengineering Industries and a Vs. Aesseal India Privatelimited and Othe

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Court : Andhra Pradesh

Decided On : Jul-10-2013

Judge : L.Narasimha Reddy and the Hon'Ble Sr

Appellant : Reliabilityengineering Industries and a

Respondent : Aesseal India Privatelimited and Othe

Judgement :

THE HON'BLE Sr.JUSTICE L.

NARASIMHA REDDY AND THE HON'BLE Sr.JUSTICE S.V.BHATT,
C.M.A.Nos.323 of 2013 and batch dated:10-07-2013 Reliability Engineering
Industries and another ...APPELLANTS Aesseal India Private Limited and others
...RESPONDENTS COUNSEL FOR THE APPELLANTS :Sri.S.Ravi in cma.323
and 352 of 2013 COUNSEL FOR THE APPPELLANTS:s RI.D.Prakash Reddy in
cma 355 of 2013 COUNSEL FOR THE RESPONDENTS:s RI.S.Niranjan Reddy :
?.CITATIONS: 130(2006) DLT330COMMON

JUDGMENT

: (per the Hon'ble Sr.Justice L.Narasimha Reddy) These three miscellaneous
appeals filed under Rule 1 of Order 43 C.P.C.arise out of a common order, dated
08.04.2013, passed in three interlocutory applications filed in O.S.No.73 of 2012

on the file of the I Additional District Judge, Ranga Reddy District.

Hence, they are disposed of through a common judgment.

For the sake of convenience, the parties are referred to as arrayed in the suit.

The 2nd plaintiff-AES Engineering Limited, Global Technology Centre is a Company, incorporated in England.

The 1st plaintiff is a Company incorporated in India and is a 100% subsidiary of the 2nd plaintiff.

The plaintiffs undertake the activity of designing, manufacture, and supply of mechanical seals, engineered sealing systems (for short 'the mechanical seals') and other related products.

They claim to have acquired international reputation in that filed.

The business of the plaintiffs is said to have started in India, in the year 2003.

The 9th defendant is an Indian Company with its registered office at Hyderabad and it is undertaking similar activity to that of the plaintiffs.

It is said to have approached the 1st plaintiff through defendants 7 and 8 and 10 and 11, who too are in the same filed of activity, with a proposal to have collaboration or association with the 1st plaintiff.

Defendants 10 and 11 are the respective spouses of defendants 7 and 8.

An asset purchase agreement has been entered into, on 03.09.2008.

According to that, the assets including proprietary rights, technical, know-how and intellectual property rights, relating to manufacture of mechanical seals as well as the employees shall be transferred in favour of the 1st plaintiff.

The consideration is said to be Rs.12.9 crores and that a sum of Rs.7.9 crores is paid on the date of the agreement.

The agreement further provided that defendants 7 and 8, who are in the administration of the 9th defendant, have to join the employment of the 1st plaintiff and that in case, they leave the employment or the 1st plaintiff terminates their services, the 9th defendant would not be entitled to balance of consideration.

Separate document, known as employment agreement, has also been entered into on 03.09.2008 itself.

Defendants 7 and 8 were appointed as Directors of the 1st plaintiff-Company with considerable powers of management.

Similarly, defendants 3, 13 to 16, who were in the employment of the 9th defendant-Company, have been employed by the 1st plaintiff through individual letters of appointment.

Thus, the 9th defendant, together with assets, Directors and employees became part of the establishment of the 1st plaintiff.

The 2nd defendant is the proprietor of the 1st defendant.

Alleging that (a) defendants 7 and 8, their wives, defendants 10 and 11, and defendants 3, 13 to 16, acted contrary to the respective agreements; (b) they have indirectly brought into existence the 1st defendant undertaking; and (c) several confidential drawings, developed and prepared by the plaintiffs were stolen and utilised in manufacturing of products, the plaintiffs filed the suit for the relief of; (a) injunction (i) restraining the defendants jointly and severally and every one associated with them as Direct ORS.Shareholders etc., or the employees from manufacturing, selling, advertising or distributing mechanical seals based on the designs, drawings and trade secrets and confidential information exclusively belonging to the plaintiffs; (ii) from passing off or using the confidential information, designs, drawings, know-how, trade secrets and intellectual property rights; and (iii) directly or indirectly from soliciting the customers of the plaintiffs; (b) direct the defendants jointly and severally by way of mandatory injunction to destroy all the drawings, designs, trade secrets, client data, documents relating to the products of the plaintiffs now being manufactured, sold or distributed by the defendants; (c) to

restrain defendants 3,7,8,12 to 17 from passing off confidential information directly or indirectly and from carrying out any business or engaging themselves in employment with defendants 1 and 4 in breach of their obligation under their respective employment agreements; and (d) to award damages of Rs.2,00,00,000/- against the defendants jointly and severally for the breach of confidentiality obligations.

The plaintiffs have also filed three applications for interlocutory reliefs.

I.A.No.263 of 2012 was filed under Order 39 Rules 1 and 2 C.P.C.for temporary injunction, to restrain the defendants, jointly and severally, or through their employees directly or from soliciting the customers of the plaintiffs.

I.A.No.264 of 2012 was filed under the same provision for temporary injunction to restrain the defendants from manufacturing, selling, advertising and distributing mechanicals or any other product based on the designs, drawings, trade secrets, confidential information, know-how belonging to the plaintiffs.

I.A.No.266 of 2012 was filed against defendants 3, 7, 8 and 12 to 17 for temporary injunction to restrain them jointly and severally from carrying on employment with defendants 1 and 4 and from carrying out any business or engagement in employment that would result in infringement of confidential information, trade secrets, intellectual property rights, patents and designs of the plaintiffs.

The plaintiffs pleaded that after they acquired the 9th defendant, together with the assets and intellectual properties and made the Directors and employees of the 9th defendant as part of their establishment, disputes were raised by defendants 10 and 11, respective spouses of defendants 7 and 8, challenging the very asset purchase agreement and other arrangements, and that proceedings were initiated before the civil Court as well as the Arbitrat ORS.The summary of the grievance of the plaintiffs was that defendants 7 and 8 had access to their drawings, intellectual property rights and trade secrets and have passed on the same to the 1st defendant.

It was alleged that the 1st defendant started manufacturing products on the basis of the drawings and know-how of the plaintiffs, stolen by defendants 7 and 8 and erstwhile employees of the 9th defendant.

Detailed reference was made to the events that are said to have taken place, ever since the takeover, and the removal of defendants 7 and 8 from the directorship, initiation of proceedings by the Police at Pune, and those by defendants 10 and 11.

It was pleaded that unless the temporary injunctions, prayed for in the respective applications are granted, they would be put to serious loss and hardship, which cannot be compensated in any manner.

The fiRs.two interlocutory applications were strongly opposed by the 1st defendant and the third application was opposed by the erstwhile employees of the 9th defendant by filing separate counteRs.They denied the allegation made against them and pleaded that none of the terms of the agreements were violated.

The 1st defendant pleaded that it is an independent establishment and has nothing to do with the plaintiffs or other defendants.

The trial Court passed a detailed common order, dated 08.04.2013, allowing all the applications.

While the 1st defendant in the suit has challenged the orders in I.A.Nos.263 and 264 of 2011 in C.M.A.Nos.323 and 352 of 2013, defendants 3, 13 to 16 filed C.M.A.No.355 of 2013 challenging the order in I.A.No.266 of 2012.

Sr.S.Ravi, learned Senior Counsel for defendants 1 and 2, submits that there was no arrangement, much less privity of contract between the plaintiffs on the one hand and defendants 1 and 2 on the other and there was absolutely no basis for the plaintiffs, to file the suit, or to seek relief of temporary injunction against them.

He contends that the 1st defendant is a manufacturer of mechanical seals and it has its own technical know-how, or the manufacturing process; and that there was no basis for the plaintiffs to proceed against the 1st defendant.

Learned Senior Counsel further submits that manufacture of mechanical seals is not something which was invented by the plaintiffs and even if one goes by the pleadings in the plaint, it is evident that there are several agencies in the field including the 9th defendant, much before the so-called asset purchase agreement was entered into.

He submits that without even specifying as to what exactly the designs, drawings, plans or know-how of the plaintiffs are, a vague, general and abstract prayer was made and the trial Court has granted temporary injunction that in effect prohibits the 1st defendant from undertaking any activity.

He submits that unless the Court was informed about the nature and details of the drawings or plans of the plaintiffs, it is just impossible for one to verify; and there is every likelihood of the plaintiffs claiming that every product manufactured by the 1st defendant is on the basis of the drawings, know-how and plans of the plaintiffs.

It is also urged that unless the plaintiffs satisfy the Court that the so-called designs, drawings and plans are exclusively prepared by them, it cannot claim any propriety rights over them, particularly when they were not the subject matter of any copyright or patent.

Sr.Ravi further submits that the relief claimed in I.A.No.264 of 2012 is totally untenable.

He submits that the plaintiffs have just downloaded the list of persons or agencies and treated them as its customers. He submits that the trial Court did not even verify the particulars of the so-called customers and had granted temporary injunction restraining the 1st defendant from dealing in any way, with every possible customer of mechanical seals in the country, if not in the world.

Sr.D.Prakash Reddy, learned Senior Counsel, appeared for defendants 3, 13 to 16.

He submits that an extraordinary relief was sought by the plaintiffs against its own employees and the trial Court granted the relief without taking into account, the implications thereof.

He submits that an employee has to work in the organisation according to the job specifications given by the employer and it is totally un-understandable as to how the working of such employees can be circumscribed with the conditions, that cannot at all be verified or understood.

Learned Senior Counsel further submits that the trial Court itself, at more places than one, in its order, observed that the various details pertaining to the issue are to be verified in the couRs.of trial and still, an order of temporary injunction was passed.

Sr.S.Niranjan Reddy, learned counsel for the plaintiffs, submits that defendants 7 and 8, who are instrumental in getting their unit (9th defendant) purchased by the plaintiffs with the assets and the entire work force at a fairly large amount, had access to sensitive information of the plaintiffs, after they became part of the Board of Directors of the plaintiffs.

He contends that they had access to the drawings, designs and plans of the plaintiffs, and have dishonestly passed on the same to the 1st defendant and the latter, in turn, started manufacturing the products on the basis of such designs, drawings and plans.

He submits that in the couRs.of investigation, in a crime, registered on a complaint of the plaintiffs against the persons associated with the 1st defendant, it emerged that quite large number of designs, drawings and plans of the plaintiffs were procured through dubious means either through defendants 7 and 8 or some of the employees; and the products so manufactured, were sold to the customers of the plaintiffs.

Learned counsel further submits that the evidence on record, even at this stage, revealed that there was an act of breach of intellectual property rights of the plaintiffs, and that they were constrained to file the suit for multifarious reliefs.

He contends that extensive arguments were advanced before the trial Court and voluminous material was placed and the common order, which dealt with every aspect and after taking into account the principles that govern the situation.

Both the learned counsel have relied upon certain precedents.

The plaintiffs, who claim to be pioneers in the manufacture of mechanical seals, intended to expand their business in India.

The 9th defendant was already undertaking that very activity.

The opening up of India for international trade and globalisation, appears to have prompted and encouraged the plaintiffs to search for an avenue in India, for promoting their activities.

Of the several options, such as collaboration, floating a joint venture and complete takeover, the plaintiffs have chosen the last one and have taken over the 9th defendant in all respects.

Not only its assets were purchased, but also its Direct ORS. defendants 7 and 8 were made Directors of the plaintiffs and employees of the 9th defendant were made as part of their establishment.

It is not uncommon that in any field of activity, such as engineering, medicine, services, practice of law and the like, there are certain tenets, according to which, the activities take place.

With the passage of time, new inventions and discoveries take place to improve upon what is already existing.

Efforts are made to ensure that the benefit of such invention and discovery is not appropriated clandestinely by others. It is here, that the phenomenon of copyright, patent, licence, franchise, etc., become relevant.

The relationship between the plaintiffs on the one hand and the defendants on the other has been furnished in brief, in preceding paragraphs.

The plaintiffs claim that they have evolved and developed the designs, drawings and plans for manufacture of mechanical seals, and such material is confidential, with them.

Even while claiming that the drawings, etc., are confidential, the plaintiffs state that defendants 7 and 8 and the employees who have brought from the 9th defendant, had access to them.

Beyond an assertion, reasoning is expected in this regard, to show how, the designs, drawings and plans, which are totally confidential, came to be accessed by the parties referred to above, and if they were so easily accessible, how they can be treated as confidential at all.

Sharing of information, is indeed essential between those who evolved or discovered it, on the one hand, and those who are entrusted with the use thereof, in the field of manufacture, on the other.

Once, such information is shared, the person, who came to know about it for the first time gets relatively well-informed.

The very purpose of providing access to such a person to a higher level of knowledge, is to extract an improved service from him.

It is not an act of charity.

Once the knowledge or information is passed, it is difficult to fence it.

Human nature is such that a person cannot be prevented from using the knowledge, acquired by him to any particular use, as long as the resultant act is not prohibited by law.

It is only when such information relates to sensitive aspects, such as security of the State, that the conduct and functioning of the person can be kept under surveillance.

In the fields of manufacture, business and trade, the relations are governed by the respective agreements or arrangements.

It is mostly, in the realm of contract.

Even according to the plaintiffs, defendants 7 and 8 were provided access to their secret information about the designs, drawings, etc. In case defendants 7 and 8 or anybody through them have acted contrary to the specific conditions, subject to which the information was shared, they can certainly be sued, duly informing the Court, the details of such arrangement.

This is not the stage to delve into the respective stands of the plaintiffs on the one hand and the defendants on the other in detail.

It is only in the context of temporary injunctions prayed for by the plaintiffs, that the matter needs to be examined.

Every care is being taken to ensure that any observation made herein does not have its impact on the merits of the case.

The suit, basically is not the one, for protection of any copyright or patent.

The plaintiffs appear to have taken for granted, their exclusive rights over the designs, drawings and plans said to have been prepared by them.

That is why the relief is claimed in the form of perpetual injunction, mandatory injunction and for damages.

While claiming temporary injunction in the context of preventing the defendants from using any designs, drawings and plans brought into existence by the plaintiffs, the Court is supposed to know as to what exactly are the details of such material, so that the defendants can be restrained from using them.

In a given case, the very revelation of the details of such designs, drawings and plans, may breach the confidentiality and that would relegate the plaintiffs to a worse position than what they were in, before the suit is filed.

In such case, at least, the Court must be taken into confidence, even while ensuring that what is shared with the Court is not known to the opposite party.

This becomes necessary to help the Court, to understand and decide whether or not the material placed before it is such that the defendants in the suit, cannot, in

the ordinary course of things, be expected to know.

Further, in case any order of temporary injunction is passed, such information constitutes the basis to verify whether the acts and omissions on the part of the defendants are the result of clandestine use of the designs, drawings and plans, which the plaintiffs claim, as their own.

The Court is also under obligation to ensure that a decent balance is maintained between protection of the rights in relation to genuine inventions and discoveries on the one hand; and freedom of an individual, to carry on the trade or activity, of his own choice, in accordance with law; on the other.

If the injunction is claimed by a plaintiff in relation to an activity, which is otherwise in the public knowledge or is an activity of ordinary commerce and trade, the Court may not be inclined to prevent the activities of the defendants.

In the instant case, the plaintiffs did not furnish the particulars of designs, drawings and plans in the pleadings or separately, to the Court.

The injunction claimed in I.A.No.264 of 2012 is to restrain the defendants, their respective principal office/directors/promoters/shareholders/managers/assigns etc., either directly and indirectly or jointly and severally from manufacturing, selling, advertising, mechanicals, or any other product in any manner based on the designs, trade secrets, confidential information, know-how exclusively belonging to the plaintiffs, pending disposal of the main suit.

The relief claimed in I.A.No.266 of 2012 is to restrain defendants 3, 7, 8, 12 to 17, either jointly and severally, from taking employment with defendants 1 and 4 directly and indirectly and from carrying out any business of engaging in employment directly and indirectly which would cause them to infringe the confidential information, trade secrets and intellectual property rights including patents and designs of the petitioners. The one claimed in I.A.No.263 of 2012 is to restrain the defendants and their respective principal office/directors/promoters/shareholders/managers/assigns etc., jointly and severally or

directly and indirectly from soliciting the customers of plaintiffs, pending disposal of the main suit.

As a matter of fact, the trial Court was also not aware as to what the so- called drawings and trade secrets are.

Neither any schedule was attached to the petition nor any sealed cover was delivered to it.

The trial Court observed in para 29 of the common order, which reads as under: ".The learned counsel for the respondents has contended that there is no proof of any patent having been granted by a competent authority in India in respect of any of the alleged designs belonging to the petitioneRs. There is no comparison made by item and no statement as to which of the particular designs of the petitioners have been copied as has been alleged and which of the offending articles are.

Certain patents alleged to have been sought/registered in foreign countries and not in India cannot be made the basis for filing the present petitions.

There is no allegation supported by tangible evidence even with respect to the prior user, the period of use and as to why the petitioners are entitled for the exclusive use of the alleged designs which are referred to in the petition.

Similarly, not one scrap of paper has been filed by the petitioners disclosing any patent or copyright.

Then, as per settled law, adverse inference against the petitioners needs to be applied.

In the present case, the respondents are relying on Section 16 of the Copy Right Act, which is not applicable to the present proceedings.

The learned counsel for the petitioneRs. on the other hand, has contended that the petitioners do not have patent right or copyright in respect of their mechanical seals and drawings.

But it is not their case of infringement of the confidential information and infringement or intellectual property rights under the Patent Act and Copy Right Act, but as a general rule under the Contract Act for the breach of confidentiality and trust with which the petitioners have reposed on these respondents being parted with the above confidential information while discharging of the duties."

At more places than one, the trial Court observed that the details of the rights claimed by the plaintiffs need to be ascertained, at the hearing of the suit.

However, it has based its findings upon certain observations said to have been made by the investigating agencies, at Pune.

A remand report, which is in Marathi, was placed before it and even the English version was not available.

One just cannot take into account, the contents of the report of Police while deciding the civil rights of the parties.

Reliance is placed upon the judgment of the Delhi High Court in Diljeet Titus versus Alfred A.

Adebare1.

That was a case in which, there was no controversy as to the identity of the material that was used by the defendants therein.

They have downloaded the forms of correspondence and notices evolved by a law firm, in which they worked earlier and attempted to deal with the very clients of the firm.

The Court, in that case, was clear as to the material regarding which the plaintiffs claimed exclusive rights and the use thereof by the defendants, unauthorisedly.

Such is not the situation here.

It has already been observed in the preceding paragraphs that unless a plaintiff in a suit of this nature satisfies the Court as to (a) the nature of discovery or invention

made by it; (b) the instances of unauthorised use of such discovery and invention or formulation of designs, it cannot prevent the defendants from undertaking the activity of their choice.

If the plaintiff is afraid of its confidential designs, drawings and plans becoming public on account of revelation, at least, the Court must be informed of that.

None of the steps have taken place in the instant case.

Therefore, the grant of temporary injunction, which has the effect of virtually preventing defendants 1 and 2 from undertaking any activity of manufacture of mechanical seals, cannot be sustained in law.

So is the case with the injunction granted against the employees.

An order of temporary injunction to restrain a trader from dealing with a set of clients or users is indeed, an extraordinary phenomenon.

Such an attempt would infringe the rights not only of a trader or manufacturer, but also of a probable or potential customer.

No provision of law, which disables the defendants from dealing with any particular person in their activity of business, was cited by the plaintiffs.

Further, it is only when a particular user or a customer had any obligation under a contract towards the plaintiffs, that the feasibility of granting injunction can be considered, so that such conditions are not violated.

The plaintiffs did not plead that they have any subsisting contract or commitment with a particular set of customers. Assuming that a set of persons are the customers of the plaintiffs, they cannot claim that they alone must deal with such customers. Hardly, any doubt exists that it is for the customer to choose the product and the agency from which he wants to procure it.

Several factors such as quality of the product, price structure, service, which one expects from the manufacturer and the like, go into the decision-making of a customer.

Added to all this, the list furnished by the plaintiffs, said to be of their customers, contains a single names, without their addresses, much less of any other details.

It resembles a list which can be downloaded from any website.

Unless there was any legal backing for such a relief, the trial Court was not justified in granting temporary injunction.

Hence, C.M.A.Nos.323 and 355 of 2012 are allowed and the orders of temporary injunction granted in I.A.Nos.263 and 266 of 2012 are set aside.

C.M.A.No.352 of 2012 filed against the order passed in I.A.No.264 of 2012 is partly allowed modifying the order of temporary injunction granted by the trial Court to the effect that injunction shall operate in respect of such designs, drawings and plans as are delivered by the plaintiffs in a sealed cover with a sworn statement to the effect that such designs, drawings and plans are prepared and invented by them exclusively and in the ordinary course of business, such drawings etc., cannot be brought into existence, by any others. In the event of any complaint being made by the plaintiffs as to breach of injunction, the trial Court shall be under obligation to verify the activity on the part of the 1st defendant, which is complained of; and compare the same with the designs, drawings and plans that are delivered to it in a sealed cover; and decide the matter after giving opportunity to both the parties.

There shall be no order as to costs.

The miscellaneous petitions filed in these appeals shall also stand disposed of.

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NARASIMHA REDDY, J _____ S.V.BHATT, J Dt:10.07.2013

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