

Sanjeev Joshi and Anr Vs. Manas Kumar Chatterjee and Ors

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Court : Delhi

Decided On : Feb-09-2015

Judge : Jayant Nath

Appellant : Sanjeev Joshi and Anr

Respondent : Manas Kumar Chatterjee and Ors

Judgement :

\$~A-42 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

09. 02.2015 + CS(OS) 204/2013 SANJEEV JOSHI & ANR Through Plaintiffs Ms.Zehra Khan and Mr.Behal Rajshekhar Rao, Advocates versus MANAS KUMAR CHATTERJEE & ORS Defendants Through Mr.Vikas Aggarwal, Adv. for D-1 Mr.M.A.Niyazi, Ms.Anamika Ghai Niyazi and Mr.Manish Kumar, Adv. for D-2, D-4 and D-5 CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

(ORAL) IA No.26323/2014 This application is filed for early hearing of IA No.1795/2013. Dismissed as infructuous. IA No.1795/2013 1. This is an application filed for ex parte injunction to restrain the defendants from sharing and disclosing trade secrets, confidential data, intellectual property rights or work of plaintiff No.2 to any person, competitor or entity which may cause any harm or loss to plaintiff No.2. Other connected reliefs are also sought.

2. It is averred in the plaint that plaintiff No.2 is a private limited company engaged in the business of travel agent etc. In 2001, shareholding of plaintiff No.2 was distributed between plaintiff No.1 and defendant No.1, defendant No.1 owned 60% of the shares and the plaintiff No.1 owned 40% of the shares. In May-June 2008 defendant No.1 on behalf of plaintiff No.2 appointed defendants No.3 and 4 respectively as Managers in plaintiff No.2 company. In September 2009 certain arrangements were made with defendant No.2 for sourcing business from Italy. Later plaintiff No.1 came to know that defendants No.2 to 4 while in employment or working for plaintiff No.2 had incorporated defendant No.5 company which had amongst its principal objects to engage in business as travel agents. Hence, on 22.4.2010 defendants No.3 and 4 were asked to resign from plaintiff No.2 immediately. A settlement was entered into on 2.3.2010 with defendant No.2 to settle the dispute between the parties. Hence, defendants No.2 to 4 exited from the plaintiff No.2 company.

3. In February 2012 it is stated that plaintiff No.1 agreed to purchase shareholding of defendant No.1 in plaintiff No.2 company for a total consideration of `1,87,50,000/-. The plaint avers the following to be the obligation of defendant No.1:

9... Pertinently, under the terms of the Agreement, Defendant No.1 was, inter alia, not to(a) share and disclose trade secrets, confidential data, Intellectual Property Rights or work of Plaintiff No.2 to any other person, competitor or entry which may cause any harm, loss to plaintiff No.2; (b) directly or indirectly through any person promote, commence run business fall within the definition of Inbound Tours and/or any business construed as being similar business of plaintiff No.2; (c) initiate and/or maintain and/or engage into any business dealings of commercial nature with the existing clients of plaintiff No.2 as set out in the Agreement; and (d) take advantage of and/or use and/or misuse any documents which defendant No.1 is in his possession to the detriment of the plaintiffs. In terms of the Agreement, defendant No.1 was required to intimate to the public at large, including existing clients of plaintiff No.2 company, that he had disassociated with the plaintiffs and retired.

4. It is urged that despite the above position, defendant No.1 has acted in collusion with defendants No.2 to 5 in a pre-planned conspiracy and continued to engage in business operations as travel agents with intent to cause loss to plaintiff through defendants No.2 to 5. It is urged that defendants No.2 to 5 have collectively interfered with the contractual relations between the plaintiff and defendant No.1. Hence, the present Suit is filed.

5. The present plaint is filed by the plaintiff seeking the following reliefs:

a) Pass a decree of declaration that defendant No.1, in collusion with defendants No.2 to 5, has committed a breach of the fundamental terms of the Agreement. b) Pass a decree of declaration that defendants No.2,3,4 and 5 deliberately induced defendant No.1 to breach the Agreement. c) Pass a decree of permanent injunction restraining the defendants from: i. sharing and disclosing trade secrets, confidential data, Intellectual Property Rights or work of plaintiff No.2 to any other person, competitor or entity which may cause any harm, loss to plaintiff No.2; ii. directly or indirectly through any person promoting, commencing running business fall within the definition of Inbound Tours and/or any business construed as being similar business of Plaintiff No.2; iii. initiating and/or maintaining and/or engaging into any business dealings of commercial nature with the existing clients of plaintiff No.2 as set out in the Agreement; and iv. taking advantage of and/or using and/or misusing any documents which defendant No.1 is in his possession to the detrimental of the plaintiffs, d) Pass a decree of rendition of accounts of profits illegally earned by the defendants by reason of breach of the agreement by defendant No.1 and a decree against the defendants in the exact sum of the amount so ascertained.

6. The controversy revolves around interpretation of clause 4 of the Agreement dated 6.2.2012 between plaintiffs No.1 and 2 and defendant No.1. The said clause 4 reads as follows:

4.1 That the Second Party shall not share and disclose trade secrets, confidential data, Intellectual Property Rights or work of TIME to any other person, competitor or entity which may cause any harm, loss to TIME. 4.2 It is agreed and undertaken by the Second Party that he shall not himself or indirectly through any person

promote, commence run business fall within the definition of Inbound Tours and/or any business construed as being similar business of TIME for a period of (3) Three years from the receipt of entire sale consideration. Second Party has agreed and endorse that the said period is reasonable and fair. 4.3 That the Second Party undertakes not to initiate and/or maintain and/or engage into any business dealings of commercial nature with the existing clients of TIME as set out in list of clients in SCHEDULE-C for a period of three years from the date of receipt of entire sale consideration. Second Party has agreed and endorse that the said period is reasonable and fair. 4.4 That to the satisfaction of the First Party the Second Party has returned and handed over all the material documents, articles of the said companies which are in his possession at the time of the signing of the present Agreement and further undertakes that in future any documents which he comes across to be in his possession shall also be returned and handed over to First Party and declares that he shall not take advantage of and/or use and/or misuse any such documents or copy thereof to the detrimental of First Party or any of the three Companies TIME, SID or IFY.

7. Learned counsel for the plaintiff has urged that this is a non compete clause and being a negative covenant the plaintiffs are entitled to injunction to restrain the defendants from violating the said terms and conditions of the clause/Agreement.

8. In the course of arguments learned counsel for the plaintiff has agreed that as far as the prohibition contained under clause 4.2 and 4.3 is concerned, the prohibition is imposed on defendant No.1 for a period of 3 years. The Agreement being dated 6.2.2012, the said period of three years expired on 5.2.2015. She submits that in case the plaintiff is able to prove violation of clause 4.2 and 4.3 by defendant No.1, the defendants would be liable for appropriate damages and such other relief as per law.

9. She further stresses that interim injunction should be passed in terms of clause 4.1 and 4.4 of the said agreement as there is no term fixed for the duration of the said clause.

10. Learned counsel for defendant No.1 had fairly stated that his clients have no objection to comply with the provisions of Clause 4.1 and 4.4. He however submits

that the phraseology used in clause 4.1 i.e. trade secret, confidential data etc. is not defined in the Agreement and any undertaking given by the defendant No.1 would lead to needless litigation as Clause 4.1 uses a very wide and indefinite phrase.

11. The Court had in the course of arguments made a query to the plaintiff as to what exactly would be encompassed in the phrase trade secret, confidential data, intellectual property rights which is subject matter of clause 4.1 and for which clause no time frame is stipulated in the agreement. Learned counsel in Court has placed today a communication which was sent to the counsel for defendant No.1. The relevant portion of the communication spells out the scope of clause 4.1 and 4.4 as envisaged by the plaintiff which reads as follows:

Clause 4.1 Share or disclose: A. trade secrets, confidential data (i) Contact information of plaintiffs clients, other partners, hotels, restaurants, shopping complex, transportation providers, guides etc. (ii) Commercial terms offered by the plaintiff No.2 to its clients, other partners, hotels, restaurants, shopping complex, transportation providers, guides, routes etc. B. Intellectual Property Rights or Work of TIME. (i) (ii) (iii) (iv) Restrain from using TIME and Tourism India Management and Tourism India Management Enterprises Restrain from using the TIME logo Restrain from using of email ID mikechatterjee@tourismindiamanagement.com Restrain from publicizing that defendant No.1 has been associated with plaintiff No.2 previously. Clause 4.4:

declares that he shall not take advantage of and/or use and/or misuse any such documents or copy thereof to the detrimental of First Party or any of the three companies TIME, SID or IFY

12. Learned counsel for defendant No.1 has fairly conceded that he will abide by the conditions as stated in clause 4.1 B and 4.4 in the above communication. He, however, strenuously argues that the conditions stipulated by the plaintiff in 4.1 A impinge upon the rights of the defendant No.1 to carry on his business. He states that even as per clause 4.2 he can now directly and indirectly carry on a business in competition with plaintiffs No.1 and 2 and he cannot be restrained from dealing with information pertaining to various customers, hotels, restaurants, shopping

complex etc. inasmuch as these are facts and figures available to all persons who are dealing in the travel trade.

13. In my opinion, there is merit in the contention of the defendant No.1. The phraseology trade secret, confidential data as used in clause 4 of the agreement is not defined in the Agreement dated 06.02.2012. It is prima facie not possible to say that the said phrase will include details of hotels, restaurants, shopping complex, transportation providers, guides etc. One cannot ignore that once the period of three years is over defendant No.1. is free to carry on business in competition with the plaintiffs. For the said purpose knowledge about various clients with whom defendant No.1 would have dealt with as a Director of the plaintiff No.2, details of hotels, restaurants etc. with whom he would have to deal while carrying on his business cannot be a subject matter of injunction. Even otherwise, in the travel trade, names of hotels, restaurants, shopping complex etc. would be something which would be available in public domain. Names of clients who are using the services of travel agents would also be something which lot of travel agents would be aware of. The defendant No.1 cannot at this stage be restrained from using such information while carrying on business in competition with plaintiff No.2.

14. I dispose of this application directing defendant No.1 to abide by clause 4.1 & 4.4 of Agreement dated 06.02.2012 as clarified by clause 4.1 B and 4.4 above in the communication between the plaintiff and defendant No.1.

15. Application accordingly stands disposed of. JAYANT NATH, J FEBRUARY09 2015 n

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