

**Vortex Engineering Pvt Ltd Vs. Ncr Financial Solutions Group Ltd**

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**SooperKanoon Citation :** [sooperkanoon.com/953615](http://sooperkanoon.com/953615)

**Court :** Chennai

**Decided On :** Nov-28-2012

**Judge :** Vinod K. Sharma

**Appeal No. :** O.A.Nos.397 & 398 of 2012 in C.S.No.316 of 2012

**Appellant :** Vortex Engineering Pvt Ltd

**Respondent :** Ncr Financial Solutions Group Ltd

**Advocate for Pet/Ap. :** For the Petitioner: Harishankar, Advocate. For the Respondent: Udayakumar, Advocate.

**Judgement :**

**ORDER:**

1. O.A.No.397 of 2012 has been filed by the applicant / plaintiff under Order XIV Rule 8 of O.S.Rules r/w Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, for grant of interim injunction, restraining the respondent, their men, agents, servants or persons acting on their behalf from in any manner continuing to issue threats to the applicant for infringing the respondent's alleged copyrights of its NDC documentation that the respondent is contemplating legal action against the applicant, pending disposal of the suit.

2. O.A.No.398 of 2012 has been filed by the applicant / plaintiff under Order XIV Rule 8 of O.S.Rules r/w Order XXXIX Rules 1 & 2 of the Code of Civil Procedure,

for grant of interim injunction, restraining the respondent, their men, agents, servants or persons acting on their behalf from in any manner interfering with the legitimate right of the applicant to manufacture and sell its Automated Teller Machines using its own interoperability protocol developed by the applicant for its use in its ATMs, pending disposal of the suit.

3. The plaintiff / applicant is a pioneer in manufacturing and installing Automated Teller Machines (ATM) in rural and semi-urban areas in India. It is the case of the applicant / plaintiff that, it has designed ATMs, which are highly reliable, rugged, easy to use and eco-friendly and consume upto 90% lesser power and also can be economically operated using solar power.

4. It is the submission of the applicant / plaintiff that it had shown interest to interoperate with the NDC protocol developed by the respondent / defendant. In response to the request made by the applicant / plaintiff, the respondent quoted the rate, which was not accepted by the plaintiff / applicant.

5. It is further submission of the applicant / plaintiff, that after a period of one year of refusal to accept the rate quoted by the respondent / defendant, a letter was written on 11.04.2012, which reads as under:

“From: Tait, Alison [mailto:AT515676@ncr.com]

Sent: 11 April 2012 19:24

To: Narayanan

Cc: Shastri, Tushar; Samuels. Ellen

Subject: RE: Vortex ATMs and support for NDC+ protocol

Hi Narayanan,

It has been some time since we corresponded on this matter and I understand from NCR team in India that Vortex is actively selling and deploying ATMs which support the NDC protocol. Can you please provide me with an update on the conclusion from the Vortex Management team discussions on the subject of

purchasing a license from NCR for the NDC documentation, as referenced in your email of the 2nd March 2011.

I require confirmation as to whether Vortex wish to purchase the NDC license and as such will pay the license fee and ongoing subscription fee detailed in the agreement, which is copied again in this email for your convenience.

I have copied NCR Legal Counsel on this email to allow them to take this matter further based on the response we receive from Vortex.

Regards,

Alison

Solution Manager

Solutions Management (NDC Software Solutions)

NCR Financial Solutions Group Limited

Phone:+44 1382 592280

alison.tait@ncr.com / www.ncr.com”

6. The contention of the learned Senior Counsel appearing on behalf of the applicant / plaintiff, is that the words used in the letter, that the matter has been referred to NCR Legal Counsel to take this matter further based on the response received, would amount to threat, which is not permissible in law in view of Section 60 of the Copyright Act, 1957, which reads as under:

"60. Remedy in the case of groundless threat of legal proceedings-Where any person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens, any other person with any legal proceedings or liability in respect an alleged infringement of the copyright, any person aggrieved thereby may, notwithstanding anything contained in section 34 of the Specific Relief Act, 1963 institute a declaratory suit that the alleged infringement to which the threats relate was not in fact an infringement of any legal

rights of the person making such threats and may in any such suit-

(a) obtain an injunction against the continuance of such threats; and

(b) recover such damages, if any, as he has sustained by reason of such threats:

Provided that this section shall not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him."

7. It is also the contention of the learned Senior Counsel, that the respondent / defendant deserves to be restrained from issuing letters or notices to the users by alleging that the applicant / plaintiff is violating the copyright, as it amounts to interfere in their right to do business and such threats are covered under Section 60 of the Copyright Act, which is not permissible in law.

8. The learned Senior Counsel further contends that it is settled law, that issuance of legal notice to threaten proceedings against a party amounts to groundless threat, as envisaged under Section 60 of the Copyrights Act.

9. This Court, in Value Invest Wealth Management (India) Private Limited vs. B.G.Kishor Kumar and others, (2012) 2 MLJ 560, has held as under:

"17. On consideration, I find that no ground is made out for grant of injunction. The remedy under Section 142 of the Act, is only for issuing injunction against threat of action. It is not possible for this Court in absence of claim of damages to determine whether there has been any violation of Trade Mark or not.

18. Section 142 permits the defendant in a suit under Section 142 of Act to satisfy the Court that the trade mark is registered and that the acts in respect of which the proceedings were threatened, constitute or if done, would constitute an infringement of the trade mark.

19. The applicant / plaintiff in the plaint itself has not disputed that the trade mark, as claimed in the notice, is a registered trade mark of the defendants. Though the notice can be treated to be a threat, but in the facts and circumstances of the present case, it is clearly proved that after issuance of notice and reply, no further

notice has been received. This Court, in exercise of powers under Section 142 of the Act cannot restrain the holder of the registered trade mark to bring out action in accordance with law. The suit under Section 142 of the Act cannot bar the defendants from filing the suit under Section 29 of the Act, where trade mark is registered.”

10. The letter referred to above therefore cannot be said to be a threat, as it is only a notice to the applicant / plaintiff, that the respondent / defendant will be taking steps to take legal action against the applicant / plaintiff, which is permissible in law.

11. However, learned Senior Counsel for the applicant / plaintiff is right, that the defendant / respondent cannot be permitted to issue letters to the customers, alleging that the applicant / plaintiff is violating their copyright, in absence of legal proceedings or order of the Court in this regard.

12. Learned counsel appearing on behalf of the respondent / defendant fairly stated, that defendant / respondent is going to take legal action in accordance with law by filing a suit against the plaintiff / applicant, and will not issue any letters to the customers, as alleged by the learned Senior Counsel for the plaintiff / applicant.

13. In view of the stand taken by the learned counsel for the respondent, O.A.No.397 of 2012 is ordered to be dismissed, whereas O.A.No.398 of 2012 for injunction is disposed of by directing the respondent / defendant to abide by the undertaking given in this Court.

14. It is made clear that the respondent / defendant shall be at liberty to institute legal proceedings against the applicant / plaintiff in accordance with law, if so advised. No costs.

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