
(1999) 06 BOM CK 0033

In the Bombay High Court

Case No : Notice of Motion No. 645 of 1999 in Suit No. 903 of 1999

Jagdish Gandhi and another

APPELLANT

Vs

Satish B. Vaidya and others

RESPONDENT

Date of Decision : 22-06-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Contract Act, 1872 — Section 10

Citation : (1999) 3 ALLMR 625 : (1999) 4 BomCR 424 : (2000) 1 MhLj 103

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : Mukesh Talsania, instructed by Bhagwati's Counselling, for the Appellant; Ravi Kadam, instructed by Sunil and Co. and H.W. Kane, for the Respondent

Judgement

S.S. Nijjar, J.—The plaintiffs seek a declaration to the effect that plaintiffs No. 1 is the inventor as well as owner of the formula submitted by defendant Nos. 1 and 2 to defendant Nos. 3 and 4 under Reference Code No. P.V. 150896 and the plaintiff No. 1 alone shall be entitled to all the benefits arising out of the said formula and that defendant Nos. 1 and 2 have no right of whatsoever nature to make use of the formula or the formula which is a sham variation or modification thereof or derivation therefrom.

2. The plaintiff No. 1 claims to be Researcher in ancient Indian Science including Indology, Archaeology, Numismatics, Ayurveda etc. He claims to have studied Ayurveda in depth on his own for about three decades. Plaintiff No. 2 is a company registered under the Companies Act, 1956. Defendant No. 1, according to the plaintiffs, made series of representations to the plaintiffs which misled the plaintiffs to enter into an agreement with defendant No. 1 on 15th August 1996. The basic idea behind the agreement or Memorandum of Agreement dated 15th August, 1996 between defendant No. 2 and the plaintiff was to join hands for commercial exploitation of the formula allegedly developed by the plaintiff. A detailed agreement was entered into on 16th August, 1996. In Clause 7 of the

aforesaid agreement, a declaration was recorded to the effect that the plaintiff No. 1 is the original inventor of the formula in relation to which the aforesaid agreement has been entered into between the parties. Subsequently by an addendum dated 21st February, 1998, it was agreed that defendant No. 2 shall inform the plaintiffs of the progress of the evaluation which was to be conducted by defendant No. 3. It is the claim of the plaintiffs that defendant No. 1 had defrauded the plaintiffs by making a series of misrepresentations. Defendant No. 1, who is not a medical doctor, claimed to be in fact a medical doctor. He, in fact, is only a Pharmacologist. Defendant No. 1 by his misrepresentations, built an impregnable wall between plaintiff No. 1 and defendant No. 3 and thus there was no communication between plaintiff No. 1 and defendant No. 3. Defendant No. 1 misused the opportunity of non-communication between the plaintiff and defendant No. 3 to give an impression to defendant No. 3 that defendant No. 1 was in fact the inventor. In such circumstances the plaintiff No. 1 claims to have been defrauded of all the rights which would have accrued in his favour if the medicines prepared on the formula of the plaintiff No. 1 had been marketed in his name.

3. Mr. Talsania, the learned Counsel appearing for the plaintiffs, has been at pains to point out that the recitals of the agreement would clearly show that defendant Nos. 1 and 2 had accepted plaintiff No. 1 as the inventor of the formula. He submits that the reference throughout to the plaintiff No. 1 in the agreement is as inventor whereas defendant No. 2 is only mentioned as a manufacturer. He further submits that the evaluation of the formula has been presented to defendant No. 3 under Code No. P.V. 150896. He submits that the figures 150896 clearly show that the evaluation was to be of the formula which mentioned in the agreement dated 15th August, 1996. He submits that the prefix of the letters P.V. is a misrepresentation by defendant No. 2 to subsequently make a claim that the formula actually belongs to Pharma Veda. He further submits that a perusal of the correspondence exchanged between the parties would clearly show that there was joint collaboration of plaintiff No. 1 and defendant Nos. 1 and 2. He submits that defendant Nos. 1 and 2 have now got greedy and have started manufacturing the medicines based on the formula of the plaintiff. In the affidavit in reply of defendant No. 1 it is stated that no cause of action has been disclosed by the plaintiffs. The agreements which are the basis of the plaint had been terminated by the plaintiffs themselves. The aforesaid agreements, has been terminated by the defendants also. Thus, nothing really remains for the plaintiffs to base the claim on the aforesaid agreements. It is further stated that the plaintiffs are not makers of the other documents except the paper containing the first plaintiff's formula. In fact, it is claimed that the medicine titled as "P.V. 150896" has been prepared on the basis of the first defendant's independently developed formula. Further the first, second and third defendants are the makers of the three documents viz. poster presentation, reports of the tests/study conducted in respect of the medicine and third defendant's report titled "Evaluation of Immunopotentiating Activity of a

Herbomineral Formulation PV-150896 in H.I.V. infection. A Randomised Double Blind Placebo Controlled Trial". It is further submitted that there is no legal right existing in favour of the plaintiffs to seek any injunction. It is submitted by Mr. Kadam, learned Counsel appearing on behalf of the first and second defendants, that the ingredients contained in the plaintiff No. 1's formula had been known prior to the first plaintiff disclosing the aforesaid formula. These ingredients have been mentioned in all the well known books on Ayurveda. In fact, the formula claimed to be the sole property of the plaintiffs is entirely public property as it is in public knowledge. No patent has been obtained with regard to the formula. Thus, obviously no rights could accrue in favour of the plaintiffs.

4. Mr. Kane, learned Counsel appearing for defendant No. 3 has submitted that wild allegations had been made against a highly respected member of the medical faculty of the J.J. College. Mr. Talsania, however, submitted that the allegations contained in the plaint as well as the rejoinder are not being pressed. The anxiety of the plaintiffs was only to show how defendant No. 1 has abused the office of defendant No. 3.

5. Having heard the Counsel for the parties at length and considered the relevant arguments, I am of the opinion that no relief can be granted at this stage to the plaintiffs. Apart from the merits of this case, it is to be noticed that the medicine which is the subject matter of the dispute is of vital importance and urgency to the general population in India. It is an accepted fact in all the studies on AIDS conducted by various agencies including WHO that by the year 2000 A.D. over 90 per cent of the AIDS cases will apparently occur in the third world countries. It is also an accepted fact that India will probably be having one of the largest populations of persons suffering from the aforesaid disease. In such circumstances the Court would be doing a grave injustice by putting impediments in the development and marketing of the drugs that would help in cure/control of the dreaded disease i.e. AIDS. The importance of urgent research and development of these vital drugs cannot be permitted to be forestalled at the instance of private parties. No matter how important the claim put forward by the plaintiffs. In such circumstances the Court owes a paramount duty to the welfare of the persons actually suffering from the AIDS disease as well as the general public. This factor has to be taken into consideration above the usual considerations of balance of convenience, irreparable loss etc. which are the usual considerations in normal circumstances. Keeping the aforesaid principle in view, the claim of the plaintiff has to be considered. Thus, even if the Court assumes that the plaintiff No. 1 is the inventor of the formula and the Court is to assume that defendant Nos. 1 and 2 had no right to manufacture the medicine, yet in larger public interest no relief ought to be granted to the plaintiffs at the interim stage. The grant of relief to the plaintiffs would cause irreparable loss to the persons suffering from AIDS as also the general public. On the other hand, non-grant of the relief can always be compensated by grant of damages, if ultimately the plaintiffs succeed. Apart from this, it is a matter of record that the dispute raised in the present case is of an extremely specialised and expert

nature. The Court by its very nature cannot judge the merits of the respective claims without extensive expert evidence. This fact in fact is reiterated in the rejoinder filed by the plaintiffs in paragraph 7 wherein it is stated that "the difference and/or the similarity between two formulations can never be arrived at merely by comparing ingredients thereof; as sought to be suggested in the affidavit in reply. It requires detailed studies/test reports by medical experts in this regard".

6. In the face of this, it would not be possible to grant any relief to the plaintiffs at this stage. Needless to say that no order is required to protect the reputation of defendant No. 3 any more in view of the statement made by the plaintiffs that the allegations against defendant No. 3 are not being pressed.

7. In view of the above, Notice of Motion is dismissed with no order as to costs.

8. Notice of Motion dismissed.