

(2013) 08 DEL CK 0341
In the Delhi High Court
Case No : CS (OS) 1436 of 2012

M/s. Vogueserv International Pvt. Ltd.	APPELLANT
Vs	
Rajesh Gosain and Others	RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4
Contract Act, 1872 — Section 27
Copyright Act, 1957 — Section 17(c)

Citation : (2013) 203 DLT 613 : (2013) 137 DRJ 244 : (2013) 55 PTC 480

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Rajat Wadhwa, for the Appellant; Anurag Ahluwalia, Rahul, Advocates for Defendant Nos. 1 and 3 and Mr. Rajesh Dwivedi, Advocate for Mr. A.K. De, Advocate for Defendant No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—The Plaintiff, a company incorporated under the Companies Act filed the suit against the Defendants, its ex-employees inter alia seeking a decree of permanent injunction against the Defendants restraining them from contacting or dealing with Companies namely "STRAUSS innovations" (Germany), "Boltze" (Germany), "Impression" (Germany), "Schneider" (Germany), and "DS Produkte" (Germany) in any manner whatsoever or from using any other information, material, electronic and other data belonging to Plaintiff Company and seeking return of the said information, electronic data, documents etc. By way of an ex-parte ad-interim injunction dated 18th May, 2012 this Court in IA No. 9538/2012 restrained the Defendants from using the data of the Plaintiff in respect of the abovementioned clients as also contacting them. Defendant Nos. 1 and 3 filed I.A. No. 13187/2012 under Order XXXIX Rule 4 CPC seeking vacation of the ex parte ad interim injunction. Thus the two applications are taken up for hearing.

2. Learned counsel for the Plaintiff contends that the Defendants in their written statement do not deny that they are using the data, material and information prepared while the Defendants were in employment of the Plaintiff. The case of the Defendants is that the client details of the plaintiff are in public domain and in the absence of any contract with the client which clearly authorizes the Plaintiff alone to deal with the clients in India in the business transactions, no exclusivity can be claimed. This contention of the Defendants is wholly erroneous in view of the decision of this Court in Mr. Diljeet Titus, Advocate Vs. Mr. Alfred A. Adebare and Others, Relying upon Homag India Private Ltd. vs. Ulfath Ali Khan, MFA No. 1682 of 2010 decided by the Karnataka High Court on 10th October, 2012 it is stated that in an identical case the Court was pleased to grant temporary injunction. It is further contended that though the Defendant Nos. 1 and 3 have filed an application under Order XXXIX Rule 4 CPC however, the Defendant Nos. 2 and 4 have not filed any application and thus they are conscious that their acts were illegal and contrary to the law. Hence the ex-parte order granting injunction is liable to be confirmed.

3. Learned counsel for the Defendant Nos. 1 and 3 contends that as per Section 27 of the Indian Contract Act, any agreement in restraint of trade of business or lawful profession is void to that extent. Hence even assuming there is any contract though there is none, the Plaintiff cannot enforce the restraint.

Relying upon American Express Bank Ltd. Vs. Ms. Priya Puri, it is contended that facts like names of customers, telephone numbers and addresses are well known and can easily be ascertained being in public domain and thus cannot be treated as trade secret or confidential information. Referring to Sanmar Speciality Chemicals Ltd. Vs. Dr. Biswajit Roy, it is contended that confidentiality and Non-Compete Agreement where-under the Respondents shall not disclose confidential information to any person after cessation of employment with the applicant and not to take up any employment or involve himself with any other person or body corporate in the similar field of activity which are competitive in nature and thus contrary to Section 27 of the Indian Contract Act. Hence the interim order is liable to be vacated.

4. I have heard learned counsel for the parties.

5. The case of the Plaintiff is that the Plaintiff Company got engaged inter alia in the business of trading of home textiles, home decorative, furnishing and clothing etc. and provide comprehensive buying service to international buying companies. It has developed and maintained various confidential data and information regarding internal processes, specific client profile, client details, business strategy and methods, finances, client budget, pricing structure, upcoming projects, vendors business profiles etc. According to the Plaintiff this confidential data was developed over a period of several years by putting in extensive efforts however, the Defendants who are its former employees had access to some of its secret and confidential data during the course of their employment and all the four Defendants after resigning from the service of the

Plaintiff company in the second week of July, 2011 took wrongful possession of various important and confidential files, documents, records etc. and are now illegally using them for their own advantage, contrary to the terms and conditions of their appointment letter. Consequently the Plaintiff registered a FIR against the Defendants on which certain data and records were seized however the Defendants are still using the data which was misappropriated and stolen from the Plaintiff Company and are contacting the old clients of the Plaintiff. The Defendants in November, 2011 formed a new company in the name and style of "Excel Buying Resources" in which they continue to use the data of the Plaintiff Company and continued to be in touch with the clients of the Plaintiff. One of the clients of the Plaintiff Company under deception continued sending emails to Defendant Nos. 1 and 3 on their old email accounts created by the Plaintiff Company on which the Defendants were dealing with the Plaintiff's customers.

6. The relevant terms of agreement between the Plaintiff and the Defendants as per the employment letter are as under:

1...

2....

8. You shall maintain complete secrecy of information and know-how regarding our business that may come to your knowledge during the course of your tenure with the Company. You shall not utilize, disclose or divulge the same to any other person/Origination.

9....

17. You recognize and acknowledge that the company shall own all work products created by you during your term of service contract and ownership of all rights, titles and interests of the intellectual proprietary rights, therein shall rest exclusively with the company "Vogueserv International Pvt. Limited". You also acknowledge that the restriction is reasonable and necessary to protect the legitimate interest of the company. That any breach by you will result in irreparable injury to the company for which a remedy at law would be inadequate. Accordingly, you acknowledge that the company shall be entitled to temporary, preliminary and permanent injunctive relief against you in the event of any breach or threatened breach by you, in addition to any other remedy that may be available at law or equity.

7. There is no doubt that a contract for restraint of trade or profession is a void contract. Vide Clause-17 of the terms of appointment of the Defendants it was agreed that the Defendants recognize and acknowledge that the Plaintiff owned the products created by them during their term of services, the ownerships of all rights, titles and interest of the intellectual propriety rights were to vest in the Plaintiff and in breach thereof the Plaintiff was to take recourse of legal remedies. Thus the only thing which has to be seen is whether the products/materials/data sought to be used by the Defendants is of a kind which entails intellectual

propriety rights in which case the bar u/s 27 of the Contract Act would not be attracted. In *Diljeet Titus, Advocate (supra)* this Court while dealing with a similar situation held that the copyright exists not only in what is drafted and created but also in the list of clients and addresses specially designed by an advocate or a law firm. It was held:

23. Learned Counsel next referred to the judgment of the learned single Judge of this Court (as he then was) in *Burlington Home Shopping Pvt. Ltd. Vs. Rajnish Chibber*, After referring to the provisions of Section 17(c) of the Copyright Act which provides that if a work is made in the course of other's employment under a contract of service, apprenticeship it is the employer who is the first owner of the copyright therein in the absence of any agreement to the contrary, a reference has been made as to what can be compilations to be included in literary works and such information would include a list of clients and their addresses. The relevant passages are reproduced as under:

7. Copinger and Skone James on Copyright (1991 Edn.) deal with law in the context of compilation and state that "compilations" are included in "literary work". They further state:

Trade catalogues are generally compilations, and as such are capable of protection as literary works. On similar principles, a computer database, stored on tape, disk or by other electronic means, would also generally be a compilation and capable of protection as a literary work

8. David Bainbridge has in *Software Copyright Law* (at p. 48) dealt with computer database in the following terms:

A computer database is a collection of information stored on computer media. The information may be a list of clients and their addresses or it may be the full text of various documents or it may be a set of co-ordinates relating to a three-dimensional building structure. The range of things which may be included in a computer database is enormous. The information contained in the database may, itself, be confidential and protected by the law of breach of confidence but what of the copyright position

The simplest way of looking at a computer database is to consider the work it represents, for example a printed listing of names and addresses, a printed set of documents or a drawing of a building. Those works are protected by copyright as literary or artistic works. It does not matter if the work is never produced on paper and only ever exists on computer storage media.

Example: XYZ Supplies Ltd. has a computer database containing names, addresses, telephone and fax numbers of customers. This database has been developed over a couple of years and it is usual for a new customer's details to be entered directly into the computer by XYZ's telesales staff without a written record being made.

The customer database is protected by copyright as an original literary work

(assuming a modicum of skill and judgment is involved in compiling the database, for example, if the telesales staff have to exercise judgment in deciding whether to accept a new customer). Being a compilation, it is a literary work. By storing the information in a database, it has been recorded in "writing or otherwise" as required by the Act ("Writing" is defined widely and includes any form of notation or code regardless of the method or medium of storage). Even if the database is never printed out on paper, it will be protected by copyright.

8. What is confidentiality or secret information has been dealt with by McComas, Davison and Gonski in THE PROTECTION OF TRADE SECRETS-A in General Guide (1981 Ed). The authors have stated that it is not possible to provide an exhaustive list of all that a Court may regard as confidential or a trade secret. However, some examples of what has been held to constitute the subject matter of an action to protect confidential information or a trade secret include (amongst others) customers lists and information concerning the proposed contents of a mail order catalogue.

12. From the above statement of the authorities and the trend of judicial opinion it is clear that a compilation of addresses developed by any one by devoting time, money, labour and skill though the sources may be commonly situated amounts to a "literary work" wherein the author has a copyright.

8. Thus even compilation of clients" database has been held to be amounting to literary work wherein the author has a copyright. In M/s. Sanmar Specialty Chemicals Ltd. (Supra) relied upon by learned counsel for the defendant the court disposed of the application in view of the specific contention of the Respondent therein that the he was not using any of the confidential information that he acquired from the applicants" company and all the information he was making use of are easily available in the public domain. Learned counsel for the Defendants has not been able to show that the data collected was in public domain nor can claim benefit of Section 27 of the Indian Contract Act.

9. In the facts and circumstances of the case I am of the considered opinion that the Plaintiff has made out a prima facie case in his favour and in case the Defendants are not injuncted, the same will cause irreparable loss to the Plaintiff. Consequently the interim order dated 18th May, 2012 passed by this Court is made absolute. I.A. No. 9538/2012 (by Plaintiff u/Order XXXIX Rule 1 & 2 CPC) is disposed of and I.A. No. 13187/2012 (by Defendant Nos. 1 & 3 u/Order XXXIX Rule 4 CPC) is dismissed.