

(2019) 07 GUJ CK 0044

In the Gujarat High Court

Case No : R/Misc. Civil Application No. 548 Of 2019

Sarine Technologies Limited Thru Prachi Bhardwaj **APPELLANT**

Vs

Diyora And Bhanderi Corporation Thru Dhaval Diyora Ashish **RESPONDENT**
Diyora Ghanshyam Bhanderi Pravinbhai D

Date of Decision : 19-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 11, 12

Citation : (2019) 07 GUJ CK 0044

Hon'ble Judges : Anant S. Dave, J;Biren Vaishnav, J

Bench : Division Bench

Advocate : Neeraj Malhotra, Sandeep Grover, Ishwer Upneja, Ara Gaur

Final Decision : Disposed Of

Judgement

Anant S. Dave, J

1. Heard learned counsel for the applicant.

2. Under Sections 11 and 12 of the Contempt of Courts Act read with Article 215 of Constitution of India, our attention is drawn to orders dated

12.2.2018, 28.2.2018, 4.5.2018 and 1.6.2018 passed by learned Commercial Judge, Vadodara about dated dated 30.7.2018 and also by the Supreme

Court of India and it is submitted that non-supply of a source code and object code by respondents as directed by the above orders and stand of

defendants by not cooperating with Court Commissioner as reflected from time to time reveal that respondent has committed deliberate and willful

disobedience and defiance to the orders as above passed by the Courts and appropriate action deserves to be taken under the Contempt of Courts

Act.

3. Having regard to the above orders, submissions made by learned counsel appearing for the parties, it appears that this Court vide CAV Judgement

dated 21.12.2017 remanded the case to Commercial Court, Vadodara for deciding application Exh.5 afresh in Commercial Trade Mark Suit No.8/2017

in accordance with law in its on merits and direction was given while deciding the application Exh.5 to call upon the plaintiff and defendants both to

provide their respective source code and object code by their respective software to the Court and the Court to send the same to some impartial and

independent expert for comparison with the source code and object code of the plaintiff. Apropos to above, learned Commercial Court from time to

time passed orders and even order below Exh. 88 and 98 in paragraph 26 issued certain directions which read as under:

â??26. Hence, in view of the aforesaid facts and without much entering into and dealing with the other contentions which rest on the merits of the

case and considering the request tendered by the Ld. Counsels appearing for the respective parties, the present applications are required to be

disposed of with following directions:

1. The Third Party Expert Mr.Robert â??Bob Zeidman is hereby appointed to carry out the work of comparison of Source Code and Object Code of

the parties to the suit as observed herein above.

2. The Local Commissioner as appointed earlier vide order passed by my Ld. Predecessor on 12/02/2018, Mr.Pranav Jain is also requested to assist

the Third Party Expert Mr.Robert â??Bob Zeidmanâ?? while carrying the exercise of comparison of the source code and object code in question.

3. On receipt of this order so communicated the Third Party Expert may call upon either party to submit the material, if any, as required by the third

party expert and the parties to the suit are hereby directed to provide all material as called for and required by the Third Party Expert for the purpose

of comparison of Source Code and Object Code without fail and at the earliest and without delay.

4. The parties to the suit shall be at liberty to name only the Technical Expert (none other) to the Third Party Expert well in advance, who in turn,

would assist the Local Commissioner as well as Mr.Robert â??Bobâ?? Zeidman, Third Party Expert.

5. The Third Party Expert is hereby requested to collect the sealed Envelope from

the Court directly and/or through the Local Commissioner from the Court and compare and analysis the Source Code and Object Code in compliance with the order passed by this Court, particularly the order passed by the Honâ??ble High Court of Gujarat vide Appeal From Order No. 310 of 2017 and the said directions is to be scrupulously followed not only by the Third Party Expert Local Commissioner but the Technical Experts as may be named by the parties concern in its true spirit and sense.

6. The Third Party Expert is further directed to carry out and complete the exercise of comparison of source code and object code of the software of the parties to the suit in expeditious manner followed by the report with analysis in a sealed cover and submit the same in this Court within a period of 2 (two) days or at the earliest after completion of exercise of comparison of the codes in person.

7. The Third Party Expert is directed to ensure that the proprietary and confidential opinion about the parties Source code and object code of the software are to be kept secret and confidential.

8. The plaintiff will pay and bear the costs to the aforesaid Commission Work to the Local Commissioner as well as to the Third Party Expert and pass an undertaking for the same before the Commission Work commence.

9. Either of the parties may communicate this order to the Local Commissioner as well as Mr.Robert â??Bobâ? Zeidman-Third Party Expert so as to get the confirmation as to the schedule fixed, the tentative date of which has been given by the third party expert Mr.Robert â??Bodâ? Zeidman, i.e. on 18/06/2018, and submit the same with affidavit sworn in by the parties concerned before this Court as to the compliance of the aforesaid order on 05.06.2018.

In view of the aforesaid the Exh.88 and Exh.98 stands disposed of accordingly.

It is needless to state that this Court has not entered into merits of the case and it is further clarified that the findings arrived at by this Court are tentative in nature and pertains to the present application only and would not affect any such contention raised by the party interested at the time of trial and same would be considered on its own merits without being influenced by the reasons being assigned herein above.

All concerned to comply with the order.â??

4. The above order was passed on 1.6.2018. It is to be noted that the Court clarified that the findings arrived by the Court were tentative in nature and pertains to the present application only and would not affect any such contention raised by party interested at the time of trial and same would be considered on its own merits without being influenced by the reasons being assigned herein above. Likewise, in other orders also no specific final directions were issued and we fail to understand any willful disobedience or disregard to any order, for which, prayer is made by the petitioners.

5. However, keeping it open for the petitioners to take appropriate steps in pending Commercial Trade Mark Suit No.8/2017, if deem proper, including the prayer for willful breach of any direction or injunction issued by the Courts. This petition is disposed of.