

(2006) 12 DEL CK 0046

In the Delhi High Court

Case No : I.A. No. 11450 of 2006 in CS (OS) No. 1938 of 2006

The Computeronics International Limited

APPELLANT

Vs

Infinite Computer Solutions (I) Pvt. Limited and Others

RESPONDENT

Date of Decision : 08-12-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2007) 34 PTC 189

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Chetan Sharma and Karma S. Bhutia and Sushil Kumar Pandey, for the Appellant; Jayant Bhushan and Ajay Bhargava and Susmit Pushkar, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—By this judgment, I propose to dispose of this application which has been filed by the plaintiff under the provisions of Order 39 Rules 1 & 2 of the Code of Civil Procedure, praying for order of restraint against the defendants "from dispossessing the Geographical Data Base, more specifically described in the plaint, to defendant Nos. 7 to 9 and/or creating any third party interest or otherwise deal with the same in the similar fashion". A further order is prayed for prohibiting the defendants from "dealing with such Geographical Data Base or encumber the same or entering into any agreement whatsoever in respect of the same during the pendency of the present suit."

2. In order to appreciate the respective contentions, it becomes necessary to examine some basic facts. It appears that defendant No. 1 entered into an agreement with the Kanpur Electricity Supply Company Limited (referred to as "KESCO" hereafter for brevity). M/s KESCO issued a letter of intent dated 23rd July, 2005 in favor of the defendants for computerisation of KESCO (Stage I) with supply and commissioning of related materials (on turnkey basis) vide tender specification No. KESCO/APDRP/2004-05/09 under a scheme known as the

APDRP Scheme. The defendant No. 1 entered into a contract dated 8th August, 2005 with KESCO pursuant to this letter of intent. The defendant company outsourced a part of the project to the plaintiff and placed a work order upon it for conducting a survey, collecting, updating or collating of consumer and network assets data to an accuracy level of 99.9% to enable the defendant company to create a comprehensive geographical data base so established that it was, spatially consistent, plotted and geo referenced on 1:1000 scale KNN maps as required by KESCO to determine any loss incurred by it on account of unregistered consumer not paying for electricity consumed, theft etc. The defendants have asserted that accuracy of the data, Therefore, was the essence of the contract. It was urged that otherwise the basic purpose of KESCO's project would not be achieved.

3. The plaintiff has placed reliance on the work order dated 28th September, 2005 of the defendant company for supply of the aforesaid data for 15 divisions and with regard to quality control and the respective responsibilities clearly laid down therein. On the other hand, as per the stipulated methodology, the maps provided by the defendant No. 1 were required to be split into divisions by the plaintiff and the existing networks as such were to be verified, marked and updated on the hard copies of the grid maps which were to be provided by the defendant to the plaintiff. The parameters were set out in the work order itself. Door to door survey was required to be conducted and a format was to be provided by the KESCO. The work order contained stipulations with regard to quality control and required accuracy level of 99.9% after the validation of the data.

4. It is contended by the plaintiff that the defendants failed to provide the maps and that the plaintiff drew the maps and marked on the same manually. Mr. Chetan Sharma, learned senior counsel appearing for the plaintiffs, has placed reliance on the delivery challans whereby the data was supplied to the defendant No. 1 by the plaintiff. Learned senior counsel has pointed out that the delivery challans were from 21st May, 2003 to 24th December, 2005. It is pointed out that whenever any mistake was pointed out by the defendant No. 1, the same would be corrected by the plaintiff and the corrected copies were also duly handed over to the defendant No. 1 against receipts on the invoices.

5. It has further been urged that no complaint was ever made by the defendant No. 1 with regard to the work done by the plaintiff and that the same is further evidenced by the fact that the defendant took no action under the terms of Clause F(3) of the work order whereby the defendant No. 1 was entitled to liquidated damages at the rate of 1% on per week of delay subject to a maximum of 10% of the project value. According to Mr. Chetan Sharma, learned senior counsel appearing for the plaintiff, the very fact that the defendant No. 1 had not taken any action to levy any liquidated damages even as per the affidavit filed in the present proceedings, it is apparent that there was no fault with the work of the plaintiff.

6. The plaintiff has based its case also on the fact that despite an invoice dated 6th September, 2006, having been raised on the defendant No. 1, it had failed to act in accordance with Clause G(2)(c)(d) of the work order whereby it was stipulated that 90% of the payment would be released to the plaintiff within 15 days of submission of the data against the invoices raised which would be submitted by the plaintiff division-wise while the balance 10% would be released within 30 days of the completion of the work.

7. The plaintiff served legal notices dated 29th September, 2006 and 6th October, 2006 upon the defendant No. 1. Mr. Chetan Sharma, learned senior counsel, has submitted that as the defendants failed to abide by the notice demand, the plaintiff has been constrained to file the present suit seeking recovery of amounts due to it from the defendants for the work done. It is urged that the interim protection sought by way of the present application is essential in order to protect the rights of the plaintiffs who would have no other means of recovery against the defendants in case it succeeds in the suit.

8. This application, on the other hand, has been vehemently opposed on behalf of the defendants. A short affidavit dated 13th October, 2006 has been placed on record setting out the opposition. A preliminary objection has been taken to the effect that the present application seeking injunction in a suit for recovery of money implicate is not maintainable. On the merits of the case, it has been contended that the plaintiff is also not entitled to any relief on the ground of concealment of material facts. Mr. Jayant Bhushan, learned senior counsel who has opposed the application on behalf of defendant Nos. 1 to 6, has urged that the agreement between the parties stands cancelled by notice dated 3rd July, 2006 sent to defendant No. 1 by e-mail. It has been pointed out that as per the records of the defendant No. 1, this e-mail stands received by the plaintiff. The invoice dated 6th September, 2006 was raised upon the plaintiff more than three months after the termination of the agreement and was a dishonest and malafide attempt to compel the defendant No. 1 to make payments of amounts to which the defendants were not entitled. It is further submitted that in the notice dated 29th December, 2006, the plaintiff had raised a demand of only Rs. 14,63,993.00 while by the notice dated 6th October, 2006 the plaintiff was claiming a hefty amount as due and payable towards interest at the rate of 24% per annum. According to learned senior counsel for the defendant, the plaintiff has claimed interest at the rate of 24% per annum on the amount allegedly due to it and thereby claimed damages of Rs. 6,00,000/-, raising the aggregate claim of Rs. 20,63,993/-.

9. The defendants have also challenged the contentions on behalf of the plaintiff on merits. In its affidavit, it has been stated on behalf of the defendants that the plaintiff did not supply any data till 23rd March, 2006 in breach of the stipulations in the work order dated 28th September, 2005. The data which was submitted was found to be wholly inaccurate and completely useless for the purposes for which the same was required. The defendants have urged that the

plaintiff was in breach of the work order dated 28th September, 2005. Upon a verification conducted by the defendant No. 1, the inaccuracies in the data submitted by the plaintiff were pointed out to it by the e-mail of 31st March, 2006. The inaccuracy is revealed in the data which was further supplied by the plaintiff was way below the contractual requirement of 99.9%.

10. The plaintiff was duly informed that a fresh survey was required to be conducted in respect of all the fifteen divisions. According to Mr. Bhushan, learned senior counsel, the plaintiff by its e-mail of 29th June, 2006, had agreed that a re-survey would be required. Further e-mails have been placed on record whereby the defendants pointed out the inaccuracies in the data provided by the plaintiff. As the plaintiff was unable to deliver the data, the defendant No. 1 by the e-mail dated 3rd July, 2006 clearly informed the plaintiff that the date of delivery cannot be extended beyond 15th July, 2006 for the reason that the last date by which the data had to be given to KESCO was 8th August, 2006. The defendant No. 1 had duly notified the plaintiff that if by 8.00 p.m. of the same date, that is, 3rd July, 2006, it did not receive any structured plan for the fresh survey, the contract would stand nullified and void. Since the defendant company did not receive any structured plan, as such, the contract stood terminated on 3rd July, 2006 as already notified. The defendant No. 1 has asserted that on account of the delay on the part of the plaintiff, it may have rendered the defendant company liable to a claim for liquidated damages at the hands of M/s Kesko.

11. Mr. Jayant Bhushan, learned senior counsel appearing for defendant Nos. 1 to 6 has further contended that no injunction deserves to be granted in favor of the plaintiff for the reason that the defendant company conducted its own fresh survey regarding all the divisions and submitted such freshly surveyed data to KESCO to 21st September, 2006 and on 4th October, 2006. According to learned senior counsel for the plaintiff, the plaintiff has no right over such data which has been collected and collated by the defendants without any contribution from the plaintiff.

12. Having heard learned senior counsel for the parties and having perused the record of the case, I find that in the instant case, the invoices which have been placed before this Court as proof of accurate data to the plaintiff, are merely receipts of some invoices. The admitted position is that there was a delay in submission of the data by the plaintiff, though the reasons for the same are disputed.

13. The defendant Nos. 1 to 6 have placed before this Court the e-mail dated 31st March, 2006. In this e-mail, the plaintiff was informed that in the data furnished by the plaintiff, in approximate 50% of the records, the requisite information had not been furnished. Incomplete addresses were given. Essential particulars in order to match the data furnished with the inspection and verification was missing. In its answer dated 29th June, 2006, the plaintiff referred to an earlier e-mail of 28th June, 2006 reiterating that a re-survey was

required. It is also admitted herein that the re-survey that would be conducted would be afresh.

The defendant No. 1 has placed strong reliance on its e-mail dated 3rd July, 2006 whereby it clearly notified the plaintiff that it cannot extend the date of delivery of the re-survey beyond 15th July, 2006 and that unless a plan for the fresh survey was received by 8.00 p.m. of the same date, the contract would stand cancelled and be treated as null and void. The plaintiff has orally disputed receipt of this e-mail. However, the admitted position is that no re-survey plan was intimated to the plaintiff. In fact, the plaintiff has not placed before this Court anything done by it in furtherance of the e-mail sent by it on 28th June, 2006. There is also no dispute that the plaintiff did not raise any invoices periodically in terms of the work order dated 28th September, 2005. The only invoice which has been raised on the defendant No. 1 is dated 6th September, 2006. There is no Explanation for the non-raising of the invoices if the work had actually been done and the data furnished as has been claimed.

14. It would be useful also to examine the receipt given by the defendant No. 1 on the invoices relied upon by the plaintiff. The only endorsement in the purported acknowledgment of the receipt is a mere squiggle upon receipt of "Items in good condition". It is not possible to see to ascertain who has received these goods. In any case, certainly upon delivery of the data which was not in a hard copy form, it would not be possible for the recipient to give a receipt or acknowledge the correctness of the data. It cannot be accepted that the mere receipt of the goods on the invoice amounted to a certification of the correctness of the data on behalf of the defendant Nos. 1 to 6.

15. In this behalf, it would be useful to notice in extenso some of the assertions made on behalf of the plaintiff in the legal notice dated 29th September, 2006. In this legal notice, in paras 3 to 5 thereof, the plaintiff has stated thus:

3. That despite numerous requests telephonically, you Noticee No. 1 to 6 did not supply the said maps and even when you did the same were in short of supply to the demand and further more without workable grids/blocks (division/subdivision wise). However, since our clients, who had already hired employees for the purpose of executing the Order, couldn't afford to lay off them and having no other option, our clients were forced to draw maps with their hands and work on the same manually.

5. Simultaneously, our clients raised an Invoice No. COIL/ICS/06-07/01/284 dated September, 06, 2006 for a sum of Rs. 14,63,993.00/- (Rupees fourteen lacs sixty three thousand nine hundred and ninety three only) for the work carried out in 8 division only, which was duly received by you. It may be pertinent to mention here that though the work was carried out and the data were handed over to you for the entire 15 divisions but invoices were raised only for 8 divisions only to re-compensate you for the alleged loss that you have suffered.

16. I find force in the submission on behalf of Mr. Jayant Bhushan, learned senior counsel for the defendant Nos.1 to 6, that prima facie the assertion of the plaintiff that it was restricting the invoice to eight divisions so as to "Only to re-compensate you for the alleged loss that you have suffered" prima facie supports the submissions on behalf of defendant No. 1 that the plaintiff had committed breach of contract resulting in loss to the defendant Nos. 1 to 6 and for this reason, even in the legal notice, the plaintiff has sought to compensate the defendants for the loss which has ensued to them. Furthermore, there is strength in the assertions of the defendant Nos.1 to 6 to the effect that the defendant had been agitating against the defective work conducted by the plaintiff. Detailed submissions in this behalf have been made in the e-mails and affidavit which were sent by the defendants to the plaintiff which have been placed on record. In its reply, the plaintiff has accepted the fact that "a fresh re-survey" was required.

17. The defendant No. 1 has placed before this Court the e-mail whereby it cancelled the work order. It has filed an affidavit in support of this submission which remains unrebutted by any affidavit or pleading on the part of the plaintiff.

18. The principles applicable and which would govern exercise of discretion for grant of injunction are well settled and would guide consideration of the present application as well. The plaintiff has to make out a prima facie case in its favor and show that irreparable loss and damage would result to it if interim protection was not granted. Balance of convenience, interest of justice and equity must also weigh in favor of the plaintiff. These principles were reiterated by the Supreme Court in *Shanti Kumar Panda Vs. Shakuntala Devi*, , where the court held thus:

22. At the stage of passing an interlocutory order such as on an application for the grant of ad interim injunction under Rule 1 & 2 of Order 39 CPC, the competent court shall have to form its opinion on the availability of a prima facie case, the balance of convenience and the irreparable injury - the three pillars on which rests the foundation of any order of injunction....

19. In *M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others*, , the Supreme Court made observations while considering an application for vacation of injunction which are instructive. It was observed by the court thus:

47. In this context, it would be relevant to mention that in the instance case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, Therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was

seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 & 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings.

20. The principles laid down by the Supreme Court in *Dalpat Kumar and Another Vs. Prahlad Singh and Others*, which would govern exercise of discretion under Order 39 of the CPC would guide adjudication in the present matter and read thus:

4. Order 39 Rule 1(c) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing . or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders. Pursuant to the recommendation of the Law Commission Clause (c) was brought on 1977. Earlier thereto there was no express power except the inherent power u/s 151 CPC to grant ad interim injunction against dispossession. Rule 1 primarily concerned with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court, on exercise of the power of granting ad interim injunction, is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

The present case has to be examined in the context of the above principles.

21. In addition to these considerations, it is also necessary to consider the maintainability of the prayer for interim injunction in the background of the claim in the suit wherein no injunction is prayed for. Perusal of the plaint shows that no relief of permanent injunction or injunction of any other kind has been sought by the plaintiff. The only prayers made in the suit are to the following effect:

i. pass a decree for an amount of Rs. 20,63,993/- in favor of the plaintiff and

against the Defendants;

ii. Award pre suit, pendente lite and future interest @ 24% from the date of accrual till the day of the payment in favor of the plaintiff and against the Defendants.

iii. award cost of the suit incurred by the plaintiff by way of ad valorem fee and litigation expenses.

iv. any other Order (s) direction (s) that this Hon'ble court may deem fit and proper in the interest of justice.

22. This issue has also fallen for consideration in several cases. The applicable principles were also succinctly stated by the High Court of Judicature at Madras in its pronouncement reported at K.P.M. Aboobucker Vs. K. Kunhamoo and Others, when the court delineated the law thus:

(13) In 70 MLJ 257 : T.S. Sankara Aiyar Vs. Muhammad Gani Rowther and Others, the learned Chief Justice observed at p. 261 (of Mad LJ) : at p.278 of AIR:

I very strongly take the view that, when a decree has been passed against a party who is himself seeking to obtain an injunction, the court has to no jurisdiction, whatever, merely because an appeal is pending in another suit, to grant an injunction on the ground that the property is in danger of being wrongfully sold in execution. If the other view were correct, then the appellant would have a greater remedy in such cases, i.e., an injunction, than he has in the suit under appeal. Whilst the decree remains unreversed, it is a good decree and all steps in execution of it are perfectly legal.

Whether it was really a case of jurisdiction or one of discretion, the scope of both of which was governed by Order 39 Rule 1(a), and whether the proposition laid down by the learned Chief Justice in the first sentence of the passage I have extracted above is not too wide as it stands, if taken out of its context, may have to be considered should occasion arise for it.

However, if I may say so with respect I find myself in complete agreement with the principle that underlies the second sentence in the passage I have extracted above, that an interim relief granted during the pendency of a suit should not be of greater scope than what could be granted in the suit itself, after the party has established his right in the suit to that relief. In my opinion, that would be a very relevant factor to be taken into account in deciding whether a court should or even could grant such an interim relief, especially so when the person against whom the interim injunction is sought is not a party to the suit and against whom no relief could be granted in the suit itself.

xxx xxx xxx (17) An interim relief is granted to a person on the footing that that person is prima facie entitled to the right, on which is based the claim for the main relief as well as the interim relief. That relief is granted as an interim

measure till the disposal of the suit, in which is to be investigated the validity of the claim of right that has been put forward.

If no such claim has been put forward in the suit, it means that there can be no occasion for the investigation of such a claim in the suit, there can be no justification for the grant of an interim relief which will just lapse on the termination of the suit, but which will leave the parties in the same position in which they were before the institution of the suit, in the course of which the interim relief was sought and obtained. That, as I conceive it, is not the scope of Order 39 Rule 1(a) C.P.C. In the present case the rights of the respondent the decree-holder in C.S. No. 228 of 1954, will remain unaffected by the disposal of the partition suit, O.S. No. 1119 of 1955.

(18) Under such circumstances, where no relief could be granted to the appellant against the respondent in the main suit itself, it is not permissible to grant any interim relief, to be operative till the disposal of the suit. Even where it is only a question of discretion, I should hold that in such a case the Court should exercise its discretion against the grant of interim injunction. I would go further and hold that the Court has no jurisdiction to grant by way of interim relief what could never be granted in the main suit itself. It is on this basis that I rest my decision to confirm the order of the learned Additional City Civil Judge, who refused to grant interim injunction for which the appellant petitioner applied.

23. This Court had occasion to consider this issue in *Raman Hosiery Factory, Delhi and Others Vs. J.K. Synthetics Ltd. and Others*, . and it was held thus:

19. It is settled law that no interim injunction would be issued if the final relief cannot be granted. As was held in *K.P.M. Aboobucker Vs. K. Kunhamoo and Others*, : "An interim relief is granted to a person on the footing that that person is prima facie entitled to the right on which is based the claim for the main relief as well as the interim relief. That relief is granted as an interim measure till the disposal of the suit in which is to be investigated the validity of the claim or right that has been put forward. If no such claim has been put forward in the suit, it means that there can be no occasion for investigation of such a claim in the suit, there can be no justification for the grant of an interim relief which will just lapse on the termination of the suit, but which will leave the parties in the same position in which they were before the institution of this suit in the course of which the interim relief was sought and obtained. That is not the scope of Order 39 Rule 1.

24. It would be useful to advert to the judicial pronouncement reported at *Gujarat Electricity Board, Gandhinagar Vs. Maheshkumar and Co., Ahmedabad*, entitled *Gujarat Electricity Board, Gandhinagar v. Maheshkumar and Co., Ahmedabad* wherein the principles on the same issue were stated thus:

... It is a settled principle of law that in a suit where there is a no permanent injunction sought for, in the final analysis, ordinarily a temporary injunction cannot be granted. The principles that govern the grant of perpetual injunction,

Therefore, would govern the grant of temporary injunction also. It is, Therefore, too late in the day for Mr. Vakil to submit that the principles underlying Section 41 are not to be invoked while dealing with the case of a temporary injunction.

25. In the light of the above, it is evident that the plaintiff has failed to make out a prima facie case for grant of an interim injunction, even if the same was otherwise legally permissible. It is well settled that an injunction would be issued in favor of the plaintiff who had made out a prima facie case for grant of injunction and who was able to establish that grave and irreparable loss and damages would occur to it in case the injunction as prayed for, was not granted. The plaintiff is also required to show that the balance of convenience, interest of justice and equity are in its favor. Grant of injunction is guided by well settled legal principles and shall not be issued at the mere asking of the plaintiff.

26. In the judgment reported at Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, the Apex Court observed thus:

30. It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favor of the plaintiff only if it is proved of the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles-ex debito injustitiae. Before any such order is passed the court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favor and refusal of injunction would cause irreparable injury to him.

27. The plaintiff before this Court has failed to satisfy any of the afore-noticed ingredients.

28. This application must fail for yet another reason. The plaintiff has claimed a relief of recovery of money for data which it claimed it compiled with a lot of efforts which it furnished to defendant Nos. 1 to 6. The plaintiff has quantified the money which according to it, is due and payable by the defendant No. 1. In the facts and circumstances of the case, it cannot be at all be held that the amount of money being quantified in the prayer clause, the damages which would result to the plaintiff in case injunction was not granted, would be irreparable. Furthermore, even if the injunction as sought was granted, the defendants would stand prohibited from using such data. The data has been compiled pursuant to a contract placed by M/s KESCO upon the defendant No. 1. Such data would not be of any utility to any other person. The same may be rendered obsolete even in the time it would take for proceedings in the suit to come to a close. In any case, the defendant No. 1 has clearly said that it does not intend to use any data which has been furnished by the plaintiff. For all these

reasons, no interim protection as has been sought by the plaintiff, can be issued in its favor. I find that even if it could be or were granted, it would serve no fruitful purpose.

29. In any case, it is trite that the plaintiff cannot be granted interim relief which is beyond the prayers in the suit.

30. In view of these legal principles, I have no manner of doubt that the plaintiff cannot be granted any relief in the present application filed by it seeking an injunction of the manner which has been sought. The plaintiff would also not be entitled any injunction in the light of the prayer for implicate recovery of money in the plaint as it stands. In any case, no fruitful purpose would be served even by the injunction which, I have held, is not legally permissible. No relief can be granted by way of an interim measure when no such final relief has been sought or is being considered for grant by the court.

31. I also find substance in the detailed submissions addressed by Mr. Jayant Bhushan, learned senior counsel for the defendant Nos.1 to 6 who has pointed out that the plaintiff has deliberately concealed the e-mails containing the complaints made by the defendant No. 1 to the plaintiff as well as the e-mails whereby it admitted the demands on behalf of the plaintiff. These were material facts which the plaintiff was duty bound to disclose. The application would deserve to be dismissed on this very ground itself.

32. For all the foregoing reasons, there is no substance in the application and the same is hereby dismissed with costs which are quantified at Rs. 25,000/-. The plaintiff shall pay a sum of Rs. 15,000/- to the defendant No. 1 while the balance amount of Rs. 10,000/- shall be apportioned equally between National Legal Aid Fund and Delhi High Court Legal Services Committee. The plaintiff shall deposit and pay these costs within a period of ten days from today and tender proof of payment/deposit in the Registry.