

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

RP.No. 567 of 2015

JUDGMENT DATED 2.6.2015 IN OP(C) 524/2015.
.....

REVIEW PETITIONER(S)/PETITIONERS/DEFENDANTS:

- 1. GBOTS SOFTWARE DEVELOPMENT
CENTRE PVT. LTD. (PCS INDIA)
IGS I FLAT, WEST GATE TERRACE, THEVARA,
KOCHI - KERALA.**
- 2. PACIFIC CONTROL SYSTEMS LLC,
A UNITED ARAB EMIRATES CORPORATION
(PCS DUBAI) TEHNOPARK, SHEIK ZAYED ROAD PO,
BOX NO.37316, DUBAI, U.A.E.**

**BY ADVS.SMT.S.SINDHU
SRI.S.SHARAN
SRI.A.D.SHAJAN**

RESPONDENT/RESPONDENT/PLAINTIFF:

**IBS SOFTWARE SERVICES PVT. LTD.,
HAVING ITS REGISTERED OFFICE AT 521 524,
NILA, TECHNO PARK CAMPUS,
THIRUVANANTHAPURAM - 695 581,
REPRESENTED BY ITS COMPANY SECRETARY,
SRI.RAMESH BABU MADHANAGOPAL,
S/O.LATE S.MADHANAGOPAL, AGED 47 YEARS,
RESIDING AT DRA 67, DEVI RESIDENCY, KOLLAVILAL,
KESAVADASAPURAM, THIRUVANANTHAPURAM.**

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

**THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 30-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

mbr/

B. KEMAL PASHA, J.

.....
Review Petition No. 567 of 2015
in O.P.(C) No. 524 of 2015
.....

Dated this the 30th day of June, 2015

ORDER

Heard learned counsel for the Review Petitioner and the learned Senior Counsel for the respondent.

2. The learned counsel for the Review Petitioner has pointed out that in order to decide the matter of jurisdiction enabling the return of the plaint in question, the court has to consider the averments in the plaint alone and not the written statement filed by the defendant. The argument is that in order to enter a finding regarding the applicability of Section 51 of the Copyright Act in this case, the court below as well as this Court ought to have relied on the averments contained in the plaint. There is no quarrel

with that proposition of law.

3. The only question to be considered is whether the averments in the plaint constitute an infringement of copyright within the meaning of Section 51 of the Copyright Act? In case the averment reveals that there is a case of infringement of copyright, as rightly pointed out by the review petitioner, the matter has to be decided by the District Court.

4. This is a case wherein the first respondent as the plaintiff has clearly averred that there is violation of the contractual obligations by the review petitioner. It has been specifically pointed out by the learned Senior Counsel that it is specifically pleaded that there is violation of clauses 9.1 and 9.3 of the agreement in this case. The plaintiff has sued the defendant alleging breach of contract, when payment was not made as agreed for the continued use of the software developed by the plaintiff, the plaintiff has stopped the licence given to the review petitioner for the continued

use of the software alleging violation of clauses 9.1 and 9.3 of the contract. At any stretch of imagination, it cannot be said that the said averments constitute a case of infringement of copyright within the meaning of Section 51 of the Copyright Act, whereas the averments are to the effect that the review petitioner has committed breach of contract and has violated the terms of contract. Mere violation of the terms of contract cannot be categorised or styled as infringement of copyright. Therefore, there is no reason to interfere with the judgment passed by this Court in the matter.

5. The learned counsel for the review petitioner has pointed out that when the matter relates to an intellectual property, the court below ought to have rejected the plaint under Order VII Rule 11 of the Code. Only when it is found that the court below has no jurisdiction to entertain the suit and the suit ought to have been filed before the District Court, the court below could have returned the plaint for

presentation before appropriate court. This is not a case wherein there is no cause of action. Specific cause of action has been shown. When cause of action is there, there is absolutely no ground for the rejection of the plaint at all. When there is no error apparent on the face of the record, the judgment passed by this Court does not call for any interference at all. Hence, this Review Petition lacks merit, and is only to be dismissed, and I do so.

In the result, the Review Petition is dismissed.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge