

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.159 OF 2016
IN
SUIT NO.17 OF 2016

Gray Routes Innovative Distributions LLP	... Applicant
<i>In the matter between</i>	
Gray Routes Innovative Distributions LLP	... Plaintiff
<i>Versus</i>	
Loginext Solutions Private Limited and Others	... Defendants

Mr. Sridharan, Senior Advocate *with Mr. Pranay Manghalam, Ms. Aarohee Gursale i/b MZD Legal Consultancy for the Plaintiff.*

Mr. Mayur Khandeparkar, *with Huzefa Khokhawala and Janaki Garde i/b M/s. Nankanl and Associates for the Defendants Nos.1 to 3.*

Mr. Bhavin Gada, *i/b Mahesh Thaker for the Defendant No.4.*

CORAM: G.S. PATEL, J
DATED: 26th July 2016

PC:-

1. The pleadings in this matter are complete. The Affidavit in Rejoinder of Defendant No.4 remained to be tendered. It is now taken on record. The Affidavit will be placed in correct sequence with the remaining papers.

2. The dispute between the parties is in relation to software used in the development of an Application or an App. The Plaintiff claims that it developed a unique algorithm source code and that this was bundled in a software known as “**GRIDER**”. The Plaintiff’s case was that Defendants Nos. 1 to 3 had produced their own app, and in doing so had used the Plaintiff’s source code and databases, as also other applications that were then being developed in-house by the Plaintiff. It appears that it was the 4th Defendant, a software developer for the Android platform, who took up employment with the 1st Defendant. It was the Plaintiff’s case that upon investigation and enquiries being made by the Police of the 4th Defendant, the Plaintiff discovered that their software and code was being used by the Defendant in the development of its own App called “TrackNext V2”.

3. All this was the subject matter of a fairly detailed *ex parte* ad-interim order dated 7th September 2015. In that order I directed the Court Receiver to take the assistance of the High Court, Information and Technology Department and to examine the 1st Defendant’s software. I granted an ad-interim injunction.

4. There was then some controversy about what happened during the Court Receiver’s inspection. This is not immediately relevant. The Defendants were served. On 28th September 2015, I heard parties again. Defendants Nos. 1 to 3 were now represented. Defendants Nos. 2 and 3 were personally present in Court. They made a statement which is noted in paragraph 2 of that order that the portion of the source code said to be infringing and which had been identified at page 122 of the Plaint had been completely deleted

from the 1st Defendant's rival application. This statement was accepted as an undertaking to the Court in paragraph 4 of that order. In paragraph 6 I also directed that Defendants Nos. 1 to 3 would not make available on any platform any App or product containing any infringing software. The question of whether there was ever an infringement of copyright was expressly left open. On 19th October 2015, Mr. Khandeparkar clarified his statement. This clarification was accepted. The statement then was that the offending source code of the software had been substituted by non-infringing code.

5. This is how matters stand today. In the Affidavit in Reply in paragraph 11 (c) of Notice of Motion paper book pages 17 and 18, it is emphasised that all traces of the keywords and the lines identified by the Plaintiff in Exhibit "Q" to the Plaint have been removed from the 1st Defendant's software. It is also stated that those Defendants have written fresh lines of code. Details of this, of course, are not made available.

6. The application before me today by Mr. Sridharan for the Plaintiffs is that apart from confirming the previous orders, I should direct a further forensic examination of the 1st Defendant's software to ascertain whether there is any further infringement and that I should appoint an independent agency for this purpose. I am not inclined to make this order at the interim stage simply because so far as the Plaintiff is concerned, as of today, there is only a speculation on their part that there may be yet more infringement in respect of the same software or product. Effectively this would mean shutting down or virtually shutting down the business of Defendants Nos.1 to 3. It is not in dispute that today the Plaintiff

and Defendants Nos. 1 to 3 are direct competitors. Their rival products are in the market. I do not think it would be possible to grant an injunction that would confer on one of the parties a monopoly to the exclusion of the other. There is insufficient basis for any such order at this stage.

7. At the same time, the competing equities must be balanced. The statements made on behalf of Defendants Nos. 1 to 3 and as previously noted will continue as the final order on the Notice of Motion. In addition, Mr. Khandeparkar makes a statement on instructions to the effect that his clients assure the Court that there is not now, and will not be, an infringement of any kind. This statement is without prejudice to Mr. Khandeparkar's contention that the Plaintiff did not in fact ever have copyright as it claims, and the code of which it speaks is open source, commonly available and extensively used by others as well.

8. Liberty is reserved to the Plaintiff to apply for further reliefs on the basis of sufficient material and to renew the application for expert testimony at the stage of the trial of the Suit. This application will need be formally made and will be decided on its own merits.

9. There is another aspect of the matter that requires to be addressed. I understand that both the Plaintiff and Defendants Nos. 1 to 3 will be looking for investors. Both sides agree that they will not reference these orders or these proceedings in any communications with the other side's investors or collaborators. At the same time, each of the parties will be at liberty to disclose the whole of this

record and all of these orders to their own investors for the purposes of completing any due diligence that might be required.

10. As far as Defendant No.4 is concerned, he submits to an order of the Court. The injunctions granted against him will continue till the final hearing of the Suit. Mr. Khandeparkar on behalf of Defendants Nos. 1 to 3 states that they will not either directly or through any sister or affiliate concern ever engage the services of the 4th Defendant in any capacity whatsoever, whether as an employee, a consultant, an expert or otherwise. This statement is also accepted as an undertaking to the Court.

11. The Notice of Motion is disposed of in these terms with no order as to costs.

12. Liberty to the parties to apply should the need arise.

(G. S. PATEL, J.)