

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.03.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE M.M.SUNDRESH

O.S.A.No.269 of 2015
and M.P.No.1 of 2015

1. M/s.Indigo Business Services (India) Pvt. Ltd.,
represented by its Director Mr.Irwin Besant Raj
having its registered office at
No.18/35, Second Cross Street, R.K.Nagar,
Chennai 600 028.

2.Mr.Irwin Besant Raj
Director,
No.18/35, Second Cross Street,
R.K.Nagar,
Chennai 600 028.
Permanently residing at:
5969, Leaside Crescent,
Mississauga
Ontario L5M 5L9, Canada. ... Appellants/Applicants

versus

1.M/s.Focal Merchandising (India) Pvt. Ltd.,
represented by its Director
Mr.NoelRavin Mohan, No.3/8, New Dhamu Nagar,
Puliyangulam, Coimbatore 641 037.

2.Tinikorah

3.NoelRavin Mohan

4.Sakthivadivelan

5.V.Shankar.

6.T.S.Vaira Prakash

7.John Paul

.. Respondents

Appeals filed under Order 36 Rule 1 of Original Side
Rules, against the Judgment and decree dated 10.03.2015
made in O.A.No.981 of 2014 in C.S.No.793 of 2014
filed to grant an interim injunction restrain the

respondents/ defendants from doint any point of purchase display or any such advertising business with any of the clients of the 1st applicant / Plaintiff CO, listed in the schedule A to this application pending disposal of suit

For Appellants .. Mr.V.Prakash
Senior Counsel

For Respondents .. Mr.AR.L.Sundaresan
Senior Counsel for R.1 to R.3
Mr.Sai Prasaath for
M/s.Sai Raaj Associates for R.4 to R.7

J U D G M E N T

(Judgement of the Court was delivered by The Hon'ble Chief Justice)

Admit.

2. Learned counsel for the respondents accepts notice. By consent of parties, the appeal is taken up for final disposal.

3. The appellants are the original plaintiffs who filed a suit against the respondents seeking compensatory and punitive damages, as also the relief of permanent injunction from doing any advertising business with the clients of the first appellant listed in Schedule-A to the plaint. Along with the suit the appellants also filed an application for interim relief under Order XXXIX Rules 1 and 2 of Civil Procedure Code praying for a restraint order against the respondents from doing any point of purchase display or any advertising business with any of the clients of the first appellant listed in Schedule-A. Initially, at a particular stage in the suit proceedings, interim relief was granted, which has been subsequently vacated by the impugned order dated 10.03.2015.

4.The factual matrix of the case is that the third respondent was originally working with the first appellant in the capacity of a Director, while respondent Nos.4 to 7 were employees in different capacities. The third respondent decided to part with the first appellant and communicated an e-mail dated 20.02.2014, indicating his intention to leave on 15th May of that year, to explore his independent opportunities. He thereafter set up the first respondent-company along with the second respondent. By passage of time, one-by-one, respondents Nos.4 to 7 also resigned from first appellant and joined the third respondent in the first respondent-company. The

appellants are aggrieved by the alleged unethical conduct of the respondents and endeavour to represent themselves as if they are either a part of the first appellant and/or that the first appellant does not exist and consequently, the first respondent has been constituted. In this behalf, a specific reference is made to the use of the 'letterhead' of the first appellant on 13.05.2014 by the first respondent in dealing with the customer of the first appellant. The document reads as under:

'To
Mr.Kansara,
UNILEVER HOUSE,
B.D.Sawant Marg, Chakala,
Andheri East Mumbai,
Maharashtra, India 400099.

Dear Mr.Kansara,

Subject: Cancellation of Indigo Business Services company vendor registration for the purpose of re-issue in the name of FOCAL Merchandising India Private Limited.

We have restructured our company and moved the merchandising services business for which we are registered with HUL to a new entity FOCAL Merchandising India Private Limited. All the facilities and manpower related to the merchandising business are also being transferred to the new company and are being consolidated at a new Greenfield location.

Please do cancel the registration which we have had with HUL to facilitate the vendor application being submitted through the new company also represented by the undersigned. I am the signatory in the NDA signed with HUL.

My email id henceforth has changed from noel@indigoworldwide.com to noel@focalmerchandising.com.

Yours truly,

for FOCAL MECHANDISING INDIA
PRIVATE LIMITED

Noel M Ravin
Director.

Director

A reading of the aforesaid thus prima facie suggests as if the first appellant has taken a re-birth under the name of the first respondent. The explanation sought to be offered by the second respondent for the same is that another employee of the first appellant viz., Madhavan had actually issued this document and that the e-mail of the third respondent has been used by him. He conceded that Madhavan walked into his company now he has gone for greener pastures somewhere else. We find this prima facie difficult to accept, as otherwise the third respondent would have reported this as a 'cyber-crime'.

5. The aforesaid is not the only document filed on record, but there is also an e-mail dated 12th October, 2014 sent by the third respondent dealing with a customer of the first appellant forwarding a design. Similarly, in a bidding process in December, 2014, the third respondent seeks to purportedly act on behalf of the first appellant and then there are other bids made - deliberately causing damage to the bid process of the first appellant.

6. Learned counsel for the first three respondents, faced with the aforesaid position, does not dispute that these respondents are not entitled to represent themselves as successors of the business of the appellants, nor claim any association with the appellants. The learned counsel for the first three respondents also states that they have not taken away any confidential material, including the client list of the appellants, though this would be a matter of trial. All we can say at this stage is that prima facie, the conduct of respondents Nos. 1 to 3 and possibly of the other respondents leaves much to be desired. As to whether the appellants are to establish their claim for damages again would be a matter for trial.

7. It is, however, not disputed by the respondents that a limited injuncted relief may be granted by this Court against them and in favour of the appellants as under:

- i) The respondents will not carry on the business seeking to represent themselves in any manner associated with the business activities of the appellants.
- ii) The respondents will not communicate on the 'letterheads' of the appellants or any other manner seeking to act on behalf of the appellants.
- iii) The respondents while dealing with the original clients of the appellants would clearly state that they are disassociated with the appellants, having set up independent

business.

8. In view of the aforesaid, the impugned order dated 10.03.2015 is set aside and the interim application filed by the appellants is allowed to the aforesaid limited extent, leaving the parties to bear their own costs.

9. The Original Side Appeal stands allowed in terms of the aforesaid. Needless to say, the expression of the view aforesaid is only prima facie in character and would not prejudice the trial in any manner.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

ksr

to

2 CCS TO M/s. A. S. Kailasam, Associates, SR. 17991
1 cc to M/s. Sai Raaj Associates, Sr. 17857
1 cc to Mr.K. Sudalai Kannu, Advocate, Sr. 17929

O.S.A.No.269 of 2015

LRS (CO)
kk 5/4

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