

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5891 of 2017 (O&M)

Date of Decision: 01.09.2017

GEO One Solution & others

... Petitioners

Versus

Geobruugg India Pvt. Ltd. & Ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Namit Gautam, Advocate,
for the petitioners.

ANIL KSHETARPAL, J.

Defendants No.2, 3 and 4 are in revision petition against the order passed by the Additional District Judge, dismissing the application under Order 7 Rule 11 CPC. The relevant extract of the order passed by the trial Court reads as under: –

“12. In the plaint, the plaintiffs have duly pleaded in paras no.4,5,6 & 7 the status of the defendants and their working. The defendant no.1 was employed with plaintiff no.1, defendant no.2 is his wife, defendant no.3 is partner and defendant no.4 is a partnership firm set up at the behest of defendant no.1. The Geobruugg trademark of the plaintiff is registered mark In favour of plaintiff no.2 and the certificate of Registration of Trademark Geobruugg in the name of plaintiff no.2 is produced with the plaint. The plaintiff no.2 hired defendant no.1 and it was pleaded that there was an employment Agreement on

21.03.2013 with defendant no.1 as a full time employee with plaintiff no.1. The terms and conditions of said agreement are mentioned in para no.18 of the plaint. In para no.24 of the plaint, it has been pleaded that defendant no.1 was associated with defendant no.4 which was purportedly a contractor engaged in the business of installation of materials supplied by the plaintiffs. It was alleged that it is now learnt that GeoOne is in fact being managed by defendant no.1 and his wife-defendant no.2 along with defendant no.3 who was purportedly a partner of GeoOne and defendants no.1 and 2 having close association with GeoOne being husband and wife having A/c in the name of GeoOne with Axis Bank and the address of the account holder i.e defendant no.4 is the same as the residential address of defendant no.1 as stated by him in his employee joining form and defendant no.1 set up GeoOne to make unlawful gains from his access to such information as also the position that he enjoyed with the plaintiffs and used the reputation and goodwill of the plaintiffs to misrepresent to the world at large that GeoOne is associated with the plaintiffs so as to induce its clients to award the contracts for installation works to GeoOne. The plaintiffs in para no.34 of the plaint have categorically pleaded that defendant no.1 has not only used all the sensitive information available to him to draft proposals on behalf of GeoOne. It is also pleaded in para

no.38 of the plaint that defendant no.1 floated a partnership firm by the name of GeoOne in collusion with his wife-defendant no.2 and defendant no.3. The plaintiff also made a ground that defendants have harm the goodwill and reputation of the plaintiffs and they claimed territorial jurisdiction in the matter by virtue of Section 134 of the Trademark Act which confers jurisdiction on the Courts within the local limits of whose jurisdiction at the time of the institution of the suit, the plaintiffs or any of them actually and voluntarily reside or carry on business or personally work for gain.

13. The plaintiffs prayed in the suit for decree of declaration against defendants no.1 to 4 for passing off the business and/or products of defendant no.4 as well as decree of declaration with permanent injunction against defendants no.1 to 4. Further various declarations regarding the breach of terms of employment agreement against defendant no.1 and misuse of confidential/proprietary information, trade secrets etc. of the plaintiffs against defendants no.1 to 4, prayer made to refund of amount from defendant no.1, direction to defendants no.1 to 4 to deliver to plaintiffs for destruction the counterfeit spike plates etc. and damages of Rs.25,80,000/- towards the loss of reputation and goodwill also claimed.”

15. Learned counsel for defendants raised mix questions of law and facts which cannot be decided without giving opportunities to both the parties to lead evidence. It is a settled law that for

the rejection of plaint only the averments in the plaint are relevant and the Court would not be entitled to consider the case of defence and for the purpose of invoking Order 7 Rule 11 CPC no amount of evidence can be looked into and issues on merits of matter which may arise between the parties would not be within the realm of Courts at this stage. The defendants no.2 to 4 have failed to show that suit is barred under any law and to determine rejection of plaint, averments made in the plaint are to be considered without any addition or subtractions. The mix questions of law and facts cannot be considered to reject the plaint at the initial stage because the written statement is yet to be filed by the defendants. Moreover the defendant no.1 has not filed any application to reject the plaint despite the fact that plaintiffs have categorically pleaded that defendants no.1 to 4 collided with each other through defendant no.1 and by taking advantage of plaintiff no.1 doing the activity as alleged in the plaint. The application though stated to be filed by defendants no.2 to 4 but it is supported by the affidavit of defendant no.3 only by mentioning that he has been authorized by defendants no.2 and 4 to sign said affidavit on their behalf. But no authorization is produced on record.”

Learned counsel for the petitioner has submitted that the order passed by the trial Court is erroneous and the Court has not appreciated the facts of the case in proper perspective. Learned counsel has submitted that it

is a case of no cause of action and, therefore, the plaint itself is liable to be rejected under Order 7 Rule 11 CPC.

The plaintiffs had filed a suit for declaration, permanent injunction, mandatory injunction, damages and any other incidental relief. The plaintiffs had pleaded the cause of action in para 52 of the plaint, which reads as under: –

“Cause of action for the present suit arose in or around March/April 2017 when the Plaintiffs came to know that Defendant Nos.1 to 4 used the confidential/proprietary information/trade secrets/knowhow of the Plaintiffs, and have been misleading the clients and customers of the Plaintiffs into believing that Defendant No.4 is in any way associated with the Plaintiffs.

Cause of action for the present suit further arose in April 2017 when the Plaintiffs came to know that Defendant No.4 was manufacturing, supplying and utilizing spike plates bearing shape and appearance identical and proprietary to that of the diamond shaped spike plates of Plaintiff No.2.

The cause of action further arose when Plaintiffs came to know that Defendants are making false and misleading statements on the websites www.shivgatha.com/geoone/about.html and www.geoonesolutions.com to the effect that Defendant No.4 is in any manner associated with the Plaintiffs.

The cause of action arose once again when the Plaintiffs came across the YouTube video posted by Defendant No.1 wherein also the Defendants projected an association of Defendant No.4 with the Plaintiffs.

The cause of action is subsisting on day to day basis till today since Defendant No.1 continues to act in breach of the terms of the Employment Agreement. The cause of action is further subsisting on day to day basis till today since Defendant Nos.1 to 4 are continuing to defraud, cheat and mislead the clients and customers of the Plaintiffs by holding out to them that Defendant No.4 is associated with the Plaintiffs. All the claims and reliefs are well within the prescribed period of limitation. No claim in the present suit is barred by the laws of limitation.

Clause 8.1 of the Employment Agreement confers jurisdiction on the courts of Gurgaon to decide all disputes arising out of the Employment Agreement. Further, Defendant Nos. 1 to 3 have their place of residence in Gurgaon. Cause of action against Defendant No.1 has arisen in Gurgaon since he has committed breach of the Employment Agreement in Gurgaon. Further, the emails sent by Defendant No.1 misrepresenting to the clients of the Plaintiffs that Defendant No.4 is associated with the Plaintiffs were sent from Gurgaon. Further, part of cause of action against Defendant Nos. 1, 2, 3 and 4 has

arisen in Gurgaon, since the Defendants have harmed the goodwill and reputation of the Plaintiffs, whose principal place of business in India is in Gurgaon. Hence, this Hon'ble Court has the territorial jurisdiction to entertain, try and dispose of the instant suit."

A reading of the plaint would show that the plaintiffs had pleaded how they have got the cause of action against defendants No.1 to 4. From the reading of the plaint, it cannot be said that the present plaint is without any cause of action.

At the stage of the application under Order 7 Rule 11 CPC, the Court is only required to see assertions made in the plaint. After examining the plaint, the trial Court has found that the plaint cannot be rejected under Order 7 Rule 11 CPC.

It will be open to the defendants to take all possible defences while filing reply and contesting the suit.

In view of the above, there is no ground to interfere with the impugned order dated 10.07.2017 passed by the learned Additional District Judge, Gurugram.

The Revision petition is dismissed.

(ANIL KSHETARPAL)
JUDGE

01.09.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No