

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:14.08.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.297 of 2009

S.Paul Raj

... Plaintiff

Vs.

1. Tata Consultancy Services Ltd.
Represented by its Managing director
Bombay House
24, Homi Mody Street, Fort,
Mumbai - 400 001

2. Tata Consultancy Services Ltd.
Vice President and Head
of Global Government Industry Group,
No.17, Cathedral Road,
Chennai - 600 086

.. Defendants

This Civil Suit is preferred, under Order IV rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure and also Sections 104 and 108 of the Patents Act, 1970 & Section 62 of the copyright Act, seeking permanent injunction restraining the defendants by themselves, their men servants, assigns or agents or anyone claiming through them from in any manner infringing the plaintiff's copyright in the work titled "FLYGUARD" in respect of the invention of the Plaintiff under the name/title "e-Passport(Smartcard)" and also as "TCS e-Passport Solution" or such other name or title or any other work or works which are in any manner identical and similar with the copyright in the work on the plaintiff's invention / work "FLYGUARD"; Granting for Permanent injunction restraining the defendants by themselves, their men, servants assigns or agents or anyone claiming through them from in any manner INFRINGING the plaintiff's patent in the invention titled"FLYGUARD" in respect of the invention of the Plaintiff under the name/title "e-passport(Smartcard)" and also as "TCS e-Passport Solution" or such other name or title

which are in any manner identical and similar to the invention of the plaintiff's invention "FLYGUARD"; for directing the defendants to surrender to the plaintiffs the entire material accumulated by the defendant in respect of "e-Passport(Smartcard)" and also as "TCS ePassport Solution" or such other name or title which are in any manner identical and similar to the invention of the plaintiff's invention "FLYGUARD", for destruction; for directing the defendants to render a true and faithful account of the profits earned by its through the sale of the offending work bearing the offending title "e-Passport(Smartcard)" and also as "TCS e-Passport Solution" or such other name or title or any other work or works which are in any manner identical and similar with the copyright in the work on the plaintiff's invention / work "FLYGUARD" and for costs.

For Plaintiff : Mr.Dharanidharan
for M/S.Perumbulavil Radhakrishnan

For Defendants : Mr.Sundar Narayan

JUDGMENT

Mr.Dharanidharan, learned counsel, representing the counsel on record for the sole Plaintiff and Mr.Sundar Narayan, learned counsel on record for both the defendants are before this Commercial Division.

2. Counsel for plaintiff has filed a memo dated 14/08/2018 which reads as follows:

"In the above matter several attempts were made to contact the plaintiff who is ordinarily residing at Thirunelveli. The counsel made attempts to contact him and only after several months he had responded stating that he would be in Chennai on 2nd August 2018 and there again on 9th August 2018

The Counsel is unable to hold the brief without further instructions in the matter.

It is therefore prayed that the Counsel be relieved from the vakalath and the above Memo is recorded and thus render justices".

3. Referring to the above said memo, learned counsel for plaintiff submits that he is reporting 'NO INSTRUCTION'.

4. Learned counsel for defendants points out that this court had directed the Registry to list this matter before Additional Master III for letting-in evidence vide proceedings dated 05.12.2016. It is pointed out that the matter was listed before Additional Master III on 20.01.2017, 03.02.2017, 21.02.2017, 08.03.2017, 03.04.2017, 20.04.2017 & 05.06.2017, but the plaintiff did not turn up and did not file proof affidavit.

5. Thereafter, the matter has been listed before the Court on 19.01.2018, 24.01.2018, 21.02.2018, 15.03.2018, 05.04.2018 23.04.2018 and 10.08.2018. The position has been no different.

6. It is also submitted by learned counsel on both sides that there is no dispute or disagreement regarding the jurisdiction of this Commercial Division as this lis pertains to copyright relating to Biometrics in Passport. It is also submitted that in the light of these facts, lis qualifies as a Commercial Dispute under Section 2(1)(c)(xvii)

of the Commercial Courts Act, 2015. In the light of Section 62 (2) of the Copyright Act, 'specified value' is not of relevance and this Commercial Division has jurisdiction under first proviso to Section 7 of Commercial Courts Act, 2015, is their further say.

In the light of the narrative supra, particularly trajectory of hearings i.e., continuous non-appearance of plaintiff, viewed in the context of the memo filed by the counsel for plaintiff and owing to learned counsel for plaintiff reporting 'No Instructions', this suit stands dismissed for default/Non-Prosecution. There shall be no order as to costs.

14.08.2018

gpa

Speaking/Non-Speaking order

Index : Yes/No

gpa

To

1. The Managing director
Tata Consultancy Services Ltd.
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2. The Vice President and Head
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Tata Consultancy Services Ltd.
No.17, Cathedral Road,
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M.SUNDAR, J.
kan/gpa



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