

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

NOTICE OF MOTION NO.58 OF 2017

IN

COMM. SUIT NO.92 OF 2017

Ecopack India Paper Cup Private Limited)...Plaintiff/Applicant

V/s.

Rakesh Jalan & Ors.)....Defendants

Mr.Aseem Naphade I/by M/s.S.K.Srivastav and Co. for
plaintiff/applicant.

Mr.Sankalp Anantwar a/w Mr.Dinesh Bhatia and Mr.Anurag Mankar
I/by Pan India Legal for defendants

CORAM : K.R.SHRIRAM,J

DATE : 19.3.2019

P.C.:-

1. The claim in the suit is primarily a money claim. Defendants were directors of plaintiff. Defendants stepped down as directors of plaintiff in 25.2.2015. On 26.2.2015 a settlement sheet was arrived it. It is stated in the plaint that defendant nos.1 & 2 agreed not to use the name, logo or data base of plaintiff company for their personal use.

2. The suit has been lodged only on 19.1.2017 though the plaint itself was declared on 10.1.2017. Notice of Motion was taken

out on 19.1.2017 and on 20.2.2017 the following order came to be passed :-

“No case for ad-interim relief is made out. Place the Notice of Motion for hearing and final disposal on 3rd April, 2017.”

3. We are on 19.3.2019. More than 4 years after the settlement sheet dated 26.2.2015 was entered into.

4. The question of granting any relief as prayed for in the Notice of Motion to restrain defendants from using the data base of the clients of plaintiff company and approaching the clients of plaintiffs company for doing the business of paper cups does not arise because of the delay on the part of plaintiff to move the Court. If such an order in a suit purely for money decree, is required, plaintiff should have immediately move the Court and also make out a case under Order 38 Rule 5 of the Code of Civil Procedure 1908.

5. In paragraph-23 of the plaint a bald averment is made “The defendants by using the data base of clients of plaintiff company and by approaching the clients of plaintiff company and doing business with them had committed a breach of the agreement dated 26.2.2015. In paragraph-21 it is stated after the resignation of defendant nos.1 &

2 as directors of plaintiff company they illegally and unlawfully started using the client database of plaintiff company for their individual business of paper cups. As noted earlier defendants resigned as directors on 25.2.2015.

6. In the affidavit in reply it is also stated that the settlement sheet which plaintiff is relying upon is not the settlement agreement that defendants have signed, because according to defendants settlement sheet that was signed by defendants did not have any non compete clause. Therefore, it is also a matter of evidence.

Therefore, Notice of Motion dismissed.

7. Pleadings are complete. On or before 30.3.2019 plaintiffs and defendants are directed to give inspection of documents relied upon by each of them. If inspection is not given, such party will not be permitted to rely on such document. This shall, however, not preclude a party from confronting a witness of the other with any document.

On or before 5.4.2019 parties to exchange statement of admission and denial with reasons for denial. If the statement of admission and denial is not given, parties shall be deemed to have admitted the existence of all the documents of the other side.

8. On the next date plaintiff and defendants shall come with agreed draft issues and a separate list of issues on which they are unable to agree, failing which parties will be put to terms.

Stand over to 10.4.2019 for issues.

(K.R.SHRIRAM,J)