

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.316 of 2012

Messrs. Vortex Engineering Private Limited,
Rep.by its Director, L.Kannan,
No.14, Palayakaran Street,
Ekkaduthangal,
Chennai – 600 032.

... Plaintiff

Vs.

Messrs. NCR Financial Solutions Group Limited,
206, Marylebone Road,
London NW1 6LY.

... Defendant

Plaint filed under Order VII Rule 1 C.P.C. read with Order IV
Rule 1 of the High Court Original Side Rules praying for:

(a) Declaring that the threat held out by the
defendant in its e-mail dated 11.04.2012, that the
plaintiff is infringing the defendant's copyrights and the
defendant is proposing to take legal action against the
plaintiff are unjustified;

(b) Grant a permanent injunction restraining the
defendant, their men, agents, servants or persons acting
on their behalf from in any manner continuing to issue
threats that the plaintiff is infringing the defendant's
alleged copyrights in its NDC Documentation and that
the defendant is contemplating legal action against the

plaintiff;

(c) Grant a permanent injunction restraining the defendant, their men, agents, servants or persons acting on their behalf from in any manner interfering with the legitimate right of the plaintiff to manufacture and sell its Automated Teller Machines using its own interoperability software developed by the plaintiff for its use in its ATM's;

(d) Directing the defendant to pay costs of the suit; and,

(e) Pass such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Plaintiff : Mr.K.Harishankar

For defendant : Mr.Udhaya Kumar Rangarajan

J U D G M E N T

The suit has been filed for permanent injunction and such other reliefs more fully described in the prayer portion of this judgment.

2. The case of the plaintiff is that the plaintiff is a pioneer in manufacturing and installing Automated Teller Machines (ATMs) in rural and semi-urban places in India. With the mission of helping banks reach out profitably to unbanked and under-banked regions

and after years of R & D, ably supported by IIT Madras, the plaintiff has designed ATMs that are highly reliable, rugged, easy to use and eco-friendly. They consume up to 90% lesser power and hence can be economically operated using solar power. The plaintiff's ATMs are currently serving even the remotest parts of rural India, using technology as an enabler to improve quality of life. Majority of people in developing countries live in semi-urban and rural areas, where banking access is still limited. Though the concept of personal banking has undergone major transformation with the introduction of core Banking and ATMs, the impact in non-urban locations has been limited.

3. Additionally, the plaintiff provides related software solutions to help banks roll out end-to-end ATM services. The plaintiff has filed five patents in the domain of ATM technology and design. The plaintiff has successfully deployed ATMs with leading banks across most states of India. The ATM terminals are networked to the Bank Host (EFT Switch) for user transaction processing. The plaintiff independently, without access to defendant's NDC documentation, developed the interoperability with the help of domain experts. This was confirmed by series of

Host/Switch interoperability testing. The defendant approached the plaintiff for purchase in the license from Aptra Advance NDC + Reference Manual. However, the plaintiff has not admitted for the claim.

4. The suit was directed to be placed before the learned Additional Master for recording evidence. Before the learned Additional Master, on behalf of the plaintiff one Manoj K.P., - Vice President – ATM R & D, was examined as P.W.1 and Exs.P1 to P15 were marked. The sole defendant has remained absent during the evidence.

5. It has already been set out supra that as many as 15 exhibits, namely Exs.P1 to P15 have been marked and the details of the 15 exhibits are as follows:

Sl. No.	Exhibits	Description	Date
1	Ex.P1	Board Resolution authorizing Mr.Manoj to depose evidence.	04.11.2019
2	Ex.P2	E-Mail sent by the defendant to the plaintiff offering to license the NDC + Reference Manual.	31.01.2011
3	Ex.P3	E-Mail sent by the defendant to the plaintiff seeking response for the E-Mail dated 31.01.2011.	05.02.2011
4	Ex.P4	E-Mail sent by the plaintiff to the defendant requesting the details of license agreements for NDC	07.02.2011

Sl. No.	Exhibits	Description	Date
		Specification.	
5	Ex.P5	E-Mail sent by the defendant to the plaintiff with regard to preparing a copy of the License Agreement.	07.02.2011
6	Ex.P6	E-Mail sent by the defendant to the plaintiff attaching NDC license agreement.	07.02.2011
7	Ex.P7	E-Mail sent by the plaintiff to the Defendant requesting to offer alternate pricing model.	24.02.2011
8	Ex.P8	E-Mail sent by the defendant to the plaintiff expressing unwillingness to negotiate the license fee.	24.02.2011
9	Ex.P9	E-Mail sent by the plaintiff to the defendant informing their difficulties to apportion a high fee for the licensed documentation.	02.03.2011
10	Ex.P10	E-Mail sent by the defendant to the plaintiff requesting confirmation of the plaintiff for purchasing the license from the defendant for NDC Documentation attaching the copy of the License Agreement and issued a threat.	11.04.2012
11	Ex.P11	News coverage published in newspapers and Internet.	July 2010-2012
12	Ex.P12	Request for proposals from various Banks.	
13	Ex.P13	Information on NDC Protocol from the defendant's website.	
14	Ex.P14	Board Resolution.	24.04.2012
15	Ex.P15	65B Certificate.	04.11.2019

6. Heard the learned counsel for the plaintiff and also gone through the averments in the plaint and the proof affidavit and also perused the Exs.P.1 to P.15.

7. Ex.P.2 is the E-Mail sent by the defendant to the plaintiff offering to license the NDC + Reference Manual. Ex.P.10 is the communication sent by the defendant dated 11.04.2012 wherein, it indicates that the defendant sent a communication to purchase the license. According to the plaintiff they did not require any license in this regard. What they sought is only information with regard to the communication. In fact, the contention of the plaintiff is that the defendant has forced the plaintiff to purchase the license. Ex.P.10 indicate that in the event, the plaintiff is not agreeing for licence, further action would be taken. Ex.P.10, along with other correspondence filed by the plaintiff makes it clear that the defendant in fact forced the plaintiff to enter into license agreement and in the case of failure to enter agreement, the further course of action can be contemplated. However, the defendant has remained absent during the evidence and Ex.P1 remained unchallenged. The contention of the plaintiff that they forced to enter into licence agreement. Accordingly, the plaintiff has established the claim and suit is decreed as prayed for.

8. In view of the same, the suit is decreed as prayed for.

No costs.

19.11.2019

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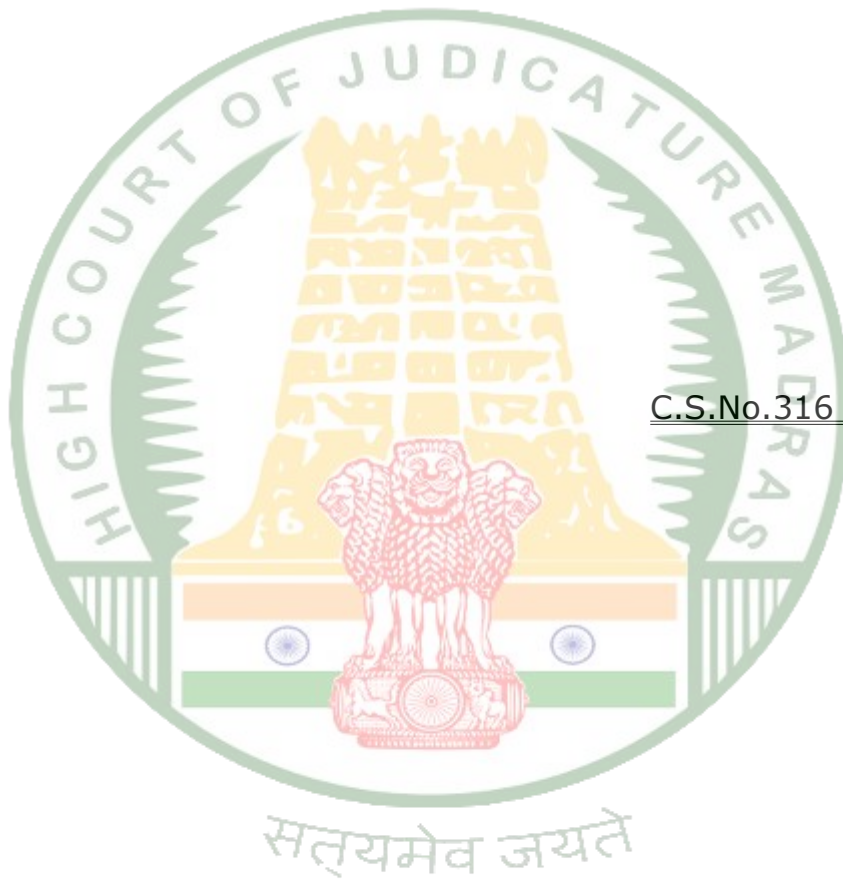


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