

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.373 of 2015
and
O.A.Nos.486 & 487 of 2015

P.J.Anoop Nishanth,
Proprietor of Maxx Speed Designs,
No.451/A, MRH Road,
Mollakadai, Chennai – 600 060
and also at:
No.5, Govindaswamy Nagar,
Jumbli New Colony,
Kodingaiyur, Chennai – 600 118. Plaintiff

Vs.

1.V.R.Manikandan,
2.M/s.Radham Motors Private Limited,
Represented by its Director,
No.87, Maravar Street, Manamadurai – 630 606,
Tamil Nadu. ... 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) Permanent injunction restraining the
defendants whether by themselves, their employees,
servants, agents, legal representatives or any one
claiming through them from infringing or attempting to
infringe the copyright vested with the plaintiff, subsisting

in the external design of the Electric Scooter E100 conceptualized, designed and product developed by the plaintiff, in the form of a 2D sketch morefully described in Schedule III hereunder, by manufacturing, causing to manufacture, marketing either directly or indirectly or in any manner dealing with the said Electric Scooter E100 in any manner whatsoever;

(b) Permanent injunction restraining the defendants whether by themselves, their employees, servants, agents, legal representatives or any one claiming through them from infringing or attempting to infringe the copyright vested with the plaintiff, subsisting in the internal plan in form of a 2D layout of the Electric Scooter E100 conceptualized, designed and developed by the plaintiff, morefully described in Schedule IV hereunder, by manufacturing, causing to manufacture, marketing either directly or indirectly or in any manner dealing with the said Electric Scooter E100 in any manner whatsoever;

(c) Permanent injunction restraining the defendants whether by themselves, their employees, servants, agents, legal representatives or any one claiming through them from directly or indirectly, in any manner using plaintiff's confidential information, including technical details, specifications, internal and external features including measurements and fitting, drawings, schemes, plans and blueprints in respect of internal and external alignments and other information

provided by the applicant to the 1st defendant in the course of his internship to any party other than the applicant, pending disposal of the suit; and

(d) Directing the defendants, their men, agents, successors in business, assigns, representatives or any other person or entity claiming through or under them to deliver the unrecovered parts of the Electric Scooter E100 listed in the Schedule II hereunder including copy/copies thereof and other copyright protected materials of the plaintiff in physical, mechanical or electric form without making or retaining any copy/copies, alterations, reproductions or duplicates of the same in any form whatsoever;

(e) For costs of the proceedings.

(f) Such other order or orders as this Hon'ble Court may deem fit and proper in the light of the facts and circumstances of the present case and thereby render justice.

For Plaintiff : Mr.S.Diwakar
For defendant : Set ex-parte

vide order dated 29.07.2019

JUDGMENT

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

2. Plaintiff is engaged in the business of automotive designing and building. In August 2013, the plaintiff founded Maxx Speed Designs (hereinafter referred to as MSD), a sole proprietorship concern in the lines of an automotive design studio in Chennai for designing and building concept motorcycles. Plaintiff is a renowned automotive designer with notable innovations such as MS01, E100 etc. The plaintiff has since catered its services to several celebrities and many other VIPs by designing their vehicles according to their custom specification.

3. In February 2013, the plaintiff conceptualized the idea of building an Electric Scooter. The object was to eliminate all shortcomings that the previous failed models of Electric Scooters had faced especially in relation to the battery and motor efficiency. After days of intense research and analysis of Electrical Scooter had finally conceptualized and designed the model of an Electrical two wheeler and named it as 'E100'. The aesthetics and design of the Scooter E100 is based on the graceful swan and it uses electric current to run, thereby eco friendly. The Electric Scooter was completely conceptualized, designed and funded by the plaintiff and

therefore copyright in respect thereof clearly lies only with the plaintiff and none else.

4. In August 2013, 1st defendant joined the plaintiff as an intern. Though no letter of appointment or agreement was signed that defines the relationship between the plaintiff and the 1st defendant, the nature of relationship is implicit from the manner and way in which the 1st defendant reported to the plaintiff, which is evident from e-mails and short message communications exchanged between the plaintiff and the 1st defendant during the months of April 2014 till December 2014 filed as Exhibits P2 and P3.

5. In view of 1st defendant's apparent interest and aptitude in the field of automotive industry, the plaintiff began to share critical and confidential information in respect of E100 with the 1st defendant and involved him in the course of work, despite his lack of experience in the field. The plaintiff spent substantial sums of money towards funding various business trips to which he took the 1st defendant and even loaned a huge sum of money for the 1st defendant's personal expenses.

6. On various occasions, the plaintiff sent the defendant to specific chores to various locations and had followed him up on instructions about work to be done at those places. Thus, the defendant had to work only on the specific instructions of the plaintiff while working on the E100 project and did not have any intellectual input of his own. The same is evident from the short message conversations exchanged between the plaintiff and 1st defendant field as Ex.P4.

7. By September 2014, E100 was fully assembled and ready for testing. Due to personal exigencies, the plaintiff had to stay away from the testing process and in view of the same, the plaintiff left specific instructions with the 1st defendant to continue testing the scooter and report to him of its performance on a daily basis. At this juncture, the 1st defendant was in possession of the Electric Scooter E100 without the direct supervision of the plaintiff.

8. By early November, the 1st defendant begun to act distant and refused to pick up any call from the plaintiff. After several messages and calls, the plaintiff was communicated about the 1st defendant's lack of interest in continuing in the project.

Further, no reason was given by the 1st defendant for such sudden withdrawal and was non-committal. In order to avert any further delay in project, the plaintiff accepted his decision and asked him to return the E Scooter E100 with all parts and materials including the prototype and other equipments left by the plaintiff with the 1st defendant for the specific and sole purpose of vehicle testing.

9. To the utter shock of the plaintiff, the 1st defendant refused to part with any of the above mentioned material and unreasonably claimed ownership over the same. The 1st defendant further demanded an unreasonable ransom of Rs.4,00,00,000/- for returning the E100 prototype failing which he threatened to promote and advertise the E100 as his own invention and creation. The plaintiff, horrified by the turn of events, filed a police complaint against the 1st defendant at K4 Anna Nagar Police Station, with hopes of recovering his prototype and to prevent any further mishaps in respect of his project. Thereafter, the 1st defendant sent a letter claiming ownership over Electric Scooter E100. The said letter was brought to the Inspector's attention and upon inquiry by him, the 1st defendant admitted that the plaintiff was running the Electric Scooter Project and undertook to return all the materials he

was retaining illegally. Copy of the said letter is marked as Ex.P9. Therefore, the plaintiff, having no other option, has filed the present suit, for the aforesaid relief.

10. After the admission of the suit, the suit summons were served on the defendants on 19.06.2015. In spite of the service of the suit summons, the defendants failed to appear before this Court. Therefore, the defendants were set ex-parte vide order dated 29.07.2019 and the suit was directed to be placed before the learned Additional Master for recording ex-parte evidence. Before the learned Additional Master, on behalf of the plaintiff one P.J.Anoop Nishanth, was examined as P.W.1 and Exs.P1 to P22 were marked.

11. It has already been set out supra that as many as 22 exhibits, namely Exs.P1 to P22 have been marked and the details of the 22 exhibits are as follows:

S.No.	Exhibits	Description of Documents
1	P1	The printout of Emails exchanged between the plaintiff and his Assistants, regarding conceptualization of Electric Scooter E100 specifications and further discussion regarding equipments etc. February 2013 till April 2014.
2	P2	The printout of Emails exchanged between

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		the plaintiff and the 1 st defendant, wherein the plaintiff had shared with the 1 st defendant the specification and conceptualization of the Electric Scooter E100, including the details of the motor and ARAI regulations dated 17.09.2013 to 17.12.2013.
3	P3	The printout of short message conversations (Mobile Phone) exchanged between the plaintiff and the 1 st defendant wherein the plaintiff has given instruction and images in respect of all the works the 1 st defendant had carried out in the Electric Scooter E100 dated 24.09.2013 to 22.11.2014.
4	P4	The printout of Emails exchanged between the plaintiff and the 1 st defendant wherein the plaintiff had shared with the 1 st defendant the initial graphics exchange specification (IGES) and its assembly specification dated 02.01.2014 to 06.01.2014.
5	P5	The printout of short message conversations (Whatsapp) exchanged between the plaintiff and the 1 st defendant wherein the plaintiff has given instruction and images in respect of all the works the 1 st defendant had carried out in the Electric Scooter E100 dated 06.04.2014 to 10.09.2014.
6	P6	The printout of Emails exchanged between the plaintiff and the 1 st defendant wherein the plaintiff had shared with the 1 st defendant the scooter study in the Indian market, technical details, designs, drawing and other confidential and critical data of the chassis, battery, cell arrangements etc regarding the Electric Scooter E100 dated 17.03.2014 to 13.09.2014.
7	P7	The printout of Emails exchanged between the plaintiff and the Battery management system supplier (Semsil Technologies) regarding the damaged BMS the reasons behind its failure and its replacement dated 03.10.2014 to 19.11.2014. (For Ex.P1 to Ex.P7, certificate under Section 35 (B) Evidence Act produced.)
8	P8	The photocopy of police complaint filed by the plaintiff against the 1 st defendant in the

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		police station in Anna Nagar dated 24.12.2014.
9	P9	The photocopy of first registered post issued by the 1 st defendant to the plaintiff claiming ownership over the Electric Scooter E100 and refusing to return the prototype with all its part dated 29.12.2014.
10	P10	The photocopy of second registered post issued by the 1 st defendant to the plaintiff claiming ownership over the Electric Scooter E100 and refusing to return the prototype with all its part dated 11.02.2015.
11	P11	The photocopy of Newspaper Articles (in Hindu) Dina Thanthi and Dina Malar) in which the 1 st defendant had falsely claimed ownership of the Electric Scooter E100 dated 19.02.2015.
12	P12	The photocopy of police complaint filed by the plaintiff against the 1 st defendant in the office of the superintendent of police at Sivagangai dated 20.02.2015.
13	P13	The photocopy of First Information Report in F.I.R.No.C4586979 filed by the plaintiff against the 1 st defendant at the office of the Superintendent of Police at Sivagangai dated 21.02.2015.
14	P14	The photocopy of Newspaper Articles in Dinamalar, Hindu Tamil Dhina Thanthi, publishing the 1 st defendant's illegal acts and his subsequent absconding dated 23.02.2015.
15	P15	The photocopy of the Anticipatory Bail Petition filed by the 1 st defendant before the learned Judicial Magistrate No.II, dated 23.02.2015.
16	P16	The photocopy of order passed by Hon'ble Madurai Bench of Madras High Court granting the 1 st defendant, interim anticipatory bail dated 25.02.2015.
17	P17	The photocopy of intimation of the order granting the 1 st defendant, Anticipatory bail to the Inspector of Police, Crime Branch at Sivagangai by his counsel J.A.S.Sathish Kumar dated 28.02.2015.

S.No.	Exhibits	Description of Documents
18	P18	The photocopy of order passed by Hon'ble Madurai Bench of Madras High Court, granting conditional bail to the defendant dated 11.03.2015.
19	P19	The photocopy of Status Report filed by the Inspector of Police before the Hon'ble Madurai Bench of Madras High Court, dated 11.03.2015.
20	P20	The photocopy of Newspaper clippings, images and emails which goes to show the standing of the plaintiff in the industry of automotive innovation and the extent of his fan base.
21	P21	The photocopies and originals of invoices regarding the project E100 and other incidental expenses involved.
22	P22	The photocopy of Statement of Accounts of the plaintiff.

12. 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.22.

13. On perusal of the Exs.P1 and P2, this Court find that the plaintiff is the owner and creator of the copyright in the design of Electric Scooter E100. However, the first defendant had taken undue advantage of his proximity and privity to the E100 project and he is trying to carry the design created and developed by the plaintiff. Thereby, disrupting the plaintiff's business and also damaging the reputation in the market. The plaintiff represented

KRISHNAN RAMASAMY,J.

that the first defendant had failed and brazenly refused to return the prototype parts. The first defendant is yet to launch E100 into the market as his creation through his newly incorporated Company M/s.Radham Motors Private Ltd., the second defendant herein. This Court is of the view that the apprehension of the plaintiff is genuine and well-founded. The first defendant is trying to exploit the name of the plaintiff, commercially through the second defendant. Hence, the plaintiff is entitled for the relief as prayed for.

14. Accordingly, suit is decreed with costs. Consequently, connected original applications are closed.

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