IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **29.01.2019**

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.910 of 2017
and
A.No.3251 of 2018

International Powered Access Federation
(IPAF)
Moss End Business Village, Crooklands,
Cumbria, LA7 7NU, UK,
represented by its CEO and Managing Director
Mr.Timothy Neil Whitemen ..Plaintiff

Vs.

1.Capital Equipment Services Limited,
39, West Madha Church Road,
Royapuram, Chennai 600 013.

2. Aerial Platform Association of India,
302, Godrej Coliseum,
Off. Eastern Express Highway,
Sion, Mumbai 400 022. .. Defendants

This Civil Suit is preferred, under Order IV Rule 1 O.S. Rules Read with Sections 55 and 62 of the Copyright Act, praying for

a) granting a permanent injunction restraining the Defendants 1 and 2 and all persons claiming under or through either of them from using or dealing with Subject Materials and the copied materials as in Annexure A and B to this Plaint in any manner;

b) Directing the defendants to render true and proper accounts of all the dealings made by them using the subject materials and the copied material and pay over to the Plaintiff all revenue there from with such compensation as this Hon'ble Court may determine upon rendition of such

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accounts, the aggregate of which is estimated at present at Rs.10,00,000/-;

c) granting such further or other reliefs as this Hon'ble Court may deem fit and proper under the circumstances of the case and thus render justice.

For Plaintiff : Mr.J.Srinivasan of M/s.Rugan & Arya

For Defendants : Mr.V.G.Anbarasu for D1
Mr. Geethi Ara for
M/s.S.Ramasubramaniam & Associates
for D2

SUMMARY JUDGMENT

There is one plaintiff and there are two defendants in this suit.

2. Mr.J.Srinivasan, learned counsel of M/s.Rugan & Arya (Law Firm) on behalf of plaintiff, Mr.V.G.Anbarasu, learned counsel on record for first defendant and Ms.Geethi Ara, learned counsel of M/s.S.Ramasubramaniam Associates (Law Firm) on behalf of second defendant are before this Commercial Division.

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3. In the light of the short summary judgment that I propose to pass and in the light of the nature of the short summary judgment that I propose to pass, I deem it unnecessary to delve much into factual matrix.

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4. Suffice to state that plaintiff has filed the main suit alleging infringement of its copy right in material which has been placed as Annexure A to the plaint. To be noted, according to the plaintiff, Annexure B is the offending material.

5. I am informed that the aforesaid material pertains to manual/training manual for operation of what is known as Mobile Elevating Work Platform' ('MEWP', for brevity). It is the case of plaintiff that operation of MEWP requires specialised skill and involves risk. Therefore, according to international trade practice, no operator is allowed to use / operate MEWP without adequate training for the same is plaintiff's further say.

6. Plaint is predicated on the ground that plaintiff has developed an exclusive training programme for operators of MEWPs and therefore, plaintiff is the original and absolute owner of all copy rights over the subject material i.e., Annexure A referred to supra.

7. As alluded to supra, according to the plaintiff, Annexure B is the alleged infringing material, which infringes the plaintiff's aforesaid copy right and it is the further say of plaintiff that defendants 1 and 2 are responsible for alleged infringement, as aforesaid.

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8. First defendant has filed an affidavit dated 04.01.2019. Most relevant portion of the affidavit of first defendant is paragraph 4 and the same reads as follows:

> *'4.In the event of the plaintiff filing such an affidavit, we hereby undertake and assure that the 1st defendant will not at all use the subject materials as in annexure A and B to the plaint in C.S.No: 910/2017 in any manner.'*

9. Likewise, second defendant has filed an affidavit dated 13.04.2018. Most relevant portion of this affidavit is contained in paragraph 4 and that portion of paragraph 4, reads as follows:

> *'4. .....I submit that this Defendant undertakes to not use the Plaintiff's Training Manual which is the Subject Materials found in Annexure A.....'*

10. Though there is a reference only to Annexure A, learned counsel Ms.Geethi Ara of M/s.S.Ramasubramaniam Associates (Law Firm), on written instructions from second defendant, submits that this undertaking will apply to Annexure B also. This is recorded.

11. In the light of the aforesaid affidavits filed by

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defendants 1 and 2, plaintiff has filed an affidavit dated 05.12.2018. Most relevant part of this affidavit is contained in paragraph 4 and the most relevant part of paragraph 4 of affidavit filed by the plaintiff reads as follows:

> *'4.....The plaintiff has no objection for the Defendants using the alternate material as filed by the Defendants and annexed to this Affidavit, in as is condition. The Plaintiff is willing to give up the prayer (b) in the Plaint claiming damages against the defendants in the above suit.'*

12. Before I proceed further, it is deemed appropriate to extract the prayer in the plaint. Prayer paragraph in the plaint is paragraph 24 and the same reads as follows:

> *'24.The Plaintiff prays for a judgment and decree:-*
>
> *a) granting a permanent injunction restraining the Defendants 1 and 2 and all persons claiming under or through either of them from using or dealing with Subject Materials and the copied materials as in Annexure A and B to this Plaint in any manner;*
>
> *b) Directing the defendants to render true and proper accounts of all the dealings made by them using the subject materials and the copied material and pay over to the Plaintiff all revenue there from with such compensation as this Hon'ble Court may*

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determine upon rendition of such accounts, the aggregate of which is estimated at present at Rs.10,00,000/-;

c) granting such further or other reliefs as this Hon'ble Court may deem fit and proper under the circumstances of the case and thus render justice.

13. A perusal of the prayer paragraph in the plaint will reveal that there are three limbs of prayer, which have been adumbrated and set out in sub-paragraphs (a), (b) and (c) of paragraph 24 of the plaint.

14. In the aforesaid backdrop, all the three learned counsel before me draw my attention to Order XIII-A of 'The Code of Civil Procedure, 1908' ('CPC' for brevity) as amended by 'The Commercial Courts Act, 2015' ('said Act' for brevity). Referring to Order XIII-A Rule 3 of amended CPC as amended by said Act, all the three learned counsel submit that this Commercial Division has adequate powers to pass a summary judgment in the instant case i.e., a judgment without resorting to oral evidence.

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15. The grounds on which summary judgment can be passed are adumbrated in Rule 3 of Order XIII-A of amended CPC as amended by said Act. A perusal of the grounds set out in Rule 3 of Order XIII-A of amended CPC, reveals that this Commercial Division has powers to pass a summary

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judgment when the plaintiff has no real prospect of succeeding the claim or when the defendant has no real prospect of successfully defending the claim and when there is no other compelling reason as to why the claim should not be disposed of before recording oral evidence.

16. The aforesaid affidavits filed by defendants 1 and 2 as well as the affidavit filed by the plaintiff, all of which have been alluded to supra, will reveal that defendants have no real prospect of successfully defending the claim qua sub-paragraph (a) in the plaint prayer paragraph.

17. To be noted, plaintiff in their affidavit have submitted that they are giving up the prayer contained in sub-paragraph (b) of prayer paragraph.

18. Sub-paragraph (c) is the usual residuary limb of any prayer paragraph. In the light of this summary judgment, no orders are necessary under sub-paragraph (c), which is the usual residuary limb of any prayer paragraph.

19. Be that as it may, a perusal of the affidavit filed by the plaintiff being affidavit dated 05.12.2018 (relevant portion already extracted supra) reveals that plaintiff has also categorically stated that they have no

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objection for defendants using alternate material as filed by the defendants. To be noted, this alternate material filed by the first defendant has been annexed as an annexure to the affidavit filed by the plaintiff dated 05.12.2018. There is no dispute or disagreement between learned counsel for plaintiff and first defendant that this annexure to the affidavit of the plaintiff is document No.4 filed by the first defendant in its typed set of papers dated 06.06.2018. To be noted, document No.4 in this typed set of papers runs from page Nos.309 to 389 of the said typed set of papers.

20. After carefully considering the affidavits filed by all the three parties to the lis as well as the statement made across the bar today, on written instructions from second defendant, this Commercial Division is convinced that this is a fit case for passing a summary judgment in terms of sub-paragraph (a) of plaint prayer paragraph. Sub-paragraph (b) as mentioned supra, has been given up by the plaintiff and no orders are required under sub-paragraph (c) (residuary limb of prayer) owing to reasons mentioned above/ narrative supra).

21. For the purpose of abundant clarity, aforementioned affidavits dated 05.12.2018, 04.01.2019 and 13.04.2018 filed by plaintiff, 1st defendant and 2nd

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defendant respectively shall form part of this summary judgment. Further to be noted, the affidavit filed by the plaintiff dated 05.12.2018, which shall form part of this summary judgment will include the aforementioned alternate material to be used by the first defendant, for which plaintiff has no objection.

22. Summary judgment is passed on above terms. Consequently, connected miscellaneous petition is closed. Parties are left to bear their respective costs.

Sd./-M.S.J
29.01.2019

Certified to be true copy//
Dated at Madras this the day of 2019.

JJ 12/07/2019

COURT OFFICER(O.S.)

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