

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

CHAMBER SUMMONS NO. 157 OF 2017
IN
COMMERCIAL IP SUIT NO. 138 OF 2016

Alfa Chemo Plast Pvt.Ltd.

...Plaintiff

vs.

Basf India Ltd. & Ors.

...Defendants

Mr.Dhruva Gandhi with Nirali Sanghavi and Preeta Panthaki i/b. Anand and Anand and Khimani for Plaintiff/Applicant.

Mr.Jesse Cornelious i/b. Dhruve Liladhar & Co. for Defendant No.1.

Dr.Veerendra Tulzapurkar, Senior Advocate with Sandeep Parekh, Bhavik Mehta and Juhi Dave i/b. Dhruve Liladhar & Co. for Defendant Nos.2 to 19.

CORAM : S.C. GUPTE, J.

DATE : 3 JANUARY 2020

P.C. :

Heard learned Counsel for the parties.

2 This chamber summons seeks amendment of the plaint by incorporating further averments and seeking an additional relief. The amendment is opposed by the Defendants basically on the ground that the plaint, as filed, does not disclose any cause of action particularly against Defendant Nos.2 to 19 in respect of whom additional averments are sought to be made by way of amendment.

3 Mr.Tulzapurkar, learned Senior Counsel appearing for Defendant Nos.2 to 19, relies on the judgment of the Supreme Court in the case of **Patasibai vs. Ratanlal**¹. Learned Counsel submits if the plaint, as

¹ (1990) 2 SCC 42

filed, does not disclose cause of action, no amendments can be brought in so as to create a new cause of action. Learned Counsel submits that in any event, his clients' application for rejection of plaint under Order 7 Rule 11 of Code of Civil Procedure on the ground of non-disclosure of cause of action is pending before this court.

4 The present suit is filed against Defendant Nos.1 to 19 seeking reliefs in respect of two broad causes of action. One cause of action concerns wrongful termination of a distribution agreement between the Plaintiff and Defendant No.1. The narration in the plaint, as originally filed, indicates that the Plaintiff had a distribution agreement with Defendant No.1, who is a public company incorporated under the provisions of the Companies Act, 1956. Defendant No.2 is claimed to be a holding or parent company, whilst Defendant Nos.3 to 10 are claimed as associates, affiliates, officers and/or directors of Defendant Nos.1 and 2, who are or have been liable and responsible for the day to day working and business affairs of Defendant Nos.1 and 2. The Plaintiff originally had a business arrangement with the Defendants for import of chemicals from their counterpart in South Korea and distribution thereof by the Plaintiff. Subsequently, the Plaintiff claims to have entered into a formal distribution agreement with Defendant No.1. This agreement was initially valid for a period of 27 months from the date of its execution, i.e. from 1 January 2008 to 31 March 2010, with a clause of automatic renewal. It is submitted by the Plaintiff that whilst this agreement was in force, the Defendants simultaneously started restructuring their sales team. The Defendants, in various meetings, called for the data of the Plaintiff's existing client base, assuring the Plaintiff that the objective was to support the Plaintiff's existing client base and not to displace or supersede the Plaintiff in any

manner. The Defendants also assured the Plaintiff that it would be allowed to continue to deal with its customers and that the sales team of the Defendants would not in any manner approach, solicit or compete with the Plaintiff or sell the products of Defendant No.1 directly to the Plaintiff's customers. It is submitted that despite these assurances, the Defendants unauthorisedly and illegally infringed the Plaintiff's network of clients/customer database by using the copyrighted data maintained by the Plaintiff and induced the Plaintiff's clients/customers to purchase products directly from Defendant No.1 by offering competitive and cut-throat prices. The Plaintiff refers to various meetings and correspondence between the parties in this behalf in the plaint. It is further the grievance of the Plaintiff that, as part of this very scheme, Defendant No.1 proceeded to terminate the distribution agreement with the Plaintiff. The Plaintiff submits that the purported termination was wrongfully caused by the Defendants and seeks to recover damages as a result thereof. The second aspect of the suit is protection of the Plaintiff's copyright in the electronic database and distribution network of clients and customers maintained in a list and challenging the rights of the Defendants to use, copy, reproduce or in any manner exploit the same. The suit also seeks a joint and several money decree against all Defendants as a remedy in respect of infringement of the Plaintiff's copyrighted work.

5 The amendment proposed by the Plaintiff merely seeks to incorporate further particulars in the plaint and amplify its case particularly against Defendant Nos.3 to 19. Originally, whilst describing the Defendants, the Plaintiff had termed Defendant Nos.3 to 10 as associates, affiliates officers and/or directors of Defendant Nos.1 and 2 and as someone responsible or accountable for the business affairs or dealings of

Defendant Nos.1 and 2. By the proposed amendment, the Plaintiff seeks to make these same averments in respect of Defendant Nos.11 to 19 as well. The Plaintiff also proposes to aver, in addition to its original averments, that all decisions in respect of wrongful termination of the distribution agreement were taken by the Defendants in connivance with one another and pursuant to the act of maliciously obtaining the Plaintiff's electronic client list as described earlier in the plaint, with a view to defraud the Plaintiff by using anti-competitive means. The Plaintiff, thus, proposes to interconnect the cause of action of wrongful termination of the distribution agreement with the alleged malicious objective of defrauding the Plaintiff through illicit use of its copyrighted client list. There is already a suggestion in the plaint in that behalf, but that suggestion is sought to be amplified by means of the proposed amendment, particularly, by adding para 32.1 in the plaint. Lastly, the Plaintiff seeks to add a prayer for perpetual injunction restraining the Defendants from using the electronic database or distribution network of the Plaintiff's clients/customers for dealing with any of the customers mentioned in that database or network.

6 *Prima facie* it is not possible to say that the Plaintiff has not disclosed any cause of action against Defendant Nos.3 to 19 in the plaint as originally framed. The Plaintiff has clearly averred in the plaint that it was the Defendants, who had arranged a meeting with the Plaintiff on the particular date mentioned in that behalf in the plaint. It is submitted that this meeting was under the pretext of review by the marketing team of the Defendants of the Plaintiff's electronic client list / customer database and/or distribution network so as to avoid any overlap between the respective customers of the Plaintiff and Defendant No.1. It is averred that

the Plaintiff, in good faith, shared this list with the marketing team of Defendant No.1. The Plaintiff then avers malafide intentions on the part of the Defendants to deliberately push the Plaintiff into a position wherein it could not fulfill its business commitments to its customers. The plaintiff then gives other instances of purported malafide conduct on the part of the Defendants. It particularly names Defendant Nos.14, 16 and 19 in this behalf and recounts actions of these Defendants. The plaintiff further avers that the Defendants approached certain customers of the Plaintiff, who are named in the plaintiff, and thereafter started selling products directly to these customers at prices lower than those offered by the Plaintiff. It is finally averred that the various instances of alleged malicious conduct of the Defendants and the series of instances set out in the plaintiff form a pattern leading to termination of the distribution agreement between the Plaintiff and Defendant No.1. That is how reliefs have been claimed against all the Defendants seeking, firstly, as noted above, a declaration of copyright and a perpetual injunction against all Defendants restraining them from in any manner using the electronic database and/or distribution network of the Plaintiff's clients / customers (Exhibit G) and dealing with any of the Plaintiff's customers mentioned in the aforesaid electronic customers' list and a money decree against all the Defendants both as damages for infringement of the Plaintiff's copyrighted work and for wrongful termination of the distribution agreement between itself and Defendant No.1. These averments make out a cause of action against all Defendants together. Whether the Plaintiff makes out any such case at the trial is completely immaterial at this stage. As of now, what we have to see is whether there is a stated cause of action against the Defendants, which needs to go to trial. That, as we have noted above, is certainly there.

7 The case of **Patasibai** referred to by Mr.Tulzapurkar is on an altogether different point. In that case, the plaintiff had filed a suit for assailing a compromise decree passed in an earlier suit as a nullity. The cause of action was not based on coercion, undue influence or fraud or the like, but on the basis of certain lapses on the part of the court whilst passing the decree. Such a suit was obviously not maintainable under Order 23 Rule 3A of the CPC or even otherwise. Whilst the Supreme Court was considering the question of rejection of the plaint under Order 7 Rule 11 of the CPC in that suit, amendments were proposed before the court *inter alia* pleading additional grounds, on which the plaintiff claimed to be entitled to maintain the suit. Though the Supreme Court did not consider applicability of Rule 3A of Order 23 in the suit before it, it was of the view that that the suit lacked any cause of action. The court noted that the averments in the suit, which specified grounds on which the particular compromise decree was alleged to be a nullity, did not raise a triable issue or, in other words, did not disclose any cause of action. The court noticed from the impugned order of the High Court that the plaintiff had never claimed any fraud, coercion or misrepresentation or the like in the matter of passing of the compromise decree. On the other hand, the plaintiff had merely claimed that due to lapses whilst deciding the matter, the decree passed by the court below had become a nullity. The Supreme Court, accordingly, noted that on the limited grounds on which the suit was filed, the same was clearly not maintainable. The only grounds of nullity mentioned in support of the plaintiff's case were that, firstly, the decree was against a non-existent person, described as one M/s.Damdoolal and Brothers, whereas the correct name of the entity should have been M/s.Ratanlal Damdoolal and Brothers. The court noted that the decree was indeed against M/s.Ratanlal Damdoolal and Brothers; that is how it was

admittedly understood throughout by the respondent himself who had represented the firm at every stage of the earlier suit. The Court, therefore, held this ground to be clearly non-existent. The second ground of nullity pleaded was that the decree did not direct discharge of defendant No.3, one Puranmal. The Court noted that admittedly, no relief was claimed or granted against the defendant, who was treated by all to be only a formal party. The court noted that even this ground was thus clearly non-existent. The court, in the premises, noted that on the admitted facts appearing from the record itself, the plaintiff was unable to show that there was any cause of action disclosed in the plaint giving rise to a triable issue. The court noted that if the averments in the plaint did not disclose any cause of action, the plaint was liable to be rejected under Order 7 Rule 11 of the CPC even without going into the applicability of Order 23 Rule 3A of CPC to the facts of the case. The court, thus, rejected the plaint under Order 7 Rule 11 after dismissing the application for amendment. These facts are clearly distinguishable and have no application to the facts of our case.

8 Accordingly, the chamber summons is made absolute in terms of prayer clause (a). It is, however, clarified that the last sentence in the prayer clause, prayer clause (d), starting with the words “The said electronic customer list” and ending with the words “its client list/customer database”, which is sought to be added by clause (6) of the schedule, shall stand deleted from the schedule of amendments. Amendment to be carried out within two weeks. The Defendants shall be entitled to file an additional written statement dealing with the amended plaint within a period of eight weeks from today.

(S.C. GUPTE, J.)