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

NOTICE OF MOTION NO.73 OF 2016
IN
COMMERCIAL IP SUIT NO. 138 OF 2016
WITH
NOTICE OF MOTION NO.2178 OF 2016
IN
COMMERCIAL IP SUIT NO. 138 OF 2016

Alfa Chemo Plast Pvt. Ltd. ...Plaintiff
vs.
BASF India Ltd. & Ors. ...Defendants

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Mr. Dhruva Gandhi, a/w. Ms. Nirali Sanghavi and Ms. Preeta Panthaki, i/b. Anand and Anand and Khimani, for Plaintiff/Applicant to NMCD/2178/2016.

Ms. Juhi Dave, i/b. Dhruve Liladhar & Co. for Defendant No.1.

Dr. Veerendra Tulzapurkar, Senior Advocate, a/w. Mr. Sandeep Parekh and Mr. Bhavik Mehta, i/b. Dhruve Liladhar & Co., for Defendant Nos.2 to 19 / Applicants to NMCD/73/2016.

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CORAM : S.C. GUPTE, J.

DATE : 6 JANUARY 2020

P.C. :

. This notice of motion seeks rejection of the plaint under Order 7 Rule 11 as against Defendant Nos. 2 to 19. The application is on the footing that the plaint, that is to say, even the plaint as amended in pursuance of the order passed on the chamber summons on 3 January 2020, does not make out any cause of action as against these Defendants.

2. The present suit is filed against Defendant Nos. 1 to 19, seeking reliefs in respect of two broad causes of action, one pertaining

protection of the Plaintiff's copyright in the electronic database and distribution of network of its clients and customers maintained in a list and the other in respect of wrongful termination of a distribution agreement between the Plaintiff and Defendant No.1. By a chamber summons, being Chamber Summons No.157 of 2017, the Plaintiff applied for amendments of the plaint *inter alia* by incorporating further averments and seeking an additional relief as against the Defendants. By an order dated 3 January 2020, the chamber summons was allowed and the amendment was permitted. The present notice of motion is on the footing that the plaint does not disclose any cause of action, particularly against Defendant Nos. 3 to 19. Mr. Tulzapurkar, learned Senior Counsel appearing for these Defendants, submits that even after the amendment of the plaint in terms of the order dated 3 January 2020, passed on the chamber summons, the plaint does not disclose any cause of action against his clients.

3. As far as the cause of action of wrongful termination of the distribution agreement between the Plaintiff and Defendant No.1 is concerned, this Court has observed in its order dated 3 January 2020, that *prima facie* it is not possible to say that the plaint, even as originally filed, does no disclose any cause of action against Defendant Nos. 3 to 19. The Plaintiff, as noted by this Court, has clearly averred in the plaint that the Defendants had acted together in first arranging a meting with the Plaintiff, seeking disclosure of the Plaintiff's electronic clients' list/customer database and/or distribution network on the pretext of avoiding any overlap between the respective customers of Defendant No.1 and later on making use of the same in breach of the confidence reposed by the Plaintiff in sharing its list with the Defendants and as a further act in pursuance of the original design of directly approaching the Plaintiff's customers, caused

a wrongful termination of the distributorship agreement between the Plaintiff and Defendant No.1. In amplification of the same case, the amendment proposed by the Plaintiff sought to include appropriate averments indicating that Defendant Nos. 3 to 19, who are described as associates, affiliates, officers and/or directors of Defendant Nos. 1 and 2 (Defendant No.2 being a holding company or parent company of Defendant No.1), in connivance with one another and Defendant Nos. 1 and 2, had taken these decisions in respect of wrongful termination of the distribution agreement with a view to defraud the Plaintiff by using anti-competitive means. It is submitted that the Defendants jointly acted in a manner so as to deceive the Plaintiff first in sharing its clients' list and later, having accessed the clients' list approaching the clients directly in supercession of the Plaintiff and procuring termination of the distribution agreement between the Plaintiff and Defendant No.1. This clearly discloses a cause of action, which needs to go to trial. It cannot be said that the plaint does not disclose any cause of action against Defendant Nos. 2 to 19.

4. The other aspect of the matter concerns breach of copyright of the Plaintiff in clients' electronic database and distribution network of its clients and customers' list, referred to in the plaint. Mr. Tulzapurkar is *prima facie* right in submitting that there is no case of breach of copyright alleged against any of the Defendants in so far as this grievance is concerned. The copyright (as defined in Section 14 of the Copyright Act, 1957), in case of a literary work, not being a computer programme, consists in the exclusive right to do or authorise the doing of any of the acts mentioned in sub-clauses (i) to (vii) in Clause (a) of Section 14. These acts include reproduction of the work in any material form, including the storing of it in any medium by electronic means or to issue copies of the

same or make translations or adaptations or performances as referred to in sub-clauses (i) to (vii) of Clause (a) of Section 14. There is no allegation in the plaint that the Defendants have either reproduced the work, namely, the electronic database or distribution network of the Plaintiff's clients and customers in the list referred to in the plaint or issued copies thereof to the public or carried out any of the acts referred to in Section 14 vis-a-vis the list disclosed to the Defendants by the Plaintiff in confidence. What is submitted is that the Defendants canvassed business directly to these clients or customers and that was wrongful. The acts, though may be termed as tortuous, do not amount to breach of copyright.

5. Considering, however, that the cause of action alleged in the plaint against the Defendant company is at least maintainable in part, and it is not possible to split the plaint by maintaining it so far as a part of the cause of action is concerned and rejecting it so far as the balance part is concerned, the application of the Defendants for rejection of the plaint under Order 7 Rule 11 does not merit countenance.

6. The notice of motion is, accordingly, dismissed. Costs to be costs in the cause.

7. Notice of Motion No.2178 of 2016, taken out by the Plaintiff for temporary injunction, is exclusively based on the cause of action of infringement of copyright. As noted above, *prima facie* there is no case of infringement of copyright against any of the Defendants. Accordingly, for the reasons stated above, the notice of motion is dismissed. Costs to be costs in the cause.

(S.C. GUPTE, J.)

Smita Gonsalves
Digitally signed by Smita Gonsalves
Date: 2020.01.09 17:39:08 +0530