



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

O.S.A.No.31 of 2020

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YENNES Infotech (P) Ltd.,
Rep. by its Director, Sales and Strategy S.Saisheshan,
No.1, 2nd Floor, Gokul Arcade,
No.2, Sardar Patel Road, Adyar,
Chennai 600 020.

...Appellant

Vs.

1. The Managing Director,
eNoah iSolution Pvt. Ltd.,
Elnet Software City, 3rd and 4th Floor,
Rajiv Gandhi Salai, Taramani,
Chennai 600 113, Tamil Nadu.
2. The Director,
Indian Institute of Technology Gandhinagar,
Palaj, Gandhinagar,
Gujarat 382 355.

...Respondents

PRAYER: Appeal filed under Order XXXVI, Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent to set aside the order dated 05.11.2019 made in Application No.7234 of 2019 in C.S.No.359 of 2019 on the file of this Hon'ble Court.

Prayer in Application:

Pleaded to reject the Complaint in CS No.359/2019 under order VII Rule 11 of the CPC, with exemplary costs and thus render justice.

Prayer in CS 359/2019:

The Plaintiff therefore prays that this Hon'ble court may be pleased to pass a Judgment and Decree in favour of the Plaintiff and against the Defendants, as follows:

(a) Granting a permanent injunction restraining both the defendants joint and severally, their co-proprietors herein, partners, staff, contractors, men, servants, agents, associates or anyone claiming through or under them from in any manner



infringing the Plaintiff's copyright in its customised Tally software and from using the customised version of the Plaintiff Tally software or any modification thereof, without the permission of the Plaintiff and thus render justice.

(b) Mandatory injunction directing both the defendants jointly or severally from breaking locks, tampering or modifying the customized Tally Software without the permission of the Plaintiff.

(c) Directing the defendants to jointly and severally pay compensative and/or punitive damages of Rs.15,00,000/- to the Plaintiff.

(d) Directing the defendants to pay the Plaintiff the costs of the suit.

For Appellant : Mr.G.K.Muthukumar

For Respondents : Mr.Puhazh Gandhi .P
for respondent No.1

: Mr.Karthick Sundaram
for respondent No.2

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The appeal arises out of an order passed on an application for rejection of the plaint, though the judgment impugned reveals an attempt at adjudication of the claim on merits.

2. There is a distinction between the rejection of a plaint and the dismissal of a claim. Indeed, the rejection of a plaint does not follow a conclusive adjudication of rights culminating in a decree, but by reason of the legal fiction in Section 2(2) of the Code of Civil Procedure, 1908, the rejection of a plaint is deemed to be a decree. Further Order VII Rule 13 of the Code mandates that the rejection of the plaint shall not preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Thus, the rejection of a plaint cannot result in a claim being stultified; it permits the plaintiff to lodge a fresh claim.

3. The plaint in the present case seeks the following reliefs:

"a. Granting a permanent injunction restraining both the Defendants joint and severally, their co-proprietors herein, partners, staff, contractors, men, servants, agents, associates or anyone



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claiming through or under them from in any manner infringing the Plaintiff's copyright in its customised Tally Software and from using the customised version of the Plaintiff Tally software or any modification thereof, without the permission of the Plaintiff and thus render justice.

b. Mandatory injunction directing both the defendants jointly or severally from breaking locks, tampering or modifying the customized Tally software without the permission of the Plaintiff.

c. Directing the Defendants to jointly and severally pay compensative and/or punitive damages of Rs.15,00,000 to the Plaintiff.

d. Directing the Defendants to pay the Plaintiff the costs of the suit and

e. Pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

4. The case as made out in the plaint is that the plaintiff obtains a generic computer programme from a third party, customises it for use by its clients and sells the same through intermediaries as the first defendant in the suit. The further case in the plaint is that in the usual course of business the plaintiff had customised the computer programme and sold it to the second defendant Indian Institute of Technology, Gandhinagar through the first defendant. Despite the plaint having made out such case and the plaintiff complaining of the balance consideration in respect of the computer programme not being paid by the first defendant, the plaint also asserts that the plaintiff is the owner of the copyright in the computer programme and the principal relief claimed is for an injunction restraining the defendants from infringing the plaintiff's copyright.

5. In dealing with the second defendant's application for rejection of the plaint, the trial court referred to the correspondence exchanged between the parties, interpreted documents and made a veritable assessment of the claim, though such an exercise was not called for on an application for rejection of the plaint. Though much of the law as it had stood for a long time has been turned on its head by recent legislation, some of the cardinal principles still hold good. A plaint may be rejected only on the basis of the statements contained in the plaint. As a consequence, the allied principle is that the allegations contained in the plaint have to be treated as true and correct for the purpose of assessing an application for rejection of the plaint. Of course, if some of the statements appear to be absurd on the face of it, to such extent the strict rule may not apply.



6. For instance, if a question of limitation is involved and some act is pleaded in the plaint which would entitle the plaintiff to obtain a period of exemption, the fact that what is pleaded in such regard is false may be decided at the trial, but the plaint cannot be rejected in such a scenario. On the other hand, since a plaintiff is obliged to indicate that the claim has been brought within time, if the aspect of limitation is completely overlooked, the plaint may be rejected. Again, as Order VII Rule 13 of the Code instructs, such a rejection will permit the mistake to be corrected and a fresh claim lodged.

7. The substance of the plaintiff's case here is that the second defendant, through the instrumentality of the first defendant, purchased a computer programme that had been created by the plaintiff and the second defendant is purporting to use the same without making full payment therefor. In copyright law, the assertion of copyright in any work and the assertion of a money claim in lieu of the copyright are completely distinct. A may have agreed with B to assign its copyright in some work in favour of B upon the payment of an agreed sum. Upon A's assignment of the copyright in favour of B, A cannot seek return of the copyright on the ground of non-payment of the consideration or any part thereof. That is elementary. The unpaid rights of the owner of a copyright may be enforced by way of a money claim, but copyright when passed, particularly in case of an assignment, does not return except upon re-assignment or upon the assignment lapsing for non-use by operation of law.

8. As to what amounts to copyright and who is entitled to exercise such right and to what extent are provided in the Copyright Act, 1957. Some of the provisions need to be seen to appreciate the nature of the claim carried by the plaintiff to court and whether the plaint relating to the suit was liable to be rejected. Section 2(d) of the Act defines an "author". In relation to, inter alia, any literary work which is computer-generated, the person who caused the work to be created is regarded under the statute to be the author of the work. Section 2(o) of the Act defines "literary work" to include, inter alia, computer programmes. Section 13 of the Act details the works in which copyright subsists. Under Section 13(1)(a), copyright subsists in any literary, dramatic, musical and artistic work. Section 14 defines "copyright" and the nature of the right that an author can exercise in such intellectual property. Section 17 of the Act provides who the first owner of the first copyright would be. It must also be remembered that there can be no copyright in respect of any matter which is not recognised by the statute. Section 16 of the Act mandates as such.



9. Clause (a) of the Proviso to Section 17 of the Act recognises, inter alia, an exception to the general principle that the creator of the work in which copyright exists would be the first owner of the copyright. Section 17 of the Act together with clauses (a) to (c) of the Proviso thereto, may be seen:

"17. First owner of copyright.— Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that—

(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work insofar as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

(b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration, at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein; "

10. It is not in dispute that the other provisions of Section 17 of the Act do not apply to the facts of the instant matter.



11. A question is raised by the appellant as to the applicability of clause (c) of the Proviso to Section 17 in the present case. Since the second defendant's contention is recorded in the impugned judgment to the effect that "the copyright in the software customized for the second defendant vests only with the second defendant in terms of section 17(c)" of the Act and such contention is accepted by the trial court, a discussion on such aspect becomes necessary; though Section 17 of the Act may have no manner of application herein.

12. At paragraph 16 of the impugned judgment it has been observed that clause (c) of the Proviso to Section 17 of the Act makes it clear that if the relevant work is capable of any copyright subsisting therein and such work is created "in the course of employment under the contract of service or apprenticeship, ... the employer shall be the first owner of the work." On such basis, the trial court held that "When the plaintiff was engaged for certain services, he cannot claim copyright of the software."

13. The trial court clearly fell into error in such regard. Section 17 of the Act lays down in absolute terms that, subject to the provisions of the Act, the author of a work shall be the first owner of the copyright therein. The Proviso to such provision qualifies the mandate, but only in certain cases. The Proviso covers the entire gamut of works in which copyright subsists.

14. As would be evident from the three relevant clauses of the Proviso set out hereinabove, clause (a) pertains to literary, dramatic or artistic work, where such work is made by the author in course of his employment by the proprietor of a newspaper or a magazine or a similar periodical under a contract of service or apprenticeship and is restricted to the work being published in the relevant newspaper or magazine or similar periodical. It is in such situations that, unless there is an agreement to the contrary, the proprietor of the newspaper or magazine or similar periodical would be the first owner of the copyright in the work. Again, the ownership of the proprietor in the copyright of the work is restricted to its publication in any newspaper or magazine or similar periodical or the reproduction thereof. In all other respects, the author remains the first owner of the copyright in the work.

15. Clause (b) of the relevant Proviso is subject to clause (a) thereof and is confined to the cases of a photograph or a painting or portrait or an engraving or a cinematograph film, which is created for valuable consideration at the instance of any person. In such a scenario, such other person at whose instance the photograph is taken or the painting or portrait is



the same as the mode of assignment since Section 30A of the Act makes the provisions of Section 19 thereof applicable to licences.

20. In the case at hand, the first defendant must be regarded as the duly authorised agent of the plaintiff who had due authority to grant licence in respect of the computer programme authored by the plaintiff and commissioned according to the requirements and specifications of the second defendant. Though such a case may not have been expressly made out in as many words, but a meaningful and charitable reading of the plaint would imply the plaintiff's case in the plaint to be this, at the highest.

21. Once a licence in any work in which copyright subsists is granted by the owner of the copyright or by his duly authorised agent, the licensee is entitled to exercise all rights covered by the licence, irrespective of the licence being exclusive or otherwise. When the owner of the copyright in any work grants any interest in the right by licence to another, such other may exploit the licence to the extent of the interest granted thereby for the period covered, if there is any limitation in such regard. Again, like in the case of assignment of copyright, a licence when granted cannot be taken back by the owner of the copyright unless it is surrendered or it lapses for non-use by operation of law. The unpaid licensor's rights lie in a claim for money.

22. In the light of the foregoing legal discussion, on a meaningful reading of the plaint, it does not appear that the plaintiff could have brought an action for infringement against either defendant since the first defendant is pleaded only to be the instrumentality through which the computer programme was sold by the plaintiff to the second defendant and must be seen to be an agent of the plaintiff for the purpose of licensing; and, the second defendant is the licensee in possession of a valid licence to use the relevant computer programme or software.

23. Accordingly, for completely different reasons than indicated in the impugned judgment, the order dated November 5, 2019 rejecting the plaint is upheld as the plaintiff could not have claimed any relief for infringement of copyright in the computer programme against either defendant as espoused in the plaint. However, nothing in this order will preclude the plaintiff from pursuing the money claim against the defendants in accordance with law.



O.S.A.No.31 of 2020 is disposed of on the above basis. There will be no order as to costs.

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Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To:

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1 CC to Mr.G.K.Muthukumar, Advocate, Sr.No. 40280.

+1 CC to Mr.Karthick Sundaram, Advocate, Sr.No.40263.(27/09/2021)

O.S.A.No.31 of 2020

SJ(CO)
LS(25/08/2021)