IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 22.06.2021

Orders Pronounced on : 06.07.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Original Application No.895 of 2019
in
Civil Suit No.584 of 2019

Lapiz Digital Services,
A Division of Ultra Marine & Pigments Ltd.,
Rep. by its Accounts Manager Mr.E.Srinivasalu,
having office at R.R.Tower-IV,
5th Floor, TVK Industrial Estate,
Guindy, Chennai-600 032. .. Applicant/plaintiff

Vs.

1. Remitmed Heathcare Services Pvt. Ltd.,
Rep. by its Managing Director,
No.58/1, Manthoppu 1st Street,
Maduvinkarai, Guindy, Chennai-600 032

and also having address at:
No.9/10, Ganapathy Nagar,
1st Street, 2nd Floor,
Ekkatuthangal, Chennai-600 032.

2. Manikandan Balakrishnan,
S/o Balakrishnan .. Respondents/defendants

Judge's Summons issued under Order XIV Rule 8 of the Madras High Court Original Side Rules and Order XXXIX Rules 1 and 2 of the Code of Civil Procedure and application filed praying to grant interim injunction restraining the respondents/defendants, their agents, men, representatives, associates and assigns from in any manner interacting with, servicing, entering into contract, communicating, receiving payments and specifically from doing business with the applicant/plaintiff's customers/clients and in particular, the applicant/plaintiff's clients enumerated in the Schedule below:

Schedule of applicant/plaintiff's clients:

1. R1 RCM Inc, 401 N. Michigan Ave, Chicago, IL 60611
2. PhyBus, 215 Jamestown Park Road, Suite 205, Brentwood, TN 37027
3. Medical Practice Solutions, 4501 Osuna Road NE, Albuquerque, NM
4. Madrelle Medical Billing, Inc., 6586 Hypoluxo Road, #268, Lake Worth, FL, 33467
5. Advanced Data Systems Corporation, 15 Prospect Street, Paramus, NJ 07652
6. Physicians Reimbursement System LLC, 12301 Grant Street, #230, Thornton, CO 80241
7. Edelberg Compliance Associates, 2078 Teron Trace Suite, Dacula, Georgia 30019
8. Center for Orthopaedics, 716 West Germantown Pike, East Norriton, PA 19403,

pending disposal of the suit.

For applicant : Mr.Perumbulavil Radhakrishnan

For respondents : Mr.T.Paranthaman for R-1

Mr.R.Ganesh Kumar for R-2

ORDER

The above application has been filed by the plaintiff, pending disposal of the suit, seeking to grant an interim injunction restraining the respondents/defendants, their agents, men, representatives, associates and assigns from in any manner interacting with, servicing, entering into contract, communicating, receiving payments and specifically from doing business with the applicant/plaintiff's customers/clients and in particular, the applicant/plaintiff's clients enumerated in the Schedule to the Judge's Summons in the application.

2. The suit has been filed for the following reliefs:

(a) for permanent injunction injunction restraining the defendants, their agents, men, representatives, associates and assigns from in any manner interacting with, servicing, entering into contract, communicating, receiving payments and specifically from doing business with the plaintiff's customers/clients and in particular, the plaintiff's clients enumerated in the Schedule to the plaint;

(b) to direct the defendants to jointly and severally pay to the plaintiff a sum of Rs.1,50,00,000/- as damages/compensation for wilful breach of confidence and loss caused to the plaintiff;

(c) to direct the defendants to render a true and faithful account of the earnings by the defendants by servicing the plaintiff's clients including (i) Physicians Management Group LLC, 338 Cortland St, Believille, NJ 07109-3202, (ii) Absolute Healthcare, 139 North M Street, Tulare, CA 93274, and (iii) PractiCons, 213 N.Orange St, Suite F, Glendale, CA 91203 and their other places of work; and

(d) to direct the defendants to pay the costs of the suit to the plaintiff.

3. The brief facts which gave rise to the filing of the suit and the present application are stated hereunder:

(a) The plaintiff is a Company registered under the Companies Act, 1956. It is a technology driven industrial entity, BPO service provider, offering publishing services, e-learning solutions, healthcare services, content services, e-commerce solutions, software solutions and related services, founded in the year 1999 with US Healthcare Business Processing Services to address the then nascent BPO market in the US and Europe. The applicant/plaintiff has a large client base, not only nationally, but also spreading across various countries abroad. The petitioner claims to enjoy a reputed position in the business field vis-a-vis their clients.

(b) The second defendant was recruited as Deputy General Manager (Client Operations) by the applicant/plaintiff-Company on 12.05.2017 and he was put on probation on 03.07.2017 for a period of one year and over-all pay package offered to him was to the tune of Rs.16,63,908/- (Annual CTC). The conditions for employment have been stated in the appointment letter, which was duly signed by the second respondent/second defendant at the time of acceptance of the offer on 03.07.2017.

(c) The second defendant's employment with the plaintiff-Company was subsequently confirmed and the confirmation letter was also issued to him on 03.01.2018 with the same terms and conditions issued along with the Probation Order. From November 2018, the second defendant was also given an increment and his pay package was also revised. In the course of his duties, the second defendant was involved in day-to-day direct interactions with the clients of the plaintiff-Company in India and abroad. In the course of transactions that the plaintiff had with their clients, the second defendant became privity to the confidential information relating to the business and also came to be acquainted with the clients of the plaintiff. As an employee of the plaintiff-Company, the second defendant has been in constant interaction with the clients of the plaintiff-Company as part of his assigned duties.

(d) The second defendant, during the period of his employment with the plaintiff-Company, was also sent to the USA at the expense of the plaintiff-Company to have direct personal meeting and project transaction with one of the plaintiff's priced clients, namely Physicians Group Management LLP (for short, PGM). The second defendant, during the course of his employment, stated to have gained immense knowledge and experience and also developed contacts with the clients of the plaintiff.

(e) While matters stood thus, the plaintiff had come to know some time in the year 2019 that the second defendant had co-founded a Company, namely the first defendant-Company, along with his wife Mrs.M.Sabitha

Devi as one of the Directors. The business objects of the first defendant-Company are to carry out identical or similar activities as that of the plaintiff-Company. In the process of floating the first defendant-Company, the second defendant had located their office in close proximity of the plaintiff-Company's office and the first defendant-Company also started servicing some of the plaintiff's clients, particularly, PGM, by entering into a contract with them on 01.03.2018. Further, the first defendant-Company has also lured away 25 employees of the plaintiff-Company and inducted them therein by utilising their expertise and knowledge.

(f) When the plaintiff-Company had come to know about the illegal activities of the second defendant in violating the terms of the confidentiality agreement between him and the plaintiff-Company, had terminated his services on 16.09.2019 forthwith. The plaintiff's relationship with some of their clients, has suffered in the meanwhile and for instance, one of their important clients, namely PGM had terminated their contract with the plaintiff-Company and migrated to the first defendant-Company for receiving the same services received by them from the plaintiff-Company. Since the action of the second defendant has been prejudicial to the vital interest of the plaintiff's business as a result of wilful violation of the conditions of the confidentiality agreement and other terms of service governing the employment, the suit has been filed for permanent injunction and other reliefs, stated supra.

4. This Court, while entertaining the suit/Original Application, has granted interim injunction as prayed for on 01.10.2019 and thereafter, it has been extended from time to time for filing counter affidavit on behalf of both the respondents/defendants.

5. Thereafter, counter affidavits have also been filed on behalf of both the respondents/defendants and the Original Application has been taken up for hearing.

6. The learned counsel for the applicant/plaintiff, at the outset, submitted that when the probation order was issued to the second respondent/second defendant on 03.07.2017, the order contained confidentiality agreement with conditions as under:

"7. Confidentiality:

7.1. During the tenure of your employment with the company and any time after leaving the company, you should at all times observe secrecy and confidentiality in respect of any process, trade, business data or any other information that may come to your knowledge or possession that, according to the company, is necessarily confidential and forms valuable property of the company, and furthermore, you should not disclose it without authority of the company to anyone other than the company's officers authorised to receive them.

7.2: All the inventions and improvements that you may make solely or jointly in the course of your employment will form intellectual property of the company and should not be published or divulged to or shared with anyone by you to the detriment of the company's interest.

7.3: You should not even attempt to engage in any activity that attempts to recruit the company's employees or consultants to any other organisation, or obtain or draw away the company's customers, contractors, service providers, alliance partners and product and service partners in any form during and after cessation of your employment with the company. You should not use any of the company's confidential information to help a competitor or potential competitor or any other person or agency to start a business by way of becoming a competitor to the company in any domain of operations.

7.4: During the period of your employment, you should not work directly or indirectly for any other person, firm or company, either with or without remuneration, nor should you engage in any trade or business either as an employer or an employee or a partner or an adviser or a consultant or in any other capacity without the express permission of the Management in writing.

7.5: As an employee, you will be privity to sensitive and commercially valuable information concerning the company and its business. Such information is deemed to be property of the company and must not be disclosed during or after this employment to any third party without prior written consent of the company. Hereby, you undertake to indemnify the company and its affiliates for any loss or damage arising from any breach of this undertaking.

7.6: You should sign a Confidentiality agreement/Confidentiality Undertaking, Non Compete & Non Poaching."

7. The learned counsel for the applicant/plaintiff further submitted that a separate confidentiality agreement was also signed by the second respondent with the plaintiff-Company on the same day of the issuance of the appointment order. The learned counsel has also drawn reference to the important conditions enumerated in the agreement, which are extracted hereunder:

Confidentiality Agreement

.. ..

5) In the course of my training and duties, LAPIZ may have to disclose to me confidential information which for the purpose of this agreement shall mean:

"Confidential information" means all information disclosed on the date from now either by the employer or employee in any form, by either party in any form (written, oral, photographic, electronic, magnetic or otherwise) marked or otherwise indicated to be 'confidential' which includes without limitation, any information, techniques, Databases, client names, client lists, software, technical data, workflow tools, product specifications and methods/process related to marketing or financial information or execution of business of LAPIZ and confidential client information and records for the purpose of efficiency executing my responsibilities.

Understanding fully the extent and severity of losses and damages that might be caused by the breach of this agreement on my part, I hereby voluntarily agree to and bind myself to the following obligation, during the course of my association with LAPIZ and for a period of 3 years thereafter:

a) Not to disclose, pass on, use for my own purpose, or in any other way communicate to anyone (including any third party or competitor), except as officially authorized by LAPIZ in the execution of my job at LAPIZ, and as authorized by LAPIZ from time to time.

b) Not to collude with any party, to work in competition with or against the business of LAPIZ by passing on in any form, by any business of LAPIZ including those stated as above.

c) Not to use the confidential information for my own purposes or for the purposes of any other organisation.

d) Not to contact any client, consultant, business partners of LAPIZ that I have come to know of, or been exposed to, during the course of my association with LAPIZ other than for business purposes of LAPIZ.

e) Not to contact any client, consultant, business partners of LAPIZ that I have come to know of, or been exposed to, during the course of my association with LAPIZ for any purpose what so ever upon the cessation of my employment with LAPIZ.

f) Not to use the names of the clients or projects of LAPIZ in my Biodata.

g) Not to disclose confidential financial concerning LAPIZ.

h) Not to breach the information security policy of Lapiz.

In affirmation of my commitment to the above, I have signed this agreement, at Chennai, on 3rd July 2017."

8. The learned counsel for the applicant/plaintiff also referred to certain e-communications originated from a named company, an overseas client of the plaintiff-Company, addressed to the plaintiff-Company, informing them that the contract would have to be terminated, as there was shortcoming in the performance of the contract from the side of the plaintiff.

In this regard, he particularly referred to one e-communication dated 02.08.2019, addressed to the second defendant when he was employed by the plaintiff-Company and the second defendant had also replied to the termination notice by the client of the plaintiff-Company, vide e-communication, dated 03.08.2019 on behalf of the plaintiff-Company, stating that action would be taken to address the concerns of the client. During the same time, the first defendant-Company, which was founded by his wife, was servicing the same client.

9. The learned counsel for the applicant/plaintiff further drew the attention of this Court to a document filed in the typed set of papers filed along with the application, namely the business / visiting card of the second defendant describing him as co-founder and Chief Operating Officer of the first defendant-Company. The learned counsel also drew the attention of this Court to paragraph 23 of the affidavit filed in support of the application, wherein a list containing the names of 25 employees, had been mentioned. The employees, whose names are found in the list, have been originally employed in the plaintiff-Company and subsequently migrated and got employed in the first defendant-Company, after its formation in 2019-2020.

10. The learned counsel for the applicant further submitted that the second respondent has not only snatched away the clients of the plaintiff-Company, but also taken away as many as 25 employees and inducted them in the first defendant-Company. Such action on the part of the second defendant amounted to grave fraud being played by him upon the plaintiff.

11. The learned counsel for the applicant/plaintiff submitted that, the conduct of the second defendant has been extremely prejudicial to the interest of the plaintiff-Company, as he has abused his position as being an Executive of the plaintiff-Company, by poaching into the employees of the plaintiff-Company and also deviously taking away the well-serviced clients of the plaintiff-Company with the knowledge and experience he gained from being employed in the plaintiff-Company and the proximity and contact which he enjoyed with the clientale of the plaintiff-Company during the period of his employment with the plaintiff-Company.

12. In fact, the learned counsel for the applicant/plaintiff referred to the voucher showing as to how the second defendant's travelling expense of his USA trip had been borne by the applicant/Company. In consideration of the totality of the circumstances and to prevent further damage to be caused

to the plaintiff-Company at the instance of the second respondent, this Court has granted interim injunction. Therefore, the learned counsel submitted that the respondents/defendants cannot be allowed to poach into the business of the plaintiff-Company by their machinations and their continued acts amounting to perfidy. The learned counsel relied upon a decision of the Supreme Court reported in **AIR 1967 SC 1098 (Niranjan Shankar Golikari Vs. The Century Spinning and Manufcaturing Co)**, wherein the Supreme Court held that "negative covenant" can be enforced in certain circumstances against the employees. According to the learned counsel, in the case on hand, the facts unequivocally disclosed that the second respondent/second defendant had completely misused his employment with the plaintiff-Company for promoting his business and floated the first defendant-Company along with his wife. In the process, the second respondent/second defendant indulged in wholesale violation of all the terms and conditions of employment, particularly, confidentiality agreement. Therefore, the interim injunction which has been in force for the last two years, may be directed to be continued till the disposal of the suit.

13. The learned counsel appearing for the first respondent/first

defendant-Company submitted at the outset that the second respondent is not a Director or holding any position in the first respondent-Company. The first defendant-Company has no privity of contract with the plaintiff-Company and therefore, it cannot be restrained from managing the affairs of its business freely. As regards the employment of some of the persons originally employed by the plaintiff-Company, the learned counsel for the first respondent drew the attention of this Court to a communication dated 12.08.2019 of the plaintiff-Company to their foreign client (PGM), wherein it is stated that the operation and location of the plaintiff-Company were shifted to a far away place from Chennai, which is about 110 Kms., resulting in termination of service of several employees. Due to the said fact, some of the employees left on their own from the plaintiff-Company. Only such of those persons have chosen to join the first defendant-Company on their own. The learned counsel for the first respondent-Company therefore submitted that the question of poaching into the employees employed by the plaintiff-Company, did not arise at all in the circumstances of the case.

14. The learned counsel for the first respondent-Company further

submitted that the plaintiff, in the plaint, has sought permanent injunction in respect of their clients as mentioned in the schedule containing a list of eight specific clients. According to the learned counsel, what is demonstrated from the documents or during the course of the arguments, does not pertain to the named eight plaintiff's clients shown in the schedule. The plaintiff has not at all shown any business transactions with the schedule companies with any supportive materials, in which case, the plaintiff is not entitled for any injunction. The learned counsel therefore submitted that the interim injunction which is in operation as on date, is not to be continued and it may be vacated by this Court.

15. The learned counsel appearing for the second respondent/second defendant submitted that as per Section 27 of the Indian Contract Act, only in respect of the sale of the goodwill of a business, a restraint clause in the agreement is enforceable in law and not in other cases. Further, he submitted that, in terms of Section 41(h) of the Specific Relief Act, when quantified loss/damages have been claimed, the claimant is not entitled to injunction as well. In this case, the plaintiff has claimed Rs.1,50,00,000/- (Rupees one crore and fifty lakhs only) towards damages, which is an equally efficacious

relief dis-entitling the plaintiff from obtaining injunction as well. The learned counsel drew the attention of this Court to the copies of e-mail correspondences filed by the plaintiff in the typed set of papers, wherein a foreign client/PGM issued an e-communication dated 16.02.2018, addressed to the second respondent/second defendant and the contents of which show that because of the second respondent's efforts, the foreign client was brought back to the business of the plaintiff. The case of the second respondent, in fact, is that the plaintiff-Company commercially gained by the employment of the second respondent in their Company and not vice-versa.

16. The learned counsel for the second respondent also referred to the communications exchanged between the foreign client/PGM and the plaintiff-Company during August 2019 and the contents of the communication also demonstrate as to how the relationship was facing strain, in view of certain pitfalls noticed in the discharge of the contractual obligations on the side of the plaintiff-Company. The communications also show that the second respondent was taking all out efforts on behalf of the plaintiff-Company to promise the foreign client assuring them of improved

performance.

17. The learned counsel further submitted that, as canvassed by the learned counsel for the first respondent/Company, there is absolutely no pleading in relation to the schedule companies and the PGM which is the subject matter of the main reference and arguments placed on behalf of the plaintiff, is not shown in the list of the schedule companies. In the absence of pleadings and materials, the applicant/plaintiff is not entitled to injunction.

18. By way of reply, the learned counsel for the plaintiff-Company submitted that the absence of pleadings in relation to the schedule companies, would not mean the fact that the schedule companies are not the clients of the plaintiff-Company. Those companies are in fact the clients of the applicant/plaintiff and because of the second respondent's vicious conduct, as could be noticed from the facts and circumstances of this case, the information relating to the business transaction of the plaintiff-Company, vis-a-vis, the schedule companies, being sensitive in nature, is not disclosed in the plaint. According to the learned counsel, disclosure of such information would only help the respondents to further encroach upon

their business interest.

19. The learned counsel for the applicant-plaintiff finally submitted by drawing the attention of this Court to the profile of the second respondent when he had applied for the position with the plaintiff-Company, wherein, one Hari Prasad is one of the persons whose name was shown in the reference column by the second respondent. The very same Hari Prasad's name is also shown as one of the two Directors of the first respondent-Company along with the second respondent's wife Sabitha Devi. Therefore, there cannot be any doubt that the second respondent has wilfully and deliberately violated the conditions of his employment in the plaintiff-Company and violated almost all the clauses of the confidentiality agreement signed by him with the plaintiff-Company at the time of his appointment and therefore, the plaintiff is entitled for continuation of the interim injunction which is in force now, till the disposal of the suit.

20. Heard the submissions of the learned counsel on either side, perused the pleadings and the materials placed on record.

21. Before dealing with the facts and the contentions that emerged from the submissions of the respective parties, this Court is in agreement

with the legal contention raised on behalf of the applicant/plaintiff that restrictive covenant is enforceable in terms of the ruling of the Supreme Court reported in **AIR 1967 SC 1098 (Niranjan Shankar Golikari Vs. The Century Spining and Manufacturing Co)**. But such enforceability after the termination of the contract/employment is possible only in extreme and limited circumstances. The observations of the Honourable Supreme Court in the said decision is found in paragraphs 17 and 18, would be pointer for adjudication of the case, which are extracted below:

> "17. The result of the above discussion is that considerations against restrictive covenants are different in cases where the restriction is to apply during the period after the termination of the contract than those in cases where it is to operate during the period of the contract. Negative covenants operative during the period of the contract of employment when the employee is bound to serve his employer exclusively are generally not regarded as restraint of trade and therefore do not fall under Section 27 of the Contract Act. A negative covenant that the employee would not engage himself in a trade or business or would not get himself employed by any other master for whom he would perform similar or substantially similar duties is not therefore a restraint of trade unless the contract as aforesaid is unconscionable or excessively harsh or unreasonable or one-sided as in the case of *W.H.Milsted and Son Ltd. (W.H.Milsted and Son Ltd. Vs. Hamp ((1927) 2 AC 158, 162-167)*. Both the Trial Court and the High Court have found, and in our view, rightly, that the negative covenant in the present case restricted as it is to the period of employment and to work similar or substantially similar to the one carried on by the appellant when he was in the employ of the respondent company was reasonable and necessary for the protection of the company's interests and not such as the court would refuse to enforce. There is therefore no validity in the contention that the

negative covenant contained in clause 17 amounted to a restraint of trade and was therefore against public policy.

18. The next question is whether the injunction in the terms in which it is framed should have been granted. There is no doubt that the courts have a wide discretion to enforce by injunction a negative covenant. Both the courts below have concurrently found that the apprehension of the respondent company that information regarding the special processes and the special machinery imparted to and acquired by the appellant during the period of training and thereafter might be divulged was justified; that the information and knowledge disclosed to him during this period was different from the general knowledge and experience that he might have gained while in the service of the respondent company and that it was against his disclosing the former to the rival company which required protection. It was argued however that the terms of clause were too wide and that the court cannot sever the good from the bad and issue an injunction to the extent that was good. But the rule against severance applies to cases where the covenant is bad in law and it is in such cases that the court is precluded from severing the good from the bad. But there is nothing to prevent the court from granting a limited injunction to the extent that is necessary to protect the employer's interests where the negative stipulation is not void. There is also nothing to show that if the negative covenant is enforced the appellant would be driven to idleness or would be compelled to go back to the respondent company. It may be that if he is not permitted to get himself employed in another similar employment he might perhaps get a lesser remuneration than the one agreed to by Rajasthan Rayon. But that is no consideration against enforcing the covenant. The evidence is clear that the appellant has torn the agreement to pieces only because he was offered a higher remuneration. Obviously he cannot be heard to say that no injunction should be granted against him to enforce the negative covenant which is not opposed to public policy. The injunction issued against him is restricted as to time, the nature of employment and as to area and cannot therefore be said to be too wide or unreasonable or unnecessary for the protection of the interests of the respondent company."

22. As far as the case on hand is concerned, no doubt, the conditions

of appointment and also the conditions of the confidentiality agreement, were binding on the second respondent. When the second respondent has consciously entered into such agreements with the applicant/plaintiff-Company, he has voluntarily surrendered his right under the terms of the contract, as the conditions are not opposed to public policy, nor could be construed as extremely unreasonable. Therefore, the second respondent cannot altogether discard the conditions of confidentiality imposed upon him.

23. However, in this case, what falls for adjudication before this Court is whether the applicant/plaintiff-Company has established its case at all for the purpose of continuation of the injunction granted in their favour by this Court in the facts and circumstances of the case. In this regard, this Court needs to address the main and the principal contentions raised on behalf of the applicant/plaintiff.

24. Firstly, whether is there any violation of the terms of the confidentiality agreement on the part of the second respondent ?

Secondly, whether the second respondent, by violating the terms of the confidentiality agreement, has made unjust enrichment by weaning away the clients of the applicant/plaintiff-Company ?

Thirdly, whether the second respondent is misusing his employment with the applicant/plaintiff-Company and attempting to snatch away the applicant/plaintiff's clients to be serviced by the first defendant-Company ?

Fourthly, whether the respondents have illegally poached into the employees of the applicant/plaintiff-Company and inducted them into the first defendant-Company and thereby illegally advanced their business interests by making use of the poached employees' knowledge, skill, expertise and experience ?

Fifthly, whether the applicant/plaintiff-Company has established their case for grant of injunction in regard to the named schedule companies, in the absence of any averment(s) in the plaint or in the affidavit ?

Lastly, whether the applicant/plaintiff is entitled to the injunction in the face of the quantified damages being sought in the suit ?

25. (i) Whether is there any violation of the terms of the confidentiality agreement on the part of the second respondent ?

The various conditions of confidentiality agreement have been extracted supra. The conditions are no doubt legal and binding on the second respondent. If the conditions are interpreted plainly, with reference to the second respondent's conduct in the face of the fact that one of the foreign clients of the applicant/plaintiff, namely PGM, being serviced by the first respondent during the relevant period, appears to be questionable. The conditions as prescribed in the confidentiality agreement, are indeed binding on the second respondent, not only during the period of his association, but also for a period of three years thereafter. Therefore, there is no doubt as to the applicability of the conditions prescribed in the agreement, dated 03.07.2017.

26. But what is to be seen beyond the letter of the agreement is as to whether the second respondent has gained by flouting the conditions of the said agreement deliberately, or it just so happened that the Company which is shown to have been serviced by the first defendant-Company, has on its own, taken a decision to quit the relationship with the plaintiff-Company and shifted their loyalty to the first respondent-Company. In this connection, the communications which were relied on during August 2018, by the respective parties, revealed that the Company PGM appeared to have been

not happy with the performance on the part of the plaintiff-Company at that point of time and the efforts were being taken to rectify the shortcomings and nevertheless, at a particular point of time, during that period, the foreign client was not satisfied with the service of the plaintiff-Company and decided to terminate the contract with the plaintiff-Company. There is nothing on record to show that the second respondent was behind the termination of the contract in the said foreign client of the applicant/plaintiff. On the other hand, the communications during the said period, show that the second respondent appeared to have made some efforts for redeeming the situation. The communications also reveal that there was reduction in the staff and shifting the location of the Company to far away place from Chennai. All these events must have contributed to the foreign client leaving the services of the plaintiff-Company. In such circumstances, it is not categorically established that the second respondent was directly responsible for snatching away the client of the plaintiff-Company.

27. It may be true that the knowledge gained by the second respondent/second defendant from his employment with the

applicant/plaintiff-Company, might have gone into the servicing of the plaintiff's client after termination of the contract with the plaintiff-Company, yet, such fact alone would not entitle the applicant/plaintiff to be granted injunction till the disposal of the suit. It is a matter to be decided with reference to the other factors as below.

28. (ii) Whether the second respondent, by violating the terms of the confidentiality agreement, has made unjust enrichment by weaning away the clients of the applicant/plaintiff-Company ?

As stated supra, violating the conditions of the confidentiality agreement is one thing and taking away the clients on that account of the plaintiff-Company, is another issue. As contended by the learned counsel for the respondents/defendants, in the absence of any pleading with reference to the named schedule companies by the applicant/plaintiff, this Court cannot come to any conclusion as to whether the second defendant has really poached into the business of the plaintiff-Company with reference to the specified and named companies in the plaint schedule. Although the reason for non-disclosure of the transactions with the schedule companies, has been put-forth, stating that such information being sensitive, can be illegally made use of by the respondents, yet, when this Court has to grant an injunction restraining the defendants from dealing with the named eight schedule companies claimed to be the clients of the applicant/plaintiff, the grant of injunction must be rested on the concrete premise and not on the basis of mere assertion unsupported by any materials or pleadings. The prayer for grant of injunction in the plaint is in respect of the named companies in the schedule and therefore, it is incumbent upon the plaintiff to come forward with the sufficient averments to establish their case for the grant of interim protection. As contended by the learned counsel for the respondents/defendants, in the plaint, there is no whisper about any transaction or dealing with the named companies by the applicant/plaintiff. Therefore, the claim of the applicant/plaintiff falls short establishing a prima-facie case for continuation of the injunction on this aspect.

29. (iii) Whether the second respondent is misusing his employment with the applicant/plaintiff-Company and is attempting to snatch away the applicant/plaintiff's clients to be serviced by the first defendant-Company ?

The above observations of this Court in issue No.(ii) have partial answer to this question. The entire focus by the learned counsel for the plaintiff was in relation to the one foreign client/PGM. But the said Company was not shown as one of the named Companies in the schedule appended to the plaint. The learned counsel for the plaintiff, of course, submitted that the respondents have already taken away the said client and therefore, the said Company was not included in the schedule. But, when an injunction has been sought, restraining the respondents from doing business with the named companies, unless and until some facts are disclosed in the plaint or in the affidavit filed in support of the application in regard to the business dealings of the plaintiff-Company, vis-a-vis, the named Companies, the allegations the respondents have been attempting to snatch away the company's employees, would not stand the test of judicial scrutiny. When an injunction is sought in respect of the schedule companies, this Court must be prima-facie satisfied with some materials to be shown on behalf of the applicant/plaintiff, that, attempts have been made by the respondents/defendants against the schedule companies. However, no iota of material is made available on this aspect on behalf of the applicant/plaintiff. In the absence of pleadings or materials in relation to the business dealing with the named companies, this Court cannot continue the interim injunction with reference to the scope of the prayer as sought in the plaint and in the present Original Application.

30. (iv) Whether the respondents have illegally poached into the employees of the applicant/plaintiff-Company and inducted them into the first defendant-Company and thereby illegally advanced their business interests by making use of the poached employees' knowledge, skill, expertise and experience ?

In regard to the above issue, the learned counsel for the respondents/defendants has submitted that some of the employees who have been inducted into the first defendant-Company, were the erstwhile employees of the plaintiff-Company. Those employees had to face termination, in view of the shifting of the office of the applicant/plaintiff-Company to a far away place, nearly about 110 Kms. from Chennai. The communications which were also relied on by the parties, revealed that the business of the applicant/plaintiff-Company had been facing some hardship and as a testimony to the fact that, e-communications of the foreign client PGM demonstrated that they were not happy with the discharge of the obligation by the applicant/plaintiff-Company. In fact, in one of the communications, signed by the Executive of the plaintiff-Company, dated 12.08.2019 by one Meena, Head of Operations of the applicant/plaintiff-Company, there is mention of shifting of the people and also the shifting of operations and location to small town, i.e. 110 kms. away from Chennai, as the Company found stable employment levels in small towns. There is an indication in the said communication that there was deployment of different set of people in order to attain the stability at employment levels. Therefore, it is possible that some of the employees faced termination, as contended by the learned counsels for the respondents/defendants, and therefore, this Court cannot come to any conclusion in categorical terms in favour of the applicant/plaintiff that the first defendant-Company has poached into the employees of the plaintiff-Company. In any case, whether this could be the reason or basis for grant of interim injunction, when the fact of the matter is that there is complete absence of averments in regard to the plaintiff's relationship with the schedule companies. The answer is 'No".

31. (v) Whether the applicant/plaintiff-Company has established their case for grant of injunction in regard to the named schedule companies, in the absence of any averment(s) in the plaint or in the affidavit ?

In regard to the above issue, the conclusions reached in the preceding paragraphs would hold good. In the face of the fact that there is complete absence of the pleadings and materials from the applicant/plaintiff's side about their business relationship with the scheduled companies, the entitlement of the applicant/plaintiff to seek interim protection in respect of the schedule companies, is to be dis-countenanced. The reason attributed for non-disclosure of the information as to the business details, are legally unacceptable. The reasons may be justified for protecting their business interest, but this Court cannot draw presumption in favour of the applicant on such plea and grant injunction.

32. (vi) Whether the applicant/plaintiff is entitled to injunction in the face of the quantified damages being sought in the suit ?

As far as this issue is concerned, the learned counsel for the second respondent relied on Section 41(h) of the Specific Relief Act, which is extracted below:

> Section 41: Injunction when refused: An injunction cannot be granted--
>
> ...
>
> (h) when equally efficacious relief can

> certainly be obtained by any other usual mode of proceeding except in case of breach of trust.
> ...."

From Section 41(h) extracted above, this Court finds that there is some force in his submissions in that regard. When the plaintiff has sought quantified damages against the defendants for violating the conditions of confidentiality agreement, the applicant/plaintiff may not be entitled for grant of interim injunction as well. When the alleged injury suffered by the plaintiff-Company is sought to be compensated by the claim for quantified damages, the question of grant of interim injunction in the interregnum, may not arise, as the above extracted Section 41(h) has provided efficacious relief. Therefore, on this ground also, this Court is of the view that the applicant/plaintiff-Company is not entitled for grant/continuation of interim injunction.

33. Thus, in view of the foregoing reasons, this application has to be dismissed, on a prima-facie consideration. However, the right of the plaintiff-Company to claim damages against the second defendant for his

violation of the conditions of the confidentiality agreement, is not taken away and it is still open to the plaintiff to claim damages even in respect of the issues which are the subject matter of consideration in the present application. But the injunction as such cannot be continued any further with reference to the named schedule companies mentioned in the plaint, as this Court finds that no case is made out for grant/continuation of the interim injunction pending disposal of the suit.

34. For the above stated reasons, this Court is of the view that the injunction though was granted by this Court at the time of institution of the suit/hearing of the application, in view of the above findings, this Court is not inclined to continue the interim injunction any further, and therefore, the present O.A.No.895 of 2019 stands dismissed.

35. The suit in C.S.No.584 of 2019 shall be posted for framing draft issues on 19.07.2021.

06.07.2021

Index: Yes
Speaking Order: Yes

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To

The Sub-Assistant Registrar,

Original Side, High Court, Madras.

V.PARTHIBAN, J

cs

Pre-delivery Order
in O.A.No.895 of 2019
in C.S.No.584 of 2019

Order pronounced on 06.07.2021