



A.No.2688 of 2023
in C.S.(Comm.Div.)No.71 of 2022

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S.SOUNTHAR, J.

The instant application has been filed by the applicant/plaintiff seeking a direction to the Advocate Commissioner to take the representatives of the applicant along with him to visit the premises of the respondent.

2. The prayer in the application is extracted below;

“20. In the above-mentioned circumstances, the Applicant humbly prays that this Hon'ble Court may be pleased to

1) Direct the Advocate Commissioner and the Expert to
a. To visit the premises of the Respondents at the following locations along with technical expert of the representatives of Applicant/Applicant and its counsels, break open the locks if the premises are found locked, with the assistance of Police authorities if necessary;

*1. 14th Floor, Damji Shamji Business Galleria,
LBS Marg, Kanjurmarg (West),
Mumbai- 400 078,
Maharashtra, India.*

*2. Smartworks, Kochar Globe,
Plot No Sp 26,*



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*Thiru-vi-ka- Industrial Estate,
Guindy, Chennai 600 032.*

b. To inspect the Hard Disks of the computers, compact discs and/or other storage/replicating media, with the help of technical expert of the Applicant/Applicant.

c. To prepare reports, summaries, inventories of the same.

d. To make mirror copies of the Respondent's Hard Disks of the computers, compact discs and/or other storage/replicating media, seal them immediately in the presence of the Respondent's representatives and produce the same before the Court, without tampering with them in any manner.

e. To seek from the Respondent, their employees and agents password particulars of any computer system, if required, in order to enable him to carry out the execution of the commission.

f. To visit any other premises within the vicinity of the abovementioned addresses where such computer systems are kept which could be carrying copies of the Respondent's software which infringe upon the Applicant's copyright in the artistic works, literary works and passing off their products and business as those of Application by use of the said trademarks.(emphasis added).



g. To take the assistance of the police, within whose jurisdiction the Respondent's premises are to be visited, in order to carry out the aforesaid activities.

2. Pass such other orders which this Hon'ble Court may deem it necessary and thus render justice.”

3. Earlier, the applicant herein filed an application in A.No.1600 of 2022 with the following prayer;

“A. To visit the premises of the Respondents at the following locations along with technical expert of the representatives of Plaintiff and its counsels, break open the locks if the premises are found locked, with the assistance of Police authorities if necessary;

*1. 14th Floor, Damji Shamji Business Galleria,
LBS Marg, Kanjurmarg (West),
Mumbai- 400 078,
Maharashtra, India.*

*2. Smartworks, Kochar Globe,
Plot No Sp 26,
Thiru-vi-ka- Industrial Estate,
Guindy, Chennai 600 032.*



b. To inspect the Hard Disks of the computers, compact discs and/or other storage/replicating media, with the help of technical expert of the plaintiff.

c. To prepare reports, summaries, inventories of the same.

d. To make mirror copies of the Respondent's Hard Disks of the computers, compact discs and/or other storage/replicating media, seal them immediately in the presence of the Respondent's representatives and produce the same before the Court, without tampering with them in any manner.

e. To seek from the Respondent, their employees and agents password particulars of any computer system, if required, in order to enable him to carry out the execution of the commission.

f. To visit any other premises within the vicinity of the abovementioned addresses where such computer systems are kept which could be carrying copies of the Respondent's software which infringe upon the Applicant's copyright in the artistic works, literary works and passing off their products and business as those of Application by use of the said trademarks.(emphasis added).



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g. To take the assistance of the police, within whose jurisdiction the Respondent's premises and are to be visited, in order to carry out the aforesaid activities.”

4. The said application came to be disposed by this Court by order dated 02.02.2023. This Court appointed an Advocate Commissioner to ensure easy transmission of all information between the parties and the Expert. This Court in earlier order clearly spelt out the terms of reference to the Expert, the same is extracted below;

“38. The terms of reference for the expert are as under:-

a. The Expert shall liaise with the authorised representatives of the plaintiff and the defendant with the help of the Advocate Commissioner and obtain necessary information and explanations from them regarding the Source Codes of the plaintiff and the defendant to understanding the scope of work to be undertaken by the Expert pursuant to the order of this Court.

b. To facilitate the above, both the plaintiff and the defendant shall file two set of Source Codes in a sealed cover with a required identification, in hard disk or such number of hard disks as follows:- i)for the purpose of Court Record to be stored safely at the Court Registry as material object; and ii)



another set to be handed over to the Expert for examination and for giving Report.

c. Both the plaintiff and the defendant shall provide visual representations of the graphical user interfaces and menu command structures, including previous versions thereof, as above for the expert/Court decide where there are any copyright violations relating to the artistic work or trademark violations pertaining to terminology used.

d. Both the plaintiff and the defendant shall provide to the Expert in sealed cover through the Advocate Commissioner all other supplementary information or documents that may be required after the expert gets the above information.

e. If desired, the Expert may also visit the place of business of the plaintiff and the defendant wherever Source Code in server and other IT peripherals are available and stored for giving the report.

f. The Advocate Commissioner shall act as an interface to facilitate such meetings.

g. The meeting and discussion with the authorised representatives of the plaintiff and the defendant shall be either at the office of the Expert or at any convenient place at request of the Expert.



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h. After ascertaining the scope of work, the Expert shall give a Report.

i. The Expert shall analyse, compare and provide an opinion in a sealed cover on the plaintiffs and defendant's Source Code in relation to the respective LMS software, including by examining previous versions thereof.

j. If desired, a Preliminary Report may be filed before this Court in a sealed cover through the Advocate Commissioner.

k. Both Expert and Advocate Commissioner shall maintain confidentially. All information or documents which they may receive/collect pursuant to this order are strictly confidential. All confidential information provided to the experts shall not be divulged or transmitted or shared with any third person.

l. Expenses in connection with the meeting and transportation, conveyance shall be shared equally both by the plaintiff and the defendant.

m. The plaintiff shall pay an initial remuneration of Rs.1,00,000/- each to the Advocate Commissioner and the Expert. It is open for both the Advocate Commissioner and the Expert for apply to the additional remuneration depending upon quantum of work and time taken.



n. Registry is directed to issue two Warrants to the Advocate Commissioner and Expert who shall transmit the Warrant and the order of this Court to the Expert for completion of work. After completing the work, the Advocate Commissioner shall collect the Warrant from the Expert and return before the Warrants to this Court.”

5. It is seen from the affidavit filed in support of this application that pursuant to the order passed by this Court in A.No.1600 of 2022 dated 02.02.2023, the Expert and the Advocate Commissioner had visited the applicant's office premises on 02.02.2023. As indicated by the Expert during his visit to the applicant's premises, the materials pointed out by the Expert were already furnished to him by the applicant. Now, the applicant has come up with the present application with the prayer that when the Advocate Commissioner and the Expert make a visit to the respondent's office premises, they should be directed to take the representatives of the applicant to identify the infringing materials.

6. The learned counsel for the applicant mainly contended that if the representatives of the applicant are not allowed to accompany the Advocate



Commissioner and the Expert, it may not be possible for them to identify the infringing products of the respondent. Therefore, he submitted that the Advocate Commissioner should be directed to take the representatives of the applicant along with him, when he makes a visit to the respondent's premises.

7. The learned counsel for the respondent vehemently opposed the prayer of the applicant on the ground that the visit by representatives of the applicant to the office premises of the respondent to collect the alleged infringing software would result in breach of confidentiality. The learned counsel further submitted that this Court while considering the application filed by the applicant in A.No.1600 of 2022 has not directed the Advocate Commissioner to take the representatives of the parties, when he makes a visit to the premises of the rival party. Therefore, the applicant is not entitled to seek a direction to the Advocate Commissioner to take his representatives to the respondent's premises, especially when the Advocate Commissioner already made a visit to the applicant's premises, without taking representatives of respondent with him.



8. A reading of the prayer in the earlier application filed by the applicant in A.No.1600 of 2022 would indicate that even in that application the applicant made a request for taking his representatives along with the Advocate Commissioner. However, this Court while disposing of that application by order dated 02.02.2023 had not made any directions to the Advocate Commissioner to take representatives of the respective parties, when he makes a visit to the premises of the rival party. It is also pertinent to mention that in terms of reference to the Expert, this Court directed both the Advocate Commissioner and the Expert shall maintain confidentiality, which reads as follows;

“38-K. Both Expert and Advocate Commissioner shall maintain confidentiality. All information or documents which they may receive/collect pursuant to this order are strictly confidential. All confidential information provided to the experts shall not be divulged or transmitted or shared with any third person.”

9. Therefore, this Court after taking into consideration the sensitiveness of the information, consciously refrained from passing any order directing the Advocate Commissioner and the Expert to take along



with them, the representatives of the parties in their visit the premises of the rival party. Therefore, eventhough the applicant made a similar request in the earlier application, this Court has not given any positive direction to the Advocate Commissioner to take representatives of the respective parties along with him. When there is no direction to the Advocate Commissioner and the Expert to take along with them the representatives of the parties, it should be inferred, the request was refused by this Court. In the circumstances, the present application made by the applicant, seeking a direction to the Advocate Commissioner to take the representatives of the applicant along with him, when he makes a visit to the respondent's office premises for identifying the alleged infringing materials is devoid of any merits.

10. Accordingly, the application in A.No. 2688 of 2023 is dismissed.

16.06.2023

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S.SOUNTHAR, J.



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