



WEB COPY



O.S.A (CAD) Nos.109 and 110 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.06.2024**

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

O.S.A (CAD) Nos.109 and 110 of 2023
&
C.M.P.Nos.13042 of 2023 in O.S.A (CAD) No.109 of 2023
and
C.M.P.No.13045 of 2023 in O.S.A (CAD) No.110 of 2023

O.S.A (CAD) No. 109 of 2023

Himanshu Pathak

... Appellant
in both appeals

Vs.

1. Star Health and Allied Insurance Company Limited
Having its registered office at
No.1, New Tank Street, Valluvar Kottam High Road
Nungambakkam
Chennnai – 600 034
Represented by its Authorised Signatory Power of Attorney
Mr.Amarjeet Dhanuja
Chief Information Security Officer

2. Akshit

... Respondents

Prayer in O.S.A No.109 of 2023: Original Side Appeals filed under Clause 15 of Letters Patent read with Order XXXVI Rule 9 of Original Side Rules to set aside fair and decretal order dated 07.06.2023 in



O.S.A (CAD) Nos.109 and 110 of 2023

O.A.No.3 of 2023 in C.S.No.1 of 2023.

Prayer in O.S.A No.110 of 2023: Original Side Appeals filed under Clause 15 of Letters Patent read with Order XXXVI Rule 9 of Original Side Rules to set aside fair and decretal order dated 07.06.2023 in A.No.17 of 2023 in C.S.No.1 of 2023.

For Appellant : Mr.Keerthikiran Murali
in both appeals

For Respondents : Mr.Sankara Narayanan
in both appeals Assisted by Mr.R.Pradeep

JUDGMENT

(Judgment of the Court was delivered by **M.Sundar, J.**)

This common order will now govern and dispose of captioned 'Original Side Appeals' ['OSAs' in plural and 'OSA' in singular for the sake of brevity] and captioned 'Civil Miscellaneous Petitions' ['CMPs' in plural and 'CMP' in singular for the sake of brevity] thereat.

2. A suit in O.S.No.1 of 2023 was filed in the original side of this Court and the plaint is dated 30.12.2022. The sole plaintiff which filed the suit is a Public Limited Company i.e., 'Star Health and Allied Insurance Company Ltd.' [hereinafter 'Star' for the sake of convenience], two individuals have been arrayed as defendants and they are Himanshu Pathak [D1] and Akshit [D2]. Prayers in the suit *inter alia* include



O.S.A (CAD) Nos.109 and 110 of 2023

injunction qua publishing/sharing/dealing with the (allegedly) illegally accessed information, mandatory injunction as regards handing over alleged illegally accessed information as described in Vulnerabilities Report dated 19.12.2022 and compensation in a sum of Rs.5 Crores. To be noted, costs and the usual residuary limb prayer also form part of the prayer paragraph in the suit.

3. In the aforementioned suit, Star took out two interlocutory applications, namely O.A.No.3 of 2023 and A.No.17 of 2023. O.A.No.3 of 2023 (hereinafter 'interim injunction application' for the sake of brevity and convenience) is with a prayer to restrain the defendants from publishing/sharing/ dealing with the alleged illegally accessed information. To be noted, this is the first limb of permanent injunction prayer in the main suit. A.No.17 of 2023 is with a prayer for appointment of an Advocate Commissioner *inter alia* to access and inspect the computer systems and computer networks of defendants, seize work relating to applicant etc., [hereinafter 'Advocate Commissioner Application' for convenience].

4. A Hon'ble single Judge on the original side of this Court took



O.S.A (CAD) Nos.109 and 110 of 2023

up aforementioned interim injunction application and Advocate Commissioner application together, heard out the same and allowed both the applications in and by a 'common order dated 07.06.2023' [hereinafter 'impugned order' for the sake of convenience].

5. Before we proceed further, it is deemed appropriate to record that in the suit on the Original Side of this Court while D1 [Himanshu Pathak] has entered appearance through a counsel and is contesting the matter, D2 [Akshit] has been duly served by resorting to substituted service but has not chosen to come before this Court and contest the matter.

6. Reverting to the captioned OSAs assailing the aforementioned common impugned order dated 07.06.2023, while O.S.A.No.109 of 2023 is directed against the order in the interim injunction application, O.S.A.No.110 of 2023 is directed against the order in the Advocate Commissioner application (appointing Advocate Commissioner). To be noted, both the intra-court appeals have been filed by D1 in the suit i.e., Himanshu Pathak.



O.S.A (CAD) Nos.109 and 110 of 2023

7. In the captioned OSAs and CMPs thereat on 27.06.2023, a Hon'ble predecessor Division Bench directed the appellant to furnish data available with him relating to Star and in the interregnum, stayed the order appointing Advocate Commissioner [order dated 07.06.2023 in A. No.17 of 2023]. This order of stay is now operating.

8. As regards the interim injunction granted by the Hon'ble single Judge vide O.A.No.3 of 2023, no order has been made by Hon'ble predecessor Division Bench and therefore, the interim injunction granted by the Hon'ble single Judge on 07.06.2023 in O.A.No.3 of 2023 is operating. In other words, two interim orders i.e., one granted by a Hon'ble predecessor Division Bench and another granted by Hon'ble single Judge are operating.

9. In the aforementioned scenario pursuant to 27.06.2023 orders of Hon'ble predecessor Bench, it comes to light that the appellant has filed the details as per directive in a sealed cover vide SR No.21905 of 2023 as this is captured in proceedings of Hon'ble predecessor Bench dated 17.08.2023.

10. In the aforesaid backdrop, today Mr.Keerthikiran Murali,



O.S.A (CAD) Nos.109 and 110 of 2023

learned counsel for sole appellant and Mr.R.Pradeep, learned counsel for Star (plaintiff before the Hon'ble single Judge) are before us. In the aforementioned scenario, learned counsel on both sides fairly consented to the main suit to be heard out within a time frame subject to appointment of a dedicated Commissioner [a retired District Judge] for recording of evidence and marking of documents and subject to the further understanding that the aforementioned two interim orders, one granted by Hon'ble Predecessor Bench staying appointment of Advocate Commissioner by Hon'ble single Judge and another being interim injunction granted by Hon'ble single Judge vide impugned order dated 07.06.2023 will continue to operate till the disposal of the suit.

11. In the light of the narrative thus far, the following order is made:

i) Second respondent before us [Akshit] (D2 in the suit before Hon'ble single Judge) is set *ex parte*;

ii) The written statement filed by D1 (appellant before us) vide Diary No.2794 of 2024 dated 29.01.2024 shall be taken on file. To be noted, the suit is not governed by 'The Commercial Courts Act, 2015 [Act 4 of 2016]'



WEB COPY

{hereinafter 'CCA' for the sake of brevity} and therefore, 120 days cap vide proviso to Order VIII Rule 1 of 'the Code of Civil Procedure, 1908 (5 of 1908)' [hereinafter 'CPC' for the sake of brevity, convenience and clarity] as substituted by CCA does not come into play;

iii) Captioned suit shall be listed before Hon'ble single Judge as per Roster on 18.06.2024 for framing issues. Learned counsel on both sides undertake to file draft issues and complete the exercise of framing issues on or before 28.06.2024;

iv) Mr.G.Karunanithi, learned District Judge (Retd.), at No.17/9, Kumar's Ragamalika, 10th Cross Road, Indra Nagar, Adyar, Chennai – 600 020 [Mob: 9962488289] is appointed as Commissioner to record evidence and mark documents (exhibits);

v) Learned Commissioner shall hold sittings either in the Arbitration Centre or in the Mediation Centre under aegis of this Court;



O.S.A (CAD) Nos.109 and 110 of 2023

vi) Directors of Arbitration Centre and Mediation

Centre are requested to make necessary arrangements, if any request is made in this regard by learned Commissioner;

vii) Learned Commissioner shall not have any adjudication powers. If any objection is raised regarding marking of documents or deposition, the same shall merely be recorded by the learned Commissioner and Hon'ble single Judge hearing the suit will take a call when the main suit is decided;

viii) Learned Commissioner shall commence the aforementioned exercise on 01.07.2024 and complete the same as expeditiously as possible but in any event by 31.07.2024;

ix) The remuneration / honorarium for the learned Commissioner for this entire exercise is fixed at Rs.1.5 lakhs and this sum shall be borne in equal moieties by the plaintiff Star and Mr.Himanshu Pathak (D1);

x) Expenses in terms of rent for Arbitration/Mediation Centre etc., shall also be borne by both parties in equal moieties;



O.S.A (CAD) Nos.109 and 110 of 2023

xi) Learned Commissioner shall send the

deposition and marked exhibits in a sealed cover to the Hon'ble Roster Judge through learned Registrar General of this Court;

xii) Hon'ble single Judge (Roster Judge) is requested to dispose of the main suit as expeditiously as the business of the Court would permit preferably by 30.08.2024;

xiii) Interim order granted by Hon'ble predecessor Judge in C.M.P.No.13045 of 2023 in O.S.A.No.110 of 2023 staying the order of Hon'ble single Judge appointing Advocate Commissioner will continue to operate till the disposal of the suit;

xiii) Order of interim injunction granted by Hon'ble single Judge in O.A.No.03 of 2023 vide order dated 07.06.2023 which is under challenge in O.S.A.No.109 of 2023 will also continue till disposal of the main suit;

xiv) Though obvious we make it clear that we have not expressed any view or opinion on the merits of the matter and therefore, Hon'ble single Judge shall decide the suit on its own merits and in accordance with law untrammelled by



O.S.A (CAD) Nos.109 and 110 of 2023

any proceedings before Hon'ble Division Bench or its earlier
interim order dated 07.06.2023;

Captioned two OSAs and captioned two CMPs thereat are
disposed of in the aforesaid manner with the aforesaid directives. There
shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
12.06.2024

Index: Yes/No

Neutral Citation: Yes/No

gpa

P.S. I: Upload forthwith

P.S.II : All concerned including the Registry of Madras High Court to act forthwith on the uploaded soft copy of this proceedings as uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR Coded.

P.S:III: Registry to communicate copy of this order to Directors of Arbitration and Mediation Centre.



WEB COPY



O.S.A (CAD) Nos.109 and 110 of 2023

**M.SUNDAR.J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,
gpa**

O.S.A (CAD) Nos.109 and 110 of 2023

12.06.2024