



2024:DHC:8965-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Pronounced on: 20.11.2024

+ **RFA(OS)(COMM) 3/2019**

NAVIGATORS LOGISTICS LTD

..... Appellant

versus

KASHIF QURESHI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Anubhav Kumar, Mr. Rishab Kaushik, Ms. Gauri Swarup Bansal, Advocates.

For the Respondents : Mr. Abhijit Mittal, Ms. Shaivya Singh, Mr. Pulkit Khanduja, Advocates for R1 to R9.
Mr. Mayank Goel and Mr. Diganata Das, Advocates for R11.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

JUDGMENT

TARA VITASTA GANJU, J.:

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Preface

1. The present appeal impugns the judgment dated 17.09.2018, passed in CS (COMM) 735/2016 [hereinafter referred to as “Impugned Judgement”], wherein the learned Single Judge, allowed the Application filed by Respondents No. 3 and 5 being IA No. 13684/2016 under Order VII Rule 11 of the Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”], and rejected the plaint filed by the Appellant/Plaintiff [hereinafter referred to as “Appellant”].

Brief facts

2. Briefly, the facts are that Appellant, is engaged in logistics and freight forwarding services, and claims to possess distinctive and confidential data, customer databases, and other business information, which it asserts are trade secrets and are protected under the Copyright Act, 1957 [hereinafter referred to as “Copyright Act”].
3. The Appellant is a logistics and freight forwarding service provider and filed a suit against 12 Defendants alleging that they misappropriated its proprietary data and trade secrets. The Respondent No.1 to 8 are the former employees of the Appellant/Company [hereinafter referred to as “Former Employees”]. Respondent Nos.1 to 8 leaked confidential data of the Appellant to Respondent Nos.9 to 11 and Respondent No.12, a Competing Company, Respondent No.9 is also the wife of Respondent No.2.
4. The Former Employees, were working in various capacities such as Customer Service Executive, Deputy Manager (Commercial), and



Assistant Manager (Pricing). It is the case of the Appellant that the employment contracts of the Former Employees contained clauses regarding confidentiality, non-competition, and protection of the Appellant's intellectual property and that they provided these employees with electronic devices including laptops containing confidential information for work purposes.

5. Between 09.05.2016 to 25.05.2016, the Former Employees resigned from their positions with the Appellant. The Appellant contends that upon return of electronic devices from the Former Employees, a forensic examination of the laptop/computers of the Former Employees was conducted. Based on this examination, it was discovered that confidential data had been deleted. The Appellant further alleged, that subsequent data recovery revealed Skype chats suggesting a conspiracy among the Former Employees to use the Appellant's confidential information for their benefit and to divert business to the Competing Company.
6. It was contended by the Appellant that it had meticulously developed and maintains comprehensive business data including customer information agreement and financial records, digitally stored and despite stringent confidentiality agreements, the Respondents retained sensitive information. It was contended that the retained information and data was exploited for personal gain by these Respondents and business was diverted to competitor(s). The Appellant explained that upon resignation of the Former Employees from their services with the Appellant, they retained crucial data with the wrongful intent to exploit it for financial gain.



- 6.1 The Appellant in the plaint alleged that the Respondents are infringing its copyright, misusing confidential information, and violating the terms of their employment agreements. Based on these allegations, the Appellant sought mandatory and permanent injunctions, rendition of accounts, delivery up and recovery of Rs. 1,50,00,000/- from the Respondents as damages.
7. The learned Single Judge on 03.06.2016, passed an *ex parte ad interim* order restraining the Respondents from utilizing, exploiting, copying, transmitting, publishing, or releasing any confidential information and trade secrets of the Appellant. Directions were also issued appointing Local Commissioners to examine the Respondents' computer systems and emails in respect of documents originating from the Appellant.
8. The Former Employees filed written statements contesting the Appellant's claims, wherein it was argued that the Appellant had failed to disclose specific details of the alleged copyrighted works or trade secrets. The Former Employees contended that the information claimed as confidential was merely client data, which is not eligible for copyright protection. They further asserted that the suit was barred by Section 27 of the Contract Act, 1872 [hereinafter referred to as "Contract Act"] and violated the Former Employees' fundamental rights under Articles 19(1)(g) and 21 of the Indian Constitution, 1950 [hereinafter referred to as "Constitution"]. The Former Employees accused the Appellant of attempting to create a monopoly and prevent its former employees from seeking better prospects. They also claimed that the non-compete clauses in the



employment contracts were onerous and unenforceable.

9. In response, the Appellant relied on recovered Skype chats and emails between the Former Employees and, Respondent Nos. 9 to 11 and Competing Company, and the reports of the Court appointed Commissioner, which allegedly found customer lists and emails of the Appellant on the Respondents' computer systems. The Appellant argued that it owned the copyright to the business data as per Section 17 of the Copyright Act. Reliance was placed on (i) ***Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber & Anr***¹; (ii) ***Diljeet Titus, Advocate v. Alfred A. Adebare & Ors***²; and, (iii) ***Mayar (H.K.) Ltd. & Ors. v. Owners & Parties, Vessel M.V. Fortune Express & Ors.***³.
10. An Application under Order VII Rule 11 of the CPC for rejection of the plaint was filed by Respondents No.3 and 5, therein contending that the Appellant had not disclosed any specific copyrighted work or confidential information, and that the non-compete clause was violative of Section 27 of the Contract Act.

Impugned Judgment

11. The learned Single Judge examined the Appellant's claims under three main heads: copyright infringement, breach of confidentiality clauses and enforcement of non-compete clause.
12. The learned Single Judge found that the Appellant's pleadings

¹ 1995 (35) DRJ 335

² (2006) 130 DLT 330

³ (2006) 3 SCC 100



regarding copyright infringement were vague and lacked specific details about the works in which copyright was claimed. The learned Single Judge analysed whether a list of customers/clients with their contact information could be considered a copyrightable work and concluded that such a list does not meet the criteria for copyright protection. It was held that, the Appellant failed to demonstrate the required level of skill, judgment, and creativity in compiling the list. Moreover, the Appellant did not disclose the identity of the author, which is essential for claiming copyright ownership.

13. On the issue of confidentiality, the learned Single Judge found the Appellant's pleadings vague. The learned Single Judge noted that the Appellant failed to specify what information was confidential, how it differed from general industry knowledge, and what steps were taken to maintain its secrecy beyond including confidentiality clauses in employment contracts. The learned Single Judge emphasized that without specific details, any injunction granted would be unenforceable.
14. The learned Single Judge delved into the legal protection of confidential information, noting that while India has obligations under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement to protect trade secrets, it has not enacted specific legislation for this purpose. Although, Indian courts have followed the English approach of protecting confidential information under both common law and equity, even in the absence of a contract.
15. The learned Single Judge observed that customer lists in the logistics



and freight forwarding business cannot be automatically deemed confidential. The learned Single Judge reasoned that such information is often readily available in the public domain, and competitors would naturally be aware of businesses requiring freight forwarding services. It was held that for a customer list to qualify as confidential information or a trade secret, it must possess significant economic, business, or commercial value.

16. While relying on *Star India Pvt. Ltd. v. Laxmiraj Seetharam Nayak & Anr.*⁴ and *Ambiance India (Private) Ltd. v. Naveen Jain*⁵, the learned Single Judge marked the parameters of what constitutes a trade secret. The learned Single Judge held that general knowledge or skills acquired during the course of employment cannot be classified as trade secrets. Instead, only formulae, technical know-how, or unique business methods unknown to others can fall under this category.
17. Thereafter, the learned Judge while relying on Supreme Court judgments, *Niranjan Shankar Golikari v. Century Spinning & Manufacturing Co. Ltd.*⁶ and *Percept D'Mark (India) (P) Ltd. v. Zaheer Khan & Anr.*⁷, concluded that post-employment restrictions, as claimed by the Appellant, are void under Section 27 of the Contract Act. The learned Single Judge found that the plaint failed to disclose a cause of action that would justify the grant of injunction or

⁴ 2003 SCC OnLine Bom 27

⁵ 2005 SCC OnLine Del 367

⁶ 1967 SCC OnLine SC 72

⁷ (2006) 4 SCC 227



damages.

Contentions of the Appellant

18. The Appellant submits that the Former Employees resigned within a short span of about one month, and it claims that forensic examination of their laptop computers which were returned to Appellant revealed transfer of confidential information and trade secrets to third parties, including the Competing Company. The Appellant further alleges that the Respondents began soliciting the Appellant's business and diverting it.
19. The Appellant contended that the learned Single Judge should have confined itself to the averments made in the plaint alone while considering the Application under Order VII Rule 11 of CPC. The allegations in the plaint should have been presumed to be true, and the case should have proceeded on a demurrer.
20. The Appellant submits that learned Single Judge erred by considering the Respondents' defences and weighing the strengths and weaknesses of the case, which is contrary to settled law, at the stage of Order VII Rule 11 of CPC. Reliance is placed on *D. Ramachandran v. R.V Janakiraman and Ors.*⁸ and *Kuldeep Singh Pathania v. Bikram Singh Jaryal*⁹.

Contention of the Respondents

21. The Respondents contend that the learned Single Judge's order rejecting the plaint under Order VII Rule 11 of CPC is well-reasoned

⁸ (1999) 3 SCC 267

⁹ (2017) 5 SCC 345



and legally sound. The Respondents emphasize that the plaintiff's rejection was based on a thorough analysis of the pleadings and documents filed by the Appellant.

22. The Respondents submit that even if all averments in the plaint were assumed to be true, no cause of action would arise in favor of the Appellant/plaintiff. Reliance is placed on *Dahiben v. Arvinbhai Kalyanji Bhanushali (GAJRA) Dead Through LRs & Ors.*¹⁰, *Dr.Zubair UI Abidin & Ors v. Sameena Adidin @ Sameena Khan*¹¹ and *I.T.C Ltd. v. Debt Recovery Appellate Tribunal & Ors.*¹².
23. The Respondents further submits regarding the confidentiality of customer lists, that such information in the logistics and freight forwarding business is generally available in the public domain. Reliance is placed on *American Express Bank Ltd. v. Ms. Priya Puri*¹³ to support the contention that customer details are not trade secrets or property.
24. The Respondents on the issue of non-compete clauses, highlighted judgement of *Percept D'Mark Case*, which held that post-employment termination restrictions are barred by Section 27 of the Contract Act. It is contended that this interpretation correctly balances the rights of employees with the interests of employers.
25. The Respondents further contend that the learned Single Judge's consideration of their written statements was not improper, as it was

¹⁰ 2020 SCC OnLine SC 562

¹¹ 2014 SCC OnLine 3575

¹² 1998 2 SCC 170

¹³ 2006 SCC OnLine Del 638



limited to addressing legal issues and did not delve into disputed facts. Reliance is placed on *T. Arivandandam v. T.V. Satyapal & Anrs.*¹⁴ to support the view that the Court can look beyond the plaint to determine if it is vexatious or meritless.

26. On behalf of Respondent No.11, it was contended that it was an independent commission agent who had previously undertaken printing projects for the Appellant and that the *inter-se* communication between them and Respondent No.1 was only with respect to design of logo, visiting cards and letter heads for the new company floated by Respondent No.1. In addition, it was contended that the reports of the local commissioner for investigation that was appointed by the learned Single Judge, did not yield any evidence of Appellant's confidential information or trade secrets being available with Respondent No.11.
27. Arguments were heard on behalf of Respondent No.1 to 9 and Respondent No.11, however, written submissions were only filed by the Appellant and Respondent Nos.1 to 9 in the present Appeal.

Analysis

28. From an examination of the record, the following is evident:
- (i) On 03.11.2016, an Application was filed by Respondent Nos.3 and 5 being IA No.13684/2016 before the learned Single Judge under Order VII Rule 11 of CPC.
 - (ii) Pleadings in this Application were completed and the Application was heard by the learned Single Judge including on 18.12.2017 and

¹⁴ (1977) 4 SCC 467



24.01.2018.

- (iii) The Impugned Judgment rejects the plaint in its entirety and orders for a decree sheet to be drawn up, holding that the plaint does not disclose a cause of action on the basis of which the Plaintiff would be entitled to an injunction or damages.
29. Based on this Application under Order VII Rule 11 of CPC, the learned Single Judge proceeded to examine whether the Plaintiff can succeed in the case by proving the averments in the plaint and documents, without noticing the defences of the Respondents. The learned Single Judge examined the plaint/suit filed by the Appellant on the basis of: (i) various provision of the Copyright Act, 1957; (ii) confidentiality of list/compilation of customers/client details of contact persons and numbers; (iii) for permanent injunction/damages for breach of the employment contract of Former Employees.
30. It is settled law that post-termination restrictive covenants in an employment contract are void under Section 27 of the Indian Contract Act. The learned Single Judge, relying on the judgments of the Supreme Court in *Niranjan Shankar Golikari case* and *Percept D'Mark Case* held that since the Former Employees were no longer in the employment of the Appellant, the non-compete clause of their employment contract was void under Section 27 of the Contract Act and thus, there can be no injunction or damages in lieu of injunction or damages for breach of contract by the Former Employees. Paragraphs 54, 55, 56 and 57 of the Impugned Judgement in this regard are reproduced below:



“54. A three Judge Bench of the Supreme Court in *Superintendence Company of India (P) Ltd. Vs. Krishan Murgai* 1981 2 SCC 246 was concerned with a claim for injunction post cessation of employment. It was held by two of the Judges on an interpretation of the restrictive clause in the Employment Contract, that the same was to apply only when the employee on his / her volition left the employment and not when the employer terminated the employment. **The third Hon'ble Judge held that even if the restrictive covenant was to include cessation of employment at the volition of the employee, there could be no post-employment restriction under Section 27 of the Act.**

55. A subsequent two Judge Bench of the Supreme Court in *Percept D'Mark (India) (P) Ltd Vs. Zaheer Khan* (2006) 4 SCC 227 refused enforcement of a post-employment restriction on the ground of same being barred by Section 27 of the Act.

56. Applying the aforesaid law to the facts of the present case, it is found that as per the plaintiff also, there was no fixed term for which either of the defendants no.1 to 8 had agreed to serve the plaintiff. **The clause in the Employment Contract claimed by the plaintiff also is to the effect that defendants no.1 to 8, for a period of one year after ceasing to be the employee of the plaintiff, to not compete with the plaintiff. Such a clause in the Employment Contract, as per the judgments aforesaid of the Supreme Court, is void under Section 27 of the Contract Act. Once the clause is void, there can be no injunction or damages in lieu of injunction on the basis thereof.**

57. The permanent injunction and in the alternative damages claimed on the premise of non-compete clause thus discloses no cause of action and is not required to be put to trial.”

[Emphasis is ours]

31. The non-compete clause as existed in the letter of appointment/employment contract [hereinafter referred to as "Contract"] of the Former Employees (which are *pari materia* with each other) and which have been signed by all the Former Employees state that they would not be allowed to go in direct competition of any business of the kind as is being undertaken by the Appellant or



its group companies. Clause 13 of the Contract in this regard is reproduced below:

"13. You will not be allowed to go to direct competition of any kind of business etc. with Navigators Logistics Pvt Ltd. or any of its group of Companies. If found in such a situation you will be liable for legal action in the court & law.

31.1 As can be seen from the foregoing, Clause 13 of the Contract, although not very well worded, sets out that the employee (Former Employees) cannot work with any business which is in direct competition with the Appellant or its group companies. The Clause does not provide for any time period but is open-ended as to the duration of the non-compete.

31.2 Section 27 of the Contract Act holds that any agreement by which one is constrained from exercising a profession, trade or business is void to the extent of such constraint. The only exception to this Section is where the goodwill of the business is sold. Section 27 of the Contract Act is reproduced below:

*"27. **Agreement in restraint of trade, void.**—Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.*

*Exception 1.— **Saving of agreement not to carry on business of which good-will is sold.**—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business."*

31.3 Clause 13 of the Contract does not permit Former Employees to carry on their trade or vocation in a similar/competing business and thus, is barred by the provisions of Section 27 of the Contract Act. The



Impugned Judgement in this regard, does not suffer from any infirmity.

32. The Supreme Court in ***Kuldeep Singh Pathania case*** has while dealing with the scope of inquiry under Order VII Rule 11 of CPC, held that the scope of inquiry has to be limited to the pleadings of the Plaintiff and neither the written statement nor the averments in the Application under Order VII Rule 11(a) of CPC filed by Defendant can be considered in the following manner:

“10. In the present case, the issue relates to an enquiry under Order 7 Rule 11 (a) of the Code, and hence, there is no question of a preliminary issue being tried under Order 14 Rule 2(2) of the Code. The Court exercised its jurisdiction only under Section 83(1)(a) of the Act read with Order 7 Rule 11(a) of the Code. Since the scope of the enquiry at that stage has to be limited only to the pleadings of the plaintiff, neither the written statement nor the averments, if any, filed by the opposite party for rejection under Order 7 Rule 11(a) of the Code or any other pleadings of the respondents can be considered for that purpose.

11. In *Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express* [2006 (3) SCC 100], this Court has dealt with a similar issue. To the extent relevant, para 12 reads as follows: (SCC p. 115)

“12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint



discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.”

12. It is not necessary to load this judgment with other judgments dealing with this first principle of Order 7 Rule 11(a) of the Code. As held by this Court in Virender Nath Gautam v. Satpal Singh, 2007 (3) SCC 617 at para 52: (SCC p. 632)

“52. The High Court, in our considered opinion, stepped into prohibited area of considering correctness of allegations and evidence in support of averments by entering into the merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable and dismissed the petition. The said action, therefore, cannot be upheld and the order deserves to be set aside.”

[Emphasis is ours]

33. The Respondents have relied on the judgement of the Supreme Court in ***Dahiben case*** to submit that if on a meaningful reading of the plaint, no cause of action is disclosed, the plaint is required to be dismissed under the provisions of Order VII Rule 11 of CPC. The Supreme Court in ***Dahiben case*** while discussing this provision has held that the power conferred on a Court to terminate a civil action is a drastic one and the conditions enumerated under Order VII Rule 11 of CPC are required to be strictly adhered to. It was further held that in examining the assertions made in the plaint, the Court is required to determine whether these are contrary to statutory law or judicial dicta and that the pleas taken by the Respondents in their written statement or the Application under Order VII Rule 11 of CPC is irrelevant. The relevant extract is below:

“23.2. The remedy under Order 7 Rule 11 is an independent



and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit.
In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

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23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.”

[Emphasis is ours]

33.1 The Supreme Court in ***Dahiben case*** while examining an Application under Order VII Rule 11 CPC, found that there was a delay of 5½ years in filing the plaint, and held that the suit was barred by limitation and rejected under Order VII Rule 11(d) of CPC. However, the only provision that the plaint in the present case is stated to be barred by, is Section 27 of the Contract Act. This provision is not of such a nature as would constitute a bar so as to reject the entire plaint as a whole.

34. We are unable to agree with the contention raised by the Respondents that on a meaningful reading of the plaint, no cause of action is



disclosed.

35. The Appellant has pleaded in the plaint, more specifically in Paragraphs 63 to 75, that the Respondents had in their possession confidential information and trade secrets and that the Former Employees were trying to divert business and customers to the competitor Company/Respondent No.12 and that agents, business associates and clients of the Appellant abroad have been contacted by persons claiming to be employed by Respondent No.12. In fact, the Paragraphs 69 to 71 refers to Skype Chat of particular dates in relation to diversion of business by the Respondents. The relevant paragraphs of the plaint are extracted below:

*"63. That a perusal of various Skype chats shows that the defendants no 1 to 8 have been working against the legal and business interest of the company in violation of the provisions stipulated in their appointment letters. **A perusal of Skype chat between Kashif Oureshi being defendant no. 1 and Bhawna Kanojia being defendant no 10 dated 12/05/16 shows the detailed planning and conspiracy of the defendants** to cause detriment to the legal interests of the plaintiff company and work in violation of the appointment/employment terms.*

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*65 That it is pertinent to note that the defendant no. 1,4,5, 6 belonged to the Sales department of the plaintiff company therein while defendant no. 2,3 worked in the pricing and commercial department of the plaintiff company whereas defendants no. 7,8 worked in the accounts department of the plaintiff company. All the defendants, in pursuance of common intention, **decided to divert the existing business that they were handling for and on behalf of the plaintiff company to another legal entity being Carex Cargo Express Pvt Ltd. This is evident from the Skype chat dated 21/4/16 and 22/4/16** between Kashif Qureshi, being defendant no 1 and Sudhir Kadam, being defendant no 11, wherein the said defendant no 1 while working in the employment of the plaintiff company, using the Internet and computer resources of the plaintiff company, was working against the legal*



interests of the plaintiff company and was also working for diverting the business of the plaintiff company to Carex Cargo Express Pvt Ltd/Carex Cargo India Pvt: Ltd/ Carex Cargo Pvt Ltd.

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69. That further the fact that the defendants have been diverting the business of the plaintiff company to defendant no. 12, gets even more crystal clear from the perusal of the **Skype chat dated 4/05/16 between defendant no. 3 Kamal Biswaland Arun Leoprex dated 04/05/2016. The said Skype chat categorically shows that while being in the employment of the plaintiff company, the defendant no. 3 was actually working against the legal interests of the plaintiff company and diverting the business of the plaintiff company to other legal entities.**

70. That further a perusal of the internal discussions available on various Skype chats which have been recovered from the said laptops from 4/3/2015 to 22/5/2016 demonstrate the various illegal acts of the defendants.

71. That further a perusal of the Skype chat recovered from the said laptops between defendant no. 2 and defendant no. 9 show **that the said defendants were working to divert the shipments of the plaintiff company from its legitimate customers to Carex Cargo India Pvt Ltd. The detailed planning in this regard can be seen from the perusal of the said chat dated 20/04/16 between defendant no. 2 and defendant no. 9.** Further, as per investigations made by the plaintiff, there is no legally incorporated entity as Carex Cargo India Pvt Ltd and hence, the defendants no 2 and 9, alongwith other defendants, have engaged in electronic forgery.

72. **That the illegal acts of the defendants are clearly demonstrated by emails and various other electronic records.** Consequently, on coming to know about illegal and criminal activities done by the defendant no. 1 to 8 along with other defendants, the plaintiff company sent an intimating asking ,its business partners to refrain from working with defendant no. 1 to 6.

73. That various agents/business associates/clients of the plaintiff company outside India have already been contacted by one Bharat Sharma from Carex Cargo India Pvt Ltd in pursuance of the illegal acts done by defendant no. 1. to 8. This was evident from the emails dated 26/05/2016 from Robert Skulsky and



Naglaa Azmi.

74. That it is pertinent to point out that the defendant no. 1 to 8 have not personally handed over all the data, information, equipment, mobile phone, data card, files or documents of the company as also original RC of Santro Car DLAC AV 2659 used by the defendant no. 1, to the plaintiff, which was allocated to the defendants no 1 to 8 by the plaintiff. The aforesaid contain confidential data and information, customers' database, account handling information drawings, Plans, test reports, and also tax related information etc pertaining to the Plaintiff Company.

75. That the plaintiff company has learnt that the defendants have forwarded various confidential data, information and trade secrets from the computer resources of the plaintiff company to their personal computer resources and email accounts."

[Emphasis is ours]

36. The Appellant has made specific allegations in relation to inter se communications between Respondent No.1 and Respondent No.10 dated 12.05.2016 in respect of the violation of the employment terms of the Former Employees. Paragraph 65 of the plaint refers to communications between 21.04.2016 and 22.04.2016 between Respondent No.1 and Respondent No.11 in relation to diversion of business of the Appellant/Company to Respondent No.12. While paragraph 69 of the plaint similarly refers to other communications between the Former Employees and the Respondents.
37. As stated above, the Appellant has set up a case that the Former Employees obtained and shared confidential data and also diverted the existing business of the Appellant, which they were handling to Respondent No.12. The claim of confidentiality and secrecy, was made by the Appellant on the basis of information, data and trade



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secrets residing in the electronic devices (laptop, computers) which was recovered from forensic analysis conducted on the Former Employees computers.

38. The Appellant had placed on record extracts of these skype chats between the Respondents in support of its averments. In addition, documents were filed showing inter se communications between the Respondents during the period from 04.03.2015 to 19.05.2016 in support of the plaint. No discussions with respect to the examination of these skype chats or that these chats/documents do not show a cause of action in favour of the Appellant can be seen in the Impugned Judgment.
39. The Appellant has filed various documents, including emails, skype chat in support of his contentions and reliefs sought which have not been examined in the impugned order. Other than a finding on the examination of the skype chat as submitted by the Local Commissioner appointed by the Learned Single Judge, there is no averment in the Impugned Judgement with respect to the examination of documents attached with the plaint.
40. We are thus unable to agree with the findings of the learned Single Judge that the plaint does not disclose a cause of action. Although, some contentions in the plaint are generalised, it cannot be said on a demurrer that these do not reflect a cause of action so as to merit dismissal under Order VII Rule 11 of CPC.



41. As stated above, the Application under Order VII Rule 11 of CPC was only filed by two of the employees being Respondent Nos.3 and 5. It is apposite at this juncture to set out the prayers in the plaint of the Appellant which seek reliefs against all the Respondents as follows:

“a) A decree for permanent injunction may kindly be passed in favour of the plaintiff and against the defendants whereby restraining the defendants, their agents, franchises, partners, servants, employees, representatives, successors, family members and assigns from infringing/ offending or violating the plaintiff’s copyright in its original literary and artistic works, as detailed in the plaint and the plaintiff’s confidential data, information and trade secrets resident and from printing, publishing, reproducing, copying and plagiarizing or otherwise dealing in any manner whatsoever, with the said literary and artistic works of the plaintiff or any other work which is identical and/or deceptively similar to the plaintiff’s said literary and artistic works.

b) A decree for permanent injunction may kindly be passed in favour of the plaintiff and against the defendants whereby restraining the defendants no.1 to 11, their agents, franchises, partners, servants, employees, representatives, successors, family members and assigns from carrying out any business containing the copyright materials belonging to the plaintiff, being the said literary and artistic works.

c) A decree for permanent injunction may kindly be passed in favour of the plaintiff and against the defendants whereby restraining the defendant, his agents, franchises, partners, servants, employees, representatives, successors, family members and assigns from creating any third party rights through sale and transfer on the copyright materials belonging to the plaintiff being the said original literary and artistic works.

d) Further a decree of permanent injunction may also be granted in favour of the plaintiff and against the defendants no 1 to 11 restraining the defendants no 1 to 11, their agents, franchises, partners, servants, employees, representatives, successors, family members and assigns from copying, downloading, extracting, distributing, transmitting, publishing, releasing or disclosing in any manner whatsoever, the confidential data information and trade secrets of the plaintiff, whether in the form of text, image, audio or video, to any other person whether in the actual world



or in electronic media by any means whatsoever.

e) A decree for perpetual injunction may kindly be awarded in favour of the plaintiff and against the defendants no 1 to 8 whereby restraining the defendants no 1 to 8 from doing any business, directly or indirectly, which is in direct competition with the business of the plaintiff for a period of one year.

f) A decree of mandatory injunction may also be granted in favour of the plaintiff and against the defendant no. 1 to 8 whereby the defendants jointly as well severally, their agents, partners, associates, servants, employees, representatives, successors, attorneys and assigns be directed to disclose to the court the computer logs of their computers, computer systems, servers and computer networks which have relation to or impact or connection or association with the electronic records infringing the copyright of the plaintiff in its original literary and artistic works aforementioned in the plaint as also any other information logs which has connection or relevance with the aforesaid acts.

g) Further a decree of mandatory injunction may also be passed in favour of the plaintiff and against the defendant no 1 to 8, whereby directing the defendant no 1 to 8, his agents, franchises, partners, servants, employees, representatives, successors, family members and assigns to handover to the plaintiff company the original computer resources, containing all data, customers databases, information, drawings, plans, test reports, tax and financial information and confidential information of the plaintiff as also the data card, as detailed in the plaint as also Original RC copy of the Santro Car bearing No DL4C AV 2659, belonging to the plaintiff.

h) A decree of mandatory injunction may also be granted in favour of the plaintiff and against the defendant no.1 to 8 whereby the defendants jointly as well as severally, their agents, partners, associates, servants, employees, representatives, successors, attorneys and assigns to return the SIM cards allocated by the plaintiff company to them for numbers 8800500237, 8826001663, 9650082059, 8826995811, 8447071435, 9650082075, 9555128289, 7042634414 as also Samsung mobile phones given by the plaintiff company to the defendant no. 1 for the purposes of carrying on the duties of the employees of the plaintiff as also data cards.

i) An order for delivery up of all impugned materials, including all CDs, inlay cards, hard disks of computer containing the infringing, pirated materials to an authorized representative of



the plaintiff, for the purposes of destruction and/or eraser.

j) An order for rendition of accounts of profits illegally earned by the defendants on account of the sale/unauthorized use of the original literary and artistic works of the plaintiff and a decree for the amount ascertained to be awarded in favour of the plaintiff and against the defendant.

k) A decree for a sum of Rs 1,50,00,000/- (Rupees One Crore and Fifty Lakhs only) as damages may kindly be awarded in favour of the plaintiff and against the defendant.

l) Interest at the rate of 18% per annum may also kindly be awarded in favour of the plaintiff and against the defendant till the date of realization of the decrimal amount.

m) An order for costs in the present proceedings; and

n) Any further orders as this Hon'ble Court deems fit and proper in the facts and circumstances of the instant case."

41.1 Prayers (a) to (d) above are in relation to all the Respondents while prayers (e) to (h) are *qua* Former Employees alone. Prayers (i) to (n) are for rendition of accounts, delivery up, damages, interest and costs, which are the consequential reliefs sought by the Appellant.

41.2 The Appellant has also sought in Prayer (g) of the plaint, handover of original computer resources and information as well as original RC of a Santro Car which belongs to the Appellant. This prayer is not barred by law The same is the case of prayers (h) and (i) of the plaint. Infact, the Application as filed by Respondent Nos.3 and 5 does not aver to these prayers in the plaint at all.

42. The Supreme Court in ***Sejal Glass Limited v. Navilan Merchants Private Limited***¹⁵ has held that Order VII Rule 11 of CPC refers to

¹⁵ (2018) 11 SCC 780



"a plaint" and that necessarily means the plaint as a whole. It has been held that it is only where a plaint as a whole does not disclose a cause of action, the provisions of Order VII Rule 11 of CPC can be made applicable. It was further held that there is no provision in the CPC for rejection of a plaint in part. The relevant paragraphs of the said judgment are as follows:

"3. In our view, the impugned judgment [Navilan Merchants (P) Ltd. v. Sejal Glass Ltd., 2016 SCC OnLine Del 6580] is wrong on principle. Order 7 Rule 11 of the Code of Civil Procedure, 1908 which reads as follows:

"11. Rejection of plaint. - The plaint shall be rejected in the following cases-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

What is important to remember is that the provision



refers to the "plaint" which necessarily means the plaint as a whole. It is only where the plaint as a whole does not disclose a cause of action that Order 7 Rule 11 springs into being and interdicts a suit from proceeding.

4. It is settled law that the plaint as a whole alone can be rejected under Order 7 Rule 11. In Magsud Ahmad v. Mathra Datt & Co.;[Magsud Ahmad v. Mathra Datt & Co., 1936 SCC OnLine Lah 337 : AIR 1936 Lah 1021], the High Court held that a note recorded by the trial court did not amount to a rejection of the plaint as a whole, as contemplated by the CPC, and, therefore, rejected a revision petition in the following terms: (AIR p. 1022 para 4 : SCC OnLine Lah para 4)

"4. ... There is no provision in the Civil Procedure Code for the rejection of a plaint in part, and the note recorded by the trial court does not, therefore, amount to the rejection of the plaint as contemplated in the Civil Procedure Code."

[Emphasis is ours]

42.1 In the *Sejal Glass Limited* case the Supreme Court also held that where only a part or portion of the plaint is to be rejected, an Application under Order VI Rule 16 of CPC would apply and that part of the pleadings would be struck out which are unnecessary, frivolous, vexatious or otherwise abuse of the process of the Court. The relevant extract is set out below:

"8. We are afraid that this is a misreading of the Madras High Court judgment. It was only on the peculiar facts of that case that want of Section 80 CPC against one defendant led to the rejection of the plaint as a whole, as no cause of action would remain against the other defendants. This cannot elevate itself into a rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected under Order 7 Rule 11. In all such cases, if the plaint survives against certain defendants and/or properties, Order 7 Rule 11 will have no application at all, and the suit as a whole must then proceed to trial.

9. If only a portion of the plaint, as opposed to the plaint as a



whole is to be struck out, Order 6 Rule 16 CPC would apply.
Order 6 Rule 16 states as follows:

"16. Striking out pleadings. - The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading -

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court."

It is clear that Order 6 Rule 16 would not apply in the facts of the present case. There is no plea or averment to the effect that, as against the Directors, pleadings should be struck out on the ground that they are unnecessary, scandalous, frivolous, vexatious or that they may otherwise tend to prejudice, embarrass or delay the fair trial of the suit or that it is otherwise an abuse of the process of the court."

[Emphasis is ours]

43. An examination of the plaint reveals that the Former Employees all resigned from the services of the Appellant during the period from 09.05.2016 to 25.05.2016 and they stopped attending office. Respondent Nos.1, 4, 5 and 6 belonged to the Sales Department of the Appellant while Respondent Nos.2 and 3 worked in the Pricing and Commercial Department and Respondent Nos.7 and 8 worked in the Accounts Department. It is the allegation of the Appellant in the plaint that they decided to divert the existing business which they were handling to another entity (Respondent No.12). Various details which have been revealed during the forensic analysis of the Skype chats and e-mails *inter se* between the Former Employees have been set out between Paragraphs 63 and 75 of the plaint (reproduced above).



43.1 It was further stated therein that the electronic equipment available shows that customer database, account handling information plans, test reports and also tax related information belonging to the Appellant, has been forwarded to Respondent Nos. 9 to 12. The Appellant in the plaint had averred that the Former Employees are persons from the sales, commercial and finance/accounts Departments had all resigned within the span of three weeks and joined a competitor/Respondent No.12. To the extent as to whether there was a breach of data/confidential information would be required to be examined in a trial and could not be decided at the preliminary stage without leading to evidence by both sides.

44. As stated above, the Application under Order VII Rule 11 of CPC was filed only by two of the Former Employees. The Supreme Court in *Sejal Glass Limited* case has clarified that even though a plaint may contain averments and contentions against different Defendants, it was not as if separate suits have been filed. If the Plaintiff chooses to file one plaint, merely because several causes of action against several Defendants were brought together in one plaint, the plaint would still remain as one plaint and the rejection of the plaint would be as a whole. The relevant paragraphs of the said judgment is extracted below:

"5. Similarly, in Bansi Lal v. Som Parkash [AIR 1952 Punj 38], the High Court held: (AIR p.39, para 7)

"7. But the real question which arises in this appeal is whether there can be a partial rejection of the plaint. Mr. Chiranjiva Lal Aggarwala submits that a plaint can either be rejected as a whole or not at all, and he has relied on the statement of the law given in Mulla's Civil Procedure Code at p. 612 where it is stated: "This rule (Order 7 Rule



11) does not justify the rejection of any particular portion of a plaint." In support of this statement the learned author has relied on *Raghubans Puri v. Jyotis Swarupa* [ILR (1906-07) 29 All 325], *Venkata Rangiah Appa Rao v. Secy. of State* [1930 SCC OnLine Mad 123] and *Maqsud Ahmad v. Mathra Datt & Co.*[1936 SCC OnLine Lah 337] In reply to this argument Mr. Puri has submitted that **it is really five suits which had all been combined in one and therefore in this particular case the rejection of a part was nothing more than rejection of three plaints.** But the suit was brought on one plaint and not five suits were brought. **The law does not change merely because the plaintiff chooses in one suit to combine several causes of action against several defendants which the law allows him. It still remains one plaint and therefore rejection of the plaint must be as a whole and not as to a part.** I am therefore of the opinion that the learned Senior Subordinate Judge was in error in upholding the rejection as to a part and setting aside the rejection in regard to the other part. This appeal which I am treating as a petition for revision must therefore be allowed and the rule made absolute, and I order accordingly."

[Emphasis is ours]

44.1 Undisputably, the prayers as have been set out by the Appellant are against all the Respondents. Since it is settled law that the plaint has to be rejected as a whole, the examination of the plaint has to be made with great care by the Court, and it has to be examined as to whether on a meaningful reading of the entire plaint, it can be said that no cause of action has arisen or that the plaint is barred by law.

45. The learned Single Judge held that the Respondents in their Application under Order VII Rule 11 of CPC have in addition to contending that prayer (e) is barred under Section 27 of the Contract Act, have also averred that no copyright can be claimed by the Plaintiff in its capacity as a juristic person. It has thus been held that prayers (a) to (d) cannot be granted and since, the primary reliefs are



liable to be rejected, the consequential reliefs cannot be granted either.

46. The Supreme Court in *Madhav Prasad Aggarwal and Another v. Axis Bank Limited and Another*¹⁶ while relying on *Sejal Glass Limited* case has held that if one or more relief(s) claimed against a Respondent in a suit is barred including by law, such an objection can be raised by invoking other remedies including under Order VI Rule 16 of CPC at the appropriate stage. However, it was held that since the plaint cannot be rejected in part, the suit must proceed as a whole to trial. Paragraph 12 of the said judgment is reproduced below:

“12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by Respondent 1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against Respondent 1 in the suit concerned is barred by Section 34 of the 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly.

[Emphasis is ours]

¹⁶ (2019) 7 SCC 158



47. The plaint as filed by the Appellant, when read as a whole comprises of various different prayers sought against the different Respondents. The majority of reliefs have been sought against the Former Employees. However, not all prayers seek relief against them alone. Applying the ratio of the *Madhav Prasad Aggarwal* case and *Sejal Glass Limited* case, if one or more reliefs are barred by any provision of law, appropriate remedies could be raised under Order VI Rule 16 of CPC by the Respondents at an appropriate stage, the suit must however proceed to trial.
48. There is one more aspect which clinches the issue. The Impugned Judgment relies upon the reports of the Local Commissioner appointed by the learned Single Judge and gives a finding that the Commissioners have found e-mails, Skype chats *inter se* the Respondents while working with the Appellant and holds that there is no copyright therein. Thus, the learned Single Judge while examining the plaint sought to rely upon the evidence/Local Commissioner's Report to reach a finding to reject the plaint. The relevant extract is below:

*"21. The plaintiff, save for the aforesaid description, has not given any other description of the works in which it claims copyright and no document also has been filed in this regard. **As per the reports of the commissions issued at the instance of the plaintiff also, what has been found in possession of the defendants is the list of customers and clients serviced by the plaintiff and their contact persons. Though the Commissioners have reported also finding e-mails/skype chats inter se the defendants while working with the plaintiff and/or e-mails between the defendants and present employee of the plaintiff, but there can possibly be no copyright therein.**"*

[Emphasis is ours]



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49. Clearly an examination under Order VII Rule 11 of CPC has gone beyond the examination of the plaint and documents and has sought to rely upon reports of the Local Commissioner which would have otherwise been relied upon only during trial in the matter. The Impugned Judgment thus cannot be sustained.

Conclusion

50. In view of the foregoing discussions, this Court is unable to agree with the finding of the learned Single Judge that the Plaint as filed by the Appellant is barred by the provisions of Order VII Rule 11 of CPC.

51. The Appeal is accordingly allowed. The Impugned Judgement is set aside. The parties shall appear before the learned Single Judge on 03.12.2024 for further proceedings.

TARA VITASTA GANJU, J

VIBHU BAKHRU, J

NOVEMBER 20, 2024/pa