

Delhi High Court

Mr. Abhinav Gupta vs Jcb India Limited And Others on 1 September, 2010

Author: Valmiki J. Mehta

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) Nos. 488/2008 & 489/2008

% 1st September, 2010

1. FAO(OS) No.488/08

MR. ABHINAV GUPTA Appellant

Through: Mr. S.K. Bansal and
Mr. Santosh Kumar Advocates.

VERSUS

JCB INDIA LIMITED AND OTHERSRespondents

Through: Mr. Rakesh Tiku with Mr. Pramod K. Singh, Ms. Purbali Bora and Mr. Vijay Srivastava,
Advocate for Respondent No.1.

2. FAO(OS) No.489/08 MR. ABHINAV GUPTA Appellant Through: Mr. S.K. Bansal and Mr.
Santosh Kumar Advocates.

VERSUS JCB INDIA LIMITED AND OTHERSRespondents Through: Mr. Rakesh Tiku with Mr.
Pramod K. Singh, Ms. Purbali Bora and Mr. Vijay Srivastava, Advocate for Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes VALMIKI J. MEHTA, J (ORAL)

1. The challenge in the present appeals is to the common impugned order dated 25.8.2008 in terms whereof the applications filed by the appellant/defendant under Order 7 Rule 11 CPC has been dismissed.

2. Sitting as an Appellate Court, we need not again re-write the entire reasoning as contained in the impugned order and with which we fully agree. However, in gist, the facts and issues which have

been decided by the learned Single Judge in the impugned order are that :-

(i) Merely because certain facts alleged in the plaint show violation of the provisions of the Information Technology Act, 2000 and for which, remedy is provided under the Information Technology Act, would not mean that a plaint which contains various other cause of actions and other reliefs based on the cause of actions, should be rejected under Order 7 Rule 11 CPC.

(ii) A part of a plaint cannot be rejected.

3. The suits which were filed in the original side of this court by the respondent No.1/plaintiff sought the reliefs of injunction restraining infringement of copyright and breach of confidentiality, mandatory injunction, rendition of accounts and damages. The substratum of the case as laid down in the suit was that the respondent no.1/plaintiff company was the largest equipment manufacturer in the India pertaining to construction and materials handling machinery such as Backhoe Loaders, Hydraulic Excavators etc and which were being sold under the world renowned trademark of JCB and its logo. It was further averred in the suits that the respondent No.1/plaintiff company engaged the services of the appellant/defendant No.1 in the capacity of Manager-Design in product engineering. It is further averred in the plaint that during the course of employment, the defendant No.1 was privy to various confidential information, drawings, designs, plans etc pertaining to the products of the respondent No.1/plaintiff company. The appellant thereafter left the employment of the respondent no.1 company and joined its competitor M/s Escorts Construction Equipment Ltd. It is further averred in the plaint that the appellant has mis- appropriated and mis-utilized the confidential data, drawings, designs, secrets and other related information of the plaintiff company. The further case as averred is that the appellant transmitted the confidential information from the respondent no.1 company from his official e-mail ID in the respondent no.1 company to his personal e-mail ID. It became clear that the appellant using computers systems and computer network of the plaintiff company down-loaded, copied and extracted drawings, confidential designs, data and information of the plaintiff company without its permission and further transmitted and forwarded the same to his personal ID. The plaintiff also made averments with respect to the violation of the provisions of the Information Technology Act.

4. In view of the averments so made in the plaint, the respondent No.1 /plaintiff sought the relief of perpetual injunction against the appellant from infringing the copyright of the respondent no.1 in the confidential information, data, designs, drawings and other related materials constituting the trade secrets of the plaintiff company relating to the plaintiff business of manufacturing of its machinery. Besides other related reliefs of injunction, mandatory injunction was sought to return the misappropriated information and other confidential data, copyright material etc. Rendition of accounts was also sought and also a decree for damages.

5. The defendant/appellant filed an application under Order 7 Rule 11 CPC only on the ground that the suit was barred by the provisions of the Information Technology Act, and more particularly Section 61 thereof, which provides that a civil court will not have jurisdiction in respect of any matter which an adjudicating officer appointed under the Act or the Cyber Appellate Tribunal under the Act is empowered to determine. In addition to the ground of the plaint being sought to be

rejected on account of bar of law, during the course of arguments, it also appears to have been argued that the suit must be stayed awaiting the determination by the adjudicating officer of the Information Technology Act inasmuch as a complaint is pending before the adjudicating officer under the Information Technology Act on the basis of the facts which also have been alleged in the plaint.

6. In view of the above facts and issues, the learned Single Judge after reproducing the relevant provisions of the Information Technology Act held, inter alia, as under while dismissing the applications:-

"13. The defendant's motion for rejection here is premised on lack of jurisdiction of this court, on account of Section 61, which clothes the Cyber Appellate Tribunal ("the Tribunal") or the adjudicating officer to decide upon the extent of damage or harm caused by someone's objectionable behavior, judged from the perspective of provisions of the IT Act. Section 43 enacts the penalty which can be recovered as compensation for the damage caused by anyone to a computer resource, etc, exhaustively defined by that provision. Section 46 deals with the powers, functions and qualifications of an adjudicating officer. Section 61 excludes jurisdiction of the civil court; Section 66 defines hacking. Taken together, these outline a species of unlawful behavior which can be swiftly adjudicated and dealt with. Section 43 also sets an outer limit for the amount of compensation which an adjudicating officer can award.

14. What cannot be ignored by the court is that the nature of jurisdiction conferred upon the adjudicating authority under the IT Act is extremely restricted; he is not a special tribunal empowered to decide upon all causes as between parties, who have disputes including those under the Act. The tribunal is one of limited jurisdiction. Necessarily, in such case, if there are claims or causes forming part of the same cause of action, or series of acts, constituting causes of action, which are not covered by the Act, or are violation of other enactments, or infringe other legal obligations, the adjudicating officer would have no power to decide them.

15. The plaintiff here asserts violation of copyright in data bases and confidential information; an injunction is sought restraining the defendants from using them.

18. The above discussion would show that the provisions of the IT Act are no doubt special, and to the extent they provide specific remedies, the civil court's jurisdiction is barred. However, what does not follow from the above decisions, as is sought to be urged by the defendant, is that every claim inter parties is barred. The provisions of the Copyright Act, which confer copyrights upon data bases, as well as the plaintiffs' rights towards its trade secrets, cannot be subject matter of jurisdiction of the adjudicating authority. To hold so would be to do violence with provisions of the IT Act, as Parliament never intended ouster of civil courts' jurisdiction, and its substitution with a specialized tribunal in that regard.

19. It is quite possible that some disputes or claims may ultimately be found to be falling outside jurisdiction of this court. However, the court, consistent with rulings of the Supreme Court in *Roop Lal Sathi v. Nachhattar Singh Gill*, 1982 (3) SCC 487 and *Raptakos Brett & Co. Ltd. v. Ganesh Property*, 1998 (7) SCC 184, that only a part of the plaint cannot be rejected, cannot view the pleadings piece meal. It was also observed by the Supreme Court, in *Popat and Kotecha Property-vs-State Bank of India Staff Association* 2005 (7) SCC 510) that the averments in the plaint as a whole have to be seen to find out whether Clause (d) of Rule 11 of Order 7 is applicable."

There are other paras also which deal with related aspects but, as an appellate Court, we need not re-write or incorporate all the reasons which have been given by the Learned Single Judge and with which we agree as already stated above.

7. Before us, learned counsel for the appellant again pressed the same issues/arguments and relied upon the following judgments: *Abdul Gafur Vs. State of Uttarakhand* (2008) 10 SCC 97, *Kalipindi Appala Narasamma Vs. Allanageshwara Rao* (2008) 10 SCC 107 and *Kalikadevi Vs. Shivasaharanand Sadhu Maharaj* AIR 1986 Karnataka 186.

Relying on the aforesaid judgments, it was contended that once the averments in the plaint are looked at, the reliefs which are claimed are ancillary to the main relief of violation of the provisions of the Information Technology Act and since the other reliefs are incidental and consequential upon violation of the provisions of the Information Technology Act, the suit/plaint itself is liable to be rejected.

8. We are unable to agree with the contentions which have been raised by the learned counsel for the appellant. The learned Single Judge has dealt with all the aspects in the impugned judgment and some of which paras we have already reproduced above. Surely and assuming, if one particular relief or cause of action is barred under the Information Technology Act would not mean that the plaint as a whole has to be rejected inasmuch as the plaint contains various other cause of actions and reliefs pertaining to injunction for infringing of copyright and confidential information/ material and also towards injunction for re-delivery of the confidential/material information. If on trial, it emerges that certain relief can be granted only under the Information Technology Act, then, such relief may be denied and the suit may be dismissed to that extent, however, that cannot mean that at this stage itself, when the suit is still at the preliminary stage, and even issues have not been framed, that the plaint itself should be rejected under Order 7 Rule 11. We also do not agree with the contention of the learned counsel for the appellant that the reliefs claimed in the suit are ancillary to the reliefs claimed for violation of the provisions of the Information Technology Act. Facts pertaining to the violation of the Information Technology Act are only some of the facts as averred in the chain of events which show how the confidential and proprietary information/materials of the respondent no.1 was mis- appropriated and mis-utilized by the appellant. This cannot mean that the other causes of action and reliefs cannot independently stand on their own, and which are specific and exhaustive in themselves pertaining to injunction against violation of confidential information/material, copyright and rendition of accounts and so on.

Each of the reliefs and causes of action are substantial and independent of each other and it cannot be said that the reliefs and causes of action pertaining to matters, other than violation of the provisions of Information Technology Act, are incidental to the violation of the provisions of the Information Technology Act. The averments as to violation of the provisions of Information Technology Act have been averred as an aide to the final reliefs which are claimed on the basis of causes of action averred and reliefs claimed thereon. We also therefore do not agree that the suits were liable to be stayed till decision of the complaint pending under the Information Technology Act.

9. We find that the appeals are therefore grossly misconceived and meritless. The appeals are dismissed with costs quantified at Rs.25,000/- for each appeal.

VALMIKI J. MEHTA, J.

SEPTEMBER 01, 2010
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SANJAY KISHAN KAUL, J.