

Prashanth Ravula And Others vs Lucintel Llc And Another on 11 August, 2011

Bench: N.V.Ramana, P.Durga Prasad

THE HON'BLE SRI JUSTICE N.V.RAMANA and THE HON'BLE SRI JUSTICE P.DURGA PRASAD
CIVIL MISCELLANEOUS APPEAL.No.362 of 2011

11.08.2011

Prashanth Ravula and others.

LUCINTEL LLC and another.

Counsel for the Appellants: Sri Resu Mahender Reddy

Counsel for Respondents: Sri Javed Razack

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? Cases referred

(1) AIR 2008 SC 685

ORDER:

(per the Hon'ble Sri Justice P.Durga Prasad) This appeal is directed against the Orders passed in I.A.No.596 of 2010 in O.S.No.723 of 2009 by the Special Sessions Judge for SC & ST (POA) Act - cum - Additional District and Sessions Judge at L.B. Nagar, Ranga Reddy District on 30.12.2010.

The appellants herein are the respondents in the said petition. Respondents herein, who are the petitioners in the said petition filed the said petition under Order 39 Rules 1 and 2 read with Section 151 of Code of Civil Procedure for grant of injunction restraining the respondents, their employees, servants, agents, partners, proprietors, directors, officers, associates or sister concern, marketing officer or any person or entity acting under their authority, as the case may be, from selling, publishing, generating and circulating, advertising, exporting any of the reports and solutions under their name or in the name of any other entity or authority by infringing the copyrights and passing off the workmanship, authorship and literature or any other orders as it deem just and fit in the circumstances of the case.

The parties in the appeal are being referred to as petitioners and respondents as mentioned in the said Interlocutory Application.

According to the petitioners, the petitioner No.1 is a registered company as a limited liability company formed and registered in accordance to the Laws of America and the Petitioner No.2 is a company registered under the Companies Act, 1956.

2nd petitioner is the Indian entity and is a research and development and marketing support of the services that are offered by the offshore 1st petitioner. The advertisement of the services and the support that the petitioners provide to its client base is through the medium of internet and the access to such advertisement is from any part of the world including Hyderabad and Ranga Reddy District. The business is expanding its wings into India and those involved in the field of Composite Materials are widely benefited by the services of the Petitioners. The copyright of Global Composite Report and its associated literature of high quality are reflected in the sales world wide including India in the past few years including but not limited to the any outside and third countries. Respondent No.1 was employed by the petitioner No.1 under a service contract and at the time of joining, he entered into a service non-compete agreement. Prior to joining in the petitioner No.1 company, respondent No.1 had no prior experience in composites industry, in terms of market research, customers, know-how and market trend and forecast for Composites Industry and on creation of marketing materials for market reports and on writing of 200-400 page market reports, creating discussion guide for conducting primary research for trend and forecast and for leadership analysis and so on. The assignment of the work of the respondent No.1 while in employment on the above such know-how are intellectual property of the petitioner No.1 and were taught to respondent No.1 during his employment with the petitioner No.1. Respondent No.1 resigned from petitioner No.1's company full time employment on 10.11.2008 and started 2nd respondent company under the name and style as "Composite Insights Private Limited" in violation of his signed non-compete agreement. Respondent No.1 currently employed himself as "Director of Market Research" and is using forged and fabricated report which belonged to the petitioner No.1 named as

(i) 'Opportunities in Indian Composites Market 2008-2013: Trend, Forecast and Competitive Dynamics.

(ii) 'Global Composites Market 2009-2014'.

(iii) 'Opportunities in Global Thermoplastic Composites Market 2009-2014, Trend and Forecast Analysis' and

(iv) 'Indian Composites Industry 2009-2014' These reports being the original adaptation and work of the petitioners are now being sold under the company name "Composite Insights" owned by the respondents without any prior approval or licensing agreement from the petitioners either express or implied. The report published by the respondent No.2 is a direct copy of the petitioners company report and contains the petitioners companies confidential business information and trade secretes. These reports are sold for on average less than Rs.2,00,000/- per copy by the respondents which is much less compared the international pricing of the said report. The respondents can afford to sell

the same as it does not belong to them and making fast and easy money out of the adaptation of the reports developed, devised, created by petitioners with employed resources spending huge amounts on research and development which can be tested and verified.

The report titled "Global Composites Market 2009-2014" that presents a completely revamped and updated in depth review of the industry which presently finds itself caught in the middle of the global economic crisis. With dramatic changes in the composites market in 2008, the petitioners report gives valuable insights as to the extent of the decline in major market segments and its ramification in the entire supply chain of the composites industry. It comprehensively details the supply side, demand side as well as the sectors with strongest near term upside and potential. It also discusses opportunities for composites industry in various regions of the world such as North America, Europe and Asia. It also addresses opportunities for various raw materials such as polyester resin, epoxy, fiberglass, and carbon fiber used in the composite industry. The petitioners by virtue of its creation, market research and intense research and development in providing solutions which have been used and in uses continuously and extensively have thus become the owner of "Global Composites Market 2009-2014" copyright worldwide within the meaning of 'Adaptation' as provided under Section 2 (a) (i) to (v) and (d) of the Copyrights Act, 1957 and is capable of the highest degree of protection. The content and data of the original work, which was gathered through years of research and development by petitioners was made available to respondent No.1 during his employment with petitioner No.1. The respondent No.1 using data and content of the report and reselling it after repackaging it under different name. The respondent No.1 as Director of Market Research for "Composite Insights Private Limited", he is selling forged and fabricated market reports, which belongs to petitioner No.1.

(i) Indian Composites Industry 2009-2014: Trend, Forecast and Opportunity Analysis".

(ii) "Global Thermoplastic Composites Industry 2009-2014: Trend and Forecast Analysis."

(iii) North American Composites Industry 2009-2014: Trend, Forecast, and Opportunity Analysis

(iv) Opportunities for Epoxy in Global Composites Industry 2009-2014.

Respondent No.1 is selling the above said 4 market reports under the company name "Composite Insights" without any prior approval or licensing agreement. These are the direct copies of petitioners market reports and contains the petitioners companies confidential business information, market data and trade secrets. These reports are sold by the respondents at much lower price compared to the petitioners international pricing of the said reports. The petitioners are authors of market report titled "Opportunities in Global Thermoplastic Composites Market 2009-2014". Respondent No.1 while in employment with the petitioners and during the period November, 2007 was assigned to work and design the market report on "Opportunities in Global Thermoplastic Composites Market" which market consist of four different types of materials as follows:

(a) Glass mat thermoplastic composites (GMT)

(b) Long fiber thermoplastic composites (LFT)

(c) Short fiber thermoplastic Composites (SFT)

(d) Continuous Fiber Reinforced Thermoplastic Composites (CFRTPC).

The respondent No.1 in active connivance and assistance of respondent No.3 launched its first report on "Indian Composites Industry 2009-2014" in May, 2009, which was already published by petitioner No.1 in 2008. The respondent Nos.1 and 3 launched "Global Thermoplastic Composites Industry 2009-2014 Trend and Forecast Analysis" in early July 2009 and about 2 months later after their first report which is the same report that the petitioners earlier released and launched as their original adaptation and work owning the copyright and absolutely belonging to the petitioners. The respondents are not only using the market data, content and writing style of market reports of petitioners but also using the sales and marketing techniques of petitioners for selling of market reports. The respondent No.2 advertises in their website and in their marketing materials that they sold above 4 market reports to many customers, majority of them are past and current customers of petitioners. According to the petitioners that the rights of the authors belonging to member countries of the Berne Convention, Universal Copyright Convention and the WTO (World Trade Organization) Agreement, are protected under the Indian Copyright Law as though their works are first published in India. India and USA are signatories to the Berne Convention, Universal Copyright Convention and the WTO (World Trade Organization) Agreement. The petitioners works are thus protected in India under Section 40 of the Copyright Act, 1957. The petitioners being the owners of copyright in all the 45 reports that it has published as aforesaid 'literary works' within the meaning of Section 17 of the Copyright Act, 1957 are entitled to all the exclusive rights flowing from such ownership as set out in Section 14 of the Copyright Act. Under Section 51 (a) and 51 (b) of the Copyright Act, 1957, copyright in a work shall be deemed to be infringed when any person without a license from the owner of copyright, does anything, the exclusive rights of which are granted to the owner of copyright are deemed to be primary acts of infringement. The respondent No.1 who was employed with the petitioners about one and half years under a services contract and during his employment the said respondent entered into a non-compete and non disclosure agreement whereby upon ceasing to be an employee, he would not divulge any information in relation to the trade secrets, the workmanship, the authorship and the copyright of the literature owing to long usage and exclusively belonging to petitioner No.1. Upon knowledge of the illegal sale of the copyright reports, the petitioners through the US consulate in India reported the infringement and the violation by the respondents and in turn the respondent No.1 assured the US Consulate that he will close down the business of 2nd respondent company and will adhere to the non-disclosure agreement that he signed while being in employment. But contrary to the assurances given, the respondent Nos.1 and 3 are blatantly continuing to sell the reports. Legal notice dated 05.06.2009 was got issued by petitioner No.1 demanding the respondent No.1 to cease and desist from selling the identical reports and solutions and was reminded of the covenant, assurance and promise that he would adhere to the terms of the services agreement and the non- disclosure covenant and additionally he was warned by the US consulate the resultant punitive will be harsh as the respondent No.1 continue to sell and generate revenue from out of the copyright literature and of the research and development of the petitioners. Hence, the petitioners are prayed for interim

injunction as prayed above.

Counter was filed on behalf of the respondents denying the allegations made in the petition and according to them the 1st petitioner Company is not a partner/shareholder in the 2nd petitioner company and vice versa. Therefore, the petitioners have joined to file the suit without any legal sanctity, empowerment or authority and it smacks at the bona fides of the petitioners. It is also pleaded by the respondents that the 1st petitioner company has not whispered about jurisdiction of the 2nd petitioner company and authorization by the 1st petitioner company to deal on its behalf. They further pleaded that the service non-compete agreement would be valid within the territorial jurisdiction of the USA Courts, in as much, in the agreement so entered on 09.11.2007, it is categorically stated in the last paragraph of the agreement that the Agreement shall be governed by the Laws of the State of Texas. Thus, the 1st petitioner company cannot derive vested right or legal right to proceed against them in India by virtue of the contract entered upon by the 1st respondent when he was in employment of the 1st petitioner company at Texas, USA. He denies about that he has no expertise or any kind of professional training in the field of Market Research to conduct market studies, trend and forecast analysis, creating discussion guide for conducting primary research for trend and forecast and for leadership analysis and so on. According to the 1st respondent, he is capable of grasping market trends of any industry within no time in terms of research, based on his skills and talents gained by him out of his M.S. in Market Research and the Masters degree in Business Administration, therefore, the 1st petitioner cannot stake claim that it has taught him the basics of market research and helped him in advancing market research skills in that matter. He admits that he has resigned from the 1st petitioner company's full time employment on 10.11.2008, but he denies about the starting of 2nd respondent company in violation of the non-compete agreement entered into between him and 1st petitioner company at USA. He further pleaded that non-compete agreement cannot be enforced in India under the Laws of India, even if they are enforceable, the clauses of service non-compete agreement can be insisted upon or passed only in the event of his termination from the employment, but not in the case of when he voluntarily resign form the job for his own reasons. He also denies about their selling the direct copies of alleged to have been published by the 1st petitioner company. The copy Certificates of Formation submitted by the petitioners show that the petitioner No.1's company has been providing the above mentioned services for less than three years and 2nd petitioner company has been providing the above mentioned services/extending the support to the 1st petitioner company, for less than two years. Therefore, the contention of the petitioners that they are leading worldwide provides of composite reports and have, over the last 10 years provided market intelligence and consulting services to more than 700 companies in over 70 countries is false.

The petitioners published market report titled as "Global Composites Market 2009-2014" in July, 2009. According to the respondents, the respondent No.1 left the premises of the 1st petitioner company way back in September, 2008 and never had any occasion to visit the 1st petitioner company nor had any access to the data and contents of the market report referred above. If at all any market report is published by him on the similar subject, it would be exclusively out of his own talent and abilities, which he need not to copy from the petitioners' market report. He admits that the about the respondents publishing 4 market reports and out of the 4 market reports, the market reports 1, 3 and 4 have not at all been published by the petitioners. So far as the 2nd report referred

above is concerned, it was published by respondents in July, 2009 and by the petitioners in August, 2009. This report contains the market analysis for 2008 and forecast for 2009-2014. In order to publish the market report, the petitioners would have gathered data after December 31, 2008. Therefore, it cannot be alleged that he had stolen any data or have access to the data collected and market report published by petitioners, since he left the 1st petitioner company by 2008 i.e. 10.11.2008. Himself and respondent No.3 have released a market report titled "Indian Composite Industry 2009-2014: Trend, Forecast and opportunity Analysis" in May 2009 and it is replica of the petitioners' market report titled "Opportunities Indian Composite Market 2008- 2013" published in September 2008. A perusal of the titles of the two reports would show that the two reports include market analysis for different years i.e. 2009-2014 and 2008-2013.

The market report titled as "Global Thermoplastic Composite Industry 2009- 2014: Trend, and Forecast Analysis" was published by the respondents in July 2009 while the market report of the petitioners was published in August 2009 i.e. one month before publication of the report by the petitioners. The petitioners have not explained as to how the Provisions of Berne Conventions, Universal Copyright Convention and the WTO etc, are violated by the respondents and what is the nexus with regard to ownership over the 45 reports by the petitioners. According to the respondents, any of the hindrances that are being caused by petitioners would infringe their rights under Article 19 (1) (g) of the Constitution of India. The issuance of the legal notice was a threat since the said notice was issued on the basis of the clauses of service non-compete agreement signed by him under the Laws of Texas, and the same be cannot be stretched to the Indian Territorial Jurisdiction. Therefore, there was no necessity to give reply to the said legal notice. In order to develop and publish new market reports in the year 2010, respondents have to collect the data and understand the market dynamics/ changes occurred in the year 2009 and forecast the market demand for the period of 2010 and 2015. Even the previously collected data by respondents would be of no use for publishing the market reports in 2010, since the market dynamics fluctuate and change. In the above circumstances, the petition is devoid of merits and is liable to be dismissed with exemplary costs.

Before the lower Court, Exs.P.1 to P.25 and Exs.R.1 to R.9 and Exs.C.1 to C.11 were marked.

The learned Additional District Judge by taking into consideration of the said documents and the arguments advanced by both the counsels passed the impugned Order restraining the respondents, their employees, servants, agents, partners, proprietors, directors, officers, associates or sister concern, marketing officer or any person or entity acting under their authority, as the case may be, from selling, publishing, generating and circulating, advertising, exporting any of the reports and solutions under their name or in the name of any other entity or authority by infringing the copyrights and passing off the workmanship, authorship and literature.

Aggrieved by the said Order, the respondents therein have filed the present appeal.

Now, the points that arise for consideration are:

(1) Whether the lower Court has got jurisdiction to entertain the suit for violation of non-compete agreement dated 9.11.2007? (2) Whether the jurisdiction of the lower Court can be invoked for the alleged violation copyright of the respondents/petitioners? (3) Whether the petitioners are entitled for the temporary injunction as prayed for?

The 1st respondent was worked with the 1st petitioner company in USA for one and half years and resigned on 10.11.2008 and thereafter he returned to India and started 2nd respondent Company in the name and style of "Composite Insights Private Limited". The 1st petitioner company is a registered company as per Laws of America and 2nd petitioner company is registered in India under the Companies Act. Both the petitioners have filed the suit against the respondents for grant of permanent injunction restraining the defendants from publishing, generating and circulating, advertising, exporting of the reports and solutions under their name or in the name of any other entity or authority by infringing the copyrights and passing off the workmanship, authorship and literature of the plaintiffs works, for decree for damages to a tune of Rs.76,82,000/- for the loss of reputation due to illegal sale of the reports, solutions, data and information belonging to the plaintiffs and also for rendition of accounts of profits illegally earned by the defendants by using reports of the plaintiffs/petitioners and to deliver up of all material in possession and custody of the respondents that contain infringing data, source codes, literature, diagrams, pictures etc stored in hard copies and on the hard drive of any computer at the respondents' premises and of its associates and like.

In the said suit, the petitioners have filed the present application for grant of temporary injunction restraining the respondents from infringement of copyright of the petitioners.

P O I N T No.1:

Learned counsel for appellants/respondents has pleaded that as the suit is filed basing on the non-compete agreement entered on 09.11.2007 by the 1st respondent with the 1st petitioner is not maintainable as the clauses mentioned in the said agreement shall be governed by the Laws of state of Texas, and as such the Courts in India have no jurisdiction to entertain the suit filed basing on the said non-compete agreement.

Learned Counsel for respondents/petitioners, on the other hand, has pleaded that even though the agreement was entered into at USA as the respondents have violated the said agreement in India and as part of cause of action arose within the jurisdiction of the lower Court, the Courts at Ranga Reddy has got jurisdiction to entertain the suit.

Admittedly, the agreement, non-compete/confidentiality/ outside employment restrictions dated 09.11.2007 was executed by the 1st respondent in favour of the 1st petitioner company. As per clauses in the said agreement, the 1st respondent was precluded from starting a business in competition with Lucintel LLC or from taking

an employment with another company engaged in market research reports, and business consulting services any of which are directly related to fiber/ reinforced plastics (composite materials) and plastics industry or within 3 years of my termination of employment with Lucintel LLC and the agreement shall be governed by the laws of the state of Texas.

Basing on the said clauses in the said agreement, the petitioners' counsel has pleaded that the 1st respondent has violated the said terms of the agreement and started competitive business in India violating the terms of the said agreement. The respondents' counsel on the other had has pleaded that the agreement shall be governed by the laws of State of Texas, as such any relief sought for violation of the said agreement is not maintainable in India and the lower Court has no jurisdiction to entertain the suit.

The said plea was also raised by the respondents before the lower Court and the lower Court held that it has got jurisdiction to entertain the suit. The petitioners' counsel relied upon a decision in "LAXMAN PRASAD V. PRODIGY ELECTRONICS LIMITED AND ANOTHER¹". In the above said decision, the similar point arises for consideration and the Apex Court has observed that "in the case on hand, they have referred to the relevant clauses of the agreement. Clause 18 provides for applicability of law and it specifically declares that the terms and conditions of the agreement shall be interpreted in accordance with ' the laws of Hong Kong special Administrative Region'. That, in our judgment, does not mean that a suit can be instituted only in Hong Kong and not in any other country. Territorial jurisdiction of a Court, when the plaintiff intends to invoke jurisdiction of any Court in India, has to be ascertained on the basis of the principles laid down in the code of Civil Procedure. Since a part of 'cause of action' has arisen within the local limits of Delhi as averred in the plaint by the plaintiff company, the question has to be considered on the basis of such averment. Since it is alleged that the appellant-defendant had committed breach of agreement by using trade mark/ trade name in Trade Fair, 2005 in Delhi, a part of cause of action has arisen in Delhi. So far as applicability of law is concerned, obviously as and when the suit will come up for hearing, the Court will interpret the clause and take an appropriate decision in accordance with law. It has, however, nothing to do with the local limits of the jurisdiction of the Court."

Therefore, in view of the above said decision, the jurisdiction of the Court will be basing on the cause of action as per the averments made in the plaint and the applicability of the law concerned has to be decided when the matter is coming up for trial. In the present case, as per the averments made in the plaint, the said non-compete agreement dated 09.11.2007 was violated by the 1st respondent by starting the 2nd respondent company within the jurisdiction of the lower Court. Therefore, as part of the cause of action arose within the jurisdiction of the lower court, the lower Court has got the prima- facie jurisdiction to entertain the suit.

With regard to applicability of the law, it was mentioned in the said non- compete agreement dated 09.11.2007 that the agreement shall be governed by the laws of the State of Texas. Thus, the applicability of the law of Texas has to be considered by the lower Court during the course of trial. Thus, in view of the above discussion the lower Court has got jurisdiction to entertain the suit for violation of the non-compete agreement dated 09.11.2007. Accordingly, the point No.1 is held.

P O I N T No.2:

The appellants/respondents counsel has pleaded that the lower Court has no jurisdiction to entertain the suit for violation of the copyright of the petitioners exists in U.S.A. The respondents/petitioners counsel on the other hand has pleaded that the petitioners works in U.S.A are protected in India under Section 40 of the Copyright Act, 1957 as India and USA are signatories to the Berne Convention, Universal Copyright Convention and the WTO (World Trade Organization) Agreement.

Chapter No.9 of the copyright Act deals with International Copyright. Section 40 of the Copyright Act deals with power to extend copyright to foreign works.

Section 40 of the Copyright Act reads as under:

Power to extend copyright to foreign works - the central government may by order published in the official gazette, direct that all or any provisions of this Act shall apply-

(a) to works first published in any territory outside India to which the order relates in like manner as if they were first published within India;

(b) to unpublished works, or any class thereof, the authors whereof were at the time of the making of the work, subjects or citizens of a foreign country to which the order relates in like manner as if the authors were citizens of India ;

(c) in respects of domicile in any territory outside India to which the order relates in like manner as if such domicile were in India;

(d) to any work in which the author was at the date of the first publication thereof, or, in case where the author was dead at that date, was at the time of his death, a subject or citizen of a foreign country to which the order relates in like manner as if the author was a citizen of India at that date or time;

and thereupon, subject to the provisions of this chapter and of the order, this act shall apply accordingly:

provided that-

(i) before making an order under this section in respect of any foreign country (other than a country with which India has entered into a treaty or which is a party to a convention relating to copying to which India is also a party; the central government shall be satisfied that foreign country has made, or has undertaken to make, such provision, if any, as it appears to the central government expedient to require for the protection in that country of works entitled to copyright under the provisions of this Act;

(ii) the order may provide that the provisions of this Act shall apply either generally or in relation to such classes of cases may be specified in the order;

(iii) the order may provide that the term of copyright in India shall not exceed that conferred by the law of the country to which the order relates;

(iv) the order may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities, if any, as may be prescribed by the order;

(v) in applying the provisions of this Act as to ownership of copyright, the order may make such exceptions and modifications as appear necessary, having regard to the law of the foreign country;

(vi) the order may provide that this Act or any part thereof shall not apply to works made before the commencement of the order or that this Act or any part thereof shall not apply to works first published before the commencement of the order.

As per Section 40 for extending copyright to the foreign works, the Central Government by an Order published in the Official Gazette, direct that all or any provisions of this Act shall apply. The Central Government has passed the International Copyright Order, 1999, to make the copyright Act applicable to the works published in countries mentioned in the schedule. The said copyright international Order was published in the Gazette of India, Extraordinary, Part.II, Section 3 (2) on 06.04.1999. As per Part.I and Part.II of the schedule under the said International Copyright Order 1999 USA is one of the Berne Convention countries, Universal Copyright Convention Countries and as per Part IV, the USA one of the World Trade Organization countries. Therefore, in view of the International copyright Order 1999, the Copyright Act is made applicable to the works published in USA.

As per Section 55 of the Copyright Act, where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right.

Since the respondents/petitioners alleging the infringement of their copyright, are entitled to invoke the jurisdiction of the lower Court for alleged violation of his copyright. Accordingly, the point is held. P O I N T No.3:

The respondents/petitioners are seeking for injunction restraining the appellants/respondents and his men from infringing the copyright and passing of the workmanship of the respondents/petitioners.

Now, it has to be examined whether there is any infringement of the copyright of the petitioners by the appellants/respondents.

The appellants/respondents' counsel contends that there is no violation of any copyright of the petitioners and the respondent No.1 by his own intelligent and hard work published 4 reports and they can not be termed as forged and fabricated reports. He further pleaded that the reports published by the respondents are prior to the publication of the reports by the petitioners; as such it cannot be termed as infringement of the copyright of the petitioners.

The respondents/petitioners' counsel, on the other hand, has pleaded that the 1st respondent while working in the 1st petitioner's company used to deal with the same subject of preparing the reports and during the employment he has got access to all the material and gained experience in the said field and taking the advantage of information collected by the petitioners, he has published the impugned reports violating the copyright of the petitioners and selling the same to lesser prices than the prices prescribed by the petitioners. He also further pleaded that since the respondent No.1 has utilized the workmanship and the material collected by them in his reports, it is the violation of the copyright of the petitioners.

The 1st petitioner company is a leading worldwide provider of composite reports with regard to market research, customers know-how, market trends and forecast for the composite industry and collection of marketing material for market reports.

Admittedly, the 1st respondent worked in the 1st petitioner company from 2007 till 10.11.2008, on which date, he resigned and left the 1st petitioner company and started 2nd respondent company by name and style "Composite Insights Private Limited". As director of the said company, he published four reports, as under:

- (i) Indian Composites Industry 2009-2014: Trend, Forecast and Opportunity Analysis".
- (ii) "Global Thermoplastic Composites Industry 2009-2014: Trend and Forecast Analysis."
- (iii) North American Composites Industry 2009-2014: Trend, Forecast, and Opportunity Analysis
- (iv) Opportunities for Epoxy in Global Composites Industry 2009-2014.

According to the petitioners, the 1st respondent has no prior experience in composite industry in terms of market research, customer know-how, market trends and forecast for composite industry and during his employment with the 1st petitioner company he was trained in the said field and he came to know about the know-how of the said reports, and he has published above said 4 reports by forging and fabricating the reports belongs to the petitioner No.1 company, viz.,

(i) 'Opportunities in Indian Composites Market 2008-2013: Trend, Forecast and Competitive Dynamics.

(ii) 'Global Composites Market 2009-2014'.

(iii) 'Opportunities in Global Thermoplastic Composites Market 2009-2014, Trend and Forecast Analysis' and

(iv) 'Indian Composites Industry 2009-2014' The respondent No.1's contention is that he has published the report for Indian Composite industry 2009-2014 in May, 2009, whereas the petitioners "Opportunities in Indian Composites Market 2008-2013" published in September 2008. The market analysis in two reports is for two different years i.e. 2008 and 2009. As such any information published in the report of the petitioners is not at all useful for him for publishing his report 2009-2014. With regard to other reports, the respondent No.1 has pleaded that they have published Opportunities in Global Thermoplastic Composites Market 2009-2014, Trend and Forecast Analysis in July, 2009, whereas the Market report of the petitioners was published in August, 2009. Therefore, the question of his copying or forging or fabricating the material from the report of the petitioners does not arise.

In the present case, 1st petitioner is claiming that he is the author of the reports published by him and he has got copyright over the said works as they were done after due research by taking the advice of the experts and whereas the respondents by starting the company after leaving the 1st petitioner company published 4 reports by copying the material, which was used in his reports and the knowledge he has gained during the employment of the 1st petitioner. As such, he has violated the copyright of the petitioners.

The petitioners got marked the reports published by the respondents as Exs.P.7, P.8 and P.9 and the reports published by them as Exs.P.10 and P.11.

Ex.P.7 is the North American Composites Industry 2009-2014: Trend, Forecast and opportunity analysis, published in August, 2009.

Ex.P.8 is the report "Global Thermoplastic Composites Industry 2009-2014: Trend and Forecast Analysis", published in July, 2009.

Ex.P.9 is the report "Indian Composites Industry 2009-2014: Trend, Forecast, and opportunity Analysis", published in May, 2009.

Ex.P.10 is the report published by the 1st petitioner "Opportunities in Global Thermoplastic Composites Market 2009-2014: Trends, Forecast and opportunity Analysis", it does not contain when it was published.

Ex.P.11 is another report published by the 1st petitioner "Opportunities in Indian Composites Market 2008-2013: Trend, Forecast and Demand Analysis", published in September 2008.

The lower Court on comparing the said reports published by the petitioners and respondents gave a finding that there are similarities like method of study, expansion, assessment, presentation of market trends. The detailed examination of the said reports published by the petitioners and respondents is not necessary at this stage and it can be done after producing necessary evidence by both the parties during the course of trial. At this stage, it has to be examined prima-facie that whether there are similarities in the reports published by the petitioners and the respondents.

Admittedly, the 1st respondent worked in the petitioner No.1's company for one and half years and resigned job on 10.11.2008 and registered the company in the name of 2nd respondent on 20.05.2009. Since the petitioners company is doing the same work of publishing the reports with regard to market research, customers market trend and forecast for composite industry, the 1st respondent has gained experience in preparing such reports having access to the research and development of 1st petitioner company, after starting the 2nd respondent company, he has released 4 reports on the same lines as that of the petitioners.

On perusal of both the reports it is prima-facie evident that there are similarities in the contents of the reports. The petitioners have started the work of publishing its reports much prior to the respondent No.1 and one of the reports, in which their copyrights have been violated was published much prior to the report of the respondent No.1. The other reports published by the respondent No.1 much prior to petitioner No.1, since the contents of the reports are prima-facie similar, it can be presumed that respondent No.1 has make use of the information to which he has got access while working in petitioner No.1 company, in his reports. Admittedly, the petitioners by preparing the said reports and publishing the same and selling those reports in the market for a price and respondents also preparing the same reports and selling the same in the market. Thus the petitioners prima-facie established the violation of copyright of the petitioners by publishing the reports.

Since the appellants/respondents have violated the copyright of the respondents/petitioners, if injunction is not granted in favour of the petitioners, the respondents may go on selling the reports to the customers of the petitioners and also others and make wrongful gain and cause wrongful loss to the petitioners. Thus, the balance of convenience and irreparable loss are in favour of the petitioners. Hence, the petitioners are entitled for injunction against the respondents.

The learned counsel for respondents has pleaded that the alleged infringement is only in respect of 4 reports published by them, they cannot be restrained from publishing any future reports by way of injunction and it will virtually closing down their business.

The petitioners' counsel, on the other hand, has pleaded that they came to know about the infringement of copyrights in the said 4 reports and they are yet to get information with regard to infringement in respect of other reports. Therefore, the respondents are to be restrained from publishing any reports.

The lower Court has granted temporary injunction restraining the respondents, their employees, servants, agents, partners, proprietors, directors, officers, associates or sister concern, marketing officer or any person or entity acting under their authority, as the case may be, from selling,

publishing, generating and circulating, advertising, exporting any of the reports and solutions under their name or in the name of any other entity or authority by infringing the copyrights and passing off the workmanship, authorship and literature. Even though, the lower Court has granted injunction restraining the respondents from doing the above said works by infringing the copyrights passing off workmanship of the petitioners, it virtually directs the respondents to close down their business.

Since the petitioners are only complaining about the infringement of their copyright in the 4 reports published by the respondents and if the respondents are prevented by way of injunction from selling, generating and circulating the other reports prepared by them, they will put to irreparable loss. Moreover, in case, if the respondents/petitioners failed to establish their case at the final disposal of the suit, all the reports that were prepared by the appellants/respondents may not be useful for sale and thereby they will put to irreparable loss. Therefore, the injunction granted by the lower Court has to be restricted only to the extent of 4 reports published by the 1st respondent, in which copyrights of the respondents/petitioners are infringed.

The learned counsel for the respondents/petitioners contends that if the injunction is modified there is chance of publishing some other reports by the appellants/respondents infringing their copyright. But as on today the respondents/petitioners have not placed any material to prove the said contention as they have only alleged about the infringement of copyright in the 4 reports of the appellants/respondents. Under these circumstances, if the respondents/petitioners come across any reports published by the appellants/respondents infringing copyright of the petitioners, they are at liberty to move the lower Court for any relief.

Therefore, in the above circumstances, the injunction granted by the lower Court has to be restricted only to the extent of selling, publishing, generating and circulating, advertising, exporting, reports and solutions relating to

- (i) Indian Composites Industry 2009-2014: Trend, Forecast and Opportunity Analysis".
- (ii) "Global Thermoplastic Composites Industry 2009-2014: Trend and Forecast Analysis."
- (iii) North American Composites Industry 2009-2014: Trend, Forecast, and Opportunity Analysis
- (iv) Opportunities for Epoxy in Global Composites Industry 2009-2014, by the respondents.

In the result, the Civil Miscellaneous Appeal is partly allowed restricting the injunction granted by the lower Court to the extent mentioned above with liberty to the respondents/petitioners to approach the lower Court in case of any further violation of their copyright by the appellants/respondents. Both parties are directed to bear their own costs.

----- JUSTICE N.V.RAMANA JUSTICE P. DURGA PRASAD
Dated:11-08-2011