

M/S Map Systems vs M/S Informatic Publishing Limited on 17 April, 2023

Bench: G.Narendar, P.N.Desai

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17th DAY OF APRIL, 2023

PRESENT

THE HON'BLE MR. JUSTICE G. NARENDAR

AND

THE HON'BLE MR. JUSTICE P.N.DESAI

COMMERCIAL APPEAL NO.438 OF 2022

BETWEEN:

- 1 . M/S MAP SYSTEMS
UPKAR CHAMBERS, 34/1,
RASHTRIYA VIDYALAYA ROAD,
BASAVANAGUDI,
BENGALURU 560 004.
REPRESENTED BY ITS MANAGER
DR. C.S CHETHAN KUMAR.
- 2 . MR. SATISH PANDHARPURKAR
RESIDING AT PE 307,
MAGAN SILVER HILL APARTMENT,
1ST MAIN CHIKKALASANDRA,
BENGALURU 560 061.
- 3 . MR. SOMASHEKHAR V. THALANGE
RESIDING AT FLAT NO.35,
VAKRATUND APARTMENT,
B WING, K P NAGAR,
DHANKWADI,
PUNE 411 043.

... APPELLANTS

(BY SRI. ARVIND KAMATH, SENIOR ADVOCATE FOR
SRI. SHISHIR S. RAO, ADVOCATE)

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AND:

M/S INFORMATICS PUBLISHING LIMITED
HAVING ITS OFFICES AT:
NO.194, R.V ROAD,
BASAVANAGUDI,
BENGALURU 560 004.
REPRESENTED BY ITS
CEO MR. SANJAY GROVER.

... RESPONDENT

(BY SRI. RAGHURAM CADAMBI AND SRI. MOHANKUMAR,
ADVOCATES)

THIS APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015 R/W ORDER XLIII RULE 1(R) AND SECTION 151 OF CPC, PRAYING TO A) SET ASIDE THE IMPUGNED ORDER DATED 30/08/2022 IN COM.O.S.NO.863/2022 ON THE FILES OF THE LXXXVII ADDITIONAL CITY CIVIL JUDGE AND SESSIONS JUDGE (EXCLUSIVE DEDICATED COMMERCIAL COURT AT BENGALURU) (CCH NO.88) AT BENGALURU AT ANNEXURE-B, ON I.A.NO.1 AND 2 FILED BY THE RESPONDENT AND I.A.NO.3 FILED BY THE APPELLANT AND CONSEQUENTLY SET ASIDE THE IMPUGNED ORDER DATED 18/06/2022 IN COM.O.S.NO.863/2022 ON THE FILES OF THE LXXXVII ADDITIONAL CITY CIVIL JUDGE AND SESSIONS JUDGE (EXCLUSIVE DEDICATED COMMERCIAL COURT AT BENGALURU) (CCH NO.88) AT BENGALURU AT ANNEXURE-A, WHEREBY THE TRIAL COURT GRANTED EX-PARTE TEMPORARY INJUNCTION AS PRAYED FOR IA NOS. I AND II OF 2022 AGAINST THE DEFENDANTS/APPELLANTS TILL APPEARANCE OF THE DEFENDANTS/APPELLANTS AND ETC.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND RESERVED AND COMING ON FOR PRONOUNCEMENT, THIS DAY, P.N DESAI J., DELIVERED THE FOLLOWING:

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JUDGMENT

This appeal is filed under Section 13(1A) of The Commercial Courts Act, 2015 read with section XLIII and Rule 1(r) and Section 151 of Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC' for short) challenging the impugned order passed by the LXXXVII Additional City Civil Judge and Sessions Judge (Exclusive Dedicated Commercial Court at Bengaluru) dated 30.08.2022 in Com. O.S. No. 863/2022 with a prayer to set-aside said order and allow I.A.No.III filed by the appellants for vacating exparte temporary injunction order and dismiss I.A.Nos.I and II filed by the respondent/plaintiff wherein the Trial Court confirmed the exparte temporary injunction order

against the appellants.

2. The appellants are the defendant Nos.1 to 3 and the respondent is the plaintiff before the Trial Court. They will be referred as such as per their respective rankings before the Trial Court for convenience in this appeal.

3. The Plaintiff instituted a suit in Com.O.S.No.863/2022 before the Commercial Court, Bengaluru for grant of relief of permanent injunction.

4. The brief contention of the plaintiff is that the plaintiff commenced its business in the year 1980, providing a range of library-centric products and services centred around the hosting educational content, information search and delivery support, Journal subscriptions and library consultancies. The plaintiff had for several years also deployed a third party remote authentication solution EzProxy which is a web proxy server used by libraries to provide access to restricted-access websites from outside the library computer network that authenticate users by internet protocol address. The plaintiff is the owner of all intellectual property rights including copyright, patents, data base rights and rights in trade marks, knowhow, trade secret and confidential information etc., in respect of its propriety remote access solution 'RemotLog'. It allows libraries to provide remote and secure online access to subscribed/licenced electronic content from publishers hosted on publisher's service. The defendant No.1 was working with plaintiff w.e.f. 01.12.2010 and defendant No.3 joined the service of holding company of plaintiff Informatics (India) Limited on 06.04.2012. The defendant No.1 was in discussion with external software M/s.Nowfloats Technology Pvt. Ltd. for development of remote access solution by the said vendor on behalf of the plaintiff. The plaintiff has paid Rs.17,74,800/- for development and deployment of said system. The plaintiff has also issued statement of work on 26.02.2020. The defendant No.1 liaised with vendor at every stage. The source code ownership was transferred by the vendor in relation to software GitHub ID of the plaintiff company. It was managed by the defendant No.1.

5. It is also contended by the plaintiff that the defendant No.3 was also a Regional Manager (West) of the plaintiff company and he was privy to various confidential and technical aspects of RemotLog software. The defendant No.1 tendered his resignation to the plaintiff company on 16.04.2021. He has disclosed that his new employer was M/s. MAP Systems, Bengaluru. The defendant No.1 was relieved from his responsibilities w.e.f. 17.05.2021. Similarly, the defendant No.3 was also relieved from his duty in the plaintiff company on 10.07.2021. The e-mails sent by defendant No.3 to customers of the plaintiff in respect of defendant No.2 company regarding lodging of its off-campus access to subscribed e-resources-MAPMyAccess surprised the plaintiff. Those letters were addressed to old e-mail of defendant No.3. Then the plaintiff made enquiry in this regard and recently they came to know that defendants have launched a product called 'MapMyAccess' purporting to provide off-campus access to electronically hosted library resources. It is contended that the said product is identical to the plaintiff product RemotLog. The defendant No.1 is shown as the Head- Product Development and Product Management. There is similarity between two products and it is found that every single one key feature of the plaintiff product is featured in the defendant No.2s purported product. It is contended by the plaintiff that defendant No.1 and defendant No.3 who have access to confidential information and intellectual property belonging to plaintiff have

misappropriated the same in order to create the defendant No.2 product. Now the customers of plaintiff are inducted by the defendants to avail the service of defendant No.2. The defendants are approaching various customers of the plaintiff. Therefore, after seeking legal advice, the plaintiff has filed this suit. It is further contended that the defendants are aggressively marketing their product. Therefore, the suit is filed for infringement of intellectual property right including copy right of the plaintiff and misusing its confidential and propriety information by the defendants. It has caused great prejudice and hardship to them. Hence, the plaintiff has filed the suit.

6. The plaintiff sought the following reliefs:-

1. Grant a decree of permanent injunction restraining the defendants, their assignees, employees, servants, agents, and/or any other person or entity acting through or on behalf of any or all of them, from in any manner, infringing, including by utilizing, disclosing, or commercially exploiting the confidential information and intellectual property rights of the plaintiff, including the source code, the object code, the executable code, technical know-how, trade secrets, inventions, and processes, in relation to the RemotLog software owned by the Plaintiff;
2. Grant a decree of permanent injunction restraining the defendants, their assignees, employees, servants, agents, and/or any other person or entity acting through or on behalf of any or all of them, from in any manner marketing, offering for sale/license, or in any manner commercially exploiting the software(including specifically, its source code, object code, and executable code currently being marketed by the defendants as 'MapMyAccess', along with its associated software-related services on the cloud;
3. Direct the defendants, jointly and severally, to pay the plaintiff damages amounting to Rs.1,00,00,000/-

(Rupees One Crore only) caused by the infringement of the intellectual property rights(including copyright and confidential information) of the plaintiff;

4. Grant such other and further reliefs as may be just and necessary, including costs of the suit.

7. Alongwith the plaint, plaintiff had filed I.A.No.I and I.A.No.II with the following prayer:-

I.A. No.I "For the reasons sworn to in the accompanying affidavit, the plaintiff/Applicant herein prays that this Hon'ble Court be pleased to grant an order of temporary injunction pending the disposal of the present suit, restraining the Defendants, their assignees, employees, servants, agents, and/ or any other person or entity acting through or on behalf of any of them, from in any manner, infringing, including the utilizing, disclosing, or commercially exploiting the confidential information and intellectual property rights of the plaintiff, including the source code, the object, the executable code, technical know-how, trade secrets, inventions

and processes in relation to the RemotLog software owned by the plaintiff, in the interest of justice.

Pending disposal of this application, the plaintiff prays that this Hon'ble Court may be pleased to issue an ex parte ad-interim order in the above terms. In the interests of justice.

I.A.No.II For the reasons sworn to in the accompanying affidavit, the plaintiff/Applicant herein prays that this Hon'ble Court be pleased to grant an order of temporary injunction pending the disposal of the present suit, restraining the Defendants, their assignees, employees, servants, agents, and/or any other person or entity acting through or on behalf of any of them, from in any manner marketing, offering for sale/license, or in any manner commercially exploiting the software (including, specifically, its source code, object code, and executable code) currently being marketed by the Defendants as "MapMyAccess", in the interests of justice.

Pending disposal of this application, the plaintiff prays that this Hon'ble Court may be pleased to issue an ex parte ad-interim order in the above terms. In the interests of justice."

8. The Trial Court by order dated 18.06.2022 granted ex-parte temporary injunction which is as follows:-

Ex-Parte Orders on I.A No.I and II Heard the arguments on IA I and II and perused the plaint, IAs, affidavits and the documents on record. The relief sought by the plaintiff under the IAs to grant an order of T.I pending disposal of the suit, restraining the defendants and their agents, or on behalf of any of them, from infringing, including by utilizing, disclosing, or commercially exploiting the confidential information and intellectual property rights of the plaintiff, including the source object, executable codes, technical know how, trade secretes and processes in relation to the RemotLog software owned by the plaintiff and restraining the defendants from in any manner marketing, offering for sale/license, currently being marketed by the defendants as MapMyAccess.

After perusal of the same and the documents highlighted by the counsel for plaintiffs, at this stage the plaintiff company has made out prima-facie case, balance of convenience and the hardship in favour of it to grant ex-parte T.I against the defendants as prayed in IA Nos. I and II, otherwise, the plaintiff company will be put to great and irreparable loss. Hence, it is just and proper, I proceed to pass the following:

ORDER Issue ex-parte T.I. as prayed in IA Nos. I and II against the defendants till appearance of the defendants.

The plaintiff shall comply under Order XXXIX Rule 3 CPC.

Issue ex-parte T.I orders, emergent notice on IA Nos. I and II and SS to defendants through Court and RPAD.

The plaintiff shall pay the PF and RPAD covers forthwith.

Call on by 25.7.2022.

Sd/-

9. Aggrieved by above order, defendants filed I.A.No.III for vacating the temporary injunction under Order XXXIX Rule 4 r/w 151 CPC for setting aside the exparte temporary injunction order passed by the Trial Court on I.A.No.1 and I.A.No.II in favour of the plaintiff. I.A.No.III filed by the appellants-defendants was dismissed and the order dated 18.06.2022 was confirmed by the Trial Court by its subsequent order dated 30.08.2022 which is now challenged by the defendants/appellants in this appeal.

10. It is contention of the appellants that defendant No.2 was founded in the year 1993. It is an India-based entity and a partnership firm which has delivered creative and technology solutions to diverse industries including education, manufacturing, E-commerce, automobile, publishing, gaming, product design & development, etc., across the globe. The defendant No.2 follows a customer-centric work approach and believes in delivering the highest level of services to its customers both in terms of quality and fair pricing. As a result, the defendant No.2 is positioned as one of the most reliable service providers in the domains that they cater to and also the defendant No.2 is an ISO/IEC 27001:2013 certified entity.

11. It is further contended that defendant No.2 caters to the needs of its clients through its creative and technology services as well as innovative line of indigenous products in the technology domain. One of the major focus areas is in the field of education. Apart from the standard services which the appellant No.1/defendant No.2 has been providing in the education sector for more than 20 years, the key technology products of defendant No.2 include MAPMyClasses and MAPMyLibrary, both of which are designed to address the specific needs of entities operating in the education industry by making learning easier and interactive through an enhanced access to key resources. These products were made by the appellant No.1/defendant No.2 using its own research and development, through skills of its team members and based on the rich experience that the defendant No.2 has in providing services in the education sector.

12. It is further contended that defendant No.2 has got team strength of 192 persons. It has a reputed permanent customers. It was in the field of education for a long time. The defendant Nos. 1 and 3 approached separately in their individual capacity and stated that they have resigned from their erstwhile company. They had necessary qualification skills hence they were inducted. It is relevant to note that there are several vendors or service providers in the field of digital library services like RemoteXS, MyLOFT, LSRemote, Knimbus, Open Athens, EzProxy, RefRead. Thus there is no monopoly of any entity in this field. The details of M/s. NowFloats Technologies Private Limited are publicly accessible and hence anyone could have contacted the said company.

13. It is further contended that the plaintiff filed a suit by suppressing the material facts. The defendants have filed written statements. The Trial Court failed to consider that RemotLog software and MapMyAccess were created by third party i.e., M/s. NowFloats. The said software was based on its own software Kitsune Proxy. Plaintiff did not have any prima facie case or any intellectual property right in RemotLog software. Restraining the appellant from making a MapMyAccess is contrary to law and material on record. The defendant No.2 has paid Rs.21,24,000/- to develop its software. The plaintiff does not have any monopoly in the market as there are already other marked players such as RemoteXS, MyLOFT, LSRemote, Knimbus, Open Ahtens, EzProxy, RefRead.

14. The appellants contended that MapMyAccess (for short MMA) was developed by M/s. NowFloats Technologies Pvt., Ltd., where appellant No.2 had paid money for valuable consideration. Plaintiff has not made out any ground for grant of injunction. There is no balance of convenience in favour of the plaintiff/respondent, but the balance of convenience lies in favour of the appellants/defendants. Plaintiff has failed to prove any irreparable loss if the injunction is not granted. The cause of action shown is more than 13 months. The plaintiff has sought damages in this suit also. All the allegations of plaintiff are false. The conduct of the plaintiff disentitle him to seek for discretionary relief. It is contended that the Trial Court failed to consider the objection filed by the defendants and documents produced by them. The Trial Court has not considered the contention of the appellants that there are no documents to show any ownership or proprietary rights in the alleged technical know-how, trade secrets, invention and processes in relation to 'RemotLog' software. There is no prima-facie material to establish as to how 'MapMyAccess' software, its source code, object code, executable code is same as that of RemotLog. Simply because the defendants are in the same field of education sector, that does not mean that there is infringement of any right of the plaintiff. Already there are multiple players in the market in the field of Remot Access digital library, the plaintiff has no monopoly in the education sector. Therefore, the appellants prayed to set aside the impugned order and allow the appeal as prayed.

15. Heard the learned Senior Counsel Sri. Arvind Kamath, for Sri. Shishir S Rao, for the appellants/defendants and Sri. Raghuram Cadambi and Sri. Mohan Kumar, learned counsels for the respondent/plaintiff.

16. Learned Senior Counsel for the appellants Sri. Arvind Kamath, argued that the plaintiff has not made the software in-house, it was made by third party i.e., M/s. NowFloats Technologies Pvt., Ltd., (hereinafter referred to as M/s. 'NTPL' for short). The present dispute is in respect of two softwares called as 'RemotLog' and 'MapMyAccess'. Plaintiff has admittedly no expertise to develop the software, as the software was developed by M/s. NTPL. Plaintiff which was using EzProxy. As stated, there are already other market players. The plaintiff's e-mail clearly shows that the 'RemotLog' is not any novel software made by plaintiff under their instructions. It was based on the information existing in softwares EzProxy, RemoteXS and CBolith and other computers. Learned counsel argued that there is no exclusive agreement by M/s. NTPL that it do not provide its service to anyone and only to the plaintiff. Whether the software MapMyAccess was created using confidential information of the plaintiff or not is to be decided at the trial. That requires evidence. On the other hand, M/s. NTPL is the common creator of both the softwares of plaintiff and defendants. The plaintiff objected for impleading the said M/s. NTPL as party to the suit deliberately when an application is filed by

the defendants to implead M/s. NTPL as defendant No.4. There is no material to show that defendant Nos.1 and 3 disclosed any confidential information of plaintiff to defendant No.2 so as to amount infringement of any right. There is no prima facie material to show that defendant Nos.1 and 3 have used confidential information of the plaintiff in any way. They are no more employees of plaintiff. Defendant No.1 being a Senior position officer, he has intrinsic knowledge about the technology. He is free to use intrinsic knowledge and skill.

17. Learned Senior counsel further argued that the information cannot be termed as confidential information merely it is claimed by a party. It is further argued that the plaintiff nowhere disclosed or stated what is the confidential information. The Trial Court has not given any finding whether the plaintiff has any intellectual property right in its application to RemotLog. There is nothing to show infringement or breach of any rights of plaintiff by the defendants. Hence, learned counsel prayed to allow the appeal and set aside the impugned order by vacating the interim injunction order.

18. In support of his argument, learned counsel for appellant relied on the following decisions:-

1. Kenrise Media Pvt., Ltd. And Ors. Vs. Ashish of 2020 dated 03.06.2021.
2. Garware-wall Ropes Ltd Vs. M/s. Techfab India and Ors. 2008 SCC Online Guj 80.
3. Zenith Mataplast Pvt. Ltd. Vs. State of Maharashtra and Ors. reported in (2009) 10 SCC 388.

19. Learned counsel for the respondent/plaintiff Sri. Raghuram Cadambi argued that the defendant Nos.1 and 3 were earlier employees of the plaintiff/respondent. Their appointment order discloses the confidential clause. They were bound by the confidentiality obligations under the employment agreement. Defendant No.1 has created a high level documents and circulated high level wish list to plaintiff setting out the desired specification of proposed Remote Authentication Software. M/s. NTPL issued a statement of work on 26.02.2020 setting out the specification of the software and entire technical architect. This document was customised on the basis of the specific requirements, technical architecture and tools and technologies requested by the plaintiff. The defendant No.1/second appellant was the privy to all these discussions, since he was leading the coordination of the development with M/s. NTPL on behalf of plaintiff.

20. It is further argued by learned counsel that the defendant No.1/second appellant was solely coordinating with the vendors of M/s. NTPL and he has personally handed over the source code, the system architecture, technical information relating to software and was also trained in this regard by M/s. NTPL. All these information was not only intellectual property i.e., copyright of the respondent, but also expressly confidential in nature both in terms of employment agreement and non disclosure agreements entered with M/s. M/s. NTPL. On 16.04.2021, second appellant tendered the resignation and on 10.06.2021, third appellant also tendered the resignation and immediately they joined the first appellant. The first appellant claims to have launched the MapMyAccess in May 2021 itself. The statement of work to the vendor to whom they claim have developed the software, was issued on 29.06.2021 and was nearly identical to the statement of work dated 26.02.2020 in

favour of the respondent. Therefore, the second appellant for the benefit of first appellant misappropriated this intellectual property consisting of both copy right and confidential information. The respondent's intellectual property rights have been infringed as the second appellant was privy to all confidential information and source code while he was an employee of the respondent. The learned counsel argued that the Trial Court after considering the prima facie case and confidential nature of information and on comparison of two sets of documents has issued the ex-parte injunction order and confirmed the same after hearing both sides. Learned counsel argued that the contention with respect to delay defeating injunction and damages as a bar to temporary injunction, jurisdiction of Commercial Courts, argued that such contentions were neither pleaded nor argued before the Trial Court and same cannot be allowed in appeal. Further, the learned counsel argued that particularly in cases relating to intellectual property right, delay does not defeat relief for seeking grant of injunction. In support of his argument, he relied on the decision of the Hon'ble Supreme Court in case of Midas Hygiene Industries Pvt., Ltd., and Anr. Vs. Sudhir Bhatia and Ors. reported in 2004 (3) SCC 90 and at para No.5 it is held as under:

"5. The law on the subject is well settled. In cases of infringement either of trade mark or of copyright, normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark was itself dishonest."

21. The learned counsel further argued that Section 55 of the Copyright Act provides both injunction and damages. In a similar case, this Court in a decision in the case of M/s. Inphase Power Technologies Pvt., Ltd., and Ors. Vs. M/s. ABB India Ltd., reported in ILR 2017 KAR 522 has confirmed the injunction when the damages were sought. The contention that no injunction can be granted when the damages are claimed, is not tenable. The jurisdiction of Commercial Court would not exclude in view of Section 2(c)(xvii) of The Commercial Courts Act. With these arguments, learned counsel prays to dismiss the appeal.

22. In support of his arguments, learned counsel for the respondent relied upon the following judgments.

1. V.V. Sivaram and Ors. V. Foseco India Ltd., Pune, reported in 2005 SCC OnLine Kar 595;
2. M/s. Inphase Power Technologies Pvt. Ltd. and Ors v. M/s. ABB India Ltd., reported in ILR 2017 Kar 522.
3. Bombay Dyeing and Manufacturing Co. Ltd. v. Mehar Karan Singh, reported in 2010 (7) Mh.L.J. 48.
4. Hi-Tech Systems and Services Ltd. v. Suprabhat Ray and Ors., reported in 2015 SCC Online Cal 1192.

5. John Richard Brady and Ors. V. Chemical Process Equipments Pvt. Ltd. and Anr., reported in 1987 SCC OnLine Del 236.

6. Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd. and Ors. reported in 2003 (3) Mh.L.J. 695.

7. Midas Hygiene Industries (P) Ltd. and Anr. V. Sudhir Bhatia and Ors. reported in (2004) 3 SCC 90.

8. Diljeet Titus, Advocate v. Alfred A. Adebare and Ors. reported in 2006 SCC OnLine Del 551.

23. From the above, the points that arise for our consideration are:

- 1) Whether the plaintiff has made out prima facie case for grant of temporary injunction?
- 2) In whose favour balance of convenience lies?
- 3) Whether the plaintiff will suffer irreparable loss and hardship which cannot be compensated in terms of money if the order of temporary injunction is not granted?
- 4) Whether the impugned order passed by the Trial Court is illegal, capricious and needs interference by this Court?
- 5) What order?

24. It is settled principle of law that this Court being the Appellate Court will be slow in interfering with the order of grant or refusal of temporary injunction as it is discretionary power of the Trial Court. In order to grant temporary injunction, the Trial Court has to see the prima facie case, balance of convenience and comparative hardship to the parties. The Court has to also consider whether the damages could be adequate remedy. The appellate Court has to see whether the discretion is exercised judicially or capriciously.

25. It is not in dispute that the appellants-defendants are marketing the software called 'MapMyAccess'. Said software enables remote access to online resources. The plaintiff is also marketing online resource software through 'RemotLog'. As evident from the plaint, said software was made by M/s. NTPL. The plaintiff's software is based on the information which was publicly available from the free softwares such as EzProxy, RemoteXS, Shibboleth and other competitors. M/s. NTPL owns Kitsune Proxy and it provides service to several clients. Kitsune Proxy is based on open- source code and also used other open-source based software of other competitors such as Ezproxy, RemoteXS in order to create RemotLog. It is evident from the documents produced before the court that RemotLog was created by using other open-source code software. Same is evident from the documents filed alongwith Statement of Work(SoW) in respect of Remote Access Solution.

The team is shown as Team Kitsune and plaintiff's software was prepared by M/s. NTPL. It is also evident from the Document 8 produced at Volume 1 that any request to Kitsune Proxy and content server will be secured and encrypted with SSL. The Document No.8 of plaint at Page 160 also shows that the contents referred in the said document is verbatim obtained from website Ezproxy. Therefore, the entire remote access solution of the plaintiff is based on Kitsune proxy server of M/s. NTPL. The document indicates that the information recorded in SoW is not confidential information, but the same is obtained from the public information website such as websites of EzProxy. As it is evident that RemoteLog is based on open-source code and public information which is also created by M/s. NTPL, therefore, the contention of the plaintiff that the confidentiality of the plaintiff's software was infringed by the defendants has no basis at all.

26. In order to appreciate the same, it is necessary to look into the contentions of the appellants/defendants and their software. The appellants' "MapMyAccess" software is developed by same M/s. NTPL. It is also evident that appellant No.1 has paid Rs.21,24,000/- in order to prepare the said software, the source code, object code and all deliverables. It is also evident that MapMyAccess was created by third-party vendor M/s. NTPL, as evident in the SoW issued by defendant No.2 by using Kitsune proxy which is again an open-source code. It is evident that the plaintiff and defendants' software have some similar objects of providing remote access to online resource.

27. It is evident that the plaintiff has not created the software on its own. According to the plaintiff, they have paid Rs.19,72,000/- and in an independent contract between plaintiff and M/s. NTPL for development of a software for remote access to online resource. M/s. NTPL had developed MapMyAccess for defendant No.2 by using open-source codes and resources for a consideration of Rs.21,24,000/-.

28. It is not the plaintiff's case nor there are documents to show that there was any agreement between the plaintiff and M/s. NTPL that the latter would not provide its services to anyone except the plaintiff nor there is any such contract between the plaintiff and defendants.

29. The main contention of the plaintiff is that defendant Nos.1 and 3 were working earlier in their company and they being erstwhile employees of their company were aware of the source code of RemoteLog and they have disclosed the confidential information to defendant No.2 and after joining defendant No.2 company.

30. It is not disputed that defendant Nos.1 and 3 have left the plaintiff's company and they have joined the defendant No.2 company. M/s. NTPL is a common creator of plaintiff's software and defendants' software. It is contended by learned counsel for the appellants that defendant No.1 was in a senior-most position in the plaintiff's company and he had intrinsic knowledge about the technology and remote-access to an online resource and he cannot be barred from using such intrinsic knowledge. As per the employment undertaking letter, it is the confidential information with the plaintiff that was prohibited to be disclosed to others, but not their intrinsic knowledge. But once defendant Nos.1 and 3 left the plaintiff's company, they are not prohibited from using their intrinsic knowledge or skill for development of any software in respect of company which they have

joined.

31. No documents or materials are referred by the trial court to show that defendant Nos.1 and 3 have used the confidential information such as source code, object code, executable code of the plaintiff to create appellants' software. Therefore, the question of infringement of confidential information or infringement of intellectual property rights of software of the plaintiff does not arise. The Trial Court without any basis or reason has observed that defendant Nos.1 and 3 have infringed the confidentiality. The plaintiff has nowhere disclosed what is the confidential information disclosed by defendant Nos.1 and 3. As stated above, defendants' software is creative work made by M/s. NTPL only. The plaintiff nowhere alleges anything against M/s. NTPL. The plaintiff does not state it is M/s. NTPL which has violated the terms of agreement and instructions which are confidential in nature. No such allegations are made against M/s. NTPL. Admittedly, the defendants have paid huge amount i.e., more than Rs.21.00 lakhs to M/s. NTPL. Most of the information about software is available to the public and it is a public domain. It becomes public property and anyone can share it. In this regard, learned counsel for the appellants has relied upon recent decision of the coordinate Bench of this Court in the case of Kenrise Media Pvt. Ltd., and Ors. Vs. Ashish K. Mishra and Ors., in COMAP No.37/2020 dated 03.06.2021, wherein at paras 40 and 61, it is held as under:-

40. "The learned Single Judge of Delhi High Court, in the case of Diljeet Titus, Advocate -vs- Alfred A. Adebare and others quoted the observations made in the aforesaid decision of the British Court in the case of Coco (supra) with approval in paragraph-30 in his Judgment. Thus, information cannot be termed as a confidential information merely because it is claimed by a party. As observed in the case of Coco (supra), the information must "have the necessary quality of confidence about it". If the information is a public property and is in public knowledge and such information is shared, it cannot be said it will lead to a breach of confidence.

Secondly, that information must have been imparted in circumstances importing an obligation of confidence. In a given case, the obligation of confidence need not be express but it can be implied. Thirdly, there must be an unauthorized use of that information to the detriment of the aggrieved party or to the detriment of a third party whom the aggrieved party wishes to protect. It is in this context, we have to appreciate the factual aspects of the case on hand.

61. As regards balance of convenience and irreparable loss caused to the appellants, it is necessary for this Court to make a reference to the prayer clauses (F), (G), (H) and (I) of the plaint. The said prayer clauses contains the following prayers:

"(i) A decree, directing the first respondent (defendant No.1) to refund a sum of Rs.30,00,000/-

to the appellants Nos.2, 3 and 4 (along with permissible interest under Interest Act, 1979) from 31st July 2019 until the eventual repayment;

(ii) A decree against the first respondent, directing him to pay a sum of Rs.50,00,000/- towards liquidated damages owed to the appellant/Plaintiff;

(iii) A decree, directing the fifth and sixth respondents to pay a sum of Rs.50,00,000/- jointly and severally to the first appellant as damages owed to the appellant No.1;

(iv) A decree, directing the fifth and sixth respondents to pay a sum of Rs.1,00,00,000/- joint and severally to the first appellant/Plaintiff No.1, for the unauthorized use of first appellant's confidential information."

The prayers made as above clearly indicate that the alleged loss which may be caused to the appellants due to the alleged breaches of restrictive covenants of various agreements by the respondents can be always compensated in terms of money.

Hence, prima facie, the appellants have failed to substantiate that the balance of convenience lies in their favour and irreparable loss will be caused to them if temporary injunction as prayed is not granted."

32. The coordinate Bench also referred to other cases. In view of the decision of the coordinate bench, if the plaintiff's allegations are considered, the information cannot be termed as 'confidential' information, unless it has necessary quality of confidentiality about it. If the information is a public property and is in public domain and such information is shared, it cannot be said it will lead to a breach of confidence. Therefore, defendants product which was made by same M/s NTPL cannot be termed as created by using confidential information of the plaintiff. Hence, the question of plaintiff having prima-facie case does not arise. The learned Judge of the Trial Court in one word has stated that he has carefully scrutinized, compared the bulk documents of both parties with each other and they supported the plaintiff's case. Without discussing anything about what is confidentiality and how the plaintiff's confidential information is disclosed or used by the defendants, what are those documents, nothing is forthcoming from the order of the Trial Court to arrive at such a conclusion. Simply stating that plaintiff and defendants are doing similar business does not infringe a copyright or other right, if any. The question of irreparable hardship to the plaintiff does not arise. The learned Judge of the Trial Court wrongly understood that if two persons are doing similar business and one who is doing earlier business is having exclusive right over the said business and no other person in the world can carry out similar business. Admittedly, no such copyright is registered or trademark is registered. On the other hand, the plaintiff and defendants have paid amount to M/s. NTPL. Therefore, without referring to the documents produced by both the parties, when there is no material placed to show any intellectual property rights have been violated, the observation of the Trial Court that the plaintiff has got prima-facie case, simply because of nature of business of the appellants and plaintiff is one and the same, is erroneous.

33. The learned counsel for the appellants relied on decision of the Gujarat High Court in the case of Garware- wall Ropes Ltd., v. M/s. Techfab India & Others reported in 2008 SCC Online Guj 80 wherein it is held that no injunction can be granted unless it is established by the plaintiff that plaintiff would suffer an irreparable injury and compensation for loss or damage would not be an

adequate remedy. It is also held that ordinarily the court would not disturb the status-quo prevailing on the date of the suit.

34. It is not disputed that the defendants infact filed an application to implead M/s. NTPL as party in the suit, but the plaintiff opposed the said application. As evident from the objection of the plaintiff to the impleading application that M/s. NTPL has no nexus with the relief relating to confidential information disclosed to defendant No.2 by defendant No.1 and defendant No.3. Plaintiff has stated that the plaintiff has no cause of action against M/s. NTPL and impleading M/s. NTPL is not necessary. Therefore, according to the plaintiff, M/s. NTPL has also not committed any infringement of intellectual property rights nor disclosed any confidential source code to the defendants. When the plaintiff himself asserts that M/s. NTPL has not committed infringement of intellectual property rights, then there is no balance of convenience in favour of the plaintiff.

35. The plaintiff has shown cause of action in the plaint on 30.10.2020 and also on 23.07.2021. Defendants have developed MapMyAccess software having contract with M/s. NTPL. Therefore, the contention of the plaintiff that defendant No.2 developed said software, infringed intellectual property rights and divulged confidential information has no basis at all. The defendants MapMyAccess was launched on 23.07.2021. Suit was filed nearly after one year.

36. Learned counsel for the appellants has relied upon the decision of the Hon'ble Supreme Court in the case of Zenit Mataplast Private Limited Vs. State of Maharashtra and others, reported in (2009) 10 SCC 388, wherein at paras 37 and 38, it is held as under:-

37. Thus, the law on the issue emerges to the effect that interim injunction should be granted by the Court after considering all the pros and cons of the case in a given set of facts involved therein on the risk and responsibility of the party or, in case he loses the case, he cannot take any advantage of the same. The order can be passed on settled principles taking into account the three basic grounds i.e. prima facie case, balance of convenience and irreparable loss.

38. The delay in approaching the Court is of course a good ground for refusal of interim relief, but in exceptional circumstances, where the case of a party is based on fundamental rights guaranteed under the Constitution and there is an apprehension that suit property may be developed in a manner that it acquires irretrievable situation, the Court may grant relief even at a belated stage provided the court is satisfied that the applicant has not been negligent in pursuing the case." But here no exceptional circumstances are shown or discussed by the trial court to grant interim relief belatedly as held by Hon'ble Supreme Court in the above decision.

37. It is not the allegation that defendant Nos.1 and 3 have copied the software or source code of plaintiff and took it away and used in preparation of software of defendant No.2 'MapMyAccess'. As rightly contended by learned counsel for the appellants, source code is not a short formula and it cannot be memorized by defendant Nos.1 and 3. Said documents runs to several pages. If at all defendant Nos.1 and 3 have copied or used source code, then there is no necessity for the defendants to have contract to the tune of Rs.21,24,000/- with M/s. NTPL to develop their software. The plaintiff has to show before the court as to how the design and structure of both the softwares,

source code and wish list of the defendants' software are based on the information given by defendant Nos.1 and 3. Simply because, there is similarity in the business, no injunction can be granted casually without going into details of the documents placed, as to how the similarity has affected or infringed the plaintiff's alleged copyright or intellectual property right.

38. In the case of Midas Hygiene Industries Pvt Ltd. V. Sudhir Bhatia and others reported in (2004) 3 SCC 90, which decision is relied on by learned counsel for the respondent, will not help the plaintiff as there is prima-facie no discussion made by the Trial Court to show infringement of any such copyright. The learned counsel relied upon the decision of the learned Single Judge of this Court in the case of M/s Inphase Power Technologies Vs. M/s ABB Indian Ltd., reported in ILR 2017 Karnataka 522. The facts of that case are totally different.

39. The learned counsel for the respondent relied on the decision of the Single Judge of this Court in V.V. Sivaram and Ors. v. Foseco India Ltd., Pune reported in 2005 SCC Online Kar 595. In the said case, section 27 of the Indian Contract Act, 1872 was considered and any restriction on employee in restraint of trade is completely void unless limited to the duration of the agreed service. In that case, defendant Nos.1 and 2 were ex-employees of the plaintiff. Thereafter, defendant Nos.1 to 3 formed defendant No.4 and they have offered to supply a product at a much cheaper rate. The defendant Nos.1 to 3 formed defendant No.4 and started to manufacture CIP similar to Turbostop through the information received by defendant Nos.1 and 2 by defendant No.3. But the facts of this case are totally different.

40. The decision referred in M/s. Inphase Power Technologies vs. M/s. ABB Indian Ltd., reported in ILR 2017 Karnataka 522 will also not help the plaintiff as the decisions referred by learned Single Judge regarding interference by Appellate Court with the exercise of discretion of court of first instance are very well settled. Even in that case also, there was a patent registration number and injunction to the employees for misappropriating or distributing plaintiff confidential information. In that case, the limited order was granted and the rest of the relief of the plaintiff was rejected, the appeal also came to be dismissed.

41. The decision in the case of Bombay Dyeing and Manufacturing Co. Ltd., v. Mehar Karan Singh, reported in 2010(7) Mh.L.J. 48 referred above, is also of no use to the plaintiff as the said case dealt with employee disclosing any confidential information despite there being no express mentioned in the contract. It was a suit against divulgence and disclosure of confidential information. There the defendant was directed not to divulge the confidential information. Again that decision will not help the plaintiff as the plaintiff's RemotLog was created by M.s. NTPL which is also the creator of defendant No.2 software on payment of money. The plaintiff has no grievance against M/s NTPL. There is no allegations against NTPL and no reasons are assigned by the Trial Court to show that any such confidential information was either divulged by defendant Nos.1 and 3 or the same was used for creating defendant No.2 product. No documents were discussed.

42. In the case of Hi-Tech System and Services Ltd., v. Suprabhat Ray and Ors., reported in 2015 SCC Online Cal 1192, relied by plaintiff will also not help the plaintiff. In that case, the defendants acted in breach and are in the process of utilizing trade secrets and confidential information and

their restraint.

43. The decision of Delhi High Court in John Richard Brady and Ors. v. Chemical Process Equipments Pvt. Ltd., and Anr., reported in 1987 SCC Online Del 236 will also not help the plaintiff/respondent. In that case, a fodder production unit was invented by Brady. His application for grant of patent was pending. The drawings are his original artistic right. He is the owner of copyright in the drawings. In that case, he set up the company. He sought quotation for supply of thermal panels manufactured by it. To enable the defendant to send quotation, he has sent details of drawings and other information. The defendants visited the plaintiff. Then they also started fodder production unit by different name. Under such circumstances, the injunction was granted. So that case will not help the plaintiff as the facts and issues are totally different from this case.

44. The decision in the case of Zee Telefilms Ltd., V. Sundail Communications Pvt. Ltd., reported in 2003 (3) Mh.L.J. 695 will not help the plaintiff as it was held that an idea is not protected by copyright.

45. The decision in the case of Diljeet Titus, Advocate v. Alfred A. Adebare and Ors. reported in 2006 SCC Online Del 551 also will not help the plaintiff. In that case, the matter was between Advocates and their associates. There the defendant who was working with the plaintiff have parted with the law firm. There was dispute regarding creation of copyright. There a limited injunction was granted only not to utilize the agreements due diligence report of plaintiff which came to their knowledge. The court held the defendants are free to carry on their profession, utilize the skills and information they have mentally retained and they are restrained only from using copied material of the plaintiff in which the plaintiff alone has a right. Therefore the facts of that case will not help the plaintiff in any way. There is nothing to show as already stated that defendant Nos.1 and 3 either copied the source code or used confidential information of the plaintiff.

46. This Court would not normally interfere in the discretionary relief of the Trial Court as the grant of injunction is discretionary power, but if the order is perverse and illegal and is not based on any material placed before the Court and if it does causes great hardship to other party who cannot be ultimately compensated if he succeeds, then no interim injunction can be granted.

47. The Trial Court without referring to any material and without considering that the plaintiff has no prima facie case has simply stated that there is prima-facie case. There is no balance of convenience in favour of the plaintiff.

48. The learned Single Judge of this Court in the case of Sri Gowrishankara Swamigalu v Sri Siddhaganga Mutt reported in ILR 1989 Kar 1701, discussed way back in 1989, the principles for consideration of Court for grant or refusal of temporary injunction with reference to American Cyanamid Co. v Ethicon Ltd. reported in ILR 1976 KAR 426 at paras 25 and 26 it is observed:-

25. " I need hardly add the existence of a prima facie case in these matters of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was

no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself. But if there was a prima facie case then other considerations governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction.

26. In other words the existence of a prima facie case or even a very strong prima facie case does not permit leap-

frogging by the plaintiff directly to an injunction without crossing the other hurdles in between, In England before the advent of the decision in *AMERICAN CYNAMID CO. v. ETHICON LTD* ILR 1976 KAR 426. referred to and followed by this Court in *L.I.C. v. Bangalore L.I.C.E.H.C.S. LTD.* the existence of a prima facie case strong enough to ensure fool-proof success ultimately of the lis was treated as the criterion for the grant of any ad interim injunction. But that view underwent a sea change following the decision in *Cynamid Company v. Ethicon Limited* wherein the House of Lords said, in order to ascertain whether a prima facie case did exist or not, it was not necessary to hold a mini trial at the threshold but it would be sufficient if an endeavour was made by the Court to identify that the suit 'Claim was neither vexatious or too casual for consideration. It is in that context this Court in *L.I.C. v. Bangalore L.I.C.E.H.C.S. Ltd.* made the following statement at para 24:

"The preventive remedy of injunction is thus granted as an instant antidote to stop or prevent the invasion of the plaintiff's rights in regard to which a complaint is made. The Court having regard to the expediency involved should not embark upon a nit-picking operation at that stage by holding a mini trial to lay thread-bare the case of the plaintiff to find out if a prima facie case is made out or not. It would be sufficient if the Court is assured that questions raised by the plaintiff are not vexatious or too casual, but are such as to merit serious consideration at a subsequent stage."

There is overwhelming authority- for the proposition that mere existence of a prima facie case or a very strong prima facie case does not ipso facto justify the grant of an injunction (See in this connection *J. KRISHNAMOORTHY v. BANGALORE TURF CLUB* ILR 1975 KAR 1957, and *NATIONAL ADVERTISES v. M.S.R.T.C* 1963(2) Mys.L.J. 356. Therefore even granting that the plaintiff has an invincible prima facie case, he will not be entitled *ex debitaie justicie*, to the grant of an injunction unmindful of other consequences. If the consequences of granting an injunction are detrimental in nature then an injunction will not be granted even though the plaintiff might have an unbeatable prima facie case. It is precisely for this reason and just as the learned Judge in the Court below did, I must also desist from pronouncing finally on the question of niceties raised and argued by both sides touching the tainted character or otherwise of the impugned order made by the Senior Pontiff in removing the junior from office. A Court, it is said, like a human being must cross a bridge only when it comes across the same and not leap blindly even before it is reached and, it being not necessary to decide all these questions at this stage, I must desist from recording a finding on all these questions as that would be forestalling the issues arising in the suit."

49. The reasoning of the Trial Court starts from para 10 of the orders passed on I.A.No.I to III dated 30.08.2022, wherein the Trial Court has simply stated that the plaintiff has produced several documents in page Nos.37 to 172 and 8 decisions in page Nos.1 to 138 and the defendant produced several documents in ink page Nos.22 to 230 and produced three citations in page Nos.1 to 57. The Trial Court neither referred as to what are those documents produced by the plaintiff nor referred by the defendants. Simply it is stated that after perusing the rival contentions of the parties and the documents, it is admitted fact that the nature of works of the plaintiff and defendant No.2 are one and the same. Though the Trial Court has observed that there is no bar to do the same business and defendant has got every right to do the same business, but simply stated that the nature of business of the plaintiff and the defendant are one and the same. On what basis the said finding is arrived is not forthcoming and the Trial Court has misunderstood that similar business is their prima-facie case. The Trial Court observed repeatedly the word same work. It has stated that the plaintiff is doing the business of sales of the similar products in the market, which has adverse inference on the plaintiff. Without stating as to how similar product affects the plaintiff, it has arrived on this conclusion. Simply, the Trial Court has stated that it has gone through the documents of both sides, the general terms of appointment letter entered between the plaintiff and defendant Nos.1 to 3 and held that the confidential conditions that forms part of employment contract will survive even after defendant Nos.1 and 3 leave the company. Without discussing as to what are the general terms of appointment letter and without stating as to what are those documents, the Trial Court simply vaguely and generally observed that the documents produced by the plaintiff when compared with the documents produced by the defendants are similar one and similar products i.e., RemotLog Access solutions, which prima- facie shows the defendants are doing the business similar to the business of the plaintiff and it adversely affected on the business of the plaintiff. How it has affected the business of the plaintiff is not stated. The Trial Court simply stated that it has carefully scrutinized and compared the bulk documents of both the parties and they all support the contention of the plaintiff and the defendants are necessary to be restrained, otherwise, the plaintiff would be put to irreparable loss and simply in one word, it is stated that the plaintiff has made out a prima-facie case and balance of convenience and has confirmed the interim order dated 18.06.2022 passed on I.A.No.1 and 2. So the reasoning given by the Trial Court is vague and general one and it is not supported by any reasons. It is also evident that the learned trial Judge has not considered the points urged by the appellants and the respondent's counsel.

50. In the light of the discussions made, if the impugned order of the Trial Court is considered, then that order is passed without referring to any documents, without considering the rival submissions made by both the parties and without discussing as to how the decisions relied on by both parties are either applicable or not applicable. Such a vague and general order is not in conformity with the settled principles regarding grant or refusal of temporary injunction. Therefore, such an order needs to be set-aside and the matter requires to be remitted back to the Trial Court to consider the matter afresh uninfluenced by any of the observations made by this Court in this order. The Trial Court shall meticulously consider and discuss relating to the documents produced by the parties and how it has compared them and how the decisions relied by the parties are either applicable or not applicable. Simply in one word stating that it has scrutinized the documents, verified all the documents without stating as to what is there in the documents, the order passed is not proper.

In the light of the principles regarding grant or refusal of temporary injunction, therefore, such order being without reasons is unsustainable and needs to be set-aside.

Accordingly, we pass the following:-

ORDER

1. The appeal is allowed-in-part.

2. The order dated 30.08.2022 passed in Com. O S No.863/2022 by learned LXXXVII Addl. City Civil Judge and Sessions Judge(Exclusive Dedicated Commercial Court at Bengaluru) (CCH No.88), Bengaluru is hereby set-aside. The temporary injunction dated 18.06.2022 granted by the Trial Court against the defendants is vacated. The order dated 18.06.2022 passed on I.A.I and II is hereby set-aside. Consequently, the I.As.I, II and III are remitted back to the Trial Court for consideration afresh without being influenced by any of the observations made in this case, in accordance with law.

4. No order as to costs.

Sd/-

JUDGE Sd/-

JUDGE BVK/ MN