

Navigators Logistics Ltd. vs Kashif Qureshi & Ors on 17 September, 2018

Equivalent citations: AIRONLINE 2018 DEL 1483

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 17th September, 2018.

+ CS(COMM) 735/2016, CCP(0) Nos.45/2016 & 46/2016, IAs
No.7964/2016 (for directions), 7421/2016 (u/0 XXXIX R-1&2
CPC), 7422/1016 (u/0 XXVI R-9&10 CPC) & 13684/2016 (u/0
VII R-11 CPC)

NAVIGATORS LOGISTICS LTD. Plaintiff
Through: Mr. Tariq Muneer, Adv.

Versus

KASHIF QURESHI & ORS. Defendants
Through: Mr. Rikky Gupta, Adv. for D-1,2,4,6 to
8.
Mr. Manish Vashisht & Mr. Sameer
Vashisht, Advs. for D-3&5.
Mr. Amarendra Kumar Dubey, Adv. for
D-11.
Mr. Murari Kumar & Mr. Santosh
Kumar Deepak, Advs. for D-12.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff instituted this suit against as many as twelve defendants, pleading i) that the plaintiff is engaged in the field of logistics and freight forwarding services; ii) that the plaintiff has developed and evolved very distinctive, detailed and comprehensive data, information and databases pertaining to running of its business; iii) that this includes all the confidential data, customer database, accounts information, airway drawings, airway bills templates, plans, reports, taxes and other financial information; iv) that the aforesaid confidential data and information
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constitute the trade secrets of the plaintiff and are in the digital format and are stored on computers, computer systems, computer networks, computer resources and communication devices of the plaintiff; v) that the said information, data and other related material are original artistic and literary works of the plaintiff within the meaning of Section 2(c) and (o) of the Copyright Act, 1957; vi) that the plaintiff is the first owner of the copyright

in the said information, data and other related materials; vii) that for the purpose of conducting its day-to-day business and activities, the plaintiff engages the services of various employees; viii) that owing to the sensitive nature of the information to which the said employees would become privy, the plaintiff has got very stringent legal documentation which it gets signed from all its employees at the time of joining the employment; ix) that the defendant no.1 was employed as Customer Service Executive, the defendant no.2 as Deputy Manager (Commercial), the defendant no.3 as Assistant Manager (Pricing), the defendant no.4 as Customer Service Executive, the defendant no.5 as Sales Executive, the defendant no.6 as Business Development Manager, the defendant no.7 as Assistant Manager (Pricing) and defendant no.8 as Accounts Executive (Overseas) with the plaintiff; x) that the Appointment Letters of the defendants contain inter alia the following Clauses:

"3. During the probation period your services maybe terminated with two week's notice or salary in lieu (Basic salary + All allowances / benefits / reimbursements) from either side. However, after the confirmation of service, the notice period would automatically stand revised to 1 (one) month from either side. The Company reserves the right to terminate your services without assigning any reasons by giving 1 month notice in writing or 1 month's salary in lieu thereof.

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5. Incase an employees service is terminated with or without notice, or in the event the employee resigns from the service, then wherever applicable, the employee is first required to recover all the outstanding, (which the client / customer owes to the company), from any clients / customer, which client / customer has been generated by the employee. The Company will not issue a relieving letter or complete exit formalities without the employee first having collected such outstanding from the respective client / customer. The Company is at liberty to first adjust from any salaries and dues of such employee such outstanding amount, at the time of payment of final dues. It is also clarified that, where the Company receives or recovers such outstanding from the client / customer, the Company shall pay to the employee his / her dues so adjusted along with the relieving letter. However, where the Company incurs any cost (including for legal counsel's fees) for the purpose of recovery of any such outstanding from such client / customers, the same shall be adjusted with the salaries or payments of the employees at the discretion of the Management.

6. The Company also reserves the right to terminate your services without any notice or salary in lieu thereof on the grounds of misconduct, integrity issue, or even in the case of reasonable suspicion of misconduct, disloyalty, commission of any act involving moral turpitude, or any act of indiscipline or inefficiency or loss of confidence.

8. In the event of your reporting and joining the duties at the location specified, it shall be deemed that you acknowledge and accept to be governed by these terms and such other employment terms as may be made under the company's policies from time to time and such action of joining duties shall imply that you are aware of and have familiarized yourself with the terms and conditions of service.

16. You will devote whole time and attention to the work of the company and will not engage yourself either paid or in the honorary capacity for any work other than the establishment works except with the prior written approval of the management.

17. You are required to maintain the highest order of discipline and secrecy as regards the work of the company and / or its subsidiaries or Associate

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companies and in case of any breach of discipline / trust, your services may be terminated by the company with immediate effect. You will not either during your employment with the company or after the termination of such employment divulge or give out in, any manner particulars or details of any of the trade secrets, research process, financial / administrative and / or organizational matters or any transactions or affairs of the company. All inventions, improvements, discoveries made by you either alone or with any other persons will become the sole property of the company. You will ensure that patent protections are obtained for such inventions / improvements and discoveries of India or elsewhere and assigned the same to the company.

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

19. In the event of your leaving / termination of your services from the Company, this agreement binds and forbids you from setting up a company (proprietorship, private limited or otherwise) which is in direct competition with the services offered by Navigators Logistics Private Limited or any of its associate companies for a minimum period of one year.

20. Apart from Certified Standing Orders any of you will be bound by any rules, regulations and office orders enforced by the management from time to time in relation to conduct, discipline, medical leave and holidays or any matters relating to service conditions.";

xi) that the plaintiff undertook extensive training of defendants no.1 to 8 and made the said defendants familiar with the confidential information and data of the plaintiff; xii) that the defendants no.1 to 8 started doing their respective jobs and started contributing towards generating business for the plaintiff; during the period of their employment with the plaintiff, for the purpose of effectively carrying on their official functions as employees of the plaintiff, the plaintiff allocated the defendants no.1 to 8 various

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computer devices and computer resources including laptops, mobile phone, desktops and data cards; xiii) that all the confidential data, information and trade secrets of the plaintiff were resident on the said laptops and mobile phones allocated to the defendants no.1 to 8; xiv) that the defendants no.1 to 8 were also given official e-mail IDs for the purpose of official communications and access to the official cloud of computer resources of the plaintiff company; xv) that aforesaid electronic devices used by the defendants no.1 to 8 contained the confidential data, customer data,

members accounts information airways, airway bills, plain reports, taxes and other confidential information and trade secrets of the plaintiff; xvi) that the defendants no.1 to 8, in conspiracy with each other, decided to start sending their resignations through e-mails; the defendant no.2 resigned on 9th May, 2016, the defendant no.1 on 19th May, 2016, the defendant no.3 on 25th May, 2016, defendant no.4 on 20th May, 2016, defendant no.5 on 19th May, 2016, defendant no.6 on 20th May, 2016, defendants nos.7 & 8 on 25th May, 2016; xvii) that the defendants no.1 to 8, during the notice period of 30 days, stopped coming to the office of the plaintiff, while continuing to retain the confidential data information and trade secrets of the plaintiff residing in the electronic devices handed over to the said defendants for the purposes of performing works for the plaintiff; xviii) that the said electronic devices were returned, by the defendant no.1 on 27th May, by the defendant no.2 on 13th May, by the defendant no.3 on 25th May, by the defendants no.4,5 and 6 on 20th May; xix) that the perusal of the laptops showed the confidential data information and the trade secrets of the plaintiff had been deleted; however on data recovery being undertaken by the plaintiff, deleted Skype chats between the defendants no.1 to 8 inter se were

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recovered which showed a conspiracy having been hatched to use the confidential data information and trade secrets of the plaintiff to the detriment of the plaintiff and to further the business interest of the defendants, proving that the defendants have acted contrary to the terms of their employment; xx) that the aforesaid Skype chats also showed the defendants to have entered into a conspiracy to divert the existing business of the plaintiff company to defendant no.12 Carex Cargo Express Pvt. Ltd.; xxi) that while the defendant nos.1,4,5 and 6 belonged to the Sales Department of the plaintiff, defendant nos.2 and 3 worked in the Pricing and Commercial Department and the defendant nos.7 and 8 in the Accounts Department; (xxii) the defendants also diverted shipment of the customers of the plaintiff to defendant no.12 Carex Cargo India Pvt. Ltd; xxiii) that the defendants no.1 to 8 are using the information and data which they got from the plaintiff, while in employment of the plaintiff, to the detriment of the plaintiff; (xxiv) the defendant nos.1 to 8 leaked the confidential data and information of the plaintiff to defendant nos.9 to 11 i.e. Ankita Ladha, Bhawna Kanojia and Sudhir Kadam; and, (xxv) the defendants are infringing the copyright of the plaintiff in its confidential data information and trade secrets.

2. On the aforesaid pleas, the plaintiff have sought the reliefs of, (i) permanent injunction restraining the defendants from violating the plaintiff's copyright in its original literary and artistic works and the plaintiff's confidential data information and trade secrets resident in the electronic devices of the plaintiff handed over to the defendants during the course of their employment with the plaintiff; (ii) permanent injunction restraining the defendants from carrying out any business with the

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copyright material belonging to the plaintiff; (iii) permanent injunction restraining the defendants from creating any third party rights in the copyright material of the plaintiff; (iv) permanent injunction restraining the defendants from disclosing the confidential information and data of the plaintiff to any other person; (v) permanent injunction restraining the

defendant nos.1 to 8 from competing with the plaintiff for a period of one year; (vi) mandatory injunction directing the defendant nos.1 to 8 to disclose to the Court the use made by them of the copyright material of the plaintiff; (vii) mandatory injunction directing the defendants no.1 to 8 to hand over the data and other confidential information of the plaintiff to the plaintiff; (viii) rendition of accounts; and, (ix) recovery of Rs.1,50,00,000/- jointly and severally from all the defendants.

3. The suit came up before this Court first on 3rd June, 2016 when, while issuing summons of the suit, vide ex parte ad interim order the defendants were restrained from, in any manner, utilizing, exploiting, copying, transmitting, publishing or releasing any confidential information and trade secrets of the plaintiff to any entity for any purpose whatsoever. On application of the plaintiff, commissions were also issued to visit the premises of the defendants, to scan the computer systems and emails of the defendants and locate the documents which had originated from the plaintiff and to seize the computer systems if the same were found to contain confidential information or trade secrets of the defendants. The said order was partly modified on 10th June, 2016 on the asking of the plaintiffs.

4. Written statements have been filed by all the defendants.

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5. The defendants no.1,2,4 and 6 to 8, in their joint written statement, have inter alia pleaded (i) that the plaintiff has failed to plead or disclose the author of the copyrighted works or having acquired such copyright from the authors of the copyrighted works; (ii) no particulars of the copyright had been given and allegations made are only in regard to data of the clients which primarily includes names, address, contact numbers etc. of the clients and which are neither any original literary work nor has any artistic rendering which could be capable of acquiring any copyright; (iii) that the plaintiff has not pleaded or disclosed as to what constitutes the data base; (iv) that the plaint is highly vague and lacks material particulars; (v) that no particulars of any trade secret or confidential information which have been alleged to have been misused have also been furnished; (vi) that the suit is barred by Section 27 of the Contract Act and the reliefs claimed are violative of the fundamental rights of the defendants under Articles 19(1)(g) and 21 of the Constitution of India; (vii) that the plaintiff is trying to curtail the right of the defendants to work and to earn their livelihood; (viii) that the plaintiff has filed the present suit as a disgruntled employer and only as a tool for harassing its former employees and to exact revenge from them for leaving the employment of the plaintiff; (ix) that the plaintiff, in the garb of confidentiality, is seeking to create a monopoly of its business by trying to retain its clients when the plaintiff has no such right; (x) that even if the plaintiff company maintains written records of its customers, the same cannot amount to copyright and on such basis no restraint can be claimed against the competitors; (xi) that the plaintiff has no exclusive right to deal with its customers; (xii) that details of customers are neither trade secrets nor are property of the plaintiff; (xiii) that an original literary work would

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imply a proof as to putting in a skill, judgment, work and expertise of the author of such work and cannot be a mere collection of information; (xiv) that the plaintiff merely wants to prevent its employees from wanting to move to greener pastures; (xv) that the plaintiff has sent communications to its various business partners and customers informing them of the defendants having left the employment of the plaintiff and containing contents defamatory of the defendants; (xvi) that the plaintiff had also not cleared the arrears of dues / emoluments of the defendants for the period of employment with the plaintiff; (xvii) that there is no confidentiality about the financial dealings of the plaintiff with its customers since the freight charges are based on demand and supply and are the rates assigned by the carriers plus a certain percentage of profit; the said carriage rates are common knowledge; service providers provide competitive rates to the customers which are then compared by the customers; (xviii) that the defendants left the employment of the plaintiff for better prospects; (xix) that there is no appointment letter in respect of defendants no.2,4 and 5; (xx) that the terms and conditions of the appointment letter are one sided and are not only onerous but are not enforceable and not every employee was made to sign conditions which the defendants no.2,4 and 5 were made to sign; (xxi) that the custody of the electronic devices allocated by the plaintiff to its employees remained in the office only and the said devices were taken out only for clients meetings and all the devices have been returned by the defendants to the plaintiff; (xxii) that no confidential data or trade secret of the plaintiff resided on the laptops / mobile phones; (xxiii) the defendants did not stop going to the office of the plaintiff; rather it was the plaintiff who did not allow defendants to serve their notice period and

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asked the defendants not to report for work; and, (xxiv) that there exist no Skype chats.

6. Written statement of the defendants no.3 and 5 is on the same lines as the written statement of the other defendants, contents whereof have been enumerated hereinabove.

7. The defendant no.11, in its written statement has pleaded (a) that he works as an independent commission agent for small businesses and designs and prints visiting cards, letter heads and does other printing related work; (b) that the said defendant used to do printing work for the plaintiff also; (c) that the defendant no.1 approached the said defendant through Skype to design a logo, visiting cards and letter heads for a new company and the said defendant sent a sample through Skype to the defendant no.1; (d) that the other e-mails between the said defendant and the defendant no.1 were with respect to printing and designing of logo, visiting cards, envelopes and letterheads only; and (e) that no data of the plaintiff which constitutes confidential information or trade secrets was found by the Commissioner who visited the premises of the said defendant.

8. The defendants no.9 and 10 in their joint written statement have denied the claim in the plaint and also pleaded that they have no privity of contract with plaintiff. Neither in the plaint nor in the written statement of defendants no.9&10 is it pleaded, whether the defendants no.9 & 10 are employees/proprietors/directors of defendant no.12 Carex Cargo Express

Pvt. Ltd. and if not, in what capacity have the defendants no.1 to 8 or any of them dealt with defendants no.9&10. The plaint however in para 71 states

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that there is no legally incorporated entity as defendants no.12 Carex Cargo Express Pvt. Ltd.

9. The defendant no.12 Carex Cargo Express Pvt. Ltd. in its written statement, while denying/disputing the claim of plaintiff, pleaded that the suit is a counterblast to the complaint filed by said defendant against plaintiff, of cheating and criminal breach of trust for representing itself to be the agent of defendants no.12 Carex Cargo Express Pvt. Ltd. and taking delivery of a shipment meant for defendants no.12 Carex Cargo Express Pvt. Ltd.

10. Though plaintiff has filed replications to written statements aforesaid, but of denial of contents of written statement and reiteration of contents of plaint.

11. The defendants no.3 and 5, vide CM No.13684/2016 have sought rejection of the plaint on the same grounds as enumerated in the written statement of the said defendants. The plaintiff has filed a reply to the said application, generally denying the contents of the application.

12. It is the contention of the counsel for the applicants / defendants no.3&5, that the plaintiff, nowhere in the plaint, has disclosed any work in which it may have any copyright or any information which may be confidential and which may have been entrusted to any of the defendants and the Clause in the agreements, that the defendants 1 to 8, for a period of one year after leaving the employment of the plaintiff, cannot engage themselves in any competing activities, is violative of Section 27 of the Indian Contract Act, 1872. It is further stated that in any case the said period of one year is over.

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13. The counsel for the parties were heard on aforesaid application on 18th December, 2017 and part order also dictated in Court but hearing could not be completed and was adjourned to the next day i.e. 19 th December, 2017 and thereafter from time to time and the counsels were further heard on 24th January, 2018 when the counsel for the plaintiff also handed over written submissions. Though the order was intended to be completed in Chamber on the same day but remained to be completed and this judgment is being pronounced today after the Court Master has intimated the counsels telephonically.

14. The counsel for the plaintiff drew attention to Skype chat inter se the defendants no.1 to 8 and also of defendant no.1 with the defendants no.10 and 11 and to the e-mail exchanged between the defendants no.1 to 8 and defendant no.12 Carex Cargo Express Pvt. Ltd. Attention is also invited to reports of the Commissions issued to the effect that the computer systems of the defendants were found to have the list of names and contact numbers

of customers/clients of the plaintiffs and emails inter se as well as emails with present employees of the plaintiff. It was further argued that the plaintiff is the owner of the copyright, as per Section 17 of the Copyright Act, of the data pertaining to the business of the plaintiff. Reliance was also placed on (i) Burlington Home Shopping Pvt. Ltd. Vs. Rajnish Chibber 1995 (35) DRJ 335; (ii) Diljeet Titus, Advocate Vs. Alfred A. Adebare (2006) 130 DLT 330; and, (iii) Mayar (H.K.) Ltd. Vs. Owners & Parties, Vessel M.V. Fortune Express (2006) 3 SCC 100. It was further contended that the grounds urged do not constitute grounds for rejection of the plaint.

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15. Per contra, the counsels for the defendants, besides raising the same arguments as raised in the written statements, also for rejection of plaint, have relied on my judgment in Tech Plus Media Private Ltd. Vs. Jyoti Janda (2014) 60 PTC 121.

16. Reliefs claimed in the suit may be grouped as, (i) for permanent injunction restraining infringement of copyright and for recovery, purportedly of damages, for infringing copyright of the plaintiff; (ii) for permanent injunction enforcing the clauses, in the claimed employment contracts, whereunder the defendants no.1 to 8 had agreed not to divulge, during employment with the plaintiff or even after leaving the employment of the plaintiff, any trade secrets, research process, financial/administrative and/or organizational matters or any transactions or affairs of the plaintiff to anyone else and/or damages for breach thereof; and, (iii) for permanent injunction enforcing the clauses, in the claimed employment contracts, whereunder the defendants no.1 to 8 had agreed not to compete with the plaintiff for a period of one year after leaving employment of the plaintiff, either by carrying on the same business themselves or by joining employment of any competitor of the plaintiff and/or damages for breach thereof.

17. What has to be seen at this stage is, whether in the event of the plaintiff proving the averments in the plaint and the documents filed therewith (and without noticing any of the defences of the defendants save legal ones) the suit can succeed. If it is found that even if the plaintiff were to prove what is pleaded in the plaint, the plaintiff still has no chance of succeeding in the suit, a case for rejection of plaint at this stage only will be

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made out. The Division Bench of this Court in Dr. Zubair Ul Abidin Vs. Sameena Abidin @ Sameena Khan (2014) 214 DLT 340 (DB) (SLP(C) No.369-370/2015 preferred whereagainst was dismissed on 16th January, 2015) has, referring to various earlier judgments held that if on a meaningful, not formal, reading of the plaint, it is found to be not disclosing a right to sue or the claim therein is found to be barred by any law or it is found that there is absolutely no chance of success on such averments, the Court should exercise its power and should not allow it to create an illusion and should not permit it to go to trial and such docket which are deadwood

should not be permitted to burden the Court. Reference in this regard context may also be made to Geodis Overseas Pvt. Ltd. Vs. Punjab National Bank 2016 SCC OnLine Del 1037.

18. I will first take up the claim of the plaintiff on the basis of copyright.

19. The plaintiff, in para 5 of the plaint, claims copyright, as under:-

"5. That the plaintiff has developed and evolved very distinctive, detailed and comprehensive data, information and databases pertaining to running its business. This includes all the confidential data, customer database, accounts information, airway drawings, airway bills templates, plans, reports, taxes and other financial information, process, financial/administrative and/or organizational information as well as transactions based templates and internal notings and trade secrets of the plaintiff company. The plaintiff has collated all its experiences together not only from India but from around the world pertaining specifically to the operation of its business and has documented the same in the form of confidential data and information as also confidential databases, including data and information in the electronic form."

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and in para 7 of the plaint, further pleaded as under:-

"7. That the said information, data and other related materials are original artistic and literary works of the plaintiff within the meaning of Section 2(c) and (o) respectively of the Copyright Act, 1957. The plaintiff has got copyright in the said information, data and other related materials under Section 13 of the Copyright Act, 1957. The plaintiff is the first owner of the copyright in the said information, data and other related materials under Section 17 of the Copyright Act."

20. It is the case of the defendants that there can be no copyright in customer database, accounts information, airway drawings, airway bills templates etc.

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

22. What is thus for adjudication is, whether there can be any copyright

in a list of customers/clients with their contact persons/numbers maintained by the service provider. Though the plaintiff has in the plaint generally pleaded database pertaining to, running of business accounts information, airway drawings, airway bills templates, plans, reports, taxes and other

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financial information, process, financial/administrative and/or organizational information as well as transactions based templates and internal notings and trade secrets of the plaintiff company, but the said words/phrases, though high-sounding, are vague and do not constitute a plea in law within the meaning of Order VI Rules 2,4,9 and Order VII Rules 1(e) and 7 of the Code of Civil Procedure, 1908 (CPC). In this context, it may be also mentioned that using such high-sounding/phrases which in fact have no content or meaning, a large number of suits are filed in this Court against the ex-employees and it has often been found that interim injunctions issued restraining the ex-employees from divulging the same to any other person remain unenforceable in the absence of particulars and with applications under Order XXXIX Rule 2A of the CPC being filed with respect to all communications made by such employees with others and with it being absolutely impossible for the Court to determine whether the communication is in violation of the interim order. It is for this reason only that Section 41(f) of the Specific Relief Act, 1963, and principles whereof are applicable to temporary injunctions also, prohibits grant of injunction to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance. Similarly, without specifying the information, disclosure of which is sought to be restrained, an injunction cannot be granted; rather I have wondered the purport of the interim order dated 3rd June, 2016 in this suit, restraining the defendants from utilizing, exploiting, copying, transmitting, publishing or releasing any confidential information and trade secrets of the plaintiff to any entity for any purpose whatsoever, without specifying as to which is that confidential information and trade secret. It is for this reason that I have hereinabove observed that

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what is for adjudication is, whether list of customers/clients with their contact numbers prepared/drawn up by a service provider can be said to be a work in which such service provider can have copyright.

23. Copyright, as distinct from a trademark, is a statutory and not a common law right or a natural right. Reference if any in this regard can be made to Time Warner Entertainment Company L.P. Vs. RPG Netcom (2007) 140 DLT 758, Entertainment Network (India) Ltd. Vs. Super Cassette Industries Ltd. (2008) 13 SCC 30 and Krishika Lulla Vs. Shyam Vithalrao Devkatta (2016) 2 SCC 521. Thus unless it can be found that a copyright vests in such a list under the Copyright Act, the plaintiff cannot have any right in the list maintained/prepared/compiled by the plaintiff of its customers/clients with their contact persons/numbers.

24. Per Section 13(1) of the Copyright Act, copyright subsists in the following classes of works, that is to say:-

"(a) original literary, dramatic, musical and artistic works;

- (b) cinematograph films; and ,
- (c) sound recording".

25. The list aforesaid is not a cinematograph film or a sound recording. The first question to be thus determined is, whether the said list qualifies as an original literary, dramatic, musical and artistic work.

26. The list does not fall in the definition of artistic work or dramatic work or musical work, as defined in Section 2(c),(h) & (p) respectively. Literary work is defined in Section 2(o) as including computer programmes, tables

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and compilations including computer databases. The definition of literary work is inclusive and the inclusion contains compilations.

27. The question which thus arises is, whether all compilations are literary work in which copyright can subsist.

28. As practicing Advocate, the list/compilation of my clients and their phone numbers was generated by my smartphone by entering the list of contacts in my phone. I never considered the same as a literary work or myself as the author of the said list/compilation.

29. In Burlington Home Shopping Pvt. Ltd. supra, a single Judge of this Court was concerned, with an application for interim relief in a suit by mail order service company against its ex-employee for injunction restraining breach of copyright and confidentiality, pleading that compilation of addresses was developed by devoting time, money, labour and skill, though the sources may be commonly situated, amounted to a 'literary work' wherein an author has a copyright. Finding, that the database available with defendant therein was substantially a copy of the database available with the plaintiff therein and compiled by the plaintiff therein, interim injunction was granted. Similarly, in Diljeet Titus, Advocate supra, another single Judge held in the context of an Advocate/law firm that copyright subsists in a list containing details about the particular persons such law firm is handling and the nature of the work or the contact person in the client's company and especially designed by an Advocate of his Court matters. The third judgment cited by counsel for plaintiff, viz. Mayar (H.K.) Ltd. supra is not on the aspect of copyright but on Order VII Rule 11 of the CPC.

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30. I have in Tech Plus Media Private Ltd., relied upon by the counsel for the defendants and against which no appeal is found to have been preferred, in the context of a list of names and address of visitors to the new portals of the plaintiff in that case or the comments of such visitors, held that the plaintiff could not be said to be the author or composer or having contribution in the same. Burlington Home Shopping Pvt. Ltd. and Diljeet Titus, Advocate supra were noticed but it was further held (i) that both the said judgments are of a date prior to the pronouncement of the Supreme Court in Eastern Book Company Vs. D.B. Modak (2008) 1 SCC 1, laying

down (i) that to claim copyright in a compilation, the author must produce the material with exercise of his skill and judgment which may not be creativity in the sense that it is novel or non-obvious but at the same time it is not a product merely of labour and capital; and, (ii) that the exercise of skill and judgment required to produce the work must not be so trivial that it could be characterized as a purely mechanical exercise. Accordingly, it was held that copy edited judgments would not satisfy the copyright merely by establishing amount of skill, labour and capital put in the inputs of the copy edited judgments as the original or innovative thoughts for the creativity are completely excluded. Notice in Tech Plus Media Private Ltd. was also taken of Emergent Genetics India Pvt. Ltd. Vs. Shailendra Shivam 2011 (47) PTC 494. Reliance in Tech Plus Media Private Ltd. was also placed on Dr. Reckeweg & Co. GMBH Vs. Adven Biotech Private Ltd. 2008 (38) PTC 308 (Del), wherein, dealing with the issue of copyright in a compilation in a brochure, of nomenclature of drugs, the listing of the medicines in a particular fashion, the description and the curative effect, the principle of law enunciated by the Supreme Court in Eastern Book Company supra was

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applied. It was held that no copyright subsists therein in the absence of employment of any skill judgment and labour in compilation thereof. It was further held that without specifically averring as to the manner/technique/criteria employed in such sequencing/collection and the originality in the same, the plaintiff could not succeed in its claim. It was yet further held that the compilation in that case was a derivative work in the sense of being a collection of sequencing of already existing information and did not satisfy the standard of creativity required to qualify as a work in which copyright subsists. It was explained that the standard of creativity required in such derivative work is higher than the standard required in cases of primary works. Resultantly, the plaint in Tech Plus Media Private Ltd. was rejected.

31. I may state that the pleadings in the present suit are equally vague as in Tech Plus Media Private Ltd. There is no averment in the plaint of the technique/criteria in compiling the list of customers.

32. Further, Section 13(2) is as under:-

"Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41 apply, unless,--

- (i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;
- (ii) in the case of an unpublished work other than a work of architecture, the author is at the date of the making of the work a citizen of India or domiciled in India; and

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(iii) in the case of work of architecture, the work is located in India.

Explanation.-- In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work."

33. Thus, even if list compiled/prepared by the plaintiff of its customers/clients with contact persons/numbers were to qualify as a original literary, dramatic, musical and artistic works (it cannot possibly be a cinematographic film or a sound recording), copyright will not vest therein unless the said list has been published or unless the said list, if unpublished, is authored by a citizen of India or domiciled in India.

34. Section 3 of the Copyright Act defines 'publication' as, making a work available to the public by issue of copies or by communicating the work to the public. It is not the case of the plaintiff that it has published the said list, for clause (i) of Section 13(2) to apply. For clause (ii) of Section 13(2) to apply, the author of the list has to be citizen, of India or domiciled in India. The plaintiff claims ownership of copyright under Section 17 of the Act, presumably under clause (c) thereof. However, the plaintiff has not disclosed the name of the author, who was employed with the plaintiff. The plaintiff, which is a company, cannot be the author. This Court in Rupendra Kashyap Vs. Jiwan Publishing House Pvt. Ltd. 1994 (28) DRJ 286 held, in the context of question papers for an examination, that the author of the examination paper is a person who has compiled the questions; the person who does this compiling, is a natural person, a human being, and not an artificial person; Central Board of Secondary Education is not a natural person--it would be entitled to claim copyright in the examination

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papers only if it establishes and proves that it has engaged persons specifically for purposes of preparation of compilation, known as question papers, with a contract that copyright therein will vest in Central Board of Secondary Education. I also, in Tech Plus Media Private Ltd. supra have held that a juristic person is incapable of being the author of any literary work in which a copyright may exist, though may be owner of copyright. The plaintiff has not disclosed the identity of author. The plaintiff does not claim any confidentiality about such identity. It was essential for the plaintiff to disclose identity of the author, to claim ownership of copyright.

35. In my opinion, for this reason alone, there can be no copyright in the plaintiff in the list aforesaid.

36. The reliefs claimed by the plaintiff on the basis of copyright thus have no chance of success in the suit and the plaint is liable to be rejected, insofar as on the premise of copyright.

37. That brings me to the second premise on which the plaintiff has claimed the reliefs i.e. enforcement of clauses in the employment contracts which prohibited the defendants No.1 to 8 from divulging confidential information of the plaintiff.

38. In fact, it is this part of this judgment which has led to the delay in pronouncement thereof as I was quite hazy and foggy about such rights of confidentiality, under the contract and otherwise and enforceability thereof.

39. Confidentiality and secrecy is claimed in the same works in which copyright is claimed viz. data, information and trade secrets residing in the electronic devices without again specifying the particulars thereof or secrecy thereof. Mere mention of research process, financial / administrative and / or
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organizational matter or transaction or affairs of the company or invention or discovery or patent protection does not satisfy the requirements of pleadings. The plaintiff as per its own admission is engaged in the business of providing logistics and freight forwarding services and is not engaged in any research work, it was incumbent for the plaintiff to, in the plaint, plead how the data etc. in which confidentiality is claimed is different from data of any other entity engaged in such business and what is secret about the same and what steps besides the clause aforesaid in the letters of appointment of defendants no.1 to 8 have been taken by the plaintiff to maintain secrecy / confidentiality thereof. The plaint in this regard is vague and cannot be put to trial. The whole purpose of pleadings in a civil suit is to let the opponent know the case to be met and which crystallizes ultimately in issues on which the parties go to trial. If such rules of pleadings are not to be adhered to, it will result in a fishing and roving enquiry and enable a party to the suit to secure a victory by springing a surprise during the course of trial. Similarly, an injunction qua confidentiality as sought, even if granted would be vague and unenforceable as aforesaid. This Court cannot pass such unenforceable order, the meaning whereof is not clear. It cannot be known, neither to the Court nor to the defendant as to what the defendant is enjoined from doing.

40. Specific mention in the plaint as aforesaid is only qua the list / compilation of customers with details of contact person / numbers. Copyright was also claimed in the same list and which has not been found. What troubled me was that the law having not protected such a list as a copyright, what could be right in law of the plaintiff to enforce confidentiality thereof. I then came across the article titled "The 'Other IP Right': Is It Time to Codify the Indian Law on Protection of Confidential Information" authored
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by Mr. Prashant Reddy T, Assistant Professor, NALSAR, Hyderabad published in Journal of National Law University, Delhi 5(1) 1-21, analysing the law with respect to confidential information and authoring (i) Article 39 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement signed by India imposed an obligation on contracting states to provide means to protect secret information that has commercial value from disclosure without the consent of the persons who have maintained the secrecy of such information; (ii) however India did not enact any new laws on the issue of trade secret protection meaning that Indian government considered its existing laws sufficient to comply with the requirements of Article 39; (iii) confidential information under English law is protected under both common law and equity with remedies of injunction and damages; (iv) however English law does not equate information to property unlike some other jurisdictions, such as the United States where trade secrets are treated as property; (v) India's approach to confidential information has been the same as that of English Courts; (vi) Indian Courts, even in the

absence of a contract have protected information received under a duty of confidence; reference is made to John Richard Brady Vs. Chemical Process Equipments Pvt. Ltd. AIR 1987 Del. 372; and, (vii) English Courts have implied a duty of fidelity into the arrangement between an employer and employee.

41. On facts as pleaded in plaint it appeared that there can be no confidentiality about such a list. Just like customers/clients of an Advocate practicing in the field of acquisition of land and determination of compensation therefor can comprise only of those whose land has been acquired and whose particulars are contained in the acquisition notification and/or award pronounced by the Land Acquisition Collector, similarly the CS(COMM) No.735/2016 Page 24 of 32

list of customers/clients of the plaintiff, carrying on business in the field of logistic and freight forwarding, can only comprise of businesses/industry requiring carriage of goods and material and none else. Names and contact addresses of such businesses are easily available in public domain. Any competitor of the plaintiff worth its salt would also know of such businesses/industry and be free to market his services to them, even if presently employing the service of the plaintiff. I am thus unable to fathom the confidentiality therein and during the hearing also repeatedly enquired about the same and also enquired about the particulars of other works/databases and in which also copyright and confidentiality was claimed. No answer was forthcoming. Every customer list cannot qualify as confidential information or a trade secret unless the confidentiality around such a list is of economic value/business value/commercial value. A thought also crossed my mind, whether not any employee of the plaintiff, dealing with the customers/clients of the plaintiff on behalf of the plaintiff, would have knowledge of the said customers/clients and their contact address even in the absence of a list and how could such an employee, when joining the employment of a competitor, be prevented from marketing the services of the competitor to the employees/clients at the address on which he was earlier servicing them under employment of the former employer and whether not it would amount to restraint of trade.

42. In fact today, trade/business directories are available of each trade/business and wherefrom names and addresses of all in a particular trade/business/industry can be known.

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43. In Star India Pvt. Ltd. Vs. Laxmiraj Seetharam Nayak 2003 SCC OnLine Bom 27 it was held that everyone in any employment for some period would know certain facts and would get to know some information without any special effort; all such persons cannot be said to know trade secrets or confidential information and that every opinion or general knowledge of facts cannot be labelled as trade secrets or confidential information. It was yet further held that if such items are called as trade secrets, or secret, would lose its meaning and significance. It was held that the basic nature of the business dealings of the plaintiff in that case with its advertisers would be openly known and cannot be called a trade secret or a confidential information; the rates of the advertisements are within the public

domain and every businessman generally knows the rates of his rivals; the concerned people know the rates of the advertisements; unless they are told the rates and other conditions of the advertisements, no business transaction can be done; such matters are not even open secrets. Similarly it was held that fixation of rates etc. depends on a number of factors including the popularity, in that case of T.V. serial and the time-slots of the display of such T.V. serials and mere use of the words 'strategies', 'policy decisions' or 'crucial policies' repeatedly in all the items does not acquire the position or character of secrecy. It was held that there was nothing on record from which it could be inferred that the defendant had come to know any trade secrets or confidential information concerning the plaintiff company and its business especially when the trade secrets and the confidential information were not even spelled out.

44. This Court also, in *Ambiance India (Private) Ltd. Vs. Naveen Jain* 2005 SCC OnLine Del 367 held that written day to day affairs of
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employment which are in the knowledge of many and are commonly known to others cannot be called trade secrets. It was further held that trade secret can be a formulae, technical know-how or a peculiar mode or method of business adopted by an employer which is unknown to others. It was yet further held that in a business house, the employees discharging their duties come across so many matters but all these matters are not trade secrets or confidential matters or formulae, the divulgence of which may be injurious to the employer and if an employee on account of employment has learnt some business acumen or ways of dealing with the customers or clients, the same do not constitute trade secret or confidential information, divulgence or use of which should be prohibited.

45. This Court again in *American Express Bank Ltd. Vs. Priya Puri* 2006 SCC OnLine Del 638 held that the plaintiff in that case, in the garb of confidentiality, was trying to contend that that once the customer of the plaintiff, always a customer of the plaintiff. It was further held that the plaintiff, a bank in that case, could not restrain its competitor banks from dealing with the customers of the plaintiff bank on the ground that the plaintiff bank maintained written record of its customers and their financial portfolios which had been acquired by the competitor bank and so the competitor bank should be restrained even to contact those customers. It was reasoned, that if the competitor bank without acquiring any information as to with whom a particular person or company is banking, can approach him and canvass about themselves, even after acquiring information that a particular person of company is banking with a bank is still entitled to approach him and canvass about themselves and it is for the customers to

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decide with which bank to bank. It was further held that creating a database of the clients/customers and then claiming confidentiality about it, will not permit creation of a monopoly about such customers. It was yet further reasoned that without impleading the customers in the suit, the competitor could not be restrained from dealing with the customers. It was thus held that details of customers are not trade secrets or property. The argument, on the basis of copyright therein, was also negated.

46. The High Court of Bombay again in Bombay Dyeing and Manufacturing Co. Ltd. Vs. Mehar Karan Singh 2010 SCC OnLine Bom 1243, relying on the judgments of the United States of America, Court of Appeals, Tenth Circuit in Rivendell Forest Products Ltd. Vs. Georgia Pacific Corporation and Timothy L. Cornwell 31 USPQ 2d1472 and Kodekay Electronics Inc. Vs. Mechanex Corp. 486 F. 2d 449 (10th Cir. 1973) and held that something which is known outside the business or to those inside the business i.e. the employees and for guarding which no steps have been taken and for developing which no effort or money has been extended, cannot be a trade secret. Accordingly, it was held that information relating to 'strategic business plans', 'product mix', 'square footage of construction', 'capital expenditure' or 'revenue budgets' could not be claimed to be of any confidential nature which no other competitor would know. Relying on Star India Private Limited supra it was held that a salesman leaving a company and heart surgeon leaving a hospital cannot be prevented from negotiating with the customers or performing a surgery on the premise that they acquired the skill by experience and those skills can be carried with the employee. It was yet further held that though the

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defendant in that case, on amassing information and knowledge with regard to the plaintiff's plan of operation, could not be enjoined from disclosing those plans to the competitor if he carried them in his head and the competitor in the market, could not be taken to be driven by the defendant's disclosure alone.

47. This Court, even in Stellar Information Technology Private Ltd. Vs. Rakesh Kumar (2016) 234 DLT 114 held that the names of the customers seeking data recovery services of the plaintiff in that case were well known and in public domain and the defendants could not be restrained from approaching the customers only on the allegation that the defendants are aware of the names of the plaintiff's customers. It was reasoned that the plaintiff, in the name of confidentiality, was seeking a restraint on trade. FA0(OS) (Com.) No.104/2016 preferred thereagainst was dismissed on 11th November, 2016.

48. The plaintiff, on a reading of the plaint, is thus found to have not made out a case for permanent injunction restraining the defendants from divulging any trade secrets, research process, financial, administrative and / or organizational matters or any transactions or affairs of the plaintiff to anyone else and / or for recovery of damages therefor for the reason of the plaintiff having not pleaded that the defendants were privy to any such trade secrets or other such matters.

49. That brings me to the last limb of the claim of the plaintiff for permanent injunction and / or for damages i.e. for breach of clause claimed in the Employment Contract whereunder the defendants no.1 to 8 had agreed not to compete with the plaintiff for a period of one year after

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leaving the employment of the plaintiff either by carrying on the same

business themselves or by joining employment of any competitor of the plaintiff.

50. It is the case of the defendants that the said contract, even if any, is void under Section 27 of the Contract Act.

51. Section 27 of the Contract Act is as under:

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

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

52. The interpretation of Section 27 of the Contract Act is not res integra.

53. A two Judge Bench of the Supreme Court, as far back as in *Niranjan Shankar Golikari Vs. Century Spinning & Manufacturing Co. Ltd.* AIR 1967 SC 1098 was concerned with a suit for injunction to restrain the employee, who had agreed to serve the employer for a fixed period, from during the said period, even after ceasing to be the employee of the plaintiff, joining employment of a competitor of the plaintiff. It was unanimously held that considerations against restrictive covenants are different in cases where the restriction is to apply during the period after the

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termination of the contract, than those in cases where it is to operate during the period of contract of employment. In the facts of that case, it was found that the employee was privy to the special process invented / adopted by the plaintiff and of which the employee was trained and had acquired knowledge. The employee who had left employment prior to the contracted period was thus restrained from joining employment of a competitor for the remaining period for which he had contracted with the plaintiff in that case.

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

55. A subsequent two Judge Bench of the Supreme Court in *Percept*

D'Mark (India) (P) Ltd. Vs. Zaheer Khan (2006) 4 SCC 227 refused enforcement of a post-employment restriction on the ground of same being barred by Section 27 of the Act.

56. Applying the aforesaid law to the facts of the present case, it is found that as per the plaintiff also, there was no fixed term for which either of the defendants no.1 to 8 had agreed to serve the plaintiff. The clause in the Employment Contract claimed by the plaintiff also is to the effect that

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defendants no.1 to 8, for a period of one year after ceasing to be the employee of the plaintiff, to not compete with the plaintiff. Such a clause in the Employment Contract, as per the judgments aforesaid of the Supreme Court, is void under Section 27 of the Contract Act. Once the clause is void, there can be no injunction or damages in lieu of injunction on the basis thereof.

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

58. The plaint thus, as per the averments made in the plaint, does not disclose the plaintiff to be entitled to the reliefs of injunction or damages and is thus liable to be rejected and is rejected and the suit is dismissed.

Decree sheet be drawn.

However, no costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 17, 2018 'gsr/pp'..