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

Reserved on: 24 August 2023
Pronounced on: 28 August 2023

+ CS(COMM) 817/2018 & IA. 5583/2018 & IA. 6193/2018

TRANSFORMATIVE LEARNING SOLUTIONS PVT. LTD.
 & ANR. Plaintiffs

Through: Mr. Saikrishna Rajagopal, Ms.
 Sneha Jain, Ms. Anjali Agrawal, Mr.
 Raghav Goyal and Ms. Mehr Sidhu, Advs.

versus

PAWAJOT KAUR BAWEJA & ORS. Defendants

Through: Mr. Rajat Aneja and Mr. S. Jha,
 Advs. for D-2
 Mr. Kshitij Sharda, Adv. for D-1 and 3

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

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28.08.2023

1. This judgment decides Issue 1, framed by this Court on 10 November 2022, which reads as under:

“1. Whether the suit as framed is maintainable in the light of the judgment in *Navigators Logistics Ltd v. Kashif Qureshi & Ors.*, 2018 SCC OnLine Del 11321? OPD”

2. The objection that the present suit is not maintainable in view of the judgment in *Navigators Logistics¹*, rendered by a learned Single

¹ (2018) 76 PTC 564



Judge of this Court, was first taken, in the present proceedings, by Defendant 2 on 30 October 2018. It finds reference in certain subsequent orders as well. Both sides requested, on 30 August 2022, that the issue of maintainability of the present suit in the light of *Navigators Logistics¹*, be decided as a preliminary issue. On 10 November 2022, this Court framed the question as Issue 1, among the various issues framed for determination in the case. Subsequently, the case was adjourned from time to time for hearing arguments on Issue 1. Arguments were finally addressed on the said Issue on 24 August 2023 and orders were reserved, to be pronounced today.

3. Mr. Saikrishna Rajagopal argued on behalf of the plaintiffs and Mr. Kshitij Sharada and Mr. Rajat Aneja argued on behalf of the applicant-defendants.

4. Issue 1, as drawn, has specifically to be decided only with reference to “the suit as framed”. What has to be seen, therefore, is the plaint, and what is pleaded therein.

5. The Plaint

5.1 The case that the plaintiffs have sought to set up in the plaint may be summarised as under.

5.2 Plaintiff 2 is a wholly owned subsidiary of Plaintiff 1. The plaintiffs sell Ayurveda related products. Defendants 1 and 2 are former employees of the plaintiffs. After leaving the plaintiffs, they



are carrying on business under the title of “Adya Ayurveda”, impleaded as Defendant 3.

5.3 During the time of their employment with the plaintiffs, Defendants 1 and 2 had access to confidential data of the plaintiffs. After leaving the plaintiffs, it is alleged that Defendants 1 and 2 are using the said information to sell competing products under the brand of Defendant 3. It is also alleged that Defendants 1 and 2 are using the customer database of the plaintiffs to solicit their customers. 84% of the customers of Defendants 1 and 2 are stated to be erstwhile customers of the plaintiffs. It is further alleged that Defendants 1 and 2 are using marketing material developed and owned by the plaintiffs. The plaint further asserts that, on Defendant 1’s website www.adyayurveda.com, Defendant 1 has copy pasted content from the plaintiffs’ website, over which the plaintiffs own copyright.

5.4 The customer database of the plaintiffs is stated to be among its most invaluable copyrighted data, which the defendants have purloined. It is asserted that the customer data has immense economic value, and that each parameter of the data can be further utilised to predict and identify potential customers, which in turn would reduce the advertisement costs for further customer acquisition. The defendants are also alleged to be using the trade dress of the plaintiffs so as to create confusion.

5.5 The plaint has set out, in detail, the manner in which the plaintiffs “niche customer database” works. It is asserted that, in developing the database, and the software for its operation, the



plaintiffs have expended over ₹ 28 crores during the period 2014 to 2018. It is further asserted that, each time a customer purchases a product, or signs up for content on the plaintiffs' website, she, or he, provides valuable personal data, the protection of which is the plaintiffs' responsibility. The data is retained by the plaintiffs in accordance with its Privacy Policy, which is made available to the concerned customer.

5.6 The plaintiffs have, therefore, developed proprietary statistical techniques, database and software. The manner in which these work have been developed is also explained, in detail, in paras 15 and 16 of the plaint.

5.7 As such, asserts the plaint in para 17, the customer database, the business and trade techniques of the plaintiffs, its marketing and sales content, advertising strategies and other information all constitute confidential and proprietary information of the plaintiffs, in which copyright subsists.

5.8 Given the nature of the present challenge, it is necessary to reproduce, *in extenso*, the relevant assertions in the plaint on the above issues, thus:

“6. During the course of their employment, the Defendant No. 1 and 2 had access to confidential and proprietary information that belongs to the Plaintiffs. *The information includes customer databases, marketing material, copyrighted content and online advertising techniques, all of which was obtained and created by the Plaintiff over the past 5 years at a huge cost, and after application of skill and judgment.* The Defendant No. 1 and 2 were using this information to sell products under the brand 'Adya Ayurveda', i.e., the Defendant No. 3. *The Defendants are using the Plaintiff's customer data to target the very same customers that the*



Plaintiff has transacted with and built a business relationship with over a period of about 5 years. The Defendants for this purpose are using marketing material that was developed by and is owned by the Plaintiff. This material is being used in marketing emails and on the 1st Defendant's Website, www.adyayurveda.com. The Defendants No. 1 & 2 copy-pasted Plaintiffs content and used that for marketing products of Defendant No.3 under the brand name of the Defendant No. 3 in the e-mails sent by the Defendants addressed to the clients of the Plaintiffs in order to induce such clients to purchase the said products of the Defendant No.3, to the detriment of the Plaintiff, and with the intent of unjust enrichment of the Defendants. The fact that this is a slavish attempt at passing off the products of the Plaintiffs is demonstrated by the Defendants using of creative copyrighted material of the Plaintiff. The Plaintiffs also have legitimate reason to believe that the Defendants have been in possession of the entire database till at least April 2018. Moreover, a comparison of the pop-ups enabled through the beeketing application/ plug-in containing details of customers who appear to have bought products from the Defendant No.3, as viewed on the website of the Defendant No.3 with the actual list of customers of the Plaintiffs showed a match of upto 84% of such customers. The Plaintiffs accordingly have very strong reasons to believe that the persons to whom the Defendant No.3 has sold its products are the customers of the Plaintiffs, and that such sale has occasioned on account of theft of the customer database by the Defendants No.1 and 2.- The Defendants purposely copy pasted material that belonged to the Plaintiffs in which the Plaintiff No. 1 had copyright, in order to create confusion in the mind of the Plaintiffs' customers, while selling the products of the Defendant No.3, which is evident from the documents, and transcripts of customer calls filed along with the Plaintiff, and is not repeated herein for the sake of brevity. Such information as to the details of customers of the Defendant No.3 would be available to the Defendant No.1, and the Defendant No.1 is called upon to indicate such details to this Hon'ble Court. It is highly suspicious that more than 84% of the customers of the Defendant No.3, as displayed on the beeketing application, match the list of customers of the Plaintiffs. Such a high co-relation only further lends credence to the fact that the Defendants had access to, had obtained illegally, and had used, the confidential proprietary customer database of the Plaintiffs. Pertinently, the reason why the Plaintiffs also ought to be compensated for such unauthorized use of database of customers living in countries outside India is on account of possible liabilities that may arise out of use of such details in a manner that has not been authorized by the person who has provided to the Plaintiffs his or her personal details. Moreover, such personal data is provided to the Plaintiffs by its customers as the end result of its unique business process/strategy/method. This



is explained in detail in the succeeding paragraphs. Such data has enormous economic value, as also has immense potential to benefit a company engaged in a similar business as the Plaintiffs. Such immense potential is on account of not just a direct list of customers, but the ability to utilize each parameter of data relating to such customers to further predict/identify potential customers, thereby significantly reducing the advertising costs for further customer acquisition. In the present case, the Defendants No.1 & 2 have not just accessed such data on account of their employment with the Plaintiffs, but have actually been provided access by the Plaintiff. This is to say that every employee does not automatically by virtue of being employed with the Plaintiffs know details of customers/potential customers, but such employee only comes into possession of customer data upon specific authorization, or at times through concerted actions for such access. The Defendant No. 1 copy-pasted Plaintiffs content and used that for marketing in its emails. It is submitted that the Defendant No. 1 purposely copy pasted material that belonged to the Plaintiff No.1 in which the Plaintiff No.1 had copyright, and used the trade dress of products of the Plaintiff No.1 while selling products of the Defendant No.3 in order to create confusion in the mind of Plaintiffs customers which is evidenced in the Suit and is not repeated herein for the sake of brevity. Such information as to the details of customers of the Defendant No. 3 would be available to the Defendant No.1, and the Defendant No.1 is called upon to indicate such details to this Hon'ble Court. It is highly suspicious that more than 84% of the customers of the Defendant No.3, as displayed on the beeketing application, match the list of customers of the Plaintiff No.1. Such a high co-relation only further lends credence to the fact that the Defendant No. 1 had access to, had obtained illegally, and had used, the confidential proprietary customer database of the Plaintiff No.1. Pertinently, the reason why the Plaintiff No. 1 also ought to be compensated for such unauthorized use of database of customers living in countries outside India is on account of possible liabilities that may arise out of use of such details in a manner that has not been authorized by the person who has handed over his or her personal details. Moreover, such personal data is provided to the Plaintiffs by its customers as the end result of its unique business process/strategy/method. This is explained in detail in the succeeding paragraphs. Such data has enormous economic value, as also has immense potential to benefit a company engaged in a similar business as the Plaintiffs. Such immense potential is on account of not just a direct list of customers, but the ability to utilize each parameter of data relating to such customers to further predict/identify potential customers, thereby significantly reducing the advertising costs for further customer acquisition. In the present case, the Defendants No.1 & 2 have not just accessed such data on account of their employment



with the Plaintiffs, but have actually been provided access by the Plaintiff. This is to say that *every employee does not automatically by virtue of being employed with the Plaintiffs know details of customers /potential customers, but such employee only comes into possession of customer data upon specific authorization, or at times through concerted actions for such access.*

11. The business model of the Company is unique inasmuch as it sells Ayurveda related products and courses using only online platforms to consumers primarily located outside India. It sells the products only on its own website/domain [http: / /theayurvedaexperience.com/](http://theayurvedaexperience.com/) which is run via Shopify, a web based ecommerce store. *For this purpose, the Plaintiff herein had made large monetary investments on various online platforms including the social networking site Facebook, in order to target a range of customized set of individuals, who would then be shown specific advertisements tailor-made for that category of individuals, in order to then induce such individuals to click on advertisements, thereby leading to the website of the Plaintiff, in which such individual would voluntarily provide details to the Plaintiffs, if s/he chooses to purchase the product. Such data was provided to the Plaintiffs voluntarily and with the conscious knowledge that the sharing of such information was protected by terms and conditions available on the website of the Plaintiffs, particularly the privacy policy, the Plaintiffs proposed to adopt. Therefore, any proposed violation could open the Plaintiffs to potential harm including, but not limited to legal recourse against the Plaintiffs. Such details were parted with by the individuals/ proposed customers in line with the privacy policy available on the website of the Plaintiffs, and any violation of such policy/unauthorized access / use of data could lead to potential harm. As such, the Plaintiffs obtained and established a niche customer database, which in itself has enormous spring-boarding effect. The decision to undertake expenditure to obtain details of a particular kind of audience who is then targeted, is premised upon in-depth analytical research conducted by the Plaintiffs in order to ensure that marketing is only done for audiences who become profitable in the long term. Upon establishing its target audience, the Plaintiffs spend capital to be able to obtain access to such target audience through websites such as Facebook. The Plaintiff then uses engaging and innovative advertisements developed using skill and judgment, which are also tailor-made for different categories of such target audiences, in order to ensure a higher click to conversion rate. For instance, a lady who is in her fifties and who enjoys Starbucks coffee would be shown a specific set of catchwords, with a specific set of products advertised, as opposed to a young lady who likes*



going to Fitness First gymnasiums. Such customers are then induced to click on the advertisement that leads to the website of the Plaintiffs, showcased the appropriate products (which may be most relevant to them) through copyrighted creative content, subsequent to which they voluntarily provide their personal information, while purchasing the product. Such personal information includes data such as their names, e-mail addresses, home/office address, and phone numbers. It is pertinent to note that each product has a different set of copyrighted creatives, and in many cases audiences used to promote such product. Both such creatives and selection of specific audiences are continuously optimized by a team of professionals employed by the Plaintiffs, to achieve the most optimal return on advertising spend/ reduce customer acquisition cost, and therefore requires application of significant skill and judgment for adapting strategy and operations to such processes which are constantly evolving. The copyrighted customer data received post the completion of several manual and online creative processes developed over a substantial period of time is only generated upon the customer undertaking a purchase transaction. As such, the Plaintiffs only obtain the information after twice exercising their unique skill, judgment, and substantial statistical research – first to decide which persons to show advertisements to; and second to design specific advertisements for a specific product for such persons, which would then induce them to visit the webpage of such chosen product on the website of the Plaintiff. Lastly, the website of the Plaintiff No. 1 also contains copyrighted material which then sets the pitch for proposed customers to and make a purchase decision, and thereby provide the above-mentioned data to the Plaintiffs. Such development of material, including the database of customers is not just on the basis of labour or capital having been expended, but is clearly the result of skill and judgment of the Director and certain other employees of the Plaintiffs, which cannot be characterized as purely mechanical. Moreover, taking several granular advertising investment decisions on the basis of the cookie-data, and other analytical data obtained by the Plaintiff is also a part of its sophisticated marketing methods. In this regard, the Plaintiffs have invested substantial capital, labour, and time in order to test over 1900 such audiences to perfect their ability to predict fruitful advertising targets. It has come to the knowledge of the Plaintiff that the Defendant Nos. 1 & 2 through the Defendant No.3 have been illegally spamming the customers of the Plaintiffs. It is on account of trying to reach the appropriate targeted markets/ customers that the Plaintiff expends huge expenditure to obtain a targeted database. However, by accessing, and stealing such customer database of the Plaintiff No. 1 in a wholly unauthorized and illegal manner, the Defendants No.1 and 2 have obtained a ready database of customers who are demonstrably interested in



Ayurveda products without having to spend any amount of money, and without exercising even a modicum of skill and judgment. Further, the Plaintiffs have spent over Rs. 28 Crore (Rupees Twenty-Eight Crore only) in order to obtain information which is/has been being illegally used by the Defendants Nd.1 and 3.

14. Over a period of time, due to the enormous resources that have been put in by the Plaintiff, 499,500 subscribers have signed up for free content on the Plaintiffs website, 17,935 persons have bought courses from the Plaintiff and the Plaintiff has shipped 142,635 products to 88,798 customers. Each time a consumer makes a purchase or signs up for content, the consumer provides personal data to the Plaintiff. This database is thereafter the responsibility of the Plaintiff (and its employees) and is used by it solely in accordance with its Privacy Policy that is made available to the consumer. The Plaintiff has a fiduciary duty towards its customers. The names of these customers, their email addresses, mailing addresses, phone numbers and other data relating to these customers is the confidential information of the Plaintiff.

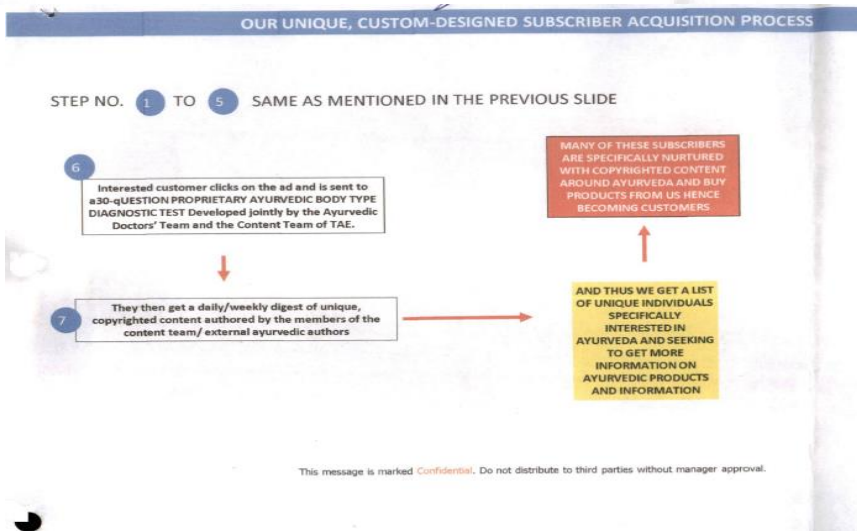
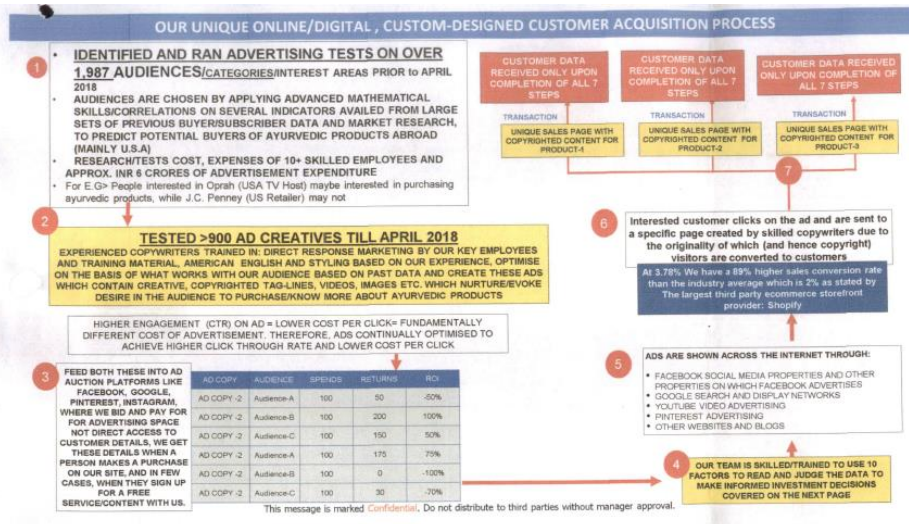
15. The data that is obtained by the Plaintiff includes customer email addresses, home addresses and phone numbers. In accordance with its Privacy policy, the Plaintiff reaches out to its existing customers/subscribers with new products and offerings. *The Plaintiff, in accordance with its privacy policy, invests substantial skill, time and effort in analysing the data it collects so as to further refine its advertising strategy. Over a period of time, the Plaintiff has developed an expertise in identifying customer groups who may "be interested in its products and thereafter expends its resources on advertising to these specific customer groups. It is this strategy that has contributed to the significant growth of the Plaintiff over a period of 4 years. Through resources spent on advertising, the Plaintiff has been able to compile a significant database of customers who are interested in Ayurvedic products and also on the specific categories of products that specific customers are interested in. In a short period of time the Plaintiff has been able to compile large database of subscribers/customers, with information as to their interests/preferences, for the reason that the Plaintiff has developed proprietary statistical techniques, databases and software that has resulted in a greater conversion rates of persons who have seen and clicked on the Plaintiffs advertisements and those who have eventually gone on to subscribe to the Plaintiffs website or buy a product from the Plaintiff. The Plaintiffs have for the convenience of this Hon'ble Court indicated in a tabular format, along with examples the manner in which*



cookies/pixels/digital footprint of a customer is used to identify target group, allowing the Plaintiffs to analyse the data, and thereafter employ targeted advertising post such analysis on relevant audiences. It is this final culmination of data, that is the information pertaining to the customer and other particulars such as age range, address, location etc. which is the data generated in respect of these specific processes, in which the Plaintiffs have a copyright. An illustrative chart is provided hereinbelow in order to explain in a simple manner the business of the Plaintiffs.

A. USE OF COOKIES/DIGITAL FOOTPRINT TO IDENTIFY TARGET GROUPS

i. Social media Platforms e.g. Facebook, as well as Google & YouTube, maintain trackers i.e. cookies/pixels in addition to some websites such as the one the Plaintiff owns.





STEP 4 EXECUTION: ADVERTISED ON APPROXIMATELY OVER 1987 DIFFERENT AUDIENCES BEFORE APRIL 2018 TO REACH CONSUMERS. EXAMPLES OF NEW CONSUMER AUDIENCES UNDERLINED IN RED. SKILL REQUIRED TO ANALYZE PLETHORA OF METRICS COLLECTIVELY AND ACCURATELY. JUDGEMENT REQUIRED TO DECIDE WHICH AUDIENCES TO INVEST MORE IN AND WHICH AUDIENCES TO WITHDRAW FROM.

Table with columns: Ad Name, Advertiser, Campaign, Ad Type, Ad Status, Ad Spend, Ad Impressions, Ad Clicks, Ad Conversions, Ad Cost Per Click, Ad Cost Per Conversion, Ad Return on Ad Spend, Ad Attribution, Ad Frequency, Ad Reach, Ad Impressions Per Day, Ad Clicks Per Day, Ad Conversions Per Day, Ad Cost Per Day, Ad Return on Ad Spend Per Day, Ad Attribution Per Day, Ad Frequency Per Day, Ad Reach Per Day, Ad Impressions Per Week, Ad Clicks Per Week, Ad Conversions Per Week, Ad Cost Per Week, Ad Return on Ad Spend Per Week, Ad Attribution Per Week, Ad Frequency Per Week, Ad Reach Per Week, Ad Impressions Per Month, Ad Clicks Per Month, Ad Conversions Per Month, Ad Cost Per Month, Ad Return on Ad Spend Per Month, Ad Attribution Per Month, Ad Frequency Per Month, Ad Reach Per Month, Ad Impressions Per Year, Ad Clicks Per Year, Ad Conversions Per Year, Ad Cost Per Year, Ad Return on Ad Spend Per Year, Ad Attribution Per Year, Ad Frequency Per Year, Ad Reach Per Year.

Data Tracking

Date of Purchase

Last Click Audience/Keyword

Days to Purchase

First Click Audience

Table with columns: Advertiser, Ad Name, Ad Type, Ad Status, Ad Spend, Ad Impressions, Ad Clicks, Ad Conversions, Ad Cost Per Click, Ad Cost Per Conversion, Ad Return on Ad Spend, Ad Attribution, Ad Frequency, Ad Reach, Ad Impressions Per Day, Ad Clicks Per Day, Ad Conversions Per Day, Ad Cost Per Day, Ad Return on Ad Spend Per Day, Ad Attribution Per Day, Ad Frequency Per Day, Ad Reach Per Day, Ad Impressions Per Week, Ad Clicks Per Week, Ad Conversions Per Week, Ad Cost Per Week, Ad Return on Ad Spend Per Week, Ad Attribution Per Week, Ad Frequency Per Week, Ad Reach Per Week, Ad Impressions Per Month, Ad Clicks Per Month, Ad Conversions Per Month, Ad Cost Per Month, Ad Return on Ad Spend Per Month, Ad Attribution Per Month, Ad Frequency Per Month, Ad Reach Per Month, Ad Impressions Per Year, Ad Clicks Per Year, Ad Conversions Per Year, Ad Cost Per Year, Ad Return on Ad Spend Per Year, Ad Attribution Per Year, Ad Frequency Per Year, Ad Reach Per Year.

Data Tracking

Date of Purchase

Last Click Audience / Keyword

Days to Purchase

First Click Audience Area

Table with columns: Advertiser, Ad Name, Ad Type, Ad Status, Ad Spend, Ad Impressions, Ad Clicks, Ad Conversions, Ad Cost Per Click, Ad Cost Per Conversion, Ad Return on Ad Spend, Ad Attribution, Ad Frequency, Ad Reach, Ad Impressions Per Day, Ad Clicks Per Day, Ad Conversions Per Day, Ad Cost Per Day, Ad Return on Ad Spend Per Day, Ad Attribution Per Day, Ad Frequency Per Day, Ad Reach Per Day, Ad Impressions Per Week, Ad Clicks Per Week, Ad Conversions Per Week, Ad Cost Per Week, Ad Return on Ad Spend Per Week, Ad Attribution Per Week, Ad Frequency Per Week, Ad Reach Per Week, Ad Impressions Per Month, Ad Clicks Per Month, Ad Conversions Per Month, Ad Cost Per Month, Ad Return on Ad Spend Per Month, Ad Attribution Per Month, Ad Frequency Per Month, Ad Reach Per Month, Ad Impressions Per Year, Ad Clicks Per Year, Ad Conversions Per Year, Ad Cost Per Year, Ad Return on Ad Spend Per Year, Ad Attribution Per Year, Ad Frequency Per Year, Ad Reach Per Year.



B. ANALYSES OF DATA COLLECTED

- iii. While the numbers of variables assessed across platforms differ, and such data is highly complex, for the purposes of understanding, a simplistic example is provided hereunder: -
- a. 20 people have an interest in Golf Accessories: -
 - b. 10 people out of 20 them are found to also have an interest in Dogs;
 - c. Separately, 6 others from the original 20 are found to also have an interest in Organic Food; and
 - d. While 4 from the original 20 are found to also have an interest in Tennis
- iv. The unique and specialized input and knowledge of the Directors and some officers of the Company lies in their ability to analyse and to determine which customer to target. For instance, an analysis of the above data could indicate that a person interested in Dogs is more likely to purchase Golf Accessories than a person interested in Organic Food, and a person who likes Organic Food is more likely to have an interest in Golf Accessories, than a person having an interest in Tennis.
- v. Such analysis also varies according to the data set in terms of the number of persons analysed.
- vi. A person may bid a dollar value on any such categories. A larger audience allows for a more specific correlation. For instance, a person who likes Oprah Winfrey, may also be more likely to like Ayurveda products than a person interested in Walmart.
- vii. Accordingly, a person can reduce his prospective cost of acquisition of targets and consequently for the same dollar spent have a higher return. It is here that the skill and judgment of the Directors and certain officers of the Plaintiff comes into play, along with the importance of their copyrighted content and advertisements that are used across such target audiences. (*The Plaintiff had tested more than*



500 permutations and combinations of ad creatives till April 2018)

viii. This requires constant work to analyse the best platform/audiences/degree of engagement of customers to show advertisements, as well scale bids and budgets, i.e. to take calls as to when to upscale/downscale or stop advertising to each category of audience. Based on inputs generated from such advertising space, targeted ads and marketing strategies are adopted.

C. TARGETED ADVERTISING UPON ANALYSIS

ix. Advertisements are designed by certain employees, copywriters and designers of the Plaintiff, on the direction of some Directors and Senior Employees of the Plaintiff. Such Ads and Sales pages are created by designers who work with copywriters creating content specifically for digital marketing. *The authors of all such content, are all employees or contractors of the company, and any data generated as a result thereof including the rights therein are owned by the Plaintiff No. 1. All such persons have entered into copyright assignment contracts with the Plaintiff, thereby the Plaintiff possess copyright of such material.* The process adopted by the Plaintiffs for the products requires constant monitoring, and evaluation by the Plaintiffs. During such process the Plaintiffs must keep in mind the requirement of each product, and more importantly of the customers, as well as various market factors amongst other things.

x. Constant assessment is also required in terms of the clicks/ website visits gained for each of the advertisements designed, and which of these advertisements leads to the highest percentage of website visits from the number of advertisement impressions shown, and thereafter assessment is further required to judge exactly which visits from which advertisements, and audiences eventually leads to the maximum amount of purchases by customers.

xi. For instance, an 80-year-old prospective customer in the targeted group may receive a different form of advertisement as opposed to a 25-year old prospective customer. It is here that the content of the advertisement, its attractiveness, and its ability to resonate with the target group matters. The high conversion rate of the Plaintiff comes from its superior advertising and marketing content, which is all subject to copyright.



- xii. The decision of scaling/stopping ads is based on the following factors, which the Company trains its teams to judge:
- a. CTR (Click Through Rate), signals the number of people who clicked on the add and went to the website. Fluctuates based on relevance of the creative to the specific audience.
 - b. CPC (Cost Per Click): Fluctuates based on other factors mentioned, here.
 - c. Engagement Rate (Likes, shares, comments etc.), all cumulate into a Relevance score of the advertisement in addition to other variables.
 - d. CPM: Cost per thousand impressions shown to the audience, which the Advertiser charges.
 - e. Frequency: Number of times an add was shown to a Prospective Customer.
 - f. First Click Attribution through our own, self-developed Cookie System. *(This includes information about from where the customer came to the Plaintiff for the very first time. The Plaintiff has its own system to track this, which plays a critical role in helping analyse where to target in the future. This has helped the Plaintiffs establish the audiences which are the first initiators of interest, which is critically important in an area like Ayurveda in the USA, which is still relatively unknown.)*
 - g. Last Click Attribution; this is the commonly provided attribution from most online platforms. This defines which was the last platform from which a click was received/ from where a consumer arrived at a website before making a purchase.
 - h. Conversion rate of click to sale-influenced/heavily defined by the Plaintiffs literary copyright in the content in advertisements creatives and on the sales page.



D. ACQUIRING CUSTOMER DATABASE

xiii. Courses and Products are also developed based on such interests. The Plaintiff has 'a one stop portal' for all things Ayurveda where interested consumers can sign up for free content, purchase courses, products and become members of the Ayurveda Experience

xiv. The Plaintiff is able to obtain personal details of the customers (Name, Phone Number, Address, e-mail address) only after the customers themselves provide the data when purchasing such item /enrolling to a course. Such data is provided by such customers on the website of the Plaintiffs. Accordingly, such customers who voluntarily provide their contact/address/ telephone-number/e-mail address do so on the basis of the extant privacy policy.

xv. The customer list is built upon only after going through all or most of the above steps. It may be noted that no such data is publicly available, and such information is provided to the Plaintiff voluntarily by prospective customers, which is subject to the privacy policy of the Plaintiff;

a. Analysis by the Plaintiffs of all the data they have on their consumers, and making correlations between different audiences, based on the past return on advertising investments on them.

b. Analysing and selecting a target audience based on research conducted in point (a) above.

c. Creation of Advertisements for specific Target Audiences

d. Customer watching/engaging with Such Advertisement

e. Customer's interest being piqued by the Advertisement

f. Customer Clicking on Such Advertisement

g. Customer making decision to visit website of Plaintiff



h. Customer making purchase from site of Plaintiff and the active decision to provide customer data. At such time the Plaintiff undertakes to protect such data in terms of its privacy policy.

E. FURTHER USE OF DATABASE OBTAINED

xvi. The Plaintiff thereafter is able to create a refined database in accordance with, the privacy policy which allows the Plaintiffs to reach out to existing customers with new products etc. by: -

- a. Directly e-mailing such customers
- b. Using customer database to selectively target customers through showing such customers advertisements on Social Media as Facebook, Instagram, YouTube. Showcasing Advertisements to such previous buyers as detailed below in points c and d is highly lucrative showcasing the business/commercial value of the customer database.
- c. Retargeting an existing customer also generates on average 80% more revenue per dollar spent than retargeting a prospective customer. In a 12-month period prior to filing of the plaint the Plaintiffs were able to, generate USD 7,00,000 from advertising/reaching out to existing customers through Facebook/Google,
- d. Taking a modest USD to INR conversion rate of 65 INR to one USD that would amount to in excess of INR 4.5 Crore.

Accordingly, the customer database of the Plaintiff is obtained through far more than just capital and labour, but is based on skill and judgment, and specialized knowledge of the Director and certain officers of the Plaintiff. Therefore, the fact that customer details are generated only once all the above-mentioned processes are completed would directly indicate such data is a culmination of skill, judgment, specialised knowledge, and training, provided by directors such as Mr. Rishabh Chopra, among others, which came from manual as also digital processes developed over a sustained period of time, would show that such data is protected by copyright.”



5.9 Defendants 1 and 2 were employed with Plaintiff 1 on 18 July 2016 and 1 May 2016 respectively. They executed agreements with Plaintiff 1, which obligated them not to share, with any third party, the confidential information of the plaintiffs, during or after the tenure of their engagement with the plaintiff. The agreements also contain clauses which forbade Defendants 1 and 2 from entering into any business which would compete with the business of Plaintiff 1 and from soliciting the clients or employees of Plaintiff 1, after the cessation of their employment with the plaintiffs. It was alleged that, in breach of their obligations, Defendant 1 and 2 had engaged in large-scale infringement of the plaintiffs’ trade secrets, copyright and trade dress, after they had left the services of Plaintiff 1. The plaintiff averred that, in April 2018, Plaintiff 1 received emails advertising “Adya Ayurveda” products, which mirrored the content created for the plaintiffs’ products. The get up and design of the website of Defendants 1 and 2 was also alleged to be similar to that of the plaintiffs’ website. The description of some of the products on the “Adya Ayurveda” website of Defendant 3 was found to be identical to the description of corresponding products of the plaintiffs, or largely similar. For example, the description of five of the ingredients in “Adya Ayurveda Kumudini Oil” was found to be identical to the description of corresponding ingredients in the plaintiffs’ “iYURA Kesaradi Oil”. Thus, alleged the plaintiff in para-32, Defendants 1 and 2 not only copied content, style and purloined the plaintiffs’ proprietary digital marketing information, but also used/stole the plaintiffs’ customer database.



5.10 Predicated on these allegations, the plaintiff seeks the following reliefs:

(i) a decree for permanent injunction restraining the Defendants and anybody acting through them, from disclosing or using in any manner whatsoever, directly or indirectly, any confidential information, trade secrets or any other information pertaining to the business and operations of the plaintiffs, for any purpose whatsoever,

(ii) a decree for permanent injunction restraining the defendants and anybody acting through them from carrying out any business of or in relation to “Ayurveda” for two years, in accordance with the employment agreement,

(iii) a decree for permanent injunction restraining the defendants and anybody acting through them from using any of the proprietary content, including copyright, of the plaintiff or doing any act so deeds that infringe the plaintiff’s copyrights, and

(iv) a decree for permanent injunction restraining the defendants and anybody acting through them from directly or indirectly approaching, soliciting, inducing or encouraging any customer of the plaintiffs, or any employee, to quit the employment of the plaintiff or join any business of the defendants,

(v) an order of mandatory injunction, directing the defendants and all others acting on their behalf to deliver up all confidential information, trade secrets and data pertaining to the plaintiffs and its business and operations and all information and material in which the plaintiffs copyright subsists, as well



as all products obtained or manufactured by the defendants under the brand “Adya Ayurveda” or any other similar brand, and

(vi) a direction to the defendants to reveal the particulars of third parties to whom the defendants have parted with, or revealed confidential information belonging to the plaintiffs, apart from damages, rendition of accounts and costs.

6. The decision in *Navigators Logistics*¹

6.1 The plaintiff in Navigators Logistics (“NL” hereinafter) was one; the defendants 12. 8 of the defendants were former employees of NL and were, therefore, privy to NL’s confidential information. As in the present case, the employment contracts of the eight defendants with NL contained non-compete and non-soliciting covenants. All eight defendants resigned between 9 May 2016 and 25 May 2016. Data recovery, undertaken on the defendant’s laptops after they had resigned revealed that they had hatched a conspiracy to use the confidential data information and trade secrets of the plaintiff to its detriment and to further their own business interests. It was also seen that the defendants had conspired to divert the existing business of the plaintiff to Defendant 12 and that, in the process, confidential information, which had come into the position of Defendants 1 to 8 during their employment with the plaintiff, was forwarded to Defendants 9 to 11. In these circumstances, NL sued the defendants, seeking reliefs which are more or less similar to those sought by the present plaintiffs before this Court.



6.2 This Court, speaking through a learned Single Judge (Endlaw, J.), observed, before venturing into the factual ticket, that if a meaningful reading of the plaint did not disclose any right to sue, or disclosed that the plaint was barred by law or that the plaintiff had no chance of success, it was the duty of the Court to ensure that such a proceeding be not allowed to burden the Court docket, and effectively to nip it in the bud. The Court proceeded, thereafter, to reproduce para 5 of the plaint before it, in which the plaintiff claimed rights in “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”. Thereafter, in paras 21 and 22, the judgment proceeds thus:

“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 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).”

(Emphasis supplied)

Thus, the Court restricted the sphere of its examination, regarding the maintainability of the suit, on the premise that what was essentially sought to be protected, and in which copyright was claimed, was the clients’ list of the plaintiff NL. To make this matter clear, Endlaw, J., in characteristically inimitable plainspeak, observed thus in para 28:

“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.”

6.3 The judgment proceeds, thereafter, to allude to the decision of the Supreme Court in *Eastern Book Company v. D.B. Modak*², to observe that a modicum of creativity, skill and judgment is necessary for a valid claim to copyright. The learned Judge proceeds, thereafter, to refer to his own earlier decision in *Tech Plus Media Pvt Ltd v. Jyoti Janda*³, in paras 30 and 31 of the judgment, thus:

“... 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.*³ was rejected.

² (2008) 1 SCC 1

³ (2014) 60 PTC 121



31. I may state that the pleadings in the present suit are equally vague as in *Tech Plus Media Private Ltd.*³ *There is no averment in the plaint of the technique/criteria in compiling the list of customers.*”

(Emphasis supplied)

6.4 The judgment proceeds, thereafter, to invoke Section 13(2)⁴ of the Copyright Act, 1957, in conjunction with Section 17(c)⁵ thereof. These provisions, according to the learned Judge, required the author of the literary work in which copyright is asserted to be identified in the plaint. As NL had not identified the author of the clients list, the decision holds that, even for that reason alone, there could be no copyright in NL therein.

6.5 Thus, holds the judgment in para 36, “the reliefs claimed by the plaintiff on the basis of copyright does have no chance of success in the suit and the plaint is liable to be rejected insofar as on the premise of copyright.”

⁴ 13. **Works in which copyright subsists.** –

(2) 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 making of the work a citizen of India or domiciled in India; and

(iii) in the case of a 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.

⁵ 17. **First owner of copyright.**— Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that—

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;



6.6 Paras 39, 41 and 42 of the judgment proceed, thereafter, to observe as under:

“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 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.

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 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.”

(Emphasis supplied)

6.7 Thereafter, in para 48, the judgment further notes that NL had not pleaded that the defendants were privy to the trade secrets or such other matters, for which reason, too, no case to injunct the defendants from diverging such trade secrets could be said to exist:

“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.”

6.8 Finally, the Court, relying on *Niranjan Shankar Golikari v. Century Spinning & Manufacturing Co. Ltd*⁶, *Superintendence Company of India (P) Ltd v. Krishan Murgai*⁷ and *Percept D’Mark*

⁶ AIR 1967 SC 1098

⁷ (1981) 2 SCC 246



*(India) (P) Ltd v. Zaheer Khan*⁸, held that the non-compete clause in the employment agreement of the defendants was void and unenforceable in law. As such, no injunction would be granted on the basis of the said clause.

6.9 Premised on these findings, this Court, speaking through Endlaw J., sitting singly, held the suit, instituted by NL, to be devoid of any cause of action and, therefore dismissed the suit.

7. Before proceeding to examine Issue 1, framed in the present case, on merits, in the light of the decision in *Navigators Logistics*¹, it has to be noted that, in that case, Endlaw, J. found *none of the pleas advanced in the suit* to be making out a cause of action, as could sustain a prayer for injunction. To wit, it was found that (i) though copyright had been asserted in various documents, no particulars were forthcoming in respect of any of the said documents, except the list of customers/clients of NL, (ii) a list of customers/clients, drawn up without any element of creativity, and which had no economic/business/commercial value, could not be regarded as confidential or partaking of the character of a trade secret, as the details of the clients were available in the public domain and could even be sourced from the telephone directory, (iii) sans any element of creativity or commercial value, such a client/customer list could not be subject matter of copyright, (iv) the author of the said list was also not identified, which was a *sine qua non* for claiming copyright therein, (v) NL had not pleaded that the defendants were privy to the trade secrets and (vi) the non-compete clause in the employment

⁸ (2006) 4 SCC 227



contracts, that NL sought to enforce, was not enforceable at law, as it amounted to a covenant in restraint of trade. As, therefore, none of the grievances of NL birthed a cause of action, which could translate into an injunction, the suit was dismissed.

8. Why this aspect assumes importance is because the exercise carried out by the learned Single Judge in *Navigators Logistics*⁹ is essentially relatable to Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), which is the only provision under which, without trial, a suit can be dismissed. A suit can also be dismissed at the instance of the defendant under Order XII Rule 6, on the basis of admissions by the plaintiff but, even in such a case, ordinarily the dismissal would be under Order XII Rule 6 read with Order VII Rule 11. The only other provision under which a suit can be guillotined even before trial is Order VII Rule 10, where the Court has no jurisdiction to adjudicate on the suit, in which case the plaint would have to be returned for presentation before the proper forum. In all other cases, bar none, a suit has to proceed to trial.

9. It is equally well-settled that, under Order VII Rule 11, the plaint cannot be rejected in part. It has either to be rejected as a whole, or has to proceed to trial. This position of law stands enunciated in several decisions of the Supreme Court, including *Sejal Glass Ltd. v. Navilan Merchants P Ltd*⁹, *Madhav Prasad Aggarwal v. Axis Bank Ltd*¹⁰ and, most recently, *Bhim Rao Baswanath Rao Patil v. Madan Mohan Rao*¹¹. In *Navigators Logistics*¹, this Court

⁹ (2018) 11 SCC 780

¹⁰ (2019) 7 SCC 158

¹¹ 2023 SCC OnLine SC 871



found that no sustainable cause of action, on the basis of which the prayers in the suit could be granted, arose *out of any of the grievances* raised by the plaintiff. Had this Court found, on the other hand, that even one of the said grievances gave rise to a triable cause of action, the suit could not have been dismissed, and would have had to proceed to trial as a whole.

10. Rival Submissions

10.1 Arguments before me, in this case, were brief. Mr. Kshitij Sharda and Mr. Rajat Aneja, arguing for the defendants-applicants, submitted that the case was fully covered by *Navigators Logistics¹*. The findings, in *Navigators Logistics¹*, on the vagueness of the assertions in the plaint with respect to all of the documents/data, except the client/customer list, in respect of which copyright was being claimed, it is submitted, apply *mutatis mutandis* to the present case. Mr. Sharda sought to submit that, though prayer (a) in the suit sought injunction in respect of “any confidential information, trade secrets or any other information pertaining to the business and operations of the Plaintiffs Company”, the only confidential information, in respect of which protection was sought, as per the averment in the plaint, was the plaintiffs’ client/customer list, as was the case in *Navigators Logistics¹*. He has drawn my attention to the fact that the plaintiffs had sought to submit the confidential information in a pen drive and has, in that context, referred to in para 2 of order dated 11 May 2018 and paras 19, 25 and 26 of order dated 17 July 2019, passed by this Court in the present proceedings. Para 2 of the order dated 11 May 2018 reads thus:



“2. Counsel for the plaintiffs states that there is a mistake in describing the electronic document being filed as a CD, but the same is in fact a Pen Drive. It is stated that the Pen Drive contains the necessary confidential information of the plaintiffs which is being illegally used by the defendants. It is prayed that so that the case of the plaintiffs can be examined on merits with respect to illegal user by the defendants of the confidential information of the plaintiffs, this Pen Drive be allowed to be filed and put in a sealed cover. This application is therefore allowed and plaintiffs will now appear before the concerned officer in the Branch of this Court and will get the Pen Drive sealed. The sealed Pen Drive will be retained in the custody of this Court.”

Paras 19, 25 and 26 of the subsequent order dated 17 July 2019 read thus:

“19. The senior counsel for plaintiffs on enquiry, under instructions states that the Pen Drive referred to in order dated 11th May, 2018, contains only the list of customers of plaintiffs and no other confidential information.

25. I have thus enquired from the senior counsel for the plaintiffs, whether the plaintiffs are willing to share the customers list with respect whereto only confidentiality is claimed, with the defendants, binding the defendants to confidentiality terms, as they have already been.

26. The senior counsel for the plaintiffs, on instructions states that the plaintiffs do not wish to share their customers list with the defendants.”

10.2 Mr. Sharda further submits that the plaint was devoid of any particulars on the basis of which a finding of infringement of copyright could be returned by the Court. The entire case, he submits, is purely speculative in nature, based on a search of the defendants’ website.

10.3 Supplementing the submissions of Mr. Sharda, Mr. Aneja submits that a meaningful reading of the plaint in the present case



discloses no triable cause of action. As such, he submits that, applying *Navigators Logistics¹*, the suit is liable to be dismissed, by deciding Issue 1 in favour of the defendants and against the plaintiffs.

10.4 Responding to the submissions of Mr. Sharda and Mr. Aneja, Mr. Rajagopal, learned Counsel for the plaintiffs submits that the decision in *Navigators Logistics¹*, in fact, supports the case of the plaintiffs rather than that of the defendants. While staunchly refuting the submission of Mr. Sharda that copyright was claimed, in the present case, only in respect of the client/customer list of the plaintiffs, Mr. Rajagopal submits that even if, arguendo, it were to be so assumed, the present plaintiffs would nonetheless be eligible to proceed to trial even applying the decision in *Navigators Logistics¹*. He submits that, in *Navigators Logistics¹*, this Court found the clients/customers list, in respect of which copyright was being played by NL, to be incapable of being subject matter of copyright, as no element of creativity had been pleaded to have gone into the creation of the said list, and the list was not shown to be possessing any economic or business value. In the present case, Mr. Rajagopal submits that there are detailed assertions in the plaint regarding the manner in which the customers list had been prepared and operated, including the assertion that, in preparing the list, expenses of ₹ 28 crores had been borne by the plaintiffs. Equally, the assertions in the plaint, he submits, clearly indicate that the list had deep and pervasive economic value for the plaintiffs, unlike the list which forms subject matter of consideration in *Navigators Logistics¹*. In fact, he submits that the plaintiffs have specifically alleged, in the plaint, that Defendants 1 and 2 were using the copyrighted information of the



plaintiffs to sell products under the brand of Defendant 3, which itself vouchsafed its commercial value. As such, submits Mr. Rajagopal, the present suit cannot be said to be devoid of any cause of action, as would justify its decapitation without a trial, as was the sorry fate of *Navigators Logistics*¹.

Analysis

11. No detailed analysis is required. The assertions in the plaint in the present case clearly distinguish it from the plaint in *Navigators Logistics*¹. Issue 1, as framed, is to be decided solely by reference to the plaint. That, in any case, is also the well settled remit of Order VII Rule 11 of the CPC¹².

12. The passages from the plaint, extracted in para 5.8 *supra*, clearly underscore the painstaking manner in which the plaintiffs developed its entire confidential data base, of which the customer list is but a part. There are detailed averments and assertions which bear out the great deal of technical expertise, inventiveness and creativity which has gone into the generation of the customers list. To equate the present case with *Navigators Logistics*¹ would, therefore, be to equate chalk and cheese. It is also clear, from these passages as well as other paras in the plaint, that the “confidential information”, with respect to which protection is sought in the plaint, is not limited to client/customer lists, but involves a great deal of additional material, including material which is alleged to have been copy pasted from the

¹² Refer *Allied Blenders & Distillers v. R.K. Distilleries*, (2017) 69 PTC 493 (DB)



plaintiffs' website onto the defendants' website so as to confuse clients.

13. Significantly, in *Navigators Logistics¹*, the Court relied on the report of local commissioners who had visited the premises of the defendants and clarified that, barring client/customer lists, there was no other material pertaining to the plaintiffs with the defendants. No such report, of any local commissioners, is forthcoming in the present case. Even otherwise, I must confess, with greatest respect, my reservation to the reliance placed by this Court, in *Navigators Logistics¹*, on local commissioners' reports. The Court was, in that case, exercising jurisdiction effectively under Order VII Rule 11 of the CPC. It could not, therefore, have looked at material outside the plaint filed by the plaintiff. Perhaps, therefore, the reliance, by the Court, on the local commissioners' reports was not entirely apposite.

14. The prayers, in the plaint, for an injunction against the defendants dealing with the plaintiffs' confidential information, and the claim of copyright therein cannot, therefore, be said to disclose no cause of action, as would justify the suit proceeding to trial. Nor can they be said to be so vague and inexact in particulars that no trial, based on such pleadings, would be possible, as was found in *Navigators Logistics¹*.

15. Once a triable issue is found to exist, the suit cannot be dismissed at the outset, as was done in *Navigators Logistics¹*. It has to proceed to trial.



16. Issue 1 is, therefore, decided in the affirmative, in favour of the plaintiffs and against the defendants.

CS(COMM) 817/2018

17. Renotify on 22 November 2023.

AUGUST 28, 2023

C. HARI SHANKAR, J.