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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 11th September, 2019
Pronounced on: 11th October, 2019
+ CS(COMM) 914/2018 & I.A. 7617/2018

LESS THAN EQUALS THREE
SERVICES PVT. LTD. & ANR Petitioner

Through: Mr. Rajiv Kumar Choudhary,
Mr. Bhanu Dhingra, Advocates
alongwith Mr. Manmeet Singh,
Director.

versus

PARAS MEHRA & ORS Respondents

Through: Mr. Ravish Kr. Goyal, Advocate
for D-1 to D-5. Mr. Devvrat
Joshi & Ms. Savni Dutt,
Advocates for D-7.

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CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. The present suit has been instituted by the plaintiff-company, which claims to operate a website under the domain name "www.quickcompany.in". The said website is intended to assist companies in managing regulatory compliances. It is alleged that the plaintiff-company is founded by one Mr. Manmeet Singh (hereinafter referred to as 'MS'), who continues to be a director of the company. The allegation against defendant nos. 1, 2 and 4 is that, although they were founders and shareholders/employees of the plaintiff-company, they have established a competing business ["www.hubco.in"] using the source code of the plaintiff-company. The cause of action pleaded

in the suit include infringement of copyright, passing off and breach of trust and confidentiality.

2. At the stage of framing of issues, Mr. Ravish Goyal, learned counsel for the defendant, cited the judgment of a Coordinate Bench of this Court in *Tech Plus Media Private Ltd. vs. Jyoti Janda & Ors.*, 2014 SCC OnLine Del 1819 [CS(OS) 119/2010, decided 29.09.2014] and submitted that a suit on behalf of a company for infringement of copyright is not maintainable in the absence of a pleading as to identity of the author of the work, and an agreement vesting the copyright in the company. Mr. Goyal contended that these essential ingredients are missing in the pleadings, and that the said judgment therefore requires that the suit be dismissed at this stage itself.

3. Mr. Rajiv Choudhary, learned counsel for the plaintiff, contended that the pleadings in the present suit are sufficient to establish the necessary elements of the cause of action asserted by the plaintiff, even in terms of the judgment in *Tech Plus* (supra). He submitted, in the alternative, that the observations in *Tech Plus*, relied upon by Mr. Goyal, are in the nature of *obiter dicta* as *Tech Plus* was, in fact, decided on a different point.

4. In view of the submissions of the counsel for both parties, it is necessary first to appreciate the true purport of the judgment in *Tech Plus* (supra). Like the present case, the cause of action in that case was also principally for infringement of copyright, passing off and unfair competition. The copyright asserted by the plaintiff was in databases pertaining to its website, which comprised of data regarding prospective customer/clients. The issue of maintainability of the suit

was raised in that case also at the stage of framing of issues. The Court rejected the contention of the plaintiff that upon issuance of summons, the suit was required to be decided only after framing of issues, and trial thereupon. It was held that if the Court finds insufficient pleading regarding the existence of copyright in favour of the plaintiff, the matter was not required to go to trial. On merits, the Court found that the database in question was nothing but a collection of e-mail addresses of visitors to the website/news portal of the plaintiff, in which the plaintiff could not be said to be the author or composer of the work. Most relevant for the purpose of the present case, the Court also found that the plaintiff, being a juristic person, was incapable of being the author of any work in which copyright could exist and would be required to disclose the identity of the author and the agreement under which the plaintiff has acquired the copyright. The relevant paragraphs of the judgment, in this regard, are reproduced below:-

*"19. No merit is found in the contention of the plaintiff that because summons are issued in a suit, issues are necessarily to be framed. Issues are to be framed only on material propositions of fact or law affirmed by one party and denied by other and material proposition are those proposition of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. Had the plaintiff pleaded anything which would show vesting of a copyright in a plaintiff, would an issue have arisen. I have in judgment dated 7th November, 2012 in CS(OS) No.2695/2011 titled **Satya Gupta Vs. Guneet Singh** dealt in detail in this regard and need is thus not felt to reiterate the same.*

20. If the Court, on a reading of the plaint seeking injunction and ancillary reliefs on the basis of a copyright finds no sufficient pleading of the existence of a copyright in favour of the plaintiff, I am not willing to accept that the matter still has to go through the rigmarole of trial. It is the settled position in law that evidence beyond pleadings cannot be led. **The plaintiff is a juristic person and is incapable of being the author of any work in which copyright may exist. However the plaintiff can be the owner of a copyright under an agreement with the author of the said work. For the plaintiff to maintain the present suit, it is incumbent upon the plaintiff to disclose the said work and the author thereof and the agreement under which the author has made the plaintiff the owner of the copyright in the said work.** The plaintiff has not done so. I cannot read the judgment of the Supreme Court in **Alka Gupta** (supra) also to be laying down that merely because a suit has been filed, it has to go through the entire gamut of trial. The Supreme Court in **Alka Gupta** (the judgment of dismissal of suit in which case also was of the undersigned and appeal whereagainst had been dismissed by the Division Bench of this Court) was concerned with the questions of fact having been decided on the basis of the statement recorded under Order X of the Code of Civil Procedure and not with a case with which we are faced herein, of the material facts required to be pleaded in an action for infringement of copyright to show a right to sue, lacking in the plaint.

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27. Order VII Rule 11 of the CPC enables the Court to, when finds the plaint to be not disclosing any cause of action or when finds the suits from the statements in the plaint to be barred by any law, to reject the plaint at the threshold. Similarly Order XV of the CPC also empowers the Court to, when finds the parties to be not at issue on any question of law or facts, at once pronounce

judgment. Order XV in my opinion applies equally to the plaintiff as to the judgment. The judgment referred to herein is not to be necessarily against the defendants and can be against the plaintiff as well. The Court, even if summons ought not to have been issued in the suit and have been issued, at the stage of framing of issues finds the plaintiff to be not pleading the material propositions of law essential for succeeding in the suit, is empowered to pronounce judgment against the plaintiff.

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30. I therefore find the plaintiff to have not pleaded the material propositions of fact essential to succeed in an action for infringement of copyright and thus pronounce judgment forthwith against the plaintiff dismissing the suit. However in the facts, no order as to costs.

[Emphasis supplied]

5. It is in the backdrop of this judgment that the pleadings in the present suit must be analysed. Unfortunately, it is not easy to discern what exactly are the pleadings of the plaintiff in the suit due to considerable (and avoidable) confusion in the conduct of the proceedings. It appears that when the suit was first made ready for filing, it was intended that the plaintiff-company and MS would be arrayed as plaintiffs in the suit. The memo of parties was however, according to Mr.Choudhary, amended at the time of filing, to the effect that the company alone remained the plaintiff and the action was brought through MS as a director and founder of the plaintiff-company. In the original plaint, references to plaintiff no.1 have been amended to “plaintiff” in most places. References to plaintiff no.2 have, to a large extent, been deleted, although paragraph 1 of the

original plaint continues to describe MS, both as the plaintiff and as the director and founder of the plaintiff-company. Curiously, in several places in the original plaint, references to “plaintiff no.2” have been amended to “plaintiff D”, by whitening out the words “no. 2” and inserting a handwritten capital letter "D". Mr.Choudhary states that the reference to “plaintiff D” was intended to be a reference to MS being a director of the plaintiff-company, although it is undisputed that the original plaint does not expressly say so anywhere. Mr.Choudhary justifies this extraordinary state of pleadings by stating that the plaintiff required an interim relief extremely urgently. The plaint was accompanied by an affidavit of MS dated 25.05.2018 where, once again, he has been described as the plaintiff, and also as authorized signatory for the plaintiff-company. During the pendency of the suit, the plaintiff applied for amendment of the plaint [I.A. 3275/2019], seeking amendment of the jurisdictional paragraph of the suit, which was allowed by an order dated 16.04.2019 upon payment of costs. The amended plaint was taken on record pursuant to that order, which compounds the confusion, as it reinstates the references to MS as plaintiff no.2 and to the plaintiff-company as plaintiff no.1. This is a wholly unsatisfactory state of affairs. [While this judgment was reserved on the question of maintainability, Mr.Choudhary mentioned the matter seeking permission to file a “clean copy” of the amended plaint, without reference to MS as plaintiff No.2. He submitted that this had been filed prior to the hearing of 11.09.2019, but returned by the Registry under objections. I have not permitted the filing at this stage.]

6. Be that as it may, I have considered the contents of the amended plaint by reading the references to plaintiff no.2 as reference to MS.

7. It may also be noted that I requested Mr.Choudhary several times to consider whether he wished to seek any further amendment of the plaint in the light of the objection raised by Mr.Goyal, but he declined to do so and preferred to argue that the suit as presently constituted is maintainable.

8. The cause of action pleaded by the plaintiff is principally for infringement of copyright in the plaintiff's website and also for misappropriation of confidential proprietary information and recovery of money. The claim of the plaintiff is that the defendant Nos. 1, 2 & 4 were "involved with" the plaintiff during the course of which the plaintiff shared with them the source code repository access, source code, mySQL database and other proprietary information which the defendants have since misappropriated.

9. The following extracts of the plaint are relevant for tracing the claim of the plaintiff-company in respect of the copyright¹:-

"4. The Plaintiff No.2 is an exceptional software architect and developer and has several successful software projects to his name and a few patents as well. He is the founder of a website – quickcompany.in. Because the business of the quickcompany.in was managing compliance for companies of companies, the Defendant No.1 & 2 being Chartered Accountants, wrote articles informing users about company registration

¹ As mentioned above, MS has erroneously been referred to plaintiff No.2 in the amended plaint which is presently on record.

*processes, etc. and the **Plaintiff No.2 created a website, developed an order tracking system, created the backend team to handle the orders, integrated the website with payment gateways, posted the articles in a format according to design of the website.***...

...Together the Defendant No.1 and 2 wrote about 30 articles for quickcompany.in. These articles were later removed on receipt of a legal notice from the Defendants. It is important to highlight here that the Defendants had assigned all rights including copyrights in the articles to the Plaintiff No.1 company at the time they sold their shareholding in the company.

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7. *In April 2014, the Plaintiff No.2 was working on two different startup ideas: one involving Company / trademarks registration, and the other involving marriages. He purchased the domain name quickcompany.in in June 2014. **Annexure P-1** shows the purchase of the domain name in the personal name of Plaintiff 2, and **Annexure P-2** shows the current landing page for quickcompany.in.*

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15. *The Defendant No.4 was helping the Plaintiff No.2 on both the projects “whenwemarry.com” and “quickcompany.in”. It is at this time that the **Plaintiff No.2 gave access to the Defendant No.4 to the source code repository and MySQL database of both the projects.** This repository was and still maintained on github. The Defendant No.4 removed the bugs as identified by the Plaintiff No.2 and posted the code he had changed on github in September 2015. An email showing that the Plaintiff No.2 provided access to Defendant No.4 to the source code of quickcompany.in maintained*

at github is enclosed as Annexure P-6. The Plaintiff No.2s' instructions to the Defendant No.4 to make certain changes to the source code is enclosed as Annexure P-7. That the Defendant No.4 had access to the entire code repository and that he made changes to the repository is enclosed as Annexure P-7A.

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18. On January 5, 2016, the Defendant No.4 registered the domain name www.hubco.in. Shortly thereafter, in January 2016 itself, the Defendants No.1 & 2 decided to split from the Plaintiff No.1 and sold their share of equity at ₹ Eleven Lacs (₹11,00,000) to a third party. **All rights and the intellectual property including customer details were deemed part of Plaintiff No.1 intellectual property.** Both the Defendants No.1 & 2 signed a non-compete agreement with the Plaintiff No.1 undertake not to take part in competing activities that the Plaintiff No.1 took part in for a period of one year. The share sale agreements are together enclosed as Annexure P-9 (Colly). The registration of the domain name Hubco.in in the name of Defendant No.4 is enclosed as Annexure P-10.

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20. In March 2016, the Defendants launch the website www.hubco.in. Suprisingly, the wireframe structure and the site working were / and still are extremely similar to Plaintiff No.1 website, quickcompany.in. **At this stage it would be pertinent to mention that it took the Plaintiff No.2 working almost 10-11 months to bring out quickcompany.in.** It took the Defendants just two months to launch the website hubco.in....

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30. That the Plaintiff has also identified several bugs in the execution of the source code of the site

hubco.in. These bugs were present at the time the Plaintiff No.2 gave access to the Defendant No.4. That further the Plaintiff No.2 has removed the bugs from quickcompany.in but the same still persist in hubco.in. One such example is the checkout cart for hubco.in....

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36. It is submitted that admittedly the copyright in the Plaintiff's website quickcompany.in vests exclusively with the Plaintiffs....

...The deliberate infringement of copyright and violation of non-complete clause continues to visit the Plaintiffs with irreparable harm and adversely affected and impacted the Defendants marketing efforts....

37. It is humbly submitted that the Plaintiffs are the creators and users of the well known and popular website quickcompany.in and by reason thereof are the exclusive owners of the copyright in the software pertaining to the quickcompany.in website. It is further submitted that by reason thereof the Plaintiffs are the exclusive owners of the copyright in the quickcompany.in website by virtue of Section 2(f) and Section 13 of the Copyright Act. It is further submitted that the Plaintiffs herein are the authors as well as the first owners of the copyright in the quickcompany.in website and the same has been conceptualized and executed by the Plaintiffs and its employees acting under a contract of service.

38. A copyright application has also been filed by the Plaintiff claiming copyright in the computer software work and the same are currently pending. Nevertheless, the Plaintiffs herein are the original adopters and owners of the software in the website quickcompany.in.

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40. *It is submitted that admittedly the copyright in the Plaintiffs' website quickcompany.in vests exclusively with' the Plaintiffs and any right therein are exclusively associated with the Plaintiffs. Use of Plaintiffs' copyrighted work by any third party for any purpose without the permission or license from the Plaintiffs is completely illegal and unlawful. India being a party to the World Convention of WTO countries and the Berne Convention, the Copyright works of the Plaintiffs are entitled reciprocally to protection in almost all the countries of the world that is WTO countries or are signatories to Berne Convention and UCC. The International Copyright order extends protection to the Plaintiffs' works in or other countries including countries outside India in which the Defendants application/computer program is available for download and use.*
41. *It is humbly submitted that the Plaintiffs' case is completely bonafide. The Plaintiffs have worked extremely hard in order to acquire and create a market for its copyrighted works by way of writing the scripts for the website quickcompany.in. The Plaintiffs have also expended large sums of money and effort in designing the website quickcompany.in. The same ought to be protected and taken cognizance by this Hon'ble Court inter alia under the provisions of Section 63 of the Copyright Act."*

[Emphasis supplied]

10. The original and the amended plaints are accompanied by statements of truth/affidavits affirmed by MS. Alongwith the original plaint, MS also filed an affidavit affirmed on 25.05.2018. For the

present purposes, the following paragraphs of the said affidavit are significant: -

- “9. *I state that the Defendant No.4 had access to the source code and MySQL database of quickcompany.in. The Defendant No.4 copied the same and used it to create hubco.in. That a copy was made, can be inferred from the following: The technology profile of quickcompany.in and hubco.in is extremely similar. Both use, Ruby on Rails, both use Phusion services, amazon services for desired areas. Initially, the colour scheme of hubco.in was blue, but recently the Defendants have even changed the colour scheme to yellow, i.e. the colour scheme I used to create quickcompany.in and maintained since then.*
10. *I state that I have identified several bugs that are still there in the hubco.in source code that can be viewed publicly. I have in the time since me and the Defendants separated out, patched some of these bugs, but some still exist. For example, in 2016 when the Defendant No.4 had copied the source code, there were some bugs in the checkout cart. At that time, the code did not allow for more than one single company / trademark to be checked out and paid for. I have patched this bug, but the same is still present in the hubco.in checkout cart.*
11. *I further state that the MySQL database used for quickcompany.in was also created by me from scratch. This database including the field names, and related time stamps was in a relational database with the source code. The Defendant No. 4 copied the source code / MySQL database of quickcompany.in and used it to create the code / MySQL database for hubco.in.*

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13. *I state that the Defendants 1 – 5, have not only committed breach of contract / non-compete / non-disclosure provisions, but have also committed breach of copyright. I state that I created the entire source code of quickcompany.in, which code was used by the Defendants to launch their own product hubco.in. I also created the MySQL database from scratch and accordingly the same was used by the Defendants to create their own database for hubco.in.*
14. *I state that I created the software / source code and connected the source code with a MySQL database for quickcompany.in from scratch and it took me almost an year to build the same. And accordingly, I state that it is not possible for someone reporting to me, including the Defendant No.4, to write from scratch, the same source code and MySQL database that I did , in about a month.*
15. *I state that I have filed a copyright application in the domain name quickcompany.in and claiming copyright in the computer software work and it is currently pending.”*

[Emphasis supplied]

11. A meaningful reading of the plaint and the accompanying affidavit reveals that the plaintiff has disclosed MS to be the author of the works in which it asserts copyright. MS, in turn, has affirmed that the copyright vests in the plaintiff. The plaint also states that the plaintiff has filed an application claiming copyright in the software, which is currently pending. In my view, these assertions are sufficient to save the plaintiff's claim from rejection at the threshold. It appears from the judgment in *Tech Plus* (supra) that the plaintiff in that case had not disclosed the work, the identity of its author, or the basis for

the claim that the copyright had been transferred by the author to the plaintiff. In the present case, the work and the author are disclosed. The author himself states on affidavit that the copyright is vested in the plaintiff-company. An extension of the reasoning in *Tech Plus* to such a situation – with the consequence that the plaintiff’s copyright claim would be rejected summarily – does not commend to me. Mr.Goyal’s preliminary objection is, therefore, rejected. However, the defendant is at liberty to seek framing of an issue on this aspect, which would be considered at the appropriate stage.

12. In view of the above finding, it is not necessary to address Mr.Choudhary’s submissions that the observations in *Tech Plus* (supra), relied upon by Mr. Goyal, are *obiter dicta*.

13. As mentioned hereinabove, the original plaint and the amended plaint both suffer from entirely avoidable errors. Mr.Choudhary is directed to file a rectified copy of the amended plaint, subject to costs of ₹30,000/- payable to the Delhi High Court Legal Services Committee. The same be done within two weeks.

14. List for framing of issues on 07.01.2020.

PRATEEK JALAN, J.

OCTOBER 11, 2019/s