THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE GADI PRAVEEN KUMAR

COMCA.NO.17 OF 2025

Sri P. Raghu Ram, learned Senior Counsel representing Sri R. Ranganathan, learned counsel appearing for the appellants.

Sri A. Venkatesh, learned Senior Counsel representing Sri A. Naveen Kumar, learned counsel appearing for the respondents.

JUDGMENT: (Per Hon'ble Justice Moushumi Bhattacharya)

1. The Commercial Court Appeal arises out of an order dated 03.10.2024 allowing the respondents/plaintiffs' I.A. granting temporary injunction for restraining the appellants/defendants from commercially exploiting or disseminating the proprietary confidential information or trade secrets of the respondents/plaintiffs from divulging the said confidential information which the defendants have gained access to owing to their past relationship with the plaintiffs.

2. The defendants (the respondents in the I.A. before the Commercial Court) are the appellants before us.

3. By the impugned order, the appellants/defendants were restrained from causing the breach of confidential information through commercial exploitation and dissemination of any proprietary confidential information of the respondents/plaintiffs.

4. The appellants/defendants are aggrieved by the absolute and blanket nature of the restraint.

5. Learned Senior Counsel appearing on behalf of the appellants submits that the impugned order is vague, lacks material particulars and is contrary to the rights of the appellants/defendants from carrying on trade and also their fundamental right to carry on any trade or business as guaranteed under the Constitution of India.

6. Senior Counsel further submits that the defendant No.1 worked with the plaintiff No.2 at the nascent stage of the plaintiff's business. Senior Counsel submits that the plaintiff No.2 is a much bigger enterprise compared to the defendant No.3 but has unlawfully sought to stop the defendants' business altogether. It is also submitted that the plaintiffs have failed to particularize the confidential information and trade secrets which form the essential cause of action in the Suit. Senior Counsel further submits that there is no trade secret involved in the manufacturing process of the oil seals and the entire procedure for manufacturing is available in the public domain.

7. Learned Senior Counsel appearing for the respondents/plaintiffs relies on the impugned order to urge that the Advocate Commissioner appointed by the Delhi High Court in an earlier Suit i.e., CS (Comm) No.318 of 2019 (renumbered

as COS No.19 of 2022) filed by the plaintiffs found several incriminating materials in the premises of the defendants. The material includes lists of customers, boxes, CDs and mails which would show that the defendant No.1 has used the confidential information and trade secrets of the plaintiffs in an unauthorized manner. Senior Counsel further submits that the defendants have obtained orders from the plaintiffs' customers by using their association with the plaintiffs.

8. We have considered the submissions made on behalf of the parties.

9. The prayers in the plaint in the Suit (COS No.19 of 2022) filed by the respondents in the present Appeal is for permanent injunction on the defendants (appellants) from breaching confidential information and fiduciary duty, misappropriation of unlawful solicitation of clients, breach of contract, unfair competition damages and delivery up, trade secrets. The prayers in the I.A. filed by the plaintiffs are relevant for outlining our view as to whether the defendants/appellants require any protection at this stage.

10. The prayers in the I.A.No.213 of 2022 are set out below:

> *"a) From commercial exploitation and further dissemination of any proprietary confidential information or trade secrets of the petitioners/plaintiffs through any medium or modes;*
>
> *b) From developing, manufacturing, offering for sale, selling, advertising, or any other acts in furtherance of the release of any product which pertains to, and/or is substantially derived*

> *from, the petitioners/plaintiffs' proprietary confidential information or trade secrets;*
>
> *c) From copying, duplicating, licensing, selling, distributing, publishing, leasing, renting, or otherwise marketing the petitioners/plaintiffs' proprietary confidential information and all other studies containing, using, and/or substantially derived from petitioners/plaintiffs' proprietary confidential information or trade secrets;*
>
> *d) And from divulging the said confidential information, which the respondents/defendants have gained access to owing to their past relationship with the petitioners/plaintiffs, or any other material which has been generated by the respondents/defendants based on the petitioners/plaintiffs' said confidential proprietary information, or making known directly or indirectly the confidential information to third parties in any manner whatsoever, amounting to infringement of trade secrets, breach of confidential information, and fiduciary duty;*
>
> *e) An order restraining the respondents/defendants from soliciting the petitioners/plaintiffs' clients."*

11. In the impugned order, the Commercial Court discusses the exhibits marked in the Suit including a mail sent by the defendants to BHEL stating that the defendant No.2 gained experience while in the employment of the plaintiff No.2 and requested for an order of products.

12. The Trial Court proceeds to rely on several exhibits consisting of an inventory list of goods seized by the local Commissioner from the premises of the defendant Nos.1 and 2 which includes documents of the plaintiff No.2, purchase orders, quality manual inventory list and products of the plaintiff No.2. The Trial Court proceeds to hold that the defendants have infringed the plaintiffs' trade secrets which resulted in the appointment of the Advocate Commissioner for seizing material pending notice to the defendants. The Trial

Court further finds that the defendants are competing with the business of the plaintiffs, more particularly with the customers of the petitioners/plaintiffs which *prima facie* shows that the defendants are in possession of the '*trade secrecy*' of the plaintiffs' and have infringed the said *'trade secrecy' and 'business tactics' of the plaintiffs which amounts to a breach of confidentiality also.*

13. The Trial Court accordingly finds that the plaintiffs have established a *prima facie* case and that the balance of convenience also tilts for grant of a temporary injunction in favour of the plaintiffs.

14. The resulting order of injunction is reproduced below:

> *"In the result, the petition is allowed by granting a temporary injunction restraining the respondents/defendants, their officers, directors, principals, agents, servants, employees, attorneys, successors, and assignees, and other person acting through them either directly or indirectly, singly and/or of together, from breach of confidential information, trade secrets, and fiduciary duty; from commercial exploitation and further dissemination of any proprietary confidential information or trade secrets of the petitioners/plaintiffs through any medium or modes; from developing, manufacturing, offering for sale, selling, advertising, or any other acts in furtherance of the releases of any product which pertains to and/or is substantially derived from the petitioners/plaintiffs' proprietary confidential information or trade secrets; from copying, duplicating, licensing, selling, distributing, publishing, leasing, renting, or otherwise marketing the petitioners/plaintiffs' proprietary confidential information or trade secrets; from divulging the confidential information or trade secret of the petitioners and also restraining the respondents from soliciting the petitioners/plaintiffs' clients, till disposal of the suit."*

15. The impugned order suffers from several fundamental infirmities.

16. It is settled law that both 'confidential information' as well as 'trade secrets' must be identified and particularized for any form of injunction to be granted against the wrongdoer. Both rights are broad-based rights that a plaintiff cannot be asserted vaguely or in a vacuum but must specify in order to pinpoint the exact unauthorized use or infringement.

17. It is also settled law that a breach of confidence can only occur:

(i) where the information possesses the necessary quality of confidence, i.e., the information is not in the public domain;

(ii) that the information was communicated to the recipient (the alleged wrongdoer) in circumstances imposing an obligation of confidence;

(iii) that the alleged wrongdoer used or disclosed the information without the proper authorization;

(iv) causing harm to the rightful owner.

18. Similarly, infringement or misappropriation of a Trade Secret entails improper acquisition, disclosure or use of the trade secret without the consent of the owner. The plaintiff/owner must first establish the existence of a valid trade secret and that the plaintiff/owner took reasonable steps to protect it. Second, the plaintiff must prove unauthorized acquisition or use of the trade secret which, (third), caused

damage to the plaintiff. The proof of duty, fiduciary or otherwise, occurs only where the plaintiff is in a position to establish that the infringer knew of the existence or value of the trade secret but nonetheless proceeded to misappropriate it without the plaintiff's consent and was bound to the plaintiff by a relationship of trust. The first condition, i.e., the existence of a trade secret also pre-supposes that the information is not in the public domain and is not readily accessible to others and has an independent economic value which gives the owner the right to protect it against others.

19. The above conditions are premised on the specificity of the information or trade secrets, which must have been clearly defined and are identifiable, as opposed to a vague, generalized body of details or plans. Indisputably, the impugned order does not contain any particulars of the confidential information or the safe trade secrets which have been divulged or infringed by the defendants. The Trial Court simply proceeds on the material seized by the Local Commissioner from the premises of the defendant No.2 to arrive at the conclusion that the plaintiffs have made out a *prima facie* case for an injunction. There is no discussion whatsoever in the impugned order as to the exact nature of the information or trade secrets over which the plaintiffs lay claim.

20. In our view, the absence of specificity goes to the root of the matter and should have been the first issue which the Trial Court considered.

21. Even more strange is the absolute and blanket order of injunction which has been extracted above. We have extracted the prayers in the plaintiffs' I.A. and the injunction for a reason. The purpose is to show that the Trial Court simply reproduced the prayers in the I.A. without bothering to exercise its independent discussion as to whether the plaintiffs' merit such a broad and open-ended injunction. The operative part of the impugned order vaguely mentions *'confidential information, trade secrets, and fiduciary duty'* without any reference to the plaintiffs' rights over any of the three limbs of restraint.

22. The impugned order is thus not only vague but draconian and contrary to a party's constitutional and legal right to carry on any trade or business.

23. We are hence of the considered view that the Trial Court erred in passing the impugned order without considering the fundamental requirements of the law relevant to the subject.

24. We thus allow and dispose of the COMCA by directing the Trial Court to consider the issues raised by the plaintiffs in the I.A. afresh with due regard to the law relevant to the subject. The I.A. shall be decided as expeditiously as possible and

without granting any unnecessary adjournments to the parties. All the issues are left open to be decided by the Trial Court.

25. COMCA.No.17 of 2025, along with all connected applications, is disposed of in terms of the above. Interim orders, if any, shall stand vacated.

MOUSHUMI BHATTACHARYA, J

GADI PRAVEEN KUMAR, J

Date: 26.09.2025
NDS