

IN THE COURT OF CITY CIVIL JUDGE AT BANGALORE

O.S. NO. 4961 OF 2018

IN

IA No. _____/2018

BETWEEN

Srinivas Devathi

.....PLAINTIFF

And

Janssen Pharmaceuticals Inc. and Ors.

.....DEFENDANTS

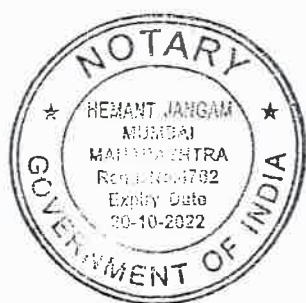
**INTERLOCUTORY APPLICATION UNDER ORDER 7 RULE 11 OF THE
CODE OF CIVIL PROCEDURE, 1908**

For the reasons stated in the accompanying affidavit, it is respectfully prayed that that this Hon'ble Court be pleased to reject the Plaint as against Defendant No. 3 with exemplary costs and pass any other order, as this Hon'ble Court may deem fit in the facts and circumstances of the case and in the interest of justice.

Place:

Date:

Advocate for Defendant No. 3



IN THE COURT OF CITY CIVIL JUDGE AT BANGALORE

I.A. NO. OF 2018

BETWEEN

Capgemini US LLC

.....APPLICANT

And

Srinivas Devathi and Ors.

...RESPONDENTS

AFFIDAVIT

I, Aliff Fazalbhoj, aged about 53 years, son of Sultan Fazalbhoj at 1st Floor, Free Press House, 215, Free Press Journal Marg, Nariman Point, Mumbai, Maharashtra 400021, do hereby solemnly affirm and state on oath as follows:

1. I am the Power of Attorney holder of the 3rd Defendant herein. I am aware of the facts and circumstances of the case and am competent to swear to this affidavit.
2. This application is being filed by Defendant No. 3, above-named, for rejection of Plaint (*under order 7, rule 11 CPC*) filed by the Plaintiff in the above-mentioned suit.
3. At the outset, it is submitted that the Plaint does not disclose any cause of action against the Defendants including Defendant No. 3, nor does this Hon'ble Court have jurisdiction to entertain and try this suit. The subject matter of the alleged dispute/alleged cause of action falls within the jurisdiction of a foreign court/authority and the reliefs claimed in the Plaint are against a foreign government adjudicating authority and not against the Defendants. Defendant No. 3 craves liberty of this Hon'ble Court to refer to and rely upon the contents of Written Statement filed in the above suit as a part and parcel of this application.



Handwritten signature or initials.

4. The brief summary of facts and primary allegations leveled by the Plaintiff against Defendant No. 3 are as follows. These are stated here for the sake of convenience and none of these allegations are admitted by this Defendant:

- a. That from the year 2000 to 2010, Plaintiff was employed by Defendant No. 3 and in the year 2007, Plaintiff allegedly invented 'Vehicle Color Change Technology';
- b. The said invention was applied for a Patent grant before United States Patent and Trade Mark Office (USPTO) on March 27, 2014 bearing National Patent Application No. (#14/227,859) which was titled as 'SYSTEMS AND METHODS FOR ALTERING THE COLOR, APPEARANCE, OR FEEL OF A VEHICLE SURFACE' (said 'National Patent Application'). It is pertinent to note that the said application was made 4 years after the Plaintiff ceased to be in the employment of the Defendant No.3;
- c. That the said Patent application was duly examined and upon alleged instructions of Defendant Nos. 1, 2 and 3, a Patent was issued by USPTO to Plaintiff on December 16, 2014 being Patent No. 8,910,998;
- d. Thereafter, Defendant Nos. 1, 2 and 3 allegedly instructed USPTO's International Search Authority (ISA) to issue a sabotaging International Search Report (ISR) in relation to its Patent Co-operation Treaty (PCT) application no. PCT/US2014/046619 (said 'PCT Application');
- e. That this was allegedly done by Defendant Nos. 1, 2 and 3 to destroy the prospects of Plaintiff to get an IP grant for its said PCT application in over 155 plus countries as alleged;
- f. That Defendant Nos. 1, 2 and 3 allegedly ensured that prior art citations in ISR are fabricated and allegedly teamed up with Defendant No. 4 to allegedly delay the delivery of the alleged sabotaging ISR;



107

- g. That the Defendant Nos. 1, 2 and 3 allegedly have hatred for Indian citizens and want to restrain them to earn royalties and have allegedly deprived Plaintiff from earning trillions of dollars which could have been used for development of India.

5. Relying on the above facts and allegations, the Plaintiff in the present Suit is claiming the following reliefs:

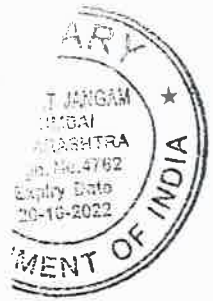
- a. To remove the sabotaging ISR from Plaintiff's said PCT Application and issue a correct ISR and communicate the same to World Intellectual Property Organization (WIPO) and all designated PTOs;
- b. To provide Plaintiff with invention enforceability rights as per PCT across all PCT countries, so that the Plaintiff could earn royalty; and
- c. To issue grant on USPTO patent application no. 14/535,867.

This clearly demonstrates that the reliefs claimed by the Plaintiff are against USPTO and not against this Defendant.

6. Defendant No. 3 states that the said National Patent Application and the said PCT Application have been applied by the Plaintiff independently in his name and is processed by USPTO which is an independent adjudicating authority for grant of Patent in US. Further, admittedly, the said applications were made when the Plaintiff was not within the employment of Defendant No.3 and Defendant No. 3 was never connected to the subject patent application.
7. In this regard, the primary allegation of Plaintiff against Defendant No. 3 is that Defendant No. 3 directed USPTO to issue an alleged ISR which diminished and/or prejudiced his chances of getting a Patent in other countries as alleged. It is submitted that USPTO has its own set of examiners who are qualified in the respective field of invention who



full



thoroughly examines an application and issues an ISR. It is absurd to even assume that Defendant No. 3 can issue orders and/or directions to manipulate something which is a subject matter of adjudication before an independent government authority. If such government offices are run under the influence of companies as contemplated by Plaintiff, Patents would be granted to only to a handful and it would be a mockery of the examination and assessment process. Further, as mentioned in the above PCT process, if the Plaintiff is aggrieved by the ISR, he always has an option to amend its claims; provide his written submissions/opinion; and contest his claims before the Patent Office of the designated country for grant of Patent in relation to its said PCT Application. This fact has even been admitted by the Plaintiff in Para 20 of the Plaint , portion of which, is reproduce hereunder:

“20. Inventor is however filing amendments in each PTO to ensure grant is procured at each national stage level.....”

Therefore, there is nothing in the Plaint which shows the role of Defendant No. 3 in the alleged dispute in relation to the said alleged invention/patent.

8. The entire proceeding is nothing but an abuse of process of law and this Hon'ble Court and the Plaintiff has initiated the same to extort money and to cause harassment/injury/harm to Defendant No. 3. None of the statements in the Plaint are substantiated with any evidence to even remotely attribute the role of Defendant No. 3 in the subject matter of dispute. In the absence of any cause of action against Defendants, more particularly Defendant No.3, this Plaint is liable to be rejected with costs.
9. Defendant No. 3 further submits that the Plaint/Suit is manifestly vexatious and meritless and does not disclose and/or bring out a clear right to sue the Defendants within the jurisdiction of this Hon'ble Court or even otherwise.

pet

It nowhere discloses the right and/or premise as to how this Hon'ble Court has jurisdiction to try and entertain the present Suit.



10. Upon bare perusal of the cause title, all the Defendants including Defendant No. 3 are located in United States of America (USA) and summons were accordingly issued to their respective addresses in USA. Further, the primary dispute raised by the Plaintiff in the Plaint is issuance of the alleged sabotaging ISR by USPTO, which is again located in USA and is an independent government adjudicating authority in USA. The reliefs claimed in the Plaint are against USPTO and not against the Defendants. The nature of Suit is such that the neither the reliefs claimed in the Suit can be granted by this Hon'ble Court nor the Defendants in the Suit can be directed by this Hon'ble Court in anyway to redress the alleged claims by the Plaintiff.
11. The Defendants including Defendant No. 3 as impleaded in the present Suit resides and/or carries on business in USA; no cause of action or part of cause of action arose within the jurisdiction of this Hon'ble Court; the entire cause of action occurred in USA; and the reliefs claimed in the Plaint/Suit cannot be granted by this Hon'ble Court. The proceedings, at best can be instituted in the Courts of USA and not in India, much less before this Hon'ble Court.
12. It is submitted that Supreme Court as well as various High Courts have rejected the Plaint, if the same does not disclose any cause of action arising with its jurisdiction. Supreme Court has further observed that the Courts should remind itself of Section 35-A, C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless litigation.
13. Therefore, as none of the ingredients of Section 20 of Code of Civil Procedure are met, this Hon'ble Court does not have jurisdiction to try and entertain the present Suit. Further, the Plaint should be rejected under Order

[Handwritten signature]

7 Rule 11 of CPC as the Plaintiff does not disclose any cause of action against the Defendants and is barred under law as this Hon'ble Court does not have jurisdiction to try and entertain the present Suit.

14. The above grounds for rejection of Plaintiff and/or dismissal of Plaintiff along with the Written Statement filed in the above Suit clearly demonstrates beyond reasonable doubt that (a) the Plaintiff does not disclose any cause of action against Defendant No. 3; (b) The cause of action, even assuming to be true arose in USA, outside the jurisdiction of this Hon'ble Court; (c) This Hon'ble Court does not have jurisdiction to try and entertain the present Suit; (d) There is no credible evidence to even remotely attribute the role of Defendant No. 3 in the subject matter of dispute; and (e) the Suit is premised on false, baseless and conflicting/contradictory statements of facts.

15. In the light of the above grounds, facts and circumstances, it is most respectfully prayed that this court may be pleased to reject the Plaintiff in the above suit filed by the Plaintiff in the above suit; else Defendant No. 3 shall suffer irreparable loss and injury. The balance of convenience and equities are in favour of Defendant No. 3 and against the Plaintiff.

WHEREFORE, in light of the above circumstances, it is respectfully prayed that this Hon'ble Court be pleased to allow the accompanying application as prayed for in the interest of justice and equity.

Identified by Me

Mr. Mehal
Advocate

Aliff
Deponent

Verifications

I, Aliff Fazalbhoj, the above named deponent solemnly state that the contents of the above statement are true and correct to the best of my knowledge, information and belief and that this statement bears my true and correct signature.

Place: Mumbai

Date : 16/11/2018

BEFORE ME
Aliff
HEMANT JANGAM
NOTARY PUBLIC OF INDIA
MUMBAI, MAHARASHTRA

Aliff
Aliff Fazalbhoj

116 NOV 2018

Recd. *Aliff*
Sr. No. 600 Pg. No. 58
Date 16 NOV 2018

