

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/07/2004

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN  
and  
THE HONOURABLE MR.JUSTICE N.KANNADASAN

O.S.A.No.169 of 2004

Merit Scada Automation Pvt. Ltd.,  
No.45, AVM Avenue, 2nd Floor  
Virugambakkam, Chennai-600 092. .. Appellant

-Vs-

1. Sanmar Industrial Systems Ltd.,  
Survey No.36/38-2A  
Old Mahabalipuram Road  
Perungudi, Chennai - 600 096.

2. R.Vinoth Kumar .. Respondents

PRAYER: Against the judgment and decree of the Hon'ble Mr. Justice  
A.Ramamurthi dated 5.8.2002 in Application No.2280 of 2002 in O.A.No.36 2 of  
2002 in C.S.No.383 of 2002 in the Original Side jurisdiction of this  
Honourable Court.

!For Appellant : No appearance  
^For Respondents : Mr.Vijay Narayanan  
for second respondent

:JUDGMENT

(Judgment of this Court was delivered by P.D.DINAKARAN,J.)

The appeal is directed against the judgment dated 5.8.2002 in  
Application No.2280 of 2002 in O.A.No.362 of 2002 in C.S.No.383 of 2002  
granting interim injunction in favour of the first respondent herein, who is  
the plaintiff in the suit.

2.1. According to the plaintiff/first respondent herein, they are  
engaged in providing software solutions to the terminal loading automation.  
The main purpose of the software is to supervise and control the working of  
the flow meters through a batch controller. The batch controller is a device  
in the form of a piece of machinery by which the quantity can be pre set to be  
loaded into the tankers. The batch controller also controls a set of stop  
valves, which will cut off the flow of the petroleum products on reaching the

required quantity.

2.2. The plaintiff/first respondent herein complains that the said software for controlling the whole operation is designed and developed by them and the commercial value of the software runs into crores of rupees depending upon the size of the product.

2.3. The plaintiff/first respondent herein further submits that, once the software has been designed and developed, it is modified to suit the actual requirement or needs of the particular oil terminal. The software is then sold to the particular oil terminal and is under warranty for a period of two years and thereafter the applicant bids for annual maintenance contract by which it will maintain and support the software a further period on annual basis. At the stage when it comes to the awarding of the annual maintenance contract, other parties are also permitted to bid. If their bids are successful, they would have to install their software for the purpose of doing the work of maintenance. One such software was installed at Vashi Bulk Petroleum Terminal of the Indian Oil Corporation Limited at Navi Mumbai in 1998 and after the period of warranty, the applicant has entered into an annual maintenance contract for maintaining the same.

2.4. The plaintiff/first respondent herein engaged in the abovesaid business, offered an appointment to the first defendant/second respondent herein as a Senior Engineer (Customer Support), by an appointment order dated 1.12.1997 and the first defendant/second respondent herein also joined duty on 8.12.1997 and the said appointment was subject to the first defendant/second respondent herein signing a Secrecy Agreement and accordingly, a Secrecy Agreement was entered into between the first and second respondents herein on 8.12.1997.

2.5. Thus, while the first defendant/second respondent herein was working under the plaintiff/first respondent herein, in terms of the Secrecy Agreement dated 8.12.1997, on 28.11.2001, the first defendant/ second respondent herein took out the software for the project of H.P.C.L. At Devanagundhi and also for another project of Indian Oil Corporation at Vashi. The above software contained all source codes and were not returned by the first defendant/second respondent herein to the plaintiff/first respondent herein. On the other hand, the first defendant/second respondent herein submitted his resignation on 15.3.2002, which was accepted on 20.4.2002 and as a result, the first defendant/second respondent herein was relieved on 23.4.2002.

2.6. The plaintiff/first respondent herein, on making enquiries, came to know that even while the first defendant/ second respondent herein was working under the plaintiff/first respondent herein, he had incorporated the second defendant/ appellant herein, acting against the interest of the plaintiff/ first respondent herein. Aggrieved by the same, the plaintiff/first respondent herein laid C.S.No.383 of 2002 seeking:

(i) a permanent injunction restraining the defendants therein ( second respondent and appellant herein) from bidding for any contract for supply or maintenance of the terminal loading automation systems with any of the Oil

Companies in India; and

(ii) for a permanent injunction restraining the defendants therein ( second respondent and appellant herein) from continuing with any project for supply or maintenance of Terminal loading automation systems with any of the Oil Companies in India.

2.7. Pending the above suit, the plaintiff/first respondent herein filed Application No.362 of 2003 seeking an interim injunction restraining the respondents therein (second respondent and appellant herein) from bidding for any contract for supply or maintenance of the terminal loading automation systems with any of the Oil Companies in India.

2.8. Having satisfied that a prima facie case is made out by the plaintiff/first respondent herein, the learned Single Judge granted interim injunction by order dated 13.6.2002 in O.A.No.362 of 2003 in C.S.No.383 of 2002.

2.9. As against the order of the learned Single Judge dated 13.6.2002 in O.A.No.362 of 2003 in C.S.No.383 of 2002, the second defendant/appellant herein filed Application No.2280 of 2002 to vacate the interim injunction granted by the learned Single Judge, by order dated 13 .6.2002 in O.A.No.362 of 2003 in C.S.No.383 of 2002.

2.10. The learned Single Judge, by a common order dated 5.8.2002 confirmed the the order of interim injunction granted on 13.6.2002 in O.A.No.362 of 2003 in C.S.No.383 of 2002 and dismissed Application No.2 280 of 2002. Hence the above appeal.

3. Heard the learned counsel for the first defendant/ second respondent herein.

4. The undisputed facts are:

- (i) the first defendant/second respondent herein was appointed by the plaintiff/first respondent herein as a Senior Engineer (Customer Support) by an appointment order dated 1.12.1997;
- (ii) the first defendant/second respondent herein joined duty in the plaintiff/first respondent-Company agreeing for the terms of Secrecy Agreement dated 8.12.1997; and
- (iii) the first defendant/second respondent herein was relieved from service on 23.4.2002 and he floated the second defendant/appellantCompany, while he was working under the plaintiff/first respondent herein.

5. The learned Single Judge, after having satisfied that a prima facie case is made out in favour of the plaintiff/first respondent herein, and that the first defendant/second respondent herein violated the terms of the Secrecy Agreement dated 8.12.1997 and floated the second defendant/appellant-Company, which proposed to compete with the plaintiff/first respondent-Company, found the balance of convenience in favour of the plaintiff/first respondent herein by an order dated 13 .6.2002 in O.A.No.362 of 2003 in C.S.No.383 of 2002 granted interim injunction and the same is in force till date. The finding of the learned Single Judge is also supported by

the ratio laid down by the Apex Court in SUPERINTENDENCE COMPANY OF INDIA (P) LTD. v. KRISHAN MURGAI, AIR 1980 SC 1717, wherein the Apex Court held that the negative covenant after the employment has come to end is enforceable in law. The said view is also followed by a Division bench of this Court in BABU, R. v. T.T.K. LIG LTD, 2004 (2) CTC 684.

6. We are, therefore, satisfied the learned Single Judge had rightly passed the order of interim injunction having satisfied with the established principles for grant of temporary injunction, viz., prima facie case and balance of convenience in favour of the first respondent/plaintiff-Company. Finding no merits, this appeal is dismissed. No costs. Consequently, C.M.P.No.11163 of 2004 is also dismissed.

(P.D.D.J.) (N.K.J.)

26.7.2004

Index : Yes

Internet : Yes

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To:

The Sub-Assistant Registrar

Original Side

High Court, Madras.

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