

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

**Reserved on: 14th September, 2017
Pronounced on: 27th September, 2017**

+

CS(COMM) 973/2016

M/S XEGENT CONSULTANTS PVT LTD

..... Plaintiff

**Through : Mr.Yakesh Anand with Mr.Nimit
Mathur, Advocates.**

versus

EA WATER PVT LTD & ORS

..... Defendants

Through : None being ex parte.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. By filing this suit the plaintiff prays for a decree of permanent injunction restraining the defendant, its office bearers, members and all others acting for and on its behalf from directly or indirectly copying and misusing the literary work which includes exclusive news and stories of the plaintiff by publishing the same in the magazines, daily news letters, online circulations issued/ published by the Defendant or in any other manner whatsoever as may lead to passing off and infringement of copyrighted work of the plaintiff.

2. Plaintiff also prays for an order for- rendition of accounts delivery up, damages of `1.00Crore and costs etc.

3. The present suit has been filed by the Plaintiff against the defendants on account of the unauthorised copying and misusing of the literary work done by the plaintiff for past few years amounting to infringement and passing of the plaintiff's copyrighted work under Section 13 of the Copyright Act, 1957 on the following allegations:-

a) the plaintiff is one of the most recognized brand names in the water sector news & information domain and aims to provide integrated and one-stop solutions to all global water-related development needs. The Plaintiff is an international consultancy and project development company in the field of irrigation/water resources, water supply and water/wastewater treatment. The Plaintiff possesses extensive domain knowledge through its highly-experienced team of water professionals and a global network of associates, led by its Director Mr. Girish Chadha;

b) the news and knowledge disseminated by the Plaintiff are acquired by the Plaintiff by personally visiting and privileged interviewing various top officials across the globe on various water related issues. The Plaintiff also acquires privileged news sometimes by way of personal telephonic conversations and emails with global water professionals;

c) Mr.Girish Chadha, has been working in the field of water sector news for past over 10 years. In order to further promote work in field of water, he has incorporated the plaintiff company

i.e. Xegent Consultants Private Limited. The plaintiff for the purpose of disseminating knowledge by focusing on water news in India has made initiative in the name of “India Water Review” (hereinafter referred to as IWR). The Plaintiff had also launched a website namely www.indiawaterreview.in for disseminating water sector news through the World Wide Web. That the abovementioned website of “India Water Review” was launched in year 2011 by the plaintiff

d) “India Water Review” is an India-focussed water news website that tracks and reports on the domestic and regional water/waste water/water management/desalination and services sectors from business/corporate/ commercial, policy and environmental perspectives. IWR targets gathering of information and news, among other areas, on the water management and new water projects being undertaken in India or are proposed to be undertaken in the Country. The IWR has become a worthy source of information & knowledge for the Corporates/ Multinationals/ Public Sector Undertakings intending to invest and expand their stakes in the water industry in India;

e) the Indian Water Review newsletters and stories have gained tremendous attraction since its launch in early 2011 and goes out to a growing list of subscribers, including to CEO/COO/CXO-level executives in Indian and foreign water companies in India, senior and top officials of Central and State governments in India, top consultancy companies, non-government sector, several overseas officials in multilateral finance agencies & UN bodies and select

top executives from educational/technical institutions, among many others;

f) the Union Ministry of Water Resources, Government of India invited “India Water Review” to become the Official Media Partner for the prestigious India Water Week 2013, which was the second edition of the country's key annual policy and technology showcase event around the water sector. IWR has become the only media organization to achieve this honour from the Government of India. IWR continues to be the only official media partner since 2013 and has been recognised as such on the Website of India Water Week;

g) Indian Water Review has been strategic media partner to several global events like the Singapore International Water Week, Singapore; the International Water Summit (IWS), Abu Dhabi, and the World Water Week in Stockholm, organised by Stockholm International Water Institute (SIWI);

h) “India Water Review” has a tie-up for distribution of all its news content and articles on the world's largest content aggregator Factiva, a subsidiary of the prestigious Dow Jones & Company, now owned by Rupert Murdoch's News Corp. Factiva is an international media organization which offers a premier and paid collection of the world's top media outlets, web media, trade and consumer publications and more. Top news sources on Factiva include The Wall Street Journal, Dow Jones Newswires, The New York Times, The Sydney Morning Herald and Le Monde, among

many other newspapers, magazines and news agencies. Selected news articles of India Water Review are also available through Thomson Reuters, the leading global financial news agency and Securities.com;

i) the plaintiff received a letter dated 17.08.2013 from one Ms. Bhupinder Malik from a general trading company namely Norvis Holdings (S) PTE Ltd in Singapore, for appreciating the good work done by the team of plaintiff in the field of reporting the latest updates and developments in the water industry all over the world. Ms.Bupinder Malik had also enquired that if plaintiff had any tie up with the Defendant No.1 as they have found several stories reported by plaintiff copied word to word in the online magazines “Everything About Water” issued by the Defendant No.1 company;

j) the plaintiff had received an email dated 10.09.2013 from one Ms.Mahashweta Mukherjee who works with WWF, India, who wanted to enquire if there is a partnership between plaintiff “Indian Water Review” and “Everything About Water” as she had found a lot of topical news and articles appearing in Indian Water Review also appearing in “Everything About Water” print and online products subsequently.

k) the plaintiff through its counsel then sent a legal notice dated 04.10.2013 thereby calling upon the defendants to immediately cease and desist from copying the plaintiff’s copyright work as well from issuing/ publishing/putting on Website the copies of the

various stories as mentioned herein above and any other infringing stories/reports/information material of the plaintiff;

l) on 14.11.2013, the plaintiff through its counsel had sent a reminder to the legal notice dated 04.10.2013;

m) in the month of December 2013, the Director of the plaintiff had received a telephonic call from one Mr. H. Subramaniam, C.O.O. & Editor i.e. Defendant No. 2 herein thereby confirming that the defendants are in receipt of their above mentioned legal notices. The Defendant No. 2 also apologized personally to the Director of the plaintiff for the actions of the officials of the Defendant no.1 company but even after admitting the mistake, the defendants did not cease and desist from infringing the exclusive copyrighted work of the plaintiff;

n) a comparative study of the contents of the stories published by the plaintiff and that of the defendants in their various publications reflects the latter has been constantly reproducing verbatim, the substantial passages from the stories of the plaintiff. Reference is brought to a story “Swiss PE Fund Capvent AG buys stake in Morf India” of the Plaintiff (Page 146-147 of the List of Documents) which has been blatantly copied by the Defendants in their publications “India Water Magazine” (Page 140-145) and “Droplets newsletter” (Page 160-174) respectively;

o) several hundreds of news stories, including several exclusive stories and articles, reported by Plaintiff’s India Water Review

from early 2012 onwards till now have been picked up and used by the Defendants in their various publications in subsequent months without the knowledge and prior approval of the Plaintiff'

p) the plaintiff has found there are several such stories being verbatim copied by the Defendants in their publications during over one-and-a-half year period. In most of the stories, articles, write-ups of 'India Water Review' copied in verbatim, the Defendants have cleverly removed the original source of such information/news as being India Water Review. There must be many more stories which the plaintiff is not aware about and the same can be ascertained only if the defendant is called upon to submit their publications;

q) most of the stories filed on record by the Plaintiff have not been covered by any other international and national media and other trade publications and are exclusive stories/articles that helped plaintiff to gain popularity for their product IWR (www.indiawaterreview.in) as a single point source for major water business and policy sector news. Due to such exclusive and exhaustive stories, "India Water Review" has become a very formidable brand in the water news and publishing industry, within a short span of just two-three years. The pervasive goodwill and reputation enjoyed by the plaintiff all over the world including India is evident from the associations and collaborations of the plaintiff with the corporate entities all over the world;

- r)** the defendants have been blatantly copying all the exclusive information & stories from the Website of plaintiff i.e. (www.indiawaterreview.in) and endorsing the same as that of defendants. The defendants have been involved in unfair trade practice by copying the verbatim extracts of the stories reported by plaintiff from time to time;
- s)** the information obtained by the plaintiff while interviewing the corporate executives across the world are privileged in nature and cannot be further subjected to distribution and commercial exploitation without express written permission or consent of the plaintiff;
- t)** the plaintiff is bound to lose the confidence and faith of the concerned international and national organization and their top officials if the privileged information is used by some other entity for the purpose of generating income;
- u)** the actions of defendants are likely to make people believe that the information/news published by the defendants in their Website and other publications & newsletters is their own work and property;
- v)** the defendants have been encashing upon the work done by plaintiff by generating income from the advertisements and endorsements made by the defendants in their magazines/monthly newsletters Everything About Water (both print and online

version) and India Water; online project tracker India Water Intelligence and newsletter Droplets;

w) the action of the defendants is an attempt to mislead the public and especially the entities involved in the development of the water industry in the country and abroad. It is pertinent to mention that the actions of the Defendant transpire that the defendants are in some way associated with the plaintiff for its stories and exclusive news;

x) the loss of reputation done to the plaintiff by malafide actions and conducts of the defendants cannot be calculated and therefore the indemnification in money cannot be sufficient and adequate for the damage/ injury to the reputation sustained by the plaintiff. However, for the purpose of the damage suffered by the plaintiff, the Plaintiff prays to consider the loss already suffered by the Plaintiff as well as the loss which the plaintiff is bound to suffer in future at the behest of the defendants. The Plaintiff is claiming a sum of ₹1 Crore as damages which the Plaintiff justifies by virtue of various infringing stories/ blatant verbatim copies. The plaintiff has paid a substantial court fee of ₹1,00,328/- for claiming a damage of ₹1Crore.

4. On dated 28.03.2014 this Court issued summons of the suit to the defendants. While hearing the arguments, the following order was also passed:-

“Learned counsel for the plaintiff has pointed out to instances and comparisons between the articles, news reports published by the plaintiff and the ones by the defendants to show that the same are identical even to the extents that in some articles there is a reference to the name of the plaintiff as if the interview was being given to the plaintiff. Learned Counsel for the for plaintiff submits that the plaintiff has done extensive research and employs great deal of effort and manpower into the research for purposes of printing and publishing these articles and in case, defendant is not restrained by n ex-parte ad interim injunction, the plaintiff shall suffer an irreparable loss and injury”

5. This Court then went on to pass an interim exparte order directing the defendants till the next date of hearing to restrain from, directly or indirectly, copying and misusing the literary work of the plaintiff by publishing the same in the magazines, daily newsletters online circulation, issued or published by the defendants.

6. The defendants were represented by a counsel on various hearing and at their request the matter was referred to mediation for settlement of disputes. One Mr.H Subramaniam on behalf of the defendant company had attended the mediation, however with a vindictive and callous approach stating that although their staff has committed a mistake the defendant company was not agreeable for payment of the damages or for settlement of the case. The mediation therefore failed and the matter returned to this Court.

7. After sometime the defendants stopped appearing and finally, vide order dated 26.07.2016 the defendants were proceeded ex-parte.

8. The plaintiffs has proved its case through its sole witness PW-1 Girish Chadha, the authorized representative of plaintiffs, who has proved his affidavit Ex.PW1/A and relied upon the documents marked as Ex.PW1/1 to Ex.PW1/39 and also proved the affidavit under section 65 (B) of the Evidence Act as Ex.PW1/40

9. The witness PW-1 reiterated the case of the plaintiffs and had proved copy of Board Resolution passed at the meeting of Board of Directors of “Xegent Consultants private Limited” on 5th Day of December 2013 as Ex.PW1/1; copy of the Memorandum and Article of Association of the plaintiff company is Ex.PW1/2; copy of the story namely “IFC Look to invest Rs.500 Crores in Indian water industry” dated 02.05.2012 is Ex.PW1/3; copy of the story namely “Everest Group Charts Major Expansion, Consolidation Plans” dated 15.05.2012 of the plaintiff along with emails exchange in this regard is Ex.PW1/4; copy of the story namely “IFC keen to support India’s private sector in water” dated 03.06.2012 of the plaintiff along with exchanged in this regard is Ex.PW1/5; copy of the story namely “Israel’s Mekorot Eyes Global Expansion; India High on Radar” dated 08.06.2012 is Ex.PW1/6; copy of the story namely “US based Halo Source Aims to Expand Indian Biz, Seeks Partners” dated 19.06.2012 is

Ex.PW1/7; copy of the story namely “WOG Technologies Eyes Four-Fold India Topline Growth” dated 09.07.2012 along with email exchanged in this regard is Ex.PW1/8; copy of the story namely “Israel’s TaKaDu Eyes Indian water network solution market” dated 15.07.2012 along with emails exchanged in this regard is Ex.PW1/9; copy of the Droplets E-Newsletter, August 2012 is Ex.PW1/10; copy of the extract of the Indian water intelligence-inaugural issue of October 2012 is Ex.PW1/11; copy of the story namely “India to have its own water innovation park shortly” dated 08.12.2012 is Ex.PW1/12; copy of the story namely “Ganga clean-up plant requires Rs 500,000 cr., private participation dated 10.12.2012 as Ex.PW1/13; copy of the story namely “Government Plants Rs 5000 cr. PPP projects to raise agri water efficiency” dated 11.12.2012 along with email exchanged in this regard is Ex.PW1/14; copy of the story namely “ Hyderabad may rope in private sector to setup mini STPs” dated 09.12.2012 is Ex.PW1/15; copy of the story namely “Maharashtra Government unveils new water allocation policy” dated 20.12.2012 is Ex.PW1/16; copy of story namely “Tanzania invites bids from Indian Firms for water project” dated 22.12.2012 is Ex.PW1/17; copy of the story namely “Govt. Proposes water audits, user charges for Indian Industry” dated 31.12.2012 is Ex.PW1/18; copy of the story namely “ACCIONA eyes India projects spanning entire water cycle” dated 23.01.2013 is Ex.PW1/19; copy of extracts of the India Water (product magazine), January-February 2013 Issue is Ex.PW1/20; copy of extracts of everything about

water, February 2013 issue is Ex.PW1/21; copy of the story namely "Pennar industries plans foray into water treatment" dated 20.03.2013 is Ex.PW1/22; copy of the story namely "Spain's Aqualia plans India foray, eyes 24x7 water project" dated 25.03.2013 along with emails exchanged in this regard is Ex.PW1/23; copy of the Droplets E-Newsletter, March 2013 is Ex.PW1/24; copy of extracts of India Water, March-April, 2013 Issue is Ex.PW1/25; copy of the story namely "Morf India sells stake to Swiss PE Fund eyes expansion" dated 16.04.2013 is Ex.PW1/26; copy of the story namely "Israel's Arad Bags DJB orders, eyes expansion in India" dated 23.04.2013 along with email exchanged in this regard is Ex.PW1/27; copy of the story namely "Needy don't have access to clean water in India" dated 06.05.2013 is Ex.PW1/28; copy of the story namely "India, Iraq look to enhance cooperation in water management" dated 24.05.2013 is Ex.PW1/29; copy of extracts of the everything About water, May 2013 Issue is Ex.PW1/30; copy of Droplets E-Newsletter, May 2013 is Ex.PW1/31; copy of extracts of the Indian water, May-June, 2013 Issue is Ex.PW1/32; copy of extracts of the everything About water, June 2013 Issue is Ex.PW1/33; copy of the story namely "Israel's Mapal Green Energy eyes Indian wastewater market" dated 06.06.2013 is Ex.PW1/34; copy of Droplets E-Newsletter, June 2013 is Ex.PW1/35; copy of the letter dated 17.08.2013 sent by Mr. Bhupinder Malik to the Managing Editor/Director is Ex.PW1/36; copy of the email dated 10.09.2013 sent by Ms. Mahashweta

Mukherjee to the Managing Editor/Director is Ex.PW1/37; copy of the legal notice dated 04.10.2013 sent by the plaintiff through his counsel to the defendant along with postal/courier receipt and acknowledgement is Ex.PW1/38; copy of the second legal notice dated 14.11,2013 sent by the plaintiff through his counsel to the defendant along with postal /courier receipt and acknowledgement is Ex.PW1/39; copy of Affidavit under section 65-B of the Indian Evidence Act, 1872 is Ex.PW1/40.

10. The facts narrated in the plaint as also in the evidentiary affidavit by the plaintiff do prove the contents of the stories published by the plaintiff in various publications and reflects that the defendant has been constantly reproducing verbatim, the substantial passages from the stories of the plaintiff; have been blatantly copying such stories in its publication in India Water Magazine and Droplets newsletter and is using the said stories in its various publications without the knowledge and prior permission of the plaintiff. Most of the stories are verbatim copies of all the exclusive information and stories that helped plaintiff to gain popularity for their product IWR www.indiawaterreview.in and endorsing the same as that of the defendant.

11. In the case of *Pearson Education Inc Versus S.M. Saifullah* [2008(38) PTC (Del.) (DB), the division bench of this Hon'ble Court while dealing with a similar case has held as under:-

“11. We could have understood if the reproduction is only limited and restricted to the subject-matter or the themes, and in that event possibly the

position would have been different, but here is a case where there is total reproduction and complete imitation of the copyrighted work in some places. Most of the materials placed before us would indicate that in many theories and expressions used in the various chapters of the book, one or two sentences from the original books are dropped whereas the rest are used and reproduced in the same manner and with similar expression as that of the original books. Once the said materials are compared, it would be established that what is used by the respondents in their books is substantial and material reproduction of the work of the appellant. Being a scientific and technical book, theme could be said to be the same but unfortunately in the present case, the same is not presented differently from the books of the appellant and it appears to be verbatim reproduction in many passages, as is evident from the materials which are available on record. The same indicates the intention to copy the original. It, therefore, cannot be said that the work of the respondent is completely new or primary. The respondents have not been able to show any broad material dissimilarities in the passages and in the materials which are part of the records.”

12. The plaintiff is thus entitle to a decree of permanent injunction restraining the defendant, its office bearers, members and all others acting for and on its behalf from directly or indirectly copying, misusing the literary work which includes exclusive news and stories of the plaintiff by publishing the same in the magazines, daily newsletters, online circulations issued/published by the defendant or in any other manner

whatsoever as may lead to passing off and infringement of copyrighted work of the plaintiff.

13. The plaintiff is also entitled to an order of delivery of all the infringing material bearing/containing the infringed stories and exclusive news of the plaintiff and in particular the magazines and online circulations/newsletters as referred to/ mentioned hereinabove which were issued/published by the defendant from last two years containing the copied/infringing stories and exclusive news or any other printed matter/online circulation, bearing the stories and exclusive news of the plaintiff for the purpose of destruction and/or erasure. Thus a decree is passed in favour of the plaintiff and against the defendant qua this relief too.

14. The conduct of the defendant in appearing before this Court, the mediation centre and then having a vindictive and callous approach and further stopped appearing in this case do show that they had no intention to adhere to the directions passed by this Court. In *Microsoft Corporation Vs. Rajendra Pawar & Anr.*, 2008 (36) PTC 697 (Del.) decided on 27th July, 2007 as under:-

“Perhaps it has now become a trend of sorts, especially in matters pertaining to passing off, for the defending party to evade court proceedings in a systematic attempt to jettison the relief sought by the plaintiff. Such flagrancy of the Defendant’s conduct is strictly deprecatory, and those who recklessly indulge in such shenanigans must do so at their peril, for it is now an inherited wisdom that evasion of court proceedings does not de facto tantamount to escape from liability. Judicial process has its own way of

bringing to tasks such erring parties whilst at the same time ensuring that the aggrieved party who has knocked the doors of the court in anticipation of justice is afforded with adequate relief, both in law and in equity. It is here that the concept of awarding punitive damages comes into perspective.”

15. In *Rajendra Pawar* (Supra) while awarding a sum of Rs. 20 lakhs as damages against the defendants the Court has held as under:-

“The Defendants have not only infringed the copyright and trademark of the plaintiff but have tried to pass off their products as that of the plaintiff by riding on its goodwill and reputation. However, inasmuch as the defendants have chosen not to appear it may not be of any use to pass a decree of rendition of accounts. The Plaintiff will nevertheless be entitled to damages in the light of the judicial dicta observed in Times Incorporated (supra) and the other aforesaid cases.”

16. The Plaintiff has been able to show prima facie violation of the plaintiff's exclusive right by the defendants on the literary work done by the plaintiff during many years. The conduct of the plaintiff is deplorable inasmuch as despite committing serious violation of the plaintiff's right, they have chosen not to appear before this Hon'ble Court which indicates the tendency of the defendants to indulge in illegal activities. The intention of the Defendants is to deceive the public, corporate entities and obtain wrongful advantage of the literary work of the plaintiff, hence to preserve the exclusive work and reputation / goodwill of the plaintiff, the Plaintiff is awarded damages to the tune of `5.00 Lac

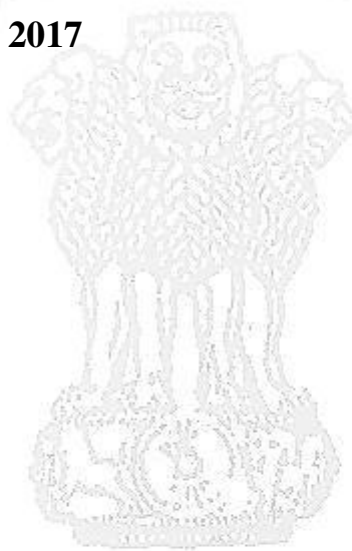
taking into consideration the loss suffered by the plaintiff on account of the illegal actions of the Defendants. The cost of the suit also awarded in favour of plaintiff and against the defendants. Thus decree is passed in favour of the plaintiff and against defendant no.1 in the sum of ₹5 lakh as damages.

17. The decree sheet be prepared.

YOGESH KHANNA, J

SEPTEMBER 27, 2017

VLD/Mn



नित्यमेव जयते