



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION  
COURT RECEIVER'S REPORT NO.12 OF 2025  
IN  
INTERIM APPLICATION (L) NO.37933 OF 2024  
IN  
COMMERCIAL IP SUIT (L) NO.37842 OF 2024

H and K Rolling Mill Engineers Private  
Limited and another ... Applicants / Plaintiffs

**Vs.**

Dipak Balshiram Kale and others ... Respondents / Defendants

Mr. Rashmin Khandekar a/w. Mr. Anand Mohan, Mr. Munaf Virjee, Mr. Tirtha Mukherjee i/b. AMR Law for Applicants / Plaintiffs.

Mr. Hiren Kamod a/w. Mr. Prem Khullar and Ms. Rashi Thakur i/b. Mr. Aniket Bomble for Defendant Nos.1, 2, 6 and 8.

Mr. Sanjay P. Shinde for Defendant No.3.

Mr. Pranit Kulkarni i/b. Mr. Anil Shete for Defendant Nos.4 and 7.

Dr. Abhinav Chandrachud for Defendant No.5.

Mr. Amit Rahane (through VC), Partner, EY Forensic Expert.

**CORAM : MANISH PITALE, J.**

**DATE : APRIL 09, 2025**

**P.C. :**

Heard learned counsel for the parties.

2. Today these proceedings were kept for considering the question of return of devices to the defendants as their devices were seized in pursuance of *ex-parte* ad-interim order dated 17.12.2024 and after service upon the defendants, subsequent orders were passed in the presence of the defendants through their counsel.

3. This Court had recorded the submission made on behalf of the defendants in the order dated 01.04.2025 that since the third party forensic expert, assisting the Court Receiver of this Court in executing

the *ex-parte* ad-interim order, had already completed the exercise of mirroring the data in the devices, upon deleting information claimed to be confidential information by the plaintiffs, the devices ought to be returned to the defendants. It is contended even today that the devices lying with the Court Receiver are creating problems for the defendants to carry out their day to day activities and particularly hampering them in conduct of their business.

4. It was also recorded in the order dated 01.04.2025 that the third party forensic expert had submitted the final report upon mirroring of the data and analysis thereof, copies of which were made available to the rival parties.

5. The learned counsel for the applicants / plaintiffs submitted that since the plaintiffs have filed criminal complaint against the defendants and further steps to be taken in that regard may entail seizure of the devices of the defendants, returning the said devices to the defendants may not be appropriate.

6. It was further submitted that apart from the aforesaid aspect of filing of criminal proceedings, the nature of objections being raised today on behalf of the defendants would indicate that they are attacking the neutrality of the third party forensic expert and that they intend to raise objections to the very manner in which the mirroring of data was undertaken by the third party forensic expert, perhaps indicating that the entire process was compromised.

7. It was submitted that in the face of such objections, returning the devices to the defendants would not be appropriate. It was highlighted that despite the *ex-parte* ad-interim order being passed about four months ago i.e. on 17.12.2024, which was served upon the defendants immediately during the execution of the said order, till date, the

defendants have chosen not to respond on merits and they have been raising various issues with regard to the manner in which the *ex-parte* ad-interim order was executed and further steps that were taken for mirroring the data in terms of the said order. The whole focus of the defendants was on return of devices and therefore, instead of entertaining such prayers, this Court may consider taking up the application of the plaintiffs filed under Order XXXIX, Rules 1 and 2 of the CPC for consideration on merits so that a final order can be passed on the said application. But in the meanwhile, particularly in the light of the nature of objections being raised today, this Court may not grant the prayer of the defendants for return of their devices. While advancing the said submissions, a brief reference was made to the contents of the final report of the third party forensic expert, in order to support the contention that the defendants have conspired with each other to clandestinely deal with the confidential information of the plaintiffs, to which some of the defendants had access during the course of their employment with the plaintiffs.

8. On the other hand, Mr. Kamod, learned counsel appearing for defendant Nos.1, 2, 6 and 8 submitted that as per law, the said defendants are entitled to raise all available objections with regard to the report of the third party forensic expert, including the manner in which the mirroring of data had taken place. It was submitted that the entire process was undertaken at the behest of the plaintiffs and when the actual exercise of mirroring of data was undertaken, the representatives of the defendants were not present. It was further submitted that in such cases, in the ordinary course, the seizure of devices and mirroring of data takes place in the premises of the defendants but in the present case, the devices were taken away and the exercise of mirroring of data took place at the premises of the third party forensic expert, due to which, the defendants are entitled to raise such an objection. It was further

submitted that the defendants cannot be deprived of their devices any longer as the directions, contained in the *ex-parte* ad-interim order read with subsequent orders passed by this Court, have been complied with and the 'offending data' could be deleted from the devices of the defendants and the devices ought to be returned to the said defendants.

9. Mr. Kulkarni, learned counsel appearing for defendant Nos.4 and 7 submitted that the said defendants have nothing to do with the controversy in the present case as they were not even the employees of the plaintiffs and since mirror copies have been already prepared by the third party forensic expert, no purpose would be served by keeping the devices of the said defendants in the custody of the Court Receiver.

10. Dr. Chandrachud, learned counsel appearing for defendant No.5 submitted that even if the findings of the third party forensic expert in the final report are to be taken into consideration, there was no data found on the devices of the said defendant, which could be said to be offending data or data claimed to be confidential data of the plaintiffs. It was submitted that merely because some observations were made by the third party forensic expert, on an aspect which was not even mandated by this Court, it cannot be said that the devices of the defendant No.5 can be retained. It was submitted that in the context of the said defendant, there is no necessity to even delete any such 'offending data' and therefore, retaining the devices of the defendant No.5 is totally uncalled for.

11. Learned counsel for the aforesaid defendants further submitted that filing of a criminal complaint is a factor that ought not to be taken into consideration by this Court and while the application for interim reliefs filed under Order XXXIX, Rules 1 and 2 of the CPC can be taken up for consideration on merits, the devices of the defendants ought not to be retained with the Court Receiver.

12. Having considered the rival submissions, this Court is of the opinion that reference to the orders passed earlier in these proceedings is necessary to appreciate the said contentions.

13. On 17.12.2024, this Court passed the *ex-parte* ad-interim order after being convinced that the plaintiffs had made out a strong *prima facie* case in their favour for appointment of a third party forensic expert to assist the Court Receiver. Specific directions were issued to seize the devices of the defendants, if necessary, by using force and to prepare mirror copies with the assistance of the third party forensic expert. Accordingly, the expert was appointed and thereupon the order was executed.

14. Subsequent orders dated 10.01.2025, 04.03.2025, 05.03.2025 and 01.04.2025 were all passed in the presence of the defendants through their counsel. A perusal of the subsequent orders does not show even a whisper of any objection raised on behalf of the defendants with regard to the procedure adopted for mirroring of data from the devices undertaken by the third party forensic expert. In fact, this Court considered specific submissions made on behalf of the Court Receiver as well as the third party forensic expert in the context of the logistics for carrying out such an exercise of mirroring of data. Thereupon, this Court permitted the devices to be handed over by the Court Receiver to the third party forensic expert, who was then permitted to carry out the aforesaid exercise of mirroring data in its premises.

15. It is to be noted that the aforesaid directions were passed in the presence of the defendants through their counsel. It is also to be noted that the third party forensic expert carried out the aforesaid directions of this Court in the presence of the representative of the Court Receiver.

16. In this backdrop, the frontal attack being launched on behalf of

some of the defendants to the procedure adopted in the present case cannot be appreciated. Although the defendants may be entitled to raise objections of all kinds, but this Court, at this stage, is not satisfied that the procedure adopted by the third party forensic expert shows as if the said expert was acting at the behest of the plaintiffs and that the defendants were given a raw deal. They may raise the objection as regards the procedure at a future point in time, when the application under Order XXXIX, Rules 1 and 2 will be taken up on merits. But, at this stage, the said objection cannot be countenanced for the reason that such follow up directions to the *ex-parte* ad-interim order passed in the subsequent orders were in the presence of the defendants through their counsel.

17. The plaintiffs are justified in relying upon the final report submitted by the third party forensic expert, to contend that return of the devices, at this stage itself, particularly in the light of the nature of objections now being raised and the allegations being made against the third party forensic expert may prejudice the plaintiffs even while the application under Order XXXIX, Rules 1 and 2 of the CPC is taken up for consideration.

18. This Court is not referring to the filing of the criminal complaint on behalf of the plaintiffs as a ground to decide the question as to whether the devices of the defendants can be returned. It is in the light of the nature of objections being raised for the first time today before this Court with regard to the very neutrality of the third party forensic expert, that this Court is constrained to consider the prayer made on behalf of the defendants in that light. The purity of process and the procedure adopted by the third party forensic expert, while assisting the Court Receiver, is itself under attack and in that light, a direction to return the devices to the defendants cannot be granted. More so, when the purport

of the serious allegations made by the said defendants can be to the effect that data foreign to the devices may have been introduced during the process of mirroring. In such a situation, it is necessary to keep the devices in the custody of the Court Receiver. In fact, this is now necessary to properly consider and examine the serious allegations made for the first time today on behalf of the said defendants and it would assist them also in making good such allegations.

19. There is substance in the contention raised on behalf of the plaintiffs that while about four months have already elapsed from the date when the *ex-parte* ad-interim order was passed and executed against the defendants, no steps have been taken to file replies and to contest the application on merits. This aspect assumes significance in the light of the findings rendered by the third party forensic expert in the final report submitted before this Court. At this stage, it would not be appropriate to arrive at any findings with regard to the same as the said aspect has to be kept open when the application under Order XXXIX, Rules 1 and 2 of the CPC is taken up for consideration on merits, but, a perusal of the said report does indicate a *prima facie* case in favour of the applicants / plaintiffs to claim that the serious allegations levelled against the defendants appear to be substantiated by the contents of the final report.

20. As regards defendant No.5, the conduct of the said defendant is evident from the earlier orders passed by this Court. It is to be noted that the said defendant along with the other defendants was supposed to comply with the directions contained in the *ex-parte* ad-interim order dated 17.12.2024, but it was only after the conduct of the said defendant of non-cooperation with the Court Receiver was brought to the notice of this Court that, on 05.03.2025, the issue was taken up and eventually a statement was made on behalf of the said defendant that he would forthwith co-operate with the Court Receiver and the third party forensic

expert for execution of the ad-interim order passed by this Court. The final report of the third party forensic expert records that, it was only after the observations made in the order dated 05.03.2025, passed about three months after the *ex-parte* ad-interim order was passed by this Court that the defendant No.5 eventually submitted the electronic devices and the passwords to the Court Receiver on 05.03.2025. The report records that the devices submitted by the said defendant indicated that data had been deleted including e-mails etc. and that, even when the devices were submitted to the third party forensic expert, attempts were made to log-in into e-mail accounts and that the conduct of the defendant, as found by the third party forensic expert even on 07.03.2025, indicated that attempts were being made from multiple devices to sign into such accounts. It is recorded in that context that the said defendant No.5 may potentially have additional devices attributable to him other than the ones submitted to the Court Receiver.

21. Considering the aforesaid conduct of defendant No.5, it cannot lie in his mouth that since the devices that were reluctantly and eventually submitted before the third party forensic expert did not contain any 'offending data' although there were traces of deletion of data from such devices, this Court may consider returning the said devices. It can also not lie in the mouth of such a defendant that continued retention of such devices would amount to punitive action against such defendant. The present proceedings are concerned with serious allegations of breach of confidentiality by the defendants in conspiracy with each other, which allegedly caused heavy losses to the plaintiff, having the effect of virtually running their business to the ground. In fact, in the *ex-parte* ad-interim order dated 17.12.2024, this Court (Coram : R. I. Chagla, J.) found that the applicants / plaintiffs had made out a strong *prima facie* case in their favour to claim that some of the defendants, being their ex-employees, had breached confidentiality and that precious information



was clandestinely and illegally exploited by the said defendants in conspiracy with each other. In such a situation it would be appropriate that Interim Application (L) No.37933 of 2024 i.e. the application filed by the plaintiffs for interim reliefs under Order XXXIX, Rules 1 and 2 itself is taken up for consideration and decision at the earliest. Till such time, this Court is of the opinion that in the peculiar facts and circumstances of the present case, noted hereinabove, the prayer made on behalf of the defendants for returning their devices cannot be entertained, at this stage.

22. The learned counsel for the plaintiffs submits that a draft amendment is already e-filed as per the directions of this Court and that this Court may consider allowing the plaintiffs to carry out amendment as per the draft amendment. It is submitted that by the said amendment, the plaintiffs wish to add pleadings and consequential prayer clauses to the plaint and the application for interim relief in the light of subsequent developments as per the information now available with the plaintiffs in pursuance of the final report submitted by the third party forensic expert. In that light, the plaintiffs wish to add parties as defendant Nos.9 to 14.

23. This Court has perused the draft amendment. The proposed amendment is indeed in the context of findings that have been given by the third party forensic expert in the final report. According to the plaintiffs, in that light, they are entitled to add defendant Nos.9 to 14 to the present proceedings and to ask for further reliefs in the matter.

24. Having considered the draft amendment in the light of the report of the third party forensic expert, this Court is satisfied that the amendment can be granted without prejudice to the rights of the defendants and further defendants, to be added by way of amendment, to contest the contentions being raised on behalf of the plaintiffs by way of the amendment.

25. In view of the above, the plaintiffs are granted leave to carry out amendment as per the draft amendment within a period of two weeks. Re-verification is dispensed with.
26. The plaintiffs shall serve the amended pleadings on the defendants within a week thereafter and file an affidavit of service.
27. The defendants are at liberty to file their reply affidavits to the application i.e. Interim Application (L) No.37933 of 2024 filed by the plaintiffs under Order XXXIX, Rules 1 and 2 of the CPC, within three weeks from today.
28. Rejoinder affidavit, if any, be filed within two weeks thereafter.
29. List the application for further consideration on 10.06.2025.
30. In the meanwhile, the mirror copies of the data prepared by the third party forensic expert shall be handed over to the Court Receiver.
31. The ad-interim order granted by this Court shall continue to operate till the next date of listing.

**(MANISH PITALE, J.)**

*Minal Parab*