

KABC170013832021



**IN THE COURT OF LXXXVI ADDL. CITY CIVIL & SESSIONS JUDGE,  
COMMERCIAL COURT, BENGALURU (CCH-87)**

**Present: Sri Jithendranath C.S., B.A., LL.M.,**  
LXXXVI ADDL. CITY CIVIL & SESSIONS JUDGE  
BENGALURU.

**COM. O.S.No. 570/2021**

**Dated on this the 07<sup>th</sup> day of August, 2024**

**Plaintiff**

Sri. Sudarshan M.S.

*(By Sri. S.K.R., Advocate)*

**// versus //**

**Defendants**

Broadvision Services Pvt. Ltd. & others

*(By Sri.N.G.K., Advocate for D1 to D3)*

**IN I.A. No. 6**

**Applicant/  
Plaintiff**

Sri. M.S.Sudarshan,  
S/o T.R. Sundar Raj Iyengar  
Proprietor of M/s. MSM Consultancy  
Services, Regd. Office situated at  
No.881/F, VS Arcade, 4<sup>th</sup> Floor,  
Modi Hospital Road,  
Basaveshwaranagar, 2<sup>nd</sup> Stage,  
Bengaluru — 560 079.

**// versus //**

**Opponent/  
Defendants**

Broadvision Services Private Limited,  
Rep. by its Board of Directors,  
Regd. Office situated at 43/1, Flat-4,

Ground Floor, Vaishnavi Woods,  
1<sup>st</sup> Main, 3<sup>rd</sup> Phase, J.P. Nagar,  
Bangalore 560078.

**Also at:**

**1.** Broadvision Services Pvt. Limited,  
Rep. by its Board of Directors,  
Office at 3<sup>rd</sup> floor, 3<sup>rd</sup> cross,  
161/B, 6<sup>th</sup> Main, JP Nagar 3<sup>rd</sup> phase,  
Bengaluru — 560 078.

**2.** Sri.Sriram Chandrasekaran,  
S/o. Sri. Chandrasekaran Ramasethu,  
Aged about 47 years, R/at 43/1,  
Flat No.4, Ground Floor,  
Vaishnavi Woods, 1<sup>st</sup> Cross,  
JP Nagar 3<sup>rd</sup> Phase,  
Bangalore 560078.

**3.** Smt. Gauri Sriram,  
D/o. Sri. Sunil Raghunath Parashare,  
W/o. Sri.Sriram Chandrasekaran,  
Aged about 38 years, R/o. 43/1,  
Flat No.4, Ground Floor,  
Vaishnavi Woods, 1<sup>st</sup> Cross,  
J.P. Nagar 3<sup>rd</sup> Phase,  
Bengaluru-560078.

**ORDERS ON I.A.No.6**

The plaintiff has filed this application under Order XI Rule 1(5) r/w Sec. 151 of CPC seeking permission to produce (i) Original of office copies of the Invoices (ii) Affidavit u/s 65-B of the Indian Evidence Act.

**2.** Advocate for the defendants filed their detailed objections and requested the court to reject the application.

**3.** Heard both the sides

**4.** Advocate for the defendants submitted that the plaintiff had filed similar application i.e., I.A.No.4 under Order XI Rule 4 of CPC seeking permission to produce 11 documents including the original of office copies of the Invoices. This court having heard the matter rejected the said application vide its order dated 15.09.2022, the plaintiff has filed similar application for the same relief and therefore, the present application is not maintainable and the same is hit by principles of *res-judicata*.

**5.** I have gone through I.A.No.6 and order passed thereon. As rightly pointed out by the advocate for the defendants the plaintiff had filed a similar application and the same has been rejected by this court. In view of the above circumstances, the following preliminary point arose for the court's consideration. If the preliminary point is answered in favour

of the plaintiff, the further point with regard to the right of the plaintiff to produce the documents can be considered.

### **PRELIMINARY POINT**

1. *Whether the I.A.No.6 is hit by principles of res-judicata ?*
2. *What order ?*

**6.** My answer to the above points are as follows;

Point No.1 : In the Affirmative

Point No.2 : As per the final orders  
for the following ;

### **REASONS**

**7. Point No.1 :** I.A. No.4 had been filed under Order XI Rule 4 of CPC seeking permission to produce as many as 11 documents, among them, the original of office copies of the Invoices sought to be produced now was found at Sl.No.6 of the said I.A. The defendant had objected I.A.No.4 by filing a detailed objections. Having heard both sides, this court on 15.09.2022 passed an order and allowed I.A.No.4 in part. The plaintiff was permitted to produce all the documents except

the office copies of the Invoices which are at Sl.No.6. The application with respect to the documents at Sl.No.6 was dismissed.

**8.** Now, the plaintiff under I.A.No.6 longing to intrude the original of office copies of the Invoices into this case though his prayer was earlier rejected. The affidavit under Section 65-B of the Indian Evidence Act, in fact, cannot be considered as an independent document, because the same is certificate issued by the person who has downloaded the information from the computer system. In the event the court allows the plaintiff to produce the original of office copies of the Invoices, the affidavit filed under Section 65-B of the Indian Evidence Act can be accepted.

**9.** In I.A.No.4, the plaintiff has invoked Order XI Rule 4 of CPC and now the plaintiff invoking Order XI Rule 1(5) r/w Sec. 151 of CPC. The law is well settled that nomenclature mentioned in the application is not significant but the prayer sought for is much relevant. Even if the provision of law quoted in the application is erroneous one, court need not

reject the application if the provision of law permits the court to allow the application. Therefore, though the plaintiff has quoted different provisions of law in I.A.No.4 & 6, the prayer is one and the same. This court has already rejected the prayer of the plaintiff to introduce the original of office copies of the Invoices. Whether the court by overlooking its earlier order or by ignoring earlier order can grant same relief in the subsequent applications is the question to be considered.

**10.** Learned counsel for the defendants submitted that the principles *res-judicata* is also applicable to the interim orders. To this proposition he has relied upon a decision of the Hon'ble Supreme Court in the case of ***Bhanu Kumar Jain Vs. Archana Kumar and another*** reported in **2005(1) SCC 787**. The Hon'ble Supreme Court in the said decision has reiterated the decision of ***Thoday vs. Thoday*** reported in **1996(2) All. ER 748** as follows;

*Res judicata debars a court from exercising its jurisdiction to determine the lis if it has attained finality between the parties whereas the doctrine issue estoppel is invoked against the party. If such an issue is decided against him, he would be estopped*

*from raising the same in the latter proceeding. The doctrine of res-judicata creates a different kind of estoppel viz estoppel by accord.*

**11.** In view of the above interpretation and distinction made between issue estoppel and res-judicata it can be conveniently conclude that the plaintiff cannot reagitate for the same relief when his application has already rejected. He is estopped from raising the same plea once again before the same court. Since the plaintiff is estopped from seeking the same relief in the same court, if his application is considered, the same would amount to violation of principles of *res-judicata*, the same is impermissible.

**12.** The plaintiff has also invoked Section 151 of CPC seeking the same relief as he had prayed earlier. It is to be noted that inherent power of the court shall be exercised in the absence of any specific provision in the Code of Civil Procedure in the interest of justice or to prevent abuse of the process of court. In the Code of Civil Procedure there is a specific provision to seek the permission of the court to

produce the document at later stage. Therefore, the plaintiff cannot insist this court to invoke Section 151 of C.P.C. Hence, I answer point No.1 in the **Affirmative**.

**13. Point No.2** : For the foregoing reasons, the court proceed to pass the following ;

**ORDER**

IA No.6 filed by the plaintiff under Order XI Rule 1(5) r/w Sec. 151 of C.P.C. is hereby rejected with cost of Rs.2,000/-.

[Dictated to the stenographer, transcribed by him, corrected and signed by me then pronounced in the Open Court, dated this the **7<sup>th</sup> day of August, 2024**]

**(Jithendranath C.S.)**  
LXXXVI ACC & SJ, (Commercial Court)  
Bengaluru