



Malavika Ramanand
Associate

BOMBAY HIGH COURT ON POST-CONTRACTUAL OBLIGATIONS

A. Introduction

The Bombay High Court (HC), in *Kenrise Media Pvt. Ltd. v Ashish K. Mishra*,¹ analysed and ruled on post-contractual obligations of confidentiality, non-compete and non-solicitation in contracts.

B. Brief Facts

1. This appeal is by Kenrise Media Pvt. Ltd. (“**Kenrise Media**”), which runs and operates an online news platform ‘*The Ken*’, along with co-founders of Kenrise Media (together, the “**Appellants**”). It was against its former co-founder Ashish Mishra (“**AM**”), his wife and three former staff writers and some others (together, the “**Respondents**”).
2. Kenrise Media’s contention involved the application of confidentiality, non-compete and non-solicitation obligations that arose from certain agreements.
3. The Appellants alleged that:
 - a. They had successfully created the first and the only subscription-based business of a news platform in India.
 - b. The Respondents made unauthorised use of confidential information pertaining to their business model and set up a platform ‘*The Morning Context*’ that is similar to *The Ken*.
 - c. AM “*illegally disseminated confidential information*” to commercially exploit it.
 - d. AM had emailed revenue and other business details to himself.
 - e. The contents are “*at the very heart*” of Kenrise Media’s operations and management and their disclosure would provide a comprehensive understanding of the manner in which subscription-lead businesses are run.
4. The agreements prescribed non-compete and non-solicit obligations on the First Respondent and the staff writers. AM was restricted from competing with Kenrise Media or engaging in business actions substantially similar to *The Ken*, for 36 months from his exit date.
5. The Appellants filed applications seeking to restrain the Respondents from utilising, disclosing, or commercially exploiting information pertaining to its analytical methods, customer lists, pricing information, *etc.*, and soliciting services of employees, business associates and customers. They also sought to restrain the Respondents from conducting business similar to that of Kenrise Media.

¹ MANU/KA/2167/2021.

C. Order & Reasoning

The Bombay HC:

1. On considering the Respondents' breach of confidential obligations, first sought to define 'confidential information.'
2. Relied on a UK Chancery Court judgment,² where it was held that: "*First, the information itself [...] must have the necessary quality of confidence about it. Secondly, that information must have been imparted in circumstances importing an obligation of confidence. Thirdly, there must be an unauthorized use of that information to the detriment of the party communicating it.*"³
3. Observed that the 'confidential' details shared via email, that were allegedly in breach of confidential obligations, which included the names of the articles' authors, subscriptions generated, *etc.* were accessible in the web portal of the Appellants and therefore cannot be construed as confidential.
4. Observed that one of the main agreements between the parties that contained details of number of equity or preference shares held was not "*intended to be confidential*".⁴
5. Observed that *The Ken* is not a creative or unique arrangement under the Copyright Act, 1957. The Appellants failed to show that their model is unique.
6. Compared *The Ken's* model to that of several subscription-based news platforms that are present in India and held that there was no breach of confidentiality by AM and the staff writers.
7. Observed on non-compete and non-solicitation obligations contained in the agreements that, "*under section 27 of the Contract Act, an agreement which contains a restraint clause, restraining a person from exercising a lawful profession, trade or business of any kind is void. There is one exception to the said rule. The exception is in a case where a goodwill of a business is sold. Only in such a case, an agreement to restrain such person from carrying on a similar business can be enforced.*"
8. The Appellants could not prove *prima facie* that there was goodwill in exercising this clause. Since these clauses restrain the Respondents from exercising their lawful profession, it is void under Section 27 of the Contract Act, 1872.
9. The Appellants could not prove that *The Morning Context* was a competitor of *The Ken*.
10. Concluded that the Appellants failed to substantiate their case.

D. Conclusion

In this fact-specific judgment, the Bombay HC evaluates the restrictions and obligations in contracts which may find a place in business agreements. However, the party seeking to enforce them before a court must demonstrate that they are permissible under law.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

This is not legal advice and must not be treated so. For legal advice, please contact us at: info@counselence.com.

² *Coco v. A.N. Clark (Engineers) Limited* (1968) F.S.R. 415.

³ Para 39 of the Order.

⁴ These details were present in the 'Restated Shareholders Agreement' according to para. 41 of the Order.