

HIGH COURT OF DELHI AT NEW DELHI

FAO (OS) 164 OF 2008

Date of Decision: 27th May, 2008.

Jaypee Brothers Medical Publishers

(P) Ltd.

!

..... Appellant

Through

Mr. Praveen Anand, Advocate
and Mr. Jagdish Sagar, Advocate

Versus

\$ Dr. Ramya Raghu & Ors.

..... Respondents

Through Ms. Pratibha M. Singh, Advocate

CORAM:

* **HON'BLE MR. JUSTICE MANMOHAN SARIN**

* **HON'BLE MR. JUSTICE MANMOHAN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? **Yes**
3. Whether the judgment should be reported in the digest? **Yes**

J U D G M E N T

MANMOHAN SARIN, J (ORAL) :

1. The Appellant, M/s. Jaypee Brothers Medical Publishers (P) Ltd. has preferred this appeal being aggrieved by impugned order dated 27th February, 2008 passed by learned Single Judge by which

the interim ex-parte stay granted by learned Single Judge was vacated/modified. The order passed is a short one and is reproduced for facility of reference :-

“27.02.2008

Present: Mr. Jagdish Sagar for the plaintiff.

Ms. Pratibha M. Singh for the defendants.

+IAs No. 4247/2007 (under Order 39 Rules 1 and 2 CPC)
&
6613/2007 (under Order 39 Rule 4 CPC) in CS(OS)
No.677/2007

This Court vide its interim order passed on 23.04.2007 had restrained the defendants from selling, distributing or in any other manner exploiting the book “Clinically Operative Dentistry (Principles and Practice)” authored by defendants No. 1 and 4 and published by defendants No. 2 and 3. This interim order is still continuing till date though an application for vacating the said interim order filed by the defendants is pending. During arguments, Mr Sagar, the learned counsel appearing on behalf of the plaintiff requested for a date for exploring the possibilities of an amicable settlement between the parties and he has assured that in the meanwhile the plaintiff shall not take any step in terms of the interim order passed by this Court on 23.04.2007. The statement given by Mr. Sagar has necessary implications of permitting the defendants from going ahead with the sale of book titled “Clinically Operative Dentistry (Principles and Practice)” authored by Dr. Ramya Raghu and Mr. Raghu Srinivasan (defendants No. 1 and 4) till further orders. However, the defendants are directed that they should maintain a proper account of sale of their said book as the concession given by the counsel appearing on behalf of the plaintiff is without prejudice to his rights and contentions on merits.

List the matter for reporting on settlement, if any on 14.05.2008.”

2. Briefly stated the facts of the present case are that the Appellant had instituted a suit being No. 677/2007 for declaration and injunction, seeking to restrain Respondents from copyright infringement, breach of contract and breach of confidentiality. The Appellant also claimed damages, rendition of accounts among other reliefs. The Appellant's case was that, it had been assigned copyright in respect of a book titled as "*Clinical Operative Dentistry; Principles and Practice*" authored by Respondent No. 1, Dr. Ramya Raghu. The said book was subject of future assignment under Section 18 (1) of the Copyright Act made by Dr. Ramya Raghu in favour of the Appellant/Plaintiff. The Appellant/Plaintiff claimed copyright in the same. By an order dated 23rd April, 2007 the learned Single Judge passed a restraint order in I.A. No. 4247/2007 wherein learned Single Judge, after noticing the facts as set out in the plaint, recorded that Appellant had entered into an agreement with Respondent No. 1 on 10th September, 2003 wherein Respondent No. 1 was mentioned as author of book and the copyright of the proposed book was vested with the Appellant. It was the Appellant's allegation that Respondent No. 2 who happens to be an ex-employee of Appellant taking advantage of confidential material, had approached the Respondent No. 1 to have the book published. In short, Appellant claims infringement of copyright by Respondent Nos. 1 and 2 who have published the said book. It may be noted that the agreement

provided for the book to be written in future and a sample chapter had been provided by Respondent No. 1. It is not necessary for us to dwell further into the factual position or other controversies for the purpose of this appeal, except to note that Appellant's claim regarding violation of the restraint order led them to file CCP No. 88/2007 on 11th July, 2007, as also another CCP No. 13/2008 on 16th January, 2008. It was the Appellant's case that Respondent Nos. 1 and 2 were in brazen contempt of court orders but curiously, while the contempt petitions had been filed, no notice had been issued on either of the two petitions. This, the learned Counsel for Respondent contends, happened on account of matter being part heard and hearing fixed at short intervals and proposals for settlement that had been mooted.

2. We have heard Mr. Praveen Anand and Mr. Jagdish Sagar, learned Counsel for the Appellant in support of the appeal and Ms. Pratibha M. Singh for Respondent in opposition. The Appellant's Counsel candidly states that several attempts for settlement were made. In fact, they themselves had given a proposed agreement for signature for a settlement, which the Respondent No. 2 did not accept. Even during the proceedings that were going on, the parties were negotiating for settlement. It is in this background that impugned order dated 27th February, 2008 came to be passed. The

learned Single Judge in the impugned order records that Mr. Sagar on behalf of Plaintiff/Appellant requested for a date for exploring the possibility of an amicable settlement between the parties. Further that he had assured in the meanwhile the Plaintiff/Appellant “shall not take any step in terms of the interim order passed by this court on 23.04.2007” Learned Single Judge goes on to observe “the statement given by Mr. Sagar has necessary implications of permitting the Respondents/ Defendants from going ahead with the sale of book titled *Clinical Operative Dentistry (Principles and Practice)* authored by Dr. Ramya Raghu & Mr. Raghu Srinivasan (defendants No. 1 & 4) till further orders”. Learned Single Judge directed the Respondents/Defendants to maintain proper accounts of sale of their said book as the concession given by Counsel appearing on behalf of the Appellant/Plaintiff was without prejudice to his rights and contentions on merits. Based on the above, learned Counsel for Appellant submitted that the statement made by Counsel has been totally misconstrued. The assurance that the Appellant would not take any step in term of interim order passed by the Court on 23rd February, 2007 cannot be interpreted to mean that Appellant had given its consent for lifting of the injunction. Of necessity it had to be considered in the background of two contempt petitions that had been filed. It is only in that context the Counsel had stated that the Appellant would not be taking any further step towards

contempt. It would be stretching too far to hold that Appellant had given the concession and agreeing to lift the injunction.

3. Learned Counsel for Respondent Ms. Pratibha M. Singh in rebuttal submitted that it was the Appellant who had been delaying the matter which had prevented a final order on the injunction application being passed by taking dates on the plea of settlement. Learned Single Judge, therefore, had rightly noted the statement of Appellant that they would not take any further step in pursuance to the order to mean that Respondent could go ahead and publish the book, distribute and sell the same, provided accounts were maintained. The learned Single Judge accordingly so ordered.

4. We have taken into account the pleadings, attendant circumstances in relation to the proceedings as well as the attempt of settlement which was going on. After taking into account all these factors, and especially the pendency of the contempt proceedings, we are prima facie of the view that the Appellant is correct in contending that the statement that it would not take any step in term of interim order passed by this court on 23rd April, 2007 referred to any steps being taken with regard to the initiation of contempt proceedings and Appellant agreeing not to pursue the same in view of the attempt of settlement. The above is indeed a plausible and a

reasonable manner of natural course of events which could have taken place. We may note, if indeed the concession to be offered by Appellant was of lifting of injunction then there could have been no difficulty in so recording it directly and noting that till next date the Appellant/Plaintiff have no objection to the Respondent printing, publishing and circulating the book provided the accounts are kept. This was not the course which was adopted. Leaving that apart, we are of the view that lifting and vacation of injunction order in the manner in which it has been done was not a desirable manner of doing it.

5. In view of the foregoing discussion, we allow the appeal and set aside the impugned order dated 27th February, 2008 and restore the injunction as granted vide interim order dated 23rd April, 2007. For the interim period during which the order 27th February, 2008 operated, the Respondent shall duly furnish accounts of sale of their books and their proceeds realised. The matter be listed before learned Single Judge for disposal of the injunction application on merits on 2nd July, 2008. Till the injunction application is disposed of, we are of the view that equity demands that the Appellant will not proceed with the two contempt applications/petitions that have been filed earlier.

6. As the matter has been delayed in view of the events that had taken place, learned Single Judge is requested to decide the injunction application and application under Order 39 Rule 4 CPC at the earliest, preferably by 31st August, 2008.

7. Consequently, the present appeal is disposed of in the above terms.

Manmohan Sarin, J.

Manmohan, J.

May 27, 2008
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