

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 10.08.2011

+ CS(OS) 1537/2009

PHI LEARNING PRIVATE LIMITED **Plaintiff**

Through:Mr. M.S.Ramamurty, Adv.

versus

DR. (MRS.) P. MEENAKSHI **Defendant**

Through:None.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No. |
| 2. To be referred to the Reporter or not? | No. |
| 3. Whether the judgment should be reported in Digest? | No. |

V.K. JAIN, J. (ORAL)

1. This is a suit for permanent injunction. The plaintiff company which was earlier known as Prentice Hall of India Private Limited, is engaged in the business of printing and publishing of books and is stated to be an internationally reputed publishing house, catering to the needs of thousands of students.

2. The defendant entered into an agreement with the

plaintiff on 01.12.2004, whereby the plaintiff was granted exclusive rights to print, publish and sell the work 'ELEMENTS OF ENVIRONMENTAL SCIENCE AND ENGINEERING' under the plaintiff's own name. The rights granted to the plaintiff included rights to publish and reprints during the full term of the copyright in the aforesaid work. As per clause 3 of the agreement, the plaintiff was required to pay 15% of the net receipts in India on all the copies sold by it, as royalty to the defendant. The plaintiff has, in terms of the aforesaid agreement, been publishing the above title with the first print in the year 2005-2006 and claims to have sold 5500 copies so far. It is also alleged that the plaintiff has paid royalty to the defendant for all the years and nothing was due to the defendant on 31.03.2009.

3. It is further alleged that an e-mail dated 11.05.2009 sent by the defendant alleging that the plaintiff had been printing making multiple printing and had not paid the royalty on her. This was controverted by the plaintiff and all details of royalty payment were sent to the defendant. It is further alleged that the defendant, in order to wriggle out her contractual obligation of the plaintiff, wants to determine the agreement between the parties and

give the publication rights of the title to a third party. It is further alleged that vide e-mail dated 01.07.2009, the defendant informed the plaintiff that it had allegedly given the assignment to the other publisher. The plaintiff has accordingly sought an injunction restraining the defendant from entering any agreement whether under the nomenclature of assignment or licence or any other nomenclature in the nature of permitting the publishing or granting distribution rights in respect of the literary work presently titled "Elements of Environmental Science and Engineering". It has also sought an injunction restraining the defendant from any copyright in the aforesaid book.

4. The defendant was proceeded ex-parte vide order dated 18.05.2011. Earlier, vide an interim order dated 01.09.2009, this Court had restrained the defendant from entering into any agreement whether under the nomenclature of assignment or licence or any other nomenclature in the nature of permitting the publishing or granting distribution rights in respect of the literary work presently titled "Elements of Environmental Science and Engineering" to any third party.

5. The plaintiff has filed the affidavit of its General Manager Mr. N.V.Rao by way of ex-parte evidence. In his deposition, Mr. N.V.Rao has stated that the defendant had entered into an exclusive agreement with the plaintiff on 01.12.2004, thereby granting exclusive rights to the plaintiff to print, publish and sell the work 'ELEMENTS OF ENVIRONMENTAL SCIENCE AND ENGINEERING' under the plaintiff's own name, including various re-prints, during full term of the copyright for the aforesaid title. He has further stated that after acquiring copyright in the aforesaid books, the plaintiff spent a lot of money and used considerable manpower for promoting the aforesaid book amongst various institutions in India, for the benefit of engineering students. He has further stated that the plaintiff has so far published only 5500 copies of the aforesaid book and it has been paying royalty to the defendant in July every year, along with the annual report of the sale of the work for the period ending 31.03.2011. This statement, according to him, is given after completion of internal audit of the plaintiff company. He has claimed that nothing is due to be paid to the plaintiff upto 31.03.2009.

PW-1 has further stated that the defendants sent an e-mail dated 11.05.2009 alleging that the plaintiff had been printing multiple editions and had not paid the royalty on them. This was controverted by the plaintiff and all details along with details of royalty payment were sent to her. The defendant despite clarification given by the plaintiff, is determined to do away with the agreement and by e-mail dated 01.07.2009, she informed that she had given the assignment to other publisher.

6. Ex.PW-1/3 is the agreement between the parties. Clause (1), (4), (13) and (16) of the agreement are relevant for the purpose of this suit and read as under:-

(1) The Author/Editor will prepare for publication a work on Elements of Environmental Science And Engineering

The Author/Editor grants this work to the Publisher with the exclusive right to print, publish and sell the work, under the Publisher's own name and under various imprints and trade names, during the full term of copyright and all renewals thereof, and to copyright said work in the Publisher's name in India and in the Publisher's name or any other name in other countries; also the exclusive rights to said work set forth in paragraph 14 below; and any other rights now existing or that may hereafter come into existence; with exclusive authority to dispose of said rights and to authorize the use of the Author's /Editor's name and likeness or photograph in connection therewith, in all

countries and in all languages; and the Author/Editor will, upon the Publisher's request, do all acts necessary to effectuate this agreement.

(4) The Publisher will pay the Author/Editor a Royalty based on 15% of net receipts in India on all copies sold. Where the said work is authored/edited by more than one person, royalty shall be divided as follows:

.....% to
.....% to
.....% to
.....% to

(13). The provisions of this agreement shall apply to each reprint, revision, and new edition of the work. The Author/Editor agrees to revise the work on request of the Publisher if the Publisher considers it necessary in the best interests of the work. The manuscript of the revised work shall be delivered in final form by the Author/Editor to the Publisher within a reasonable time after requires for revision. Should the Author/Editor not provide a revision acceptable to the Publisher within a reasonable time, or should the Author/Editor be deceased, the Publisher may have the revision done and charge the cost of such revision against royalties due or that may become due to the Author/Editor, and may display in the revised work, and in advertising, the name of the person, or persons, who revise said work.

(16) The Author/Editor undertakes that he shall offer his next two works for publication to the Publisher on the same terms and conditions as contained herein and the Publisher shall have a lien on all such works.”

7. It would thus be seen that subject to payment of royalty in terms of clause (4) of the agreement, it is the plaintiff company which has been given an exclusive right to print, publish and sell the aforesaid book under its own name or under various imprints and trade name during the full time of its copyrights and all its renewals. The rights given to the plaintiff company under this agreement include the right to reprint or revise the book or print out any new edition. Of course, the plaintiff has to pay royalty to the defendant even on the reprints/revised editions, if any. The defendant has no right, during the subsistence of the agreement, to assign copyrights in the aforesaid title to any person and no one else can publish the aforesaid book and thereby infringe the copyright which has been given to the plaintiff in the aforesaid book under the agreement dated 01.12.2004.

8. Ex.PW-1/4 is the e-mail dated 11.05.2009 sent by the defendant to Mr. N.V.Rao of the plaintiff company. Vide this e-mail, she informed Mr. Rao that she had come to know that the plaintiff had been printing multiple reprints and was liable for royalty along with interest on it. As noted earlier, the case of the plaintiff is that it has been paying the

royalty which was due to the defendant in terms of clause 4 of the Agreement dated 01.12.2004. The defendant has not come forward to contest the suit and to establish that any royalty payable to her in terms of the agreement remains unpaid. In the absence of any material to the contrary, I see no reason to disbelieve the evidence produced by the plaintiff to the effect that no amount was due to the defendant as royalty as on 31.03.2009 and whatever royalty was payable to her in terms of the agreement was being paid to her in July every year.

9. Ex.PW-1/6 is an e-mail dated 01.07.2009 written by the defendant to Pushpita Ghosh of the plaintiff company. Vide this e-mail, she informed Pushpita Ghosh that she had given the assignment to other publisher and that the right given to the plaintiff as publisher holds no value. It is not known whether the defendant has actually assigned the copyrights/publication rights in the aforesaid book to any other publisher or not. The defendant has not come forward to claim before the Court that she has assigned the publication and/or distribution rights in the aforesaid title to the third party. Of course, she is not entitled in law to assign these rights to any person other

than the plaintiff, so long as royalty in terms of clause 4 of the Agreement dated 01.12.2004 is paid to her and such assignment, if any by her, would be of no avail to the assignee and would not come in the way of the plaintiff exercising the right under its agreement with the defendant. Vide e-mail dated 13.07.2009, Ex.PW-1/7, the defendant claimed that the plaintiff had misused its faith and given false details of annual report every year. Again, there is no material before the Court to indicate that the sale figures provided by the plaintiff to the defendant were accurate. The case of the plaintiff is that it had published only 5500 copies so far. No material has been brought before the Court to show that the plaintiff had published more than 5500 copies of the aforesaid book.

10. In these circumstances, I have no hesitation in holding that since the copyrights in the book 'ELEMENTS OF ENVIRONMENTAL SCIENCE AND ENGINEERING' including the right to publish, distribute and sell the aforesaid book, have been assigned to the plaintiff under the agreement dated 01.12.2004, defendant has no right to assign these rights to another person during subsistence of

the agreement, provided she is paid whole of the royalty in terms of clause 4 of the agreement.

11. The learned counsel appearing for the plaintiff states that in fact even after filing of this suit, the defendant continue to receive royalty from the plaintiff in respect of the aforesaid book and the plaintiff has no evidence with it to indicate that she has assigned the publication and/or distribution rights in the aforesaid book to some other publisher.

12. For the reasons given in the preceding paragraphs, a decree for permanent injunction is passed with cost restraining the defendant from assigning the copyright including the right to re-print, publish, sell and distribute the book 'ELEMENTS OF ENVIRONMENTAL SCIENCE AND ENGINEERING' to any person during subsistence of the agreement dated 01.12.2004, provided the plaintiff continues to pay royalty to her in terms of clause 4 of the agreement.

Decree sheet be drawn accordingly.

(V.K. JAIN)
JUDGE

AUGUST 10, 2011
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