

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRP No. 64 of 2011

1. PARUL LIBRARY PRIVATE LTD.

A company incorporated under the Companies Act, 1956, carrying its Business at 14, Brindaand Mallick 1st Lane, Kolkata-700009
P.S. Amherst Street and also at 55, College Street, 2nd Floor, P.S. Amherst Street, Kolkata- 70003.

2. Sri. Sankar Das Saha

55, College Street, 2nd Floor
P.S. Amherst Street,
Kolkata-700073.

Petitioner Nos. 1 and 2 represented by

Sri. Partha Saha

son of Sri. Sankar Das Saha
having office at 55, College Street,
2nd Floor, P.S. Amherst Street,
Kolkata-700073
As the constituted attorney
vide Power of Attorney dated 13.07.2011

3. Solanki Prakashani

Prop. Sri Sridam Bhowmik
Son of Late Jogesh Ch. Bhowmik of
Lenin Sarani (Akhaura Road)
Agartala, P.S. West Agratala
Diostrict- West Tripura.

.....Petitioners.

VERSUS

Sri. Sreepati Saha

Proprietor of Parul Library
Carrying on its business at
23, Akhaura Road,
P.S.-West Agartala,
P.O. Agartala 799001
West Tripura.

.....Respondent.

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

For the petitioners : Ms. S. Deb Gupta, Adv.

For the Respondent : Mr. P. Chakraborty, Adv.

Date of hearing and
judgment : 13.7.2015.

Whether fit for reporting : Yes.

JUDGMENT AND ORDER (ORAL)

This petition is directed against the order dated 01.07.2011, whereby the learned District Judge, West Tripura, Agartala directed that the plaint along with the copy of the petition be sent to the Court of the Civil Judge, Junior Division for dealing with the suit in accordance with law.

[2] This case has a chequered history. The plaintiff filed the suit before the Civil Judge, Junior Division, Court No.1, Agartala. The said Court vide order dated 30th June, 2011 held that the suit is *prima facie* a suit under the Copyright Act, 1957 (for short, Copyright Act) and, therefore, he returned the plaint with the observation that the suit should be filed in the Court of the learned District Judge.

[3] When the suit was taken up by the learned District Judge, he in turn held that the suit had to be filed before the Court of the learned Civil Judge and that the learned Civil Judge had transferred the suit to the court of the District Judge without

application of mind. The learned District Judge while passing the order has relied upon Sections 9 and 15 of the Code of Civil Procedure. Under Section 9 of the Code of Civil Procedure all Courts have the jurisdiction to try all civil disputes unless specifically barred and under Section 15 the case must be instituted in the lowest grade Court competent to try the said suit. Unfortunately, though the learned Civil Judge, Junior Division had made reference to certain judgments and also to Sections 17 and 55 of the Copyright Act the learned District Judge made no reference to the same in his order.

[4] The case of the plaintiff, as set out, is that the plaintiff for a long time has been doing business of books, magazines, periodicals and exercise books under the name and style of M/s Parul Library. According to him, he used to publish various articles including books, guide books, health books, model question papers etc. and that he had designed and devised two trade marks for publication, one under the name of “PARUL LIBRARY” and one under the name of “9 SCHOLARS”. The case of the complainant is that the respondents have violated his Copyright under the two trade marks. Para 11 of the plaint reads as follows:-

“That, by virtue of origination, first publication and first user of the composite trade mark PARUL LIBRARY and 9 SCHOLARS as stated in the foregoing paragraph, the plaintiff is the true and bonafide owner of the copy rights involved in the said artistic works within the meaning of Section 17 of the Copy Right Act, 1957 and is entitled to all the reliefs provided U/s. 55 of the said Act for

any unauthorized printing, distributing for the purpose of trade and/or sell for any commercial purpose by way of trade exhibits bearing the said artistic work.”

[5] At this stage, this Court is not deciding whether the allegations made are true or not. The only question is whether the suit as framed is to be filed before the Civil Judge or before the District Judge.

[6] The plaintiff claims to be the owner of the Copyright in the two trade marks “Parul Library” & “9 Scholars” under Section 17 of the Copyright Act and claims that the defendant has violated his Copyright. In the suit the plaintiff has claimed reliefs under Section 55 of the Act which reads as follows:-

“55. Civil remedies for infringement of copyright. - (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right :

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher, as the case may be, appears on copies of the work published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the court.”

[7] A bare perusal of the section clearly shows that where a party complains that the Copyright in any work has been infringed he is entitled to all such remedies by way of injunction, damages, accounts and otherwise as may be conferred by law and in such a case, the suit will be a suit under Section 55 of the Copyright Act.

[8] Section 62 of the Copyright Act reads as follows:

“62. Jurisdiction of court over matters arising under this Chapter. - (1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose of sub-section (1), and "district court having jurisdiction" shall,

notwithstanding anything contained in the Code of Civil Procedure, 1908,(5 of 1908) or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.”

It clearly states that every suit or civil proceedings arising out of Chapter 12, which includes Section 55 of the Copyright Act will be filed in the District Court having jurisdiction notwithstanding anything contained in the Code of Civil Procedure. Therefore, Section 62 dilutes the provision of Sections 9 and 15 of the Code of Civil Procedure and a suit, even one claiming civil remedies under Section 55 of the Copyright Act will lie only in the Court of the District Judge and not in any other subordinate Court.

[9] Therefore, I am of the considered view that the order passed by the learned District Judge is totally erroneous and the same is accordingly set aside.

Copy of this order shall be sent to the learned Civil Judge, Jr. Division who shall remit the records of the case to the learned District Judge, who shall then proceed to decide the matter in accordance with the aforesaid judgment.

The revision petition is disposed of in the aforesaid terms. Send down the LCRs forthwith.

CHIEF JUSTICE

satabdi/Dipankar