

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO No.2919 of 2016(O&M)
Date of Decision-19.09.2016**

M/s Modern Publishers and others	... Appellants
Versus	
Professor Satish Kumar Gupta	... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Gurminder Singh, Sr. Advocate with
Mr. Aman Pal, Advocate,
Mr. Rajan Kohli, Advocate and
Mr. Sunny Chhabra, Advocate for the appellants.

Mr. A.K. Chopra, Sr. Advocate with
Mr. Vikas Jain, Advocate and
Mr. Ankit Midha, Advocate for the caveator.

RAJ MOHAN SINGH, J.

[1]. In this appeal, appellants have assailed order dated 18.04.2016 passed by Additional District Judge, Jalandhar whereby application under Order 39 Rules 1 and 2 read with Section 151 CPC was dismissed.

[2]. Appellant No.1 is a partnership firm. Plaintiffs-appellants filed a suit for declaration to the effect that plaintiffs are the exclusive owners having exclusive rights of publication and of copyright till the termination of legal terms of the copyright as per agreement dated 22.06.1989. Restraint order was also sought against the defendants from allowing publication of the book to

anybody else except the plaintiffs till termination of the legal terms of the copyright as per agreement dated 22.06.1989. Ad interim injunction was also sought seeking to restrain the defendants from allowing publication of the book to anybody else except the plaintiffs during pendency of suit.

[3]. After completion of pleadings and hearing the learned counsel for the parties, trial Court dismissed the application for ad interim injunction vide order dated 18.04.2016. Interim order dated 06.01.2016 which was granted earlier was vacated.

[4]. I have heard learned counsel for the parties.

[5]. Learned counsel for the appellants submitted that as per agreement dated 22.06.1989, the copyright and exclusive publishing rights were given to the appellants during legal term of the copyright. Learned counsel for the appellants referred to clauses of agreement dated 22.06.1989. As per memorandum of agreement Modern's abc of Physics (XI and XII Classes) for CBSE and other Boards and Modern's abc of Practical Physics (XI and XII Classes) for CBSE and other Boards were claimed to be under consideration.

[6]. Learned counsel contended that according to aforesaid agreement, the terms shall mean and include their heirs, assigners, executors, administrators and representatives in interest. The author agreed to deliver to the publishers the complete typed manuscript of the book at present entitled as on

cover page with diagrams, photographs, pictures, maps etc. in their final form for processing diagrams, photographs, pictures, maps etc in their final form for processing within certain time of the agreement and also agreed to help in the preparation of the publication. The author agreed to correct, approve and pass for printing the final page proofs of the book without delaying or causing inconvenience to the printers. In case the author want to make alternations in the proofs, the printers would be entitled to charge for such changes. Such additional payment would be made by the author. The general management of the production, publication, reprinting and sale of the books and conditions and details incidental thereto were left to the judgment and discretion of the publisher. The publisher was not responsible for accidental loss of the MSS or its damage by fire or otherwise during the work or course of printing. The publisher was to produce and publish the book at its own risk and expenses during the legal term of copyright and was given exclusive right of producing/publishing and subsequent editions throughout the world including the general control of publication and sale of the book and its subsequent edition. The publisher was also entitled to publish and get published a translation and adaptation of the book in any language.

[7]. Learned counsel for the appellants further contended that during the legal term of the copyright, the publisher was to pay 15% of the printing price for all the copies and value realized

thereof to the author as royalty and $\frac{2}{3}$ rd of the royalty as per para 7(a) calculated on the Indian price for the copies sold in foreign countries. The author was only entitled to three free specimen and every co-author entitled to purchase further copies for personal use, but not for sale at $\frac{2}{3}$ rd of the published price. As per clause 9 of the agreement, it was recited that in case publishers have to take legal action to safeguard the interest of the book, then the expenses were to be borne equally by the publishers and the author. The publisher was liable for rendering account of the sale of the book in August every year and to pay the amount found to be due within 2 months of such rendering of account. The author was agreed to edit and revise with additions and alterations in every subsequent edition of the book and also to prepare the index of the book without any extra charge. In case of refusal by the author, the publisher was entitled to get it revised by someone else and the charges shall be borne out of the royalty payable to the author. The author was not entitled to have direct or indirect interest in any other similar book which may adversely affect the sale of the book in question, nor the author shall allow any book to be published or get published any abridgement, portion, translation or dramatized version of the work without the consent of the publisher in writing.

[8]. By referring to Clause 15, learned counsel for the appellants pointed out that the author agreed without prejudice to get back his manuscript without any claim whatsoever. If the

manuscript was not upto mark to the opinion of the expert consulted by the publisher, the author agreed to accept the decision of the publisher. The publisher was not bound to state reasons that the agreement has become null and void. By referring to all these clauses, learned counsel for the appellants contended that no right was retained by the author and the agreement was irrevocable inasmuch as that copyrights were assigned to the plaintiffs.

[9]. Learned counsel for the appellants further submitted that defendant/respondent started threatening the plaintiffs that he would get the book published from some other publisher for which he has no legal right to do so as per Clause 7 of the agreement. It was upto the appellants to pay the royalties till the legal terms of the copyright and as per terms of the copyright which was upto 60 years after the death of defendant. The threat given by the defendant, prompted the plaintiffs to file suit along with application under Order 39 Rules 1 and 2 read with Section 151 CPC.

[10]. Learned counsel for the plaintiffs also submitted that agreement entered into between the parties was not a terminable agreement as the rights assigned to the plaintiffs were for entire legal terms of the copyright in the work of worldwide basis.

[11]. Defendant-respondent got a criminal case registered against the Director of the appellant-Company alleging that they have published a book and the author of said book has copied the

matter from the book of the plaintiffs. A cancellation report was prepared by the Police in the said case.

[12]. Learned counsel for the appellants/plaintiffs by highlighting the cardinal principle for grant of temporary injunctions contended that the plaintiffs are entitled to ad interim injunction in terms of Order 39 Rules 1 and 2 read with Section 151 CPC for restraining the defendant from publishing and selling his book through any other publisher.

[13]. Learned counsel for the appellants submitted that the case of the plaintiffs falls under the ambit of settled principles for grant of ad interim injunction as no right was retained by the author in view of terms and conditions given in the agreement. He submitted with reference to Section 17(c) of the Act that in case of a work made in the course of the author's employment under a contract of service to which Section 17(1) or Clause(b) of the Act does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright.

[14]. Learned counsel for the appellants also referred to Section 18 of Copyright Act to contend that there was an assignment of copyright and there was a proper mode of assignment. Learned counsel further referred to Section 54 of the Act to highlight that exclusive licensee can be owner of copyright in the context of the agreement so requires. In view of Section 55 of the Act, civil remedies are provided for infringement of copyright for

which the defendant was obligated to act in case his work in the context of copyright was infringed.

[15]. Learned counsel for the appellants by citing **Radha Sundar Dutta Vs. Mohd. Jahadur Rahim and others, 1959 AIR (SC) 24, Rupendra Kashyap Vs. Jiwan Publishing House, 1996(16) PTC 439, Diamond Comic Pvt. Ltd Vs. Raja Pocket Books, 2005(3) RAJ 590, Saregama India Ltd. Vs. Suresh Jindal and others, 2006 AIR (Calcutta) 340** and **John Wiley and sons Inc. and ors Vs. Prabhat Chander Kumar Jain and others, 2010(4) RCR (Civil) 112** emphasized that assigner was required to approach Copyright Board under Section 19(a) of the Act for cancellation of deed of assignment. Even in assignment there is a royalty. The breach of terms would create a right in favour of assigner to treat the assignment as discharged and the same has to be read with the real intention of the parties. If assigner has absolutely assigned the copyright, the breach of any term will not give right to treat the agreement as discharged.

[16]. Learned counsel by referring to clauses of the agreement stressed that no right was retained by the author, therefore, the intention of the parties was to assign the copyright absolutely in favour of the plaintiffs and therefore, breach of any term will not give any right to discharge the agreement in favour of the defendant.

[17]. On the other hand, learned counsel for the respondent/caveator submitted that the suit itself has become infructuous on account of termination of agreement dated 22.06.1989 through a legal notice 29.08.2015. Plaintiffs were merely licencees. Defendant was the first owner of the copyright in terms of Section 17 of the Indian Copyright Act, 1957. Plaintiffs were guilty of infringement of copyright and a Criminal Case bearing FIR No.399 dated 07.11.2015 for the offences under Sections 406, 420, 465, 467, 477-A, 120-B IPC and Sections 63 and 65 of the Copy Right Act, 1957 was registered against the plaintiffs at Police Station, Sector-5, Panchkula. Plaintiffs have published a literary work of the defendant-respondent in connivance with Professor B.K. Sharma in violation of all norms. Learned counsel for the respondent also submitted that no prima facie case existed for grant of ad interim injunction in favour of the plaintiffs and ingredients of balance of convenience and causing of irreparable loss in the event of non grant of temporary injunction were also not present in favour of the plaintiffs-appellants.

[18]. Learned counsel for the respondent further submitted that notice of cancellation of agreement was not challenged by the plaintiffs despite due service upon them. It was admitted by the plaintiffs in para No.20 of the plaint i.e. **“in view of constantly evolving syllabus and curriculum, it was imperative that the new books on the subject matters were constantly published, therefore, in view of that and considering that the impugned**

work was in the market for the last 26 years, plaintiffs felt imperative to encourage new authors to throw fresh light on the subject matter which would be in the interest of students.”

[19]. By referring to para No.17 of the plaint, learned counsel for the respondent submitted that if the pleadings of the para are taken to its logical meaning, then, there cannot be any assignment of copyright. He also submitted that under the garb of plea as mentioned in para No.20 of the plaint, the plaintiffs tried to bring new text of books in collusion with Mr. B.K. Sharma who also authored the text in the same name. It was an admitted position in terms of para No.21 of the plaint that plaintiffs commissioned Mr. B.K. Sharma to author books for Physics (Part I and II) for Classes XI and XII for the year 2013. Providing help to Mr. B.K. Sharma to develop the work on the subject matter which had already been published by the defendant was in fact a clever devise which made the plaintiffs liable for action. It was also an admitted case of the plaintiffs that there was an exchange of correspondence between plaintiffs and Mr. B.K. Sharma and on being objected, the plaintiffs stopped selling the books authored by Mr. B.K. Sharma.

[20]. Learned counsel for the respondent also highlighted that as per admission by the plaintiffs in para No.21 of the plaint, plaintiffs commissioned Professor B.K. Sharma to author books for Physics (Part I and II) for Classes XI and XII and resultantly an agreement dated 30.05.2015 was entered between them. Plaintiffs

in collusion with Professor B.K. Sharma have brought out the books under the name and style as that of defendant i.e. Modern's abc+ of Physics (Part I and II) for Class XI and Modern's abc+ of Physics (Part I and II) for Class XII. The collusion of plaintiffs with Professor B.K. Sharma was apparent as they maliciously titled the aforesaid book in the manner prejudicial to the interest of the defendant by adding "+" sign between the words "abc" and "of". This was with a view to mislead the students and teachers by passing their new publication as the old ones. This was done by the plaintiffs in collusion with Professor B.K. Sharma to take advantage of the popularity of books authored by the defendant and also to cause wrongful loss to him and wrongful gain to the plaintiffs and Professor B.K. Sharma.

[21]. Learned counsel for the defendant-respondent further highlighted the instances where the plaintiffs being publishers had indulged in unethical, dishonest and illegal business since long. In the year 1982, a criminal case was filed by the defendant against the then proprietor of plaintiff publication i.e. Mr. R.P. Virmani @ Virmani and Mr. D.S. Sareen @ Sareen in the District Court, Ferozepur for the infringement of copyright of the book authored by the defendant. All the persons were summoned by the Court and thereafter, on their undertaking the criminal proceedings were dropped. The undertaking was given by Mr. A.K. Malhotra that M/s Modern Publishers will never publish a book authored by Mr. R.P. Virmani and Mr. D.S. Sareen. Again in the year 2005, the books,

Modern's abc of Physics for Classes XI and XII for the States of Chhattisgarh, Madhya Pradesh, Asam and Orissa were clandestinely published by M/s Modern Publishers i.e. plaintiff No.1 under the names of local authors of those States thereby infringing the copyright of the defendant by keeping the defendant in total dark and without his consent and knowledge. That was not a case of mere copying by a local author from the defendant/respondent books, but that was a case of fraud committed by the plaintiffs to sell the books authored by the defendant in the names of local authors by paying them a meager royalty and by duping the defendant/respondent for his actual royalty. The said issue was brought to the notice of Mr. A.K. Malhotra vide letters dated 30.07.2005 and 01.08.2005. Plaintiffs hushed up the matter by paying the royalty for each book to the defendant without making any dispute in furtherance thereof.

[22]. Learned counsel for the defendant further highlighted that in the year 2012, the plaintiffs in collusion with Dr. Gauri Shankar and others i.e. local authors in Orissa had published a book with the same name i.e. Modern's abc of Physics (Vol.I) for 10+1 students, Modern's abc of Physics (Vol.II) for 10+2 students and Modern's abc of Practical Physics (Vol. I & Vol. II) for 10+2 students. The subject matter was verbatim same that of the book authored by the defendant. The infringement of copyright of the defendant was noticed. Plaintiffs published the said books in connivance with local authors since 2002 onwards for a period of

about 10 years in a most clandestine manner. Defendant got a case registered by way of lodging FIR No.323 dated 20.06.2013 at Police Station, Sector 5, Panchkula. Plaintiffs pressurized the defendant to withdraw the said FIR on the ground that Gauri Shankar being Chairman of the Orissa School Education Board and others were of great help to the plaintiffs and were instrumental in getting the publications of the plaintiffs in all different subjects recommended to the students through their teachers in all schools. In the context of E-Mail given by the defendant offering to withdraw the books authored by him from M/s Modern's publishers, plaintiff No.3 replied to the defendant in an emotional overtone and by way of emotional black mailing forced the defendant to believe that the infringement of the copyrights of the defendant was not in the knowledge of the plaintiffs.

[23]. Learned counsel for the respondent vehemently pointed out that Professor B.K. Sharma was also served with legal notice dated 29.08.2015 separately. He filed his reply through E-Mail dated 14.10.2015 addressed to plaintiff No.1 with a copy to the defendant. Professor B.K. Sharma made number of disclosures/admissions in his reply. He admitted that he was willing to write such voluminous books, but the plaintiffs persuaded him to accept the offer by providing him facilities, material and assistance and thereafter, he agreed to provide assistance of its editorial staff. Professor B.K. Sharma further admitted that he advised the editorial staff of plaintiff No.1 to compile the referred questions and

problems which were in public domain from the material made available by plaintiff No.1. The editorial staff did the same from the referred material provided by the plaintiffs. Professor B.K. Sharma admitted in unequivocal manner that he did not verify meticulously the source of such material as referred by the plaintiffs, rather he acted in good faith. The admissions made by Professor B.K. Sharma clearly proved that the plaintiffs in connivance with Professor B.K. Sharma had in fact infringed the copyright of the defendant by incorporating the matter out of books authored by the defendant.

[24]. Ultimately by referring to Clause (II) of the agreement, learned counsel for the respondent contended that only an interest was given and not the copyright. There was no question of assignment. According to him as per Clause 4 of the agreement, period was of lifetime and thereafter, 60 years for right of production and not the copyright. During the legal term of the copyright only royalties were to be paid and the same did not amount to any assignment. In response to Clause No.9 of the agreement, learned counsel for the respondent emphasized that the meaning assigned to such pleadings was only in respect of certain rights. If the copyright was to be assigned, then why the amount was to be apportioned equally.

[25]. Again in response to Clause No.11 of the agreement, learned counsel for the respondent contended that a limited

right/interest was given. He also explained with reference to clause No.13 of the agreement that if copyright was given, then where it would fit in the context of pleadings made in para No.13. In the context of Clause Nos.14 and 15 of the agreement, learned counsel for the respondent submitted that it was not a question of giving copyright, rather only a partial interest was assigned for specified evidence and the agreement was not irrevocable agreement for which a lawful legal notice for termination was issued.

[26]. Learned counsel for the respondent by referring to Section 19-A of the Act contended that agreement came to be entered into in the year 1998. Section 19-A was inserted only by Act 38 of 1994 and the same has no retrospective effect. By referring to Section 22 of the Act, learned counsel contended that it was a beneficial legislation for the legal representatives of the author and therefore, the interpretation as culled out by the appellants has no relation with the present controversy.

[27]. In view of Section 30 of the Act, it was merely an interest in the copyright which was given to the plaintiffs and therefore, revocation of agreement by way of issuing legal notice was pressed to be a lawful exercise. In support of his contentions, learned counsel for the respondent relied upon **Mishra Bandhu Karyalaya and others Vs. Shivratn Lal Koshal, AIR 1970, MP 261(DB)** to contend that where payment is by royalties, the licence

is always removable and copyright cannot be treated to be assigned. Learned counsel further relied upon **K.P.M Sundhram Vs. M/s Rattan Prakashan Mandir and others, AIR 1983 Delhi 461** to the same ratio.

[28]. Both the parties have tried to argue the case on merits at the stage of arguing the application for grant of temporary injunction. The aforesaid facts and grounds have been noted just to incorporate the plea and rival pleas in the *lis*. However for the purpose of deciding the application under Order 39 Rules 1 and 2 CPC, three cardinal principles are to be appreciated viz.-

(a) Existence of prima facie case

(b) Balance of convenience.

(c) Irreparable loss in the event of non grant of temporary injunction.

[29]. In the present case, the relief claimed by the plaintiffs is squarely based on interpretation of agreement dated 22.06.1989. Receipt of notice of termination of the agreement has been admitted. There is no challenge made on the notice of such termination in the suit. Section 17 of the Copyright Act provided that the author is the first owner of the copyright. The other provisions of the Act viz-a-viz the plea of the appellant that he has become owner of the copyright by virtue of non-applicability of Clause A or B of Section 17 of the Act, defendant was obligated to have the recourse to the proceedings before the Copyright Board

in view of alleged infringement of copyright by anyone and the licencees becoming owner of copyright subject to satisfaction of Section 30 of the Act are the issues which would be appropriately gone into by the trial Court at the time of final assessment of evidence.

[30]. At this stage of litigation, only a prima facie case is to be seen which in considered opinion of this Court does not exist as the notice of termination of Section 17 of the Act makes the author to be the first owner of the copyright. The events narrated by the respondent in the context, instances of infringement of copyright by the plaintiffs throughout India does not make out any prima facie case in favour of plaintiffs-appellants. There is no balance of convenience in favour of appellants/plaintiffs. Even though, the plaintiff has pleaded the likely causing of loss in the event of non grant of injunction, but in view of facts on record, there is a prima facie case of infringement of copyright of the defendant which makes him to have the agreement discharged, the legality of which would be gone into by the trial Court.

[31]. In view of aforesaid, this Court does not wish to interfere in the appeal against the dismissal of application under Order 39 Rules 1 and 2 CPC. Consequently, the present appeal is found to be totally bereft of merits and the same is accordingly dismissed.

[32]. However nothing expressed hereinabove shall be construed to be an opinion on merits of the case in any manner.

19.09.2016

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No