

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : September 15, 2017

+ RFA 8/2009
DR. UDAY CHAND JINDAL

..... Appellant
Through: Ms. Bhavna Duhoon, Advocate

versus

M/S GALGOTIA PULBLICATIONS PVT. LTD.

..... Respondent
Through: Mr. Sanjeev Narula and
Mr. Anshuman Upadhyay, Advocates

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI
JUDGMENT
P.S.TEJI, J

1. Aggrieved by the decision of the Copyright Board dated 21st September 2008, passed in No.3-1/2007-CRB(NZ) whereby the claim of the petitioner/appellant was dismissed, the appellant has preferred the present appeal under Section 72 of the Copyright Act, 1957.

2. In brief, facts as enumerating from the record are as under:

Appellant claims to be the author of several books and has mentioned titles of seven books on various aspects of Mechanical Engineering which were given for publication to the respondent. Agreements of assignment were entered into on different dates in relation to these works. Appellant has

mentioned titles of other four books for which, according to the appellant, no agreement in writing between the appellant and respondent exists. Respondent has published all these books and the same finds mention in the catalogue published by the respondent. Advances, if any, paid by the respondent have been mentioned in the respective agreements. In the matter of a particular book, out of these four books, bearing title 'Mechanical Engineering [UPTU], as per new Syllabus by U.C. Jindal/Vivek Kumar', the respondent has fraudulently ripped eight chapters (Chapters 1 to 7 and 10). In the various catalogues published by the respondent, 10 out of 11 books of the appellant are mentioned. A book out of these books, namely, Engineering Mechanics (UPTU) by U.C. Jindal does not find mention. From this very book, the respondent fraudulently ripped certain chapters and bound those with another book. No permission from the appellant was taken for the same. The appellant has annexed a statement of royalty amounts paid to him from 1996-97 and 2005-06. Certain discrepancies in these statements have been explained by the appellant. In October, 2003, the appellant found that the book Engineering Mechanics, Part I STATICS is shown as re-printed in the year 2002, but the publisher never paid any royalty on the reprinted copies to the appellant despite various reminders. Respondent is obligated to send to the appellant yearly information about the sale of the books of the appellant which the respondent never adhered to. There is non-observance of clause 9 of different agreements

which provides for the settlement of royalty. Book titled “Introduction to Strength of Materials” was kept out of print during the year 2005-06 and at the end of year 2006, the respondent printed a revised edition 2007 of the book without getting the book revised by the author. Appellant has also relied on various letters which he wrote to the respondent about non-payment of royalties, etc.

It is submitted by the appellant that the respondent has got the books of the same character written by other authors and published those works which amounts to violation of principle of reciprocity.

In response to the plaint filed by the appellant the Respondent, in its written statement has submitted that there was no assignment qua the four books mentioned in paragraph 3. Thus, there is no assignment in terms of section 19 of the Copyright Act, 1957 and there cannot be any dispute under section 19A of the said Act, which can be adjudicated by the Copyright Board in relation to those books. It is further submitted that there is an arbitration clause in the agreements entered in writing for the remaining books mentioned in paragraph 2. Hence, any dispute qua those books is liable to be adjudicated by the arbitrator and not by the Copyright Board. He further submitted that the claim of the appellant was not substantiated by evidence and documents. Respondent has specifically denied that he has fraudulently ripped the chapters

from the earlier books of the appellant. In reply to paragraph 4 of the petition, respondent has agreed that it has mentioned 10 books of the appellant in its catalogue for the reason that the book at serial number 9 of the petition had been brought out as a revised edition. The respondent has further submitted that the amount of royalty due to be paid to the appellant has been in fact correctly paid. The respondent has given certain explanation about certain calculation errors which were rectified later on. Regarding various letters written by the appellant, respondent has submitted that the letters received were appropriately replied to. The respondent has submitted that the appellant is challenging the clause of an agreement entered into some 10 years back, which was necessary to safeguard the sanctity and the goodwill of the literary work of the author as well as of the concerned publication house. It has further been submitted that it is under no obligation to communicate to the appellant the number of copies printed or to disclose the stock in hand.

The appellant filed his replication to the written statement filed by the respondent mentioning that the standard form of agreement between the appellant and respondent is one sided and unreasonably harsh to the appellant. It was further submitted that the harshness of agreement further gets aggravated through the behavior of the respondent inasmuch as the respondent has denied receipt of many letters written to him. Furthermore, the appellant stated that the respondent has

submitted false royalty statements before the Board and has deliberately avoided producing the prescription of the appellant's work in many colleges. The appellant further alleges that the Respondent had been distributing older editions of the appellant's book despite the fact that the new edition had come into print. The appellant further urged that the right in relation to four books for which there was no written agreement was withdrawn by the appellant by means of various letters and final letter dated 9th April, 2007 and despite that, the respondent continued to publish those books. Respondent's action in publishing an adaptation of the appellant's work titled "Mechanical Engineering UPTU" without any permission is in violation of the author's special right provided under section 57(b). It was submitted that admittedly there was no written agreement in relation to four books and the appellant sought for appropriate action for unauthorized publication by the respondent. It was further urged that the respondent had been unresponsive to various communications from him and hence the remedy lies before the Copyright Board only. So far as the arbitration clause is concerned, it is stated that the arbitration clause is only with regard to interpretation or enforcement of the agreement and not in the case of revocation and only the Copyright Board has statutory powers in that regard.

3. After hearing both the sides, the learned Copyright Board in its order dated 21.09.2008 observed that the complaint in relation to four book for which there is no assignment in writing does not stand

scrutiny of Section 19 of the Act, therefore the same was not maintainable and the complaint in relation to seven books for which there is a written agreement of assignment, petitioner has failed to prove that the terms of the agreements are harsh, and, therefore the remedy under the arbitration clause in the respective agreements, lies with the arbitrator. So far as the jurisdiction for remedy for breach of moral rights under Section 57(1)(b), it was held that the same does not lie with the Copyright Board.

4. The appellant being aggrieved by the aforesaid order of the Copyright Board, has preferred the present appeal on the ground that the learned Board was not right and justified in its order dated 21.09.2008 as the petition before the said Board, filed by the appellant was neither for interpretation nor for enforcement of the agreement but for revocation of assignment agreement/pronouncement of revocation, for which the power is vested with the Copyright Board. The appellant contended in his appeal that the statute has empowered the Copyright Board to adjudicate the dispute with respect to assignment of copyright including revocation of assignment agreement. It is further contended on behalf of the appellant that by virtue of Section 19A of the Copyright Act, the Copyright Board is the only body entrusted with the power to adjudicate disputes with respect to assignment of copyright including revocation of assignment agreement. It is urged that the Copyright Board itself is a “special board” created under a special statute solely with an aim to protect and promote the interest of a copyright holder/owner.

5. The learned counsel for the appellant further contended that the learned Board has failed to appreciate that the actions of the Respondent are malafide and deliberate to mislead the learned Board with a view to suppress material facts. It was argued on behalf of the appellant that the Copyright Board erred in holding that the terms of agreement between the parties were not harsh. While referring to the clauses of the agreement, it was argued that all the agreements were one sided, unbalanced, prejudicial to the interest of the appellant and unreasonably harsh to the appellant and the same is substantiated by the actions of the Respondent in pursuance of the agreements where the Respondent has made unauthorized use of the appellant's work in complete disregard of the appellant's rights.

6. To support the submissions, learned counsel for the appellant has relied upon the following judgments:

- i) Sukanya Holdings Pvt. Ltd. vs. Jayesh H. Pandya and Anr., (2003) 5 SCC 531;
- ii) The premier Automobiles Ltd. vs. Kamlekar Shantaram Wadke of Bombay and Ors., (1976) 1 SCC 496.

7. Learned counsel for the appellant argued that no doubt, there was arbitration clause in the agreement, but the appellant had filed the petition before the Copyright Board for seeking relief with regard to the harshness of clause 13 of the agreement, which according to the appellant should have been heard and decided by the Copyright Board

but the Copyright Board had dismissed the petition by referring the parties to the arbitration only. As per the appellant, the learned Copyright Board could have considered the fact that the appellant had sought various reliefs including the harshness of clause of the agreement and the Board had jurisdiction to hear and decide the issue of harshness. The appellant has also drawn attention to a standard clause 13 in all the agreements providing as under:--

"The author agrees that he will not during the continuance of the agreement without the written consent of the publisher write, print or publish or cause to be written, printed or published, any other edition of the work, revised, enlarged, abridged, adapted, or otherwise, or any book of a character that might interfere with or inure the sale of the work."

8. The appellant had also sought revocation of the agreements entered with the respondent, which the learned Board had not considered fit to adjudicate upon. According to the appellant, since the appellant had sought various reliefs in the petition, which could not be referred to the arbitrator, therefore, the learned Board could have adjudicated upon other issues as well.

9. Learned counsel for the appellant has relied on the following extracts of the judgment in *Sukanya Holding (supra)*, herein the provisions of section 5, 8, and 11 were referred:

"Section 5. Extent of judicial intervention.

Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part,

no judicial authority shall intervene except where so provided in this Part.

Section 8. Power to refer parties to arbitration where there is an arbitration agreement. (1) *A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.*

(2) *The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.*

(3) *Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."*

For interpretation of Section 8, Section 5 would have no bearing because it only contemplates that in the matters governed by Part-I of the Act, Judicial authority shall not intervene except where so provided in the Act. Except Section 8, there is no other provision in the Act that in a pending suit, the dispute is required to be referred to the arbitrator. Further, the matter is not required to be referred to the arbitral Tribunal, if (1) the parties to the arbitration agreement have not filed any such application for referring the dispute to the arbitrator; (2) in a pending suit, such application is not filed before submitting first statement on the substance of the dispute; or (3) such application is not accompanied by the original arbitration agreement or duly certified copy thereof. This would, therefore, mean that Arbitration Act does not oust the jurisdiction of the Civil Court to decide the dispute in a case where parties to the Arbitration Agreement do not take appropriate

steps as contemplated under sub- sections (1) & (2) of Section 8 of the Act.

10. Learned counsel for the appellant contended that despite there being arbitration clause in the agreement but the respondent has not filed any application under Section 8 read with section 11 of the Arbitration Act for referring the dispute to the Arbitrator in a pending proceeding but it chosen to contest the matter by filing its written statement to the appellant's petition and the learned Board accordingly passed the order. Therefore, as per the appellant, the respondent has waived its right under Section 4 of the Arbitration Act for not referring the dispute to the Arbitrator and in such a situation, the learned Board ought to have held that Section 5 of the Arbitration Act has overriding effect upon any other statute.

11. The Respondent on the other hand submitted that the decision of the Copyright Board is a just and reasoned order and does not warrant any interference. Counsel for the respondent argued that there is a specific arbitration clause 19 in the memorandum of agreement entered into between the parties with respect to settlement of any dispute between the parties by way of arbitration. Thus, any dispute arising between the parties was to be settled by way of arbitration alone. Therefore, in such a situation, there is no illegality or infirmity in the order passed by the learned Copyright Board and the appeal filed by the appellant is liable to be rejected on this ground alone.

12. In support of his submissions, learned counsel for the respondent relied upon the following judgments:

- i) HDFC Bank Ltd. vs. Satpal Singh Bakshi, 193(2012) DLT 203;
- ii) Decision of the Bombay High Court in Suit No.331/2013, titled as Eros International Media Limited vs. Telemex Links India Pvt. Ltd., decided on 12th April 2016;
- iii) Booz Allen and Hamilton Inc. vs. SBI Home Finance Ltd. and Ors., AIR 2011 SC 2507.

13. I have heard the submissions made on behalf of both the sides and also gone through the order passed by the Copyright Board and the judgments cited by counsel for the parties.

14. The contentions of the appellant regarding breach of moral right as raised, this court is of the opinion that the Copyright Board is a quasi-judicial forum with limited jurisdiction. Jurisdiction in relation to remedy for breach of moral rights does not lie with the Board. So far as the submission of the appellant that the terms of the agreements were harsh, in view of the arbitration clause in the respective agreements, remedy lies with the arbitrator; and jurisdiction for remedy for breach of moral rights does not lie with the Copyright Board. (*U.C. Jindal vs. Galgotia Publication Pvt. Ltd. (21.09.2008 - Copyright Board) : MANU/CP/0017/2008*)

15. This court has also gone through the judgments cited on behalf of the respondent. In *HDFC Bank Ltd. V Satpal Singh Bakshi (supra)* while dealing with a similar issue held as under:-

“No doubt, for determination of disputes the State does provide the medium of alternate forums, but while doing so, it also recognizes that that is not the only means for determination of the resolution of conflicts between the parties. The parties, are still, given the freedom to choose a forum, alternate to and in place of the regular Courts or judicial system for the decision of their inter se disputes. There has been recognition of the concept that notwithstanding the judicial system, parties are free to choose their own forum in the form of arbitration, first recognized by enacting the Arbitration Act, 1891. Therefore, even when the matter is pending in the Court, parties to the dispute are given freedom to resort to conciliation, mediation and also the arbitration.”

16. Similarly, the Apex Court in *Booz Allen and Hamilton Inc (supra)* has observed that *“while considering an application under Section 11 of the Act, the Chief Justice or his designate would not embark upon an examination of the issue of ‘arbitrability’ or appropriateness of adjudication by a private forum, once he finds that there was an arbitration agreement between or among the parties, and would leave the issue of arbitrability for the decision of the Arbitral Tribunal”*.

17. In the present matter, the parties had a specific arbitration clause in the memorandum of agreement entered into between the them, being *clause 19; Arbitration*, which clearly states that-

“All differences or disputes arising out of or in connection with the interpretation or enforcement of this agreement shall be settled by arbitration in Delhi and will be subject thereto the Courts in Delhi in accordance with the Indian Arbitration Act”.

Since, both parties agreed to the above said clause, the Appellant cannot now be permitted to say that this arbitration clause is of no consequence. This, alone, would defeat the very effect of the said arbitration clause which was mutually acceptable between the parties.

18. After hearing the submissions of counsel appearing for both the sides and going through the aforesaid judgments, this court observes that the grouse of the appellant is two folds; firstly that the terms and conditions referred to in the agreement is very harsh and the appellant had difficulty to act in accordance with the agreement, and therefore the appellant had sought revocation of the agreement vide notice dated 9th April 2007 and thereafter approached the Copyright Board for directing revocation of the agreement entered into between the parties. The appellant further claimed the balance of royalty and submitted that the royalty to the tune of Rs.1,08,267/- was paid, however it was expecting the royalty more than that.

19. In this regard, Section 19A of the Copyright Act, 1957, would be relevant to refer, which reads as under:-

"(1) If an assignee fails to make sufficient exercise of the rights assigned to him, and such failure is not attributable to any act or omission of the assignor, then, the Copyright Board may, on receipt of a complaint from the assignor and after holding such inquiry as it may deemed necessary, revoke such assignment.

(2) If any dispute arises with respect to the assignment of any copyright, the Copyright Board, may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable:

Provided that Copyright Board shall not pass any order under this sub-section to revoke the assignment unless it is satisfied that the terms of the assignment are harsh to the assignor in case the assignor is also the author:

Provided further that no order of revocation of assignment under this sub-section shall be made within a period of five years from the date of such assignment".

20. The aforesaid arguments have been opposed on the ground that the benefit claimed by the appellant are borne out only from the agreement. The agreement was initially entered in the year 1991 and subsequent also, which were seven in number. The payment of royalty was made as per the books from time to time. The submissions made by the counsel that there is no provision of revocation of the agreement and the appellant had been availing benefit of the agreement till 2007 and there cannot be any reason for opening the provisions of Section 19A. Although, if the petitioner/appellant was aggrieved by any terms and conditions of the agreement, it was well within his right to terminate the agreement and stop the respondent to

publish the books. As regards the claim of royalty, it has been submitted that the money or claim itself is on the basis of the agreement entered between the parties and the same is the subject matter of the dispute, which could be resolved only in the arbitration proceedings.

21. After careful scrutiny of the facts and circumstances of the case, the agreement containing the arbitration clause and the judgments cited by both the sides, this court is of the considered opinion that when the appellant himself had signed the agreements in question having the arbitration clause in which the appellant had agreed to the terms therefore, in such a scenario, he cannot be permitted to say that the arbitration clause is of no consequence in respect of the grievance towards any clause of the agreement including its harshness, if any. Therefore, finding no merit in the grounds raised by the appellant in the present appeal and no illegality or infirmity in the impugned order passed by the learned Copyright Board, the appeal filed by the appellant is dismissed.

22. The parties are directed to bear their own costs.

(P.S.TEJI)
JUDGE

SEPTEMBER 15, 2017
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