

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 8th January, 2018.

+ CS(COMM) 935/2016, CCP(O) No.32/2017, OA No.115/2017 & IA NO.9488/2017 (for condonation of 105 days delay in filing OA) & IAs No.9822/2017 (of defendants u/O XI R-10 CPC) & 10321/2017 (of defendants u/S 151 CPC) & CC (COMM) No. 118/2017

NEETU SINGH

..... Plaintiff

Through: Ms. Rajeshwari H. & Mr. Tahir A. J., Advs.

Versus

RAJIV SAUMITRA & ORS

..... Defendants

Through: Mr. Murari Tiwari, Mr. Rahul Kumar and Mr. Devesh Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit for permanent injunction restraining the three defendants i.e. (i) Rajiv Saumitra; (ii) Paramount Coaching; and, (iii) Anil Anand from reproducing, publishing, distributing, selling, offering for sale the literary work "English for General Competitions" or any other book copyright whereof vests with the plaintiff and for recovery of damages.

2. The suit was entertained and summons thereof ordered to be issued, though no *ex-parte* injunction as sought, granted. Common written statement was filed by the defendants no.1&2 and a separate

written statement filed by defendant No.3 and to both of which replications have been filed by the plaintiff.

3. The defendants No.1&2 have filed a Counter-Claim to restrain the plaintiff from reproducing, publishing, distributing, selling, offering for sale the literary work “English for General Competitions” and for recovery of damages from the plaintiff.

4. The pleadings in the Counter-Claim have also been completed.

5. Vide order dated 4th August, 2017, the application of the plaintiff for interim relief was allowed and the defendants were restrained from reproducing, publishing, distributing, selling, offering for sale the literary work titled “English for General Competitions” or any other book copyright whereof vests with the plaintiff and from reproducing, publishing, distributing, selling, offering for sale the artistic work being the “Two Mountains” or any other artistic work copyright whereof vests with the plaintiff.

6. The defendants have allowed the said interim order to attain finality and have not preferred any remedy thereagainst.

7. The Suit and the Counter-Claim are listed today for framing of issues.

8. The defendants have also preferred a Chamber Appeal being OA No.115/2017 against the order dated 20th April, 2017 of the Joint Registrar closing the opportunity of the defendants of admission/denial of the documents of the plaintiff, along with IA No.9488/2017 for condonation of 105 days delay in filing thereof. The defendants have

also filed an application for filing additional documents being IA No.9822/2017. Another application being IA No.10321/2017 under Section 151 of the Code of Civil Procedure, 1908 (CPC) has also been filed by the defendants for the said relief.

9. The plaintiff has filed CCP(O) No.32/2017 alleging violation of the interim order.

10. The plaintiff Neetu Singh and the defendant no.1 Rajiv Saumitra are wife and husband respectively, whose marriage has run into trouble and besides the present suit, several other proceedings are stated to be pending between the parties.

11. It is not in dispute that while the plaintiff and the defendant no.1 were together, both were Directors of the defendant no.2 Paramount Coaching Centre Private Limited and which is now being managed and controlled by the defendant no.1 only.

12. The defendant no.3 Anil Anand is the publisher of “English for General Competitions”.

13. The counsel for the plaintiff, on enquiry, states that only one book i.e. “English for General Competitions” is the subject matter of the present suit.

14. The said book comprises of a compilation of Multiple Choice Questions along with Answer key thereof for tests of English language in various competitive examinations.

15. The counsel for the plaintiff contends that in the editions of the book published in May, 2014 and February, 2015, the plaintiff is shown

as the author thereof and the plaintiff also has a copyright registration of the said book and its contents.

16. The contention of the counsel for the defendants is that the marriage of the plaintiff and the defendant no.1 ran into trouble in May, 2015 and the book, first edition whereof, as aforesaid, was published in May, 2014 and second edition in February, 2015, was published, when the plaintiff and the defendant no.1 were together and were Directors of the defendant no.2 and the book was published by the team of the defendant no.2 and the plaintiff in the book is described as the Director of the defendant no.2. It is further the contention of the counsel for the defendants that the plaintiff as the Director of the defendant no.2 was drawing a package of Rs.10 lacs per month and the copyright in the book thus vests in the defendant no.2 and not in the plaintiff and the plaintiff is not entitled to any relief.

17. In the interim order dated 4th August, 2017, the aforesaid pleas of the defendants have been dealt with by reasoning that the defendants can at best invoke proviso (c) to Section 17 of the Copyright Act, 1957.

18. Admittedly, the plaintiff was working as a Director of the defendant no.2 and the book aforesaid was published from 2012 to 2014. The defendants have not placed on record any material to show that the book was authored by the plaintiff as part of duties and obligations of a Director of the defendant no.2. No Agreement in this regard or Articles or Memorandum of Association of the defendant no.2 has been placed on record and in the absence thereof, it cannot be said that the defendants are entitled to the benefit of proviso (c) to Section 17 of the Act.

19. Supreme Court in *Ram Pershad Vs. The Commissioner of Income-Tax, New Delhi* 1972 2 SCC 696 held that a Director of a company is not a servant but an agent of the company; only when the Director is employed as the Managing Director, would he have the capacity as the Managing Director of an employee of the company and the nature of his employment is to be determined by the Articles of Association of the company and/or by the Agreement, if any entered into between him and the company.

20. In the present case, the defendants have not placed on record any document to show that the plaintiff was working as an employee of defendant No.2.

21. The counsel for the defendants states that the defendants now seek to file an application to place on record an application filed by the plaintiff in another proceeding where the plaintiff has admitted to have received salary of Rs.10 lacs from the defendant no.2 as well as the Memorandum of Articles of Association and similar books published by the defendant no.2 from the year 2009 onwards.

22. As far as the Memorandum and Articles of Association is concerned, the counsel for the defendants is unable to state the relevance thereof for the present controversy. As far as the books which are now sought to be filed are concerned, I have enquired from the counsel for the defendants, which portions thereof are identical to the book aforesaid, subject matter of this suit.

23. The counsel for the defendants states that he is unable to show any document in support of his contention.

24. I am constrained to observe that the defendants, though desirous of keeping the suit and the counter-claim alive, are found to be totally lacking in preparation and not wanting to go ahead with the suit and found to be interested merely in keeping the litigation alive. When the parties come before this Court and have a commercial dispute qua which special provisions have been made and which can be summarily disposed of, the counsels ought to be prepared and if found to be lacking and merely interested in keeping the litigation alive for collateral purposes and not to get any relief, the Commercial Division of the High Court would certainly be entitled to deal appropriately with such so called 'commercial litigants'. The Commercial Division of this Court cannot allow its process to be abused in this fashion.

25. The counsel for the plaintiff, during the hearing, has also informed that the plaintiff, after 2015, has published one more edition of the book aforesaid in the year 2016. Even otherwise, my experience in the context of Delhi Judicial Services Examination shows that the format of the questions in competitive examinations keeps on changing with time. I have thus enquired from the counsel for the defendants, what purpose keeping the present suit alive for this reason, will serve, inasmuch as the book qua which the suit has been filed, is likely to be redundant and/or subjected to substantial changes by the time the suit is decided. Moreover, none can claim exclusivity to the subject and the nature of the book which is a compilation of probable/likely questions in the subject of English in various competitive examinations is such that the copyright with respect thereto can only be in formatting, chronological order and language of the questions.

26. The counsel for the plaintiff has contended that the book aforesaid also comprises *inter alia* of a guide to the candidates to solve and determine the right answer and contains explanations of various expressions of English language.

27. Again, none can claim copyright in the aforesaid also and the copyright can only be in the language and manner in which the same is explained. It is not as if, the defendants by the interim order are restrained from publishing their own book of compilation of likely questions. The defendants, if have any acumen in authoring another similar book, are free to do so. However, when this suit was filed, they were verbatim copying the book aforesaid.

28. The counsel for the defendants states that the defendants are already publishing another book.

29. As regards the plea of the counsel for the defendants, of the plaintiff having authored the aforesaid book with the team work of the defendant no.2, the same is without naming any members of the team or placing before this Court any document, evidencing their contribution and the same does not constitute a material plea on which an issue is to be framed.

30. The counsel for the defendants, of course, again states that he will file such documents.

31. The defendants having missed the bus, if it is found that no material questions of fact or law arise, cannot keep the suit alive in such fashion.

32. Yet another argument of the counsel for the defendants is that in another litigation between the parties, vide order dated 21st March, 2016 in FAO (OS) No.60/2016 titled *Rajiv Saumitra Vs. Neetu Singh and Ors.*, the plaintiff has been restrained from using the title “English for General Competitions – Plinth to Paramount”.

33. However, a perusal of the said order shows the plaintiff to have been restrained only from using the mark ‘Paramount’, its goodwill and from luring the teachers, students or several members of the defendant no.2 and to have been directed to remove ‘Paramount’ from all hoardings, advertisements, brochures and other materials.

34. The counsel for the plaintiff, on enquiry, states that the plaintiff is complying with the said order and in the title of the subsequent editions has not used the word ‘Paramount’.

35. In this view of the matter, the pleadings of the parties are not found to raise any material question of fact or law, insofar as the relief of permanent injunction is claimed in the present suit.

36. The counsel for the plaintiff, on enquiry, states that if the suit for permanent injunction, as sought, is decreed today, the plaintiff for the sake of minimising litigation, will not press for damages.

37. Though the counsel for the defendants presses for the relief for damages but once the defendants are found to be liable for permanent injunction, the question of the defendants being entitled to any damages from the plaintiff, does not arise.

38. The counsel for the defendants states that the defendants, in the Counter-Claim, have also sought the relief with respect to the artistic work of “Two Mountains”.

39. It transpires that the defendant no.1 has applied to the Registrar of Trademarks for registration of a label with the word ‘Paramount’ with the device of two mountains and the plaintiff has filed opposition thereto.

40. The counsel for the defendants states that liberty be granted to the defendants to separately pursue the relief with respect thereto.

41. Accordingly, the suit is disposed of by passing a decree in favour of the plaintiff and jointly and severally against the defendants, of permanent injunction, in terms of prayer paragraphs 36(a)&(b) of the plaint dated 11th July, 2016 and with the clarification that the injunction insofar as with respect to the artistic work of “Two Mountains” is concerned, will be subject to the outcome of the proceedings aforesaid, pending before the Registrar of Trademarks and any separate proceedings filed by the defendants in future.

42. The parties are left to bear their own costs.

43. Decree sheet be drawn up.

44. All the pending applications and CCP are also disposed of in terms of above.

RAJIV SAHAI ENDLAW, J.

JANUARY 08, 2018

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(corrected & released on 12th February, 2018)