

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

Before:

The Hon'ble Justice Harish Tandon

and

The Hon'ble Justice Hiranmay Bhattacharyya

FMAT 369 OF 2020

With

I.A. No. C.A.N. 1 OF 2020

With

I.A. No. C.A.N. 2 OF 2020

**Debarati Mukhopadhyay @ Debarati Mukherjee
Vs.**

M/s. Book Farm

For the Appellants : Mr. Saptansu Basu,
Mr. Sukanta Chakraborty,
Mr. Anindya Halderadvocates

For the Respondents :Mr. Aritra Basu,
Mr. Ashis Kr. Chowdhury,
Mr. Rajib Ghosh....advocates

Heard on : 25.09.2020

Judgment on : 27.11.2020

Hiranmay Bhattacharyya, J.:

The defendant in a suit for infringement of copyright has preferred the instant first miscellaneous appeal challenging the order no. 1 dated August 20, 2020 passed by the learned District Judge, 24 Parganas (south) at Alipore in Title Suit No. 6 of 2020.

The author who is the appellant herein entered into a publishing and copyright agreement with the publisher being the respondent on November 24, 2017. The respondent filed the instant suit alleging illegal termination of the aforesaid agreement by the appellant through e-mail dated June 1, 2020. It was further alleged that the appellant herein through her learned advocate's letter dated July 20, 2020 threatened to institute legal proceedings against the respondent before the appropriate forum. The respondent claims that the appellant herein threatened to publish the books through other publishers which compelled the respondent to pray for an order of injunction restraining the appellant herein from giving any effect to the e-mail dated June 1, 2020 and the letter dated July 20, 2020 by filing an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure.

The Learned Trial Judge, by the order impugned, restrained the defendant/appellant herein from taking any steps pursuant to the letter dated June 1, 2020 as well as the letter dated July 20, 2020 till September 25, 2020.

Being aggrieved against the aforesaid order, the instant appeal has been preferred.

Mr. Saptansu Basu, learned Senior Advocate appearing for the appellant assails the impugned order on the following grounds. Firstly, the principles laid down by the Hon'ble Supreme Court of India in the case of *Shiv Kumar Chadha versus Municipal Corporation of Delhi and others* reported at (1993) 3

SCC 161 has not been followed by the learned court below while passing the ex-parte order of injunction.

Secondly, no order of injunction can be passed restraining a person from instituting a proceeding before a court of law.

Lastly, the respondent may, at best, be entitled to damages in the event the court finds that the notice period as mentioned in the termination letter falls short of the required notice period as per the agreement in question. Mr. Basu relied upon a judgment of the Hon'ble Supreme Court of India in the case of *Indian Oil Corporation Ltd. versus Amritsar Gas Service and others* reported at (1991) 1 SCC 533 in support of such submission. Thus, Mr. Basu concludes by submitting that no injunction can be passed restraining the appellant herein from taking further steps pursuant to the e-mail dated June 1, 2020 and the letter dated July 20, 2020.

Per contra Mr. Aritra Basu, Learned Advocate for the respondent submitted that the agreement dated November 24, 2017 contains a termination clause which provides that 90 days notice is mandatory before terminating the agreement by the appellant herein. He submitted that since the termination letter has been issued by the appellant herein in violation of the said agreement, the same cannot be given effect to and the learned court below was thus perfectly justified in passing an order of injunction. He further submitted that Section 42 of the Specific Relief Act empowers the court to grant an injunction directing the appellant to perform the negative agreement by issuing a 90 clear days' notice for termination of the agreement in the instant case

even if the court is unable to compel the specific performance of the agreement. In other words, the court can direct the appellant to comply with the mandatory requirement of 90 days' notice as stipulated in the agreement for terminating the same.

Mr. Basu, the Learned Advocate for the respondent relies upon the judgment of Delhi High Court in the case of *KSL & Industries Ltd. versus National Textiles Corporation Limited* in O.M.P. 581/2010 decided on 14.08.2012 as well as the judgment of the Madras High Court in the case of *Base International Holdings versus Pallava Hotels Corporation Limited* in C.S. No. 802 of 1996, Orl. Appln. Nos. 653 and 654 of 1996 and 104 of 1997 and Appln. No. 1464 of 1997 decided on 04.09.1998 in support of his submission that an order of injunction can be passed in case the notice period mentioned in the termination notice is in violation of the termination clause mentioned in the agreement.

We have heard the submissions of the Learned Advocates of the respective parties and have considered the materials on record.

The crux of the argument of the plaintiff/respondent is that a letter of termination providing for a shorter notice period than that mentioned in clause 14 of the said agreement is bad in law. According to the learned Advocate for the respondent since the letter of termination is bad in law and clause 5 of the agreement provides that the agreement shall remain in vogue indefinitely, the appellant should be restrained from taking any steps pursuant to the letters dated June 1, 2020 and July 20, 2020.

After going through the agreement dated November 24, 2017 particularly clauses 5 and 14 thereof we are of the view that the said agreement shall remain in vogue till it is terminated by a notice of termination. Thus, the said contract is determinable in nature and cannot be specifically enforced in view of Section 14(1) of the Specific Relief Act.

Section 41 of the Specific Relief Act provides that an injunction cannot be granted to prevent the breach of a contract, the performance of which would not be specifically enforced. Since we are of the view that the contract in question is one, the performance of which could not be specifically enforced, the learned judge of the court below erred in law by passing an order of injunction in the instant case which would in effect amount to directing specific performance of the said agreement. Furthermore, no injunction can be passed restraining a party from instituting any proceeding in a court of law. The resultant effect of the order of injunction passed by the learned court below is a restraint upon the appellant from initiating any legal proceedings before a court of law which is not permissible in law.

It is very difficult for us to digest the submission of the respondent that the Court has the power under Section 42 of the Specific Relief Act to direct the appellant herein to comply with the requirement of 90 days' notice as stipulated in the agreement. Section 42 of the Specific Relief Act operates in a totally different field and cannot be applied to the facts of the instant case.

In the event the court at the time of trial is of the view that the respondent has suffered any injury due to short notice

period, the respondent may be entitled to reliefs in accordance with law but that cannot be a ground for passing an order of injunction.

The Learned Trial Judge while passing the ex-parte injunction order also did not record reasons for its opinion as required by proviso to Rule 3 of Order 39 of the Code before passing the order of injunction. Thus, the principles laid down by the Hon'ble Supreme Court of India in *Shiv Kumar Chadha* (supra) has also not been followed in the instant case and the order of injunction passed by the learned Judge of the court below is liable to be set aside on that ground alone.

The contract which was the subject matter of the dispute in *KSL (supra)* did not contain any provision conferring right upon the party to terminate the contract. Thus, the said case relied upon by the learned advocate for the respondent do not have any manner of application to the facts of the instant case as in the case in hand the agreement specifically provides that it can be terminated by a notice.

In *Base International* (supra) the agreement which fell for consideration before the Madras High Court contained a termination clause which provided that the written notice is to be accompanied by a lump sum payment for the notice period. On such facts it was held that there was no valid termination of the agreement in question and the court held that the agreement continued to subsist and accordingly passed an order of injunction. The facts of the said case is completely different from the facts of the instant case and as such the decision of the

Madras High Court in *Base International (supra)* is not applicable to the facts of the instant case.

For the reasons as aforesaid, we are of the view that the learned judge of the court below erred in law by passing an order of injunction. The instant appeal being FMAT No. 369 of 2020 is allowed. The later part of order number 1 dated August 28, 2020 by virtue of which an interim order of injunction was passed is accordingly set aside. The connected applications being CAN 1 of 2020 and CAN 2 of 2020 are also disposed of accordingly without however any order as to costs.

We, however, request the learned judge of the court below to make endeavours to dispose of the application under Order 39 Rule 1 and 2 read with Section 151 of the Code as expeditiously as possible. Needless to mention that the learned judge of the court below while disposing of the application for temporary injunction shall not be swayed by the fact that this court has set aside the ex-parte order of injunction as the principles for grant of ad interim injunction is different from that of temporary injunction.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis.

I agree.

(Harish Tandon, J.)

(Hiranmay Bhattacharyya, J.)

