

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL MISCELLANEOUS PETITION NO.1 OF 2022

Anil G. Karkhanis ... Petitioner
Vs.
Kirloskar Press and another ... Respondents

Mr. Amit Jamsandekar with Mr. Vignesh Kamath and Ms. Oindrilla Mukherjee
i/b. Link Legal for Petitioner.

CORAM : MANISH PITALE, J.
DATE : MARCH 21, 2023

P.C. :

. By this petition, the petitioner has invoked Section 32 of the Copyright Act, 1957 and Rule 32 of the Copyright Rules, 2013 for grant of licence to produce and publish a translation of a literary work titled “The Spirit’s Pilgrimage” in Marathi language and a further direction to the Registrar of Copyrights to notify such grant of licence in the Official Gazette and to post the same on the website of the office of the Registrar of Copyrights.

2. On 11.10.2022, this Court had heard the learned counsel appearing for the petitioner and after being satisfied that a case was indeed made out for publication of appropriate notice as per Rule 33 of the aforementioned Rules, it was directed that such a notice would be published by respondent No.2 i.e. Registrar of Copyrights in respect of the prayers made in the present petition. The format of the public notice was incorporated in paragraph 9 of the order and it was directed that additionally, the petitioner would ensure that such a notice is published in two newspapers i.e. Free Press Journal and Loksatta (Marathi).

3. An affidavit of publication dated 15.02.2023 is placed on record

along with copies of the publications to show that the order passed by this Court on 11.10.2022 was indeed complied with. The notices were published in Free Press Journal on 30.10.2022; in Loksatta (Marathi) on 09.11.2022; and respondent No.2 - Registrar published the notice on 26.10.2022 on the official website.

4. There is no dispute about the fact that a period of more than 120 days has passed after publication of the aforementioned notices and there is no objection raised by any person.

5. In that light, Mr. Jamsandekar, learned counsel appearing for the petitioner is pressing for grant of reliefs in terms of prayer clauses (a) and (b). At this stage, learned counsel submits that inadvertently, in prayer clause (a), reference is made to 'Rule 38' of the Copyright Rules instead of 'Rule 32' thereof. A prayer is, therefore, made for permission to make suitable amendment in the said prayer clause.

6. In the interest of justice, the oral prayer is granted and the petitioner is permitted to amend prayer clause (a) to replace the words 'Rule 38' with 'Rule 32'. The amendment be carried out forthwith. Re-verification is dispensed with.

7. This Court has considered the petition and the material on record. Section 32 of the said Act and Rule 32 of the said Rules set out specific requirements to be satisfied before such licence for translation can be granted. A perusal of the material on record shows that the aforementioned requirements are satisfied in the present case. The following table confirms the said fact that requisite particulars are stated in specific paragraphs of the petition and the accompanying Exhibits:

Requirement under Section 32 of the Copyright Act, 1957:-

Sr. No.	Section 32. Licence to produce and publish translations	Particulars	Reference in the Pleadings/ Documents
1.	S. 32 (1) Any person may apply to the <i>Commercial Court</i> for a licence to produce and publish a translation of a literary or dramatic work in any language <i>after a period of seven years from the first publication of the work.</i>	The Work was first published in 1960 in India by Orient Longman Private Ltd. and in Great Britain by the publisher Longmans, Green & Co., therefore, 61 years have passed from the date of first publication of the work.	Paragraph 4. A at page 4 of the Petition Exhibit A Pages 17-18
2.	S. 32 (2) Every application under this section shall be made in such form as may be prescribed...	Form VI prescribed under Rule 32 of the Copyright Rules 2013 which annexed to the Petition as Exhibit D. The same is only in respect of one work titled 'The Spirit's Pilgrimage' and in respect of translation of a work into one language only i.e., Marathi.	Paragraph 4 C. at page 6 of the Petition Exhibit. D page 349
3.	...and shall state the proposed retail price of a copy of the translation of the work.	The Petitioner has stated in the Petition that the proposed retail price of a copy of the translation of the work would be around Rs. 450/-. The Petitioner intends to publish not more than 1000 copies in paperback, the maximum royalty for which would be at 8% is Rs. 36,000/- (8% X Rs. 450 per copies X 1000 copies).	Paragraph 4 E. at page 7 of the Petition
4.	S. 32 (3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.	The Petition contains the undertaking of the Petitioner to deposit Rs. 5000 as specified in the Second Schedule of the Copyright Rules with the Registrar of Copyrights, along with his application or any other such fee as may be prescribed.	Paragraph 4. D at page 6 of the Petition
5.	S. 32 (4) Proviso (a) a translation of the work in the language mentioned in the application has <i>not been published by the owner of the copyright in the work or any person authorised by him, within seven years or three years or one year, as the case may be,</i>	The Original author, Madeleine Slade (Mira Behn), has not translated and published the work in Marathi or has not authorized any other person to do so within seven years from 1960 i.e., the year of first publication of the work An <i>abridged</i> translation of the said work	Paragraph 4. A at page 4 of the Petition

	of the first publication of the work, or <i>if a translation has been so published, it has been out of print</i>;	titled ‘एक चैतन्य यात्रा’ was written by Shri Ranga Marathe and was published by ‘Kirkoskar Press’ (hereinafter referred to as the said Publisher) on 2nd October 1971. The said abridged version is since then out of print and not available to the public and the Publisher is not operational any more. Petitioner wrote to the said Publisher on the address given on the abridged translation, requesting license to publish a Marathi translation of the Work on 17th August, 2021 on the basis of the claim made by the said publisher on the work. The said Letter returned with the remark that the Addressee left without instruction.	Exhibit A-1 at page 337, Exhibit B at pages 341-347
6.	S. 32 (4) Proviso (b) the applicant has proved to the satisfaction of the Commercial Court that he had requested and had been denied authorisation by the owner of the copyright to produce and publish such translation, or <i>that he was, after due diligence on his part, unable to find the owner of the copyright</i>;	The original author ‘Madeleine Slade’: - had left her home and her family in 1920s to live and work with Mahatma Gandhi - was unmarried throughout her lifetime - passed away in a small village in Austria in 1982 The Petitioner was unable to find the original author / owner or any of her family members or heirs of the original author.	Paragraph 4 B. at page 5 of the Petition
7.	S. 32 (4) Proviso (c) <i>where the applicant was unable to find the owner of the copyright</i>, he had sent a copy of his request for such authorisation by registered air mail post to the publisher whose name appears from the work, and in the case of an application for a licence under sub-section (1), not less than two months before such application;	The Petitioner was unable to find the publisher whose name appears on the published work which was published in the year 1960: The publisher whose name appears on the original work is of Longmans. The Work was originally published in 1960 in India by Orient Longman Pvt. Ltd. and in Great Britain by the publisher Longmans, Green & Co. It appears that in the year 1968, Pearson Education group of the United Kingdom took over the Longman name globally.	Ex. A Pages 17-18 Paragraph 4 C. at page 6 of the

		The Petitioner also contacted Orient Blackswan Pvt. Ltd. only to be informed that the said company no longer dealt or is in any manner involved in Longman or books published under Longman. In fact, it was informed to the Petitioner that Orient Blackswan Pvt. Ltd. only publishes educational books and not autobiographies. The Petitioner wrote to Pearson education group vide an email dated 7.7.2021 in respect of translation rights of the said work. No response received to the Petitioner either from Pearson or Kirloskar Press.	Petition Ex. C Page 348
8.	S. 32 (4) Proviso (d) the Commercial Court is satisfied that the applicant is competent to produce and publish a correct translation of the work ...	The Petitioner since his childhood as read innumerable Marathi books. The Petitioner has his own library and collection of Marathi books and other literature. Post retirement from the profession, the Petitioner came across literature on Ms. Madeline Slade which referred to her autobiography "Spirit's Pilgrimage". The Petitioner has a reasonable command on Marathi language and is competent to translate the work in Marathi.	Paragraph 4 G. at page 8 of the Petition
9.	...and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;	The Petitioner: - is qualified Advocate with a good career; - is in a good financial state and has sound means to pay royalty;	Paragraph 4 F. at page 7-8 of the Petition

Requirements under Rules 32 to 35 of the Copyright Rules, 2013:-

Sr. No.	Rule	Particulars	Reference in the Pleadings/ Documents
1.	32. Application for licence. (1) An application for a licence under section 32 to produce and publish a translation of a literary or	Form VI prescribed under Rule 32 of the Copyright Rules 2013 which annexed to the Petition as Exhibit D.	Paragraph 4 C. at page 6 of the Petition

	dramatic work in any language shall be made in Form VI and shall be accompanied by the fee specified in Second Schedule. (2) Every such application shall be in a respect of one work only and for translation of that work into one language only.	The same is only in respect of one work titled 'The Spirit's Pilgrimage' and in respect of translation of a work into one language only i.e., Marathi.	Ex. D page 349
2.	33. Notice of application.—(1) when any such application has been made, the Commercial Court shall, as soon as possible, give notice of the application in the Official Gazette and also, if the Commercial Court thinks fit, in one or two newspapers and shall send a copy of the notice to the owner of the Copyright, wherever practicable. (2) Every such notice shall contain the following particulars, namely: (a) the date of the application; (b) the name, address and nationality of the applicant; (c) particulars of the work which is to be translated; (d) the date and country of the first publication of the work; (e) the name, address and nationality of the owner of the copyright as stated in the application; (f) the language in which the work is to be translated; and (g) the registration number of the work in the Registrar of Copyrights, if any.	Vide Order dated 11.10.2022, the Notice of the Application as contemplated under Rule 33 of the Copyright Rules was issued and the said Notice was published in the journal and available at the official Website of the Copyright office on 26.10.2022 and published in two leading newspapers i.e., Free Press Journal on 30.10.2022 and Lok Satta on 09.11.2022 as the work is intended to be translated in Marathi. The Notice as published, contained all the particulars as required under Rule 33.	Order dated 11.10.2022 Affidavit dated 15.02.2023 of one Mr. Tilakraj Suvarna
3.	34. Consideration of the application.—(1) The Commercial Court shall consider the application after the expiry of not less than one hundred and twenty days from the date of the	In the Order dated 11.10.2022 and the published Notices, it was also notified that any person claiming any interest in the copyright of the work may within one hundred and twenty days from the date of this publication file an application, in	Order dated 11.10.2022 & Affidavit dated

	publication of the notice in the Official Gazette.	writing, with adequate evidence. No further time will be granted after the expiry of 120 days of Public Notice. The last of the publication was on 09.11.2022 and the time period of 120 days has elapsed since then. No person claiming any interest in the Copyright of the work has come forth.	15.02.2023 of one Mr. Tilakraj Suvarna
4.	(4) If the Commercial Court is satisfied that the licence for a translation of the work in the language applied for may be granted to the applicant, or, if there are more applicants than one to such one of the applicants as, in the opinion of the Commercial Court, <i>would best serve the interests of the general public</i>, it shall grant a licence accordingly.	In the Work, the author has narrated India's freedom struggle for independence and various campaigns under the leadership of Mahatma Gandhi. The author also narrated her experience of trials and tribulations during her association with Mahatma Gandhi and after his demise. It is submitted by the Petitioner that the work would best serve the interests of the general public and the publication would serve public interest. The Petitioner has also stated that his intention to publish or the publication itself is not for profit or for any commercial enterprise and that the translation of the work in Marathi language is in public interest and for the larger benefit of the society. The license is sought for translation in Marathi which is not in use in any developed country.	Para 3, page 3 of the Petition Para 8, page 10 of the Petition
5.	(5) Every such licence shall be subject to the condition provided in sub-section (4) of Section 32 relating to the payment of royalties and shall specify- (a) the period within which the translation shall be produced and published; (b) the language in which the translation shall be produced and published; (c) the rate at which royalties in respect of the copies of the translation of the work sold to the public shall be paid to the owner of the copyright in the work; and	The Petitioner has stated that he has translated the said work in Marathi and intends to publish 1000 copies only. Reasonable time may be granted to translate and produce such copies. As regards the person to whom the royalties shall be payable, the exact owner of the Copyright is not known to the Petitioner. The author and first owner of the copyright in the work 'Spirit's pilgrimage' passed away in 1982. The Petitioner states that he was unable to find the legal heirs or family members of the author. Further, the Petition also states that none of the Publishers exist as	Ex. D Pg 349 Paragraph 4. A at page 4 of the Petition Paragraph 4 C. at

	(d) the person or persons to whom such royalties shall be payable.	on today. The petitioner found that an abridged version of the said work was translated by one Ranga Marathe and it was published by the respondent no.1, but neither the said Translator nor Respondent no. 1, is to be found as on today. It was in this view that Notice and newspaper publications were directed to be given.	page 6 of the Petition
6.	35. Manner of determining royalties. The Commercial Court shall determine the royalties payable to the owner of the copyright under sub-section (4) of section 32. The Commercial Court while determining the royalty shall take into consideration the following, namely:- (a) The proposed retail price of a copy of the translation of the work; (b) The prevailing standards of royalties with regard to translation of works; and (c) Such other matters as may be considered relevant by the Commercial Court.	The Petitioner has stated that the Petitioner believes the prevailing standard of royalty rate to be normally at 7.5% or 8% for most authors for paperbacks and 10% for hardcover editions. The Petitioner also states that the proposed retail price of a copy of the translation of the work would be around Rs. 450/-. Moreover, the Petitioner intends to publish not more than 1000 copies in paperback, the maximum royalty for which would be at 8% is Rs. 36,000/- (8% X Rs. 450 per copies X 1000 copies). However, in view of the Petitioner being unable to find the owner or the publisher and there being no one who has come forth claiming any rights in respect of the said work in response to the public notice issued, the question of determining royalties need not be gone into. The Petitioner in paragraphs 4 E. and F. of the Petition has given an undertakings to the Hon'ble Court to pay royalties payable to the owner/interested party.	Paragraph 4 E. and F. at page 7 of the Petition

8. This Court has perused the literary work of which the petitioner is seeking licence to translate. This pertains to the autobiography of *Madeleine Slade* also known as *Mira Behn*, who was actively involved and assisted Mahatma Gandhi during India's freedom struggle. This Court is convinced that grant of licence to the petitioner for

translating the aforesaid literary work would indeed serve the interest of general public, thereby showing that requirement of Rule 34(4) of the said Rules is satisfied.

9. It is also brought to the notice of this Court that the petitioner in paragraphs 4E and F has given specific undertakings in the context of Royalty payable to the rightful owner. The relevant portion of the said paragraphs read as follows:-

“E. The petitioner states that the proposed retail price of a copy of the translation of the work would be around Rs.450/-. The royalty rate is normally fixed at 7.5% or 8% for most authors for paperbacks and 10% for hardcover editions, which the petitioner believes to be prevailing standard rate of royalty. Since the petitioner intends to publish not more than 1000 copies in paperback, the maximum royalty which could be payable at 8% is Rs.36,000/- (8% x Rs.450 per copies x 1000 copies). The petitioner hereby undertakes that the petitioner shall pay to the owner of the copyright in the work, if any, royalties in respect of copies of the translation of the work sold to the public, calculated at the said rate or any other rate as this Hon’ble Court may, in the circumstances of this case, determine. The petitioner shall secure the royalty payable to the right owner, if any, by depositing the royalty in this Hon’ble Court and / or as directed by this Hon’ble Court.

F. That the petitioner possesses the means to pay to the owner of the copyright, the royalties payable to him under Section 32 of the Act.”

10. In the present case, as noted hereinabove, since none has come forward to raise objections in response to the notices published as regards licence for translation sought by the petitioner and more than 120 days have elapsed from the dates of publication of such notices, this Court is convinced that the petition can be allowed by directing the petitioner to abide by the undertakings given in the above quoted paragraphs 4E and F of the petition. It is specifically recorded that the petitioner undertakes to deposit the Royalty in this Court, if and when any person raises a claim in that regard.

11. In view of the above, the petition is allowed in terms of prayer clauses (a) and (b), which read as follows:-

a. That the Petition in Form VI of Rule 32 of the Copyright Rules, being Exhibit D hereto, be allowed and Petitioner be granted a license to produce and publish a translation of the literary work titled “the Spirit’s Pilgrimage” in Marathi language on the terms and conditions as deemed reasonable by this Hon’ble Court;

b. That Registrar of Copyright be ordered and directed to notify in the Official Gazette and to post on the website of the copyright office the grant of license as per clause (a) above, as soon as possible;

12. It is recorded that the petitioner shall abide by the aforesaid undertaking recorded hereinabove, as regards the issue of Royalty.

13. Liberty is reserved for any person interested in approaching this Court in respect of the claim of Royalty arising from grant of such licence to the petitioner.

14. The petition stands disposed of accordingly.

(MANISH PITALE, J.)

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