
Ashok Prakashan (Regd.) and Another Vs Sunil Kumar and Others

F.A.F.O. No. 620 of 2006

Court: Allahabad High Court

Date of Decision: June 30, 2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 39 Rule 3, Order 39 Rule 4, 10#Copyright Act, 1957 " Section 48#Evidence Act, 1872 " Section 65, 74

Citation: AIR 2006 All 284 : (2006) 3 AWC 2573

Hon'ble Judges: Tarun Agarwala, J

Bench: Single Bench

Advocate: M.K. Gupta, for the Appellant; B.D. Mandhyan, Manu Saxena, R.B. Singhal, Murlidhar, Ajtt Kumar and Anoop Trivedi, for the Respondent

Judgement

Tarun Agarwala, J.

This first appeal from order under Order XLIII, Rule 1(r) of the CPC is against an ex parte injunction dated

29.5.2006, passed by the Incharge District Judge, Meerut in Original Suit No. 1 of 2006 restraining the defendant-appellants from printing,

publishing and selling the books, detailed at the foot of plaint and from using the name G. Ram or J. Ram,

2. The brief facts, as enumerated in the plaint is, that the plaintiffs" father G. Ram and defendant Nos. 1 and 2 are real brothers. The plaintiffs father

had written several books which were published by a firm known as Ashok Prakashan, in which defendant Nos. 1 and 2 were the partners. It is

alleged that the appellant"s father was also a partner in the said firm. However, there was no deed in writing but the plaintiffs mother Sheela Devi

was a partner in the firm and that an agreement to this effect was executed in writing. The plaintiff contended that his father died on 24.2.2004 and

that the plaintiff inherited the copyright of the books written by his father. It was alleged that after the death of his father, the plaintiffs were selling

the books under the name of J. Ram and that no royalty was being paid by the defendants to the plaintiff on the books sold by the defendants"

firm. Consequently, the plaintiffs prayed for a permanent injunction restraining the defendants from printing, publishing or selling the books written

by the plaintiffs" father G. Ram and also prayed for the defendants be further restrained from using the name G. Ram as J. Ram.

3. The said suit was instituted on the last working day of the civil court, Meerut on 29.5.2006 before the Incharge District Judge and on the same

date, an ex parte injunction was granted restraining the defendants from printing, publishing and selling the books, detailed at the foot of the plaint

and from using the name G. Ram or J. Ram. The court below while granting the injunction held:

The purpose of the suit shall be frustrated, if interim injunction is not granted in favour of the plaintiff because the defendants have been

continuously infringing the copyright of the plaintiff.

4. Aggrieved, the defendants-appellants have filed the present first appeal from order before this Court and have prayed that the injunction order

granted by the court below should be set aside. Before this Court, the defendants-appellants submitted that the present suit is a second suit arising

out of the same cause of action, and therefore, was not maintainable and was also barred by Section 10 of the Code of Civil Procedure. Further,

the plaintiff had concealed material facts and had not come to the Court with clean hands. The plaintiff alongwith others had earlier filed Original

Suit No. 362 of 2006 before the Civil Judge (Senior Division) at Bulandshahr in April, 2006, praying for the rendition of the accounts and for

restraining the defendant-appellants from publishing or selling the books written by G. Ram without paying royalty to the plaintiff. It was also

submitted that an injunction application was moved on 25.5.2006, in which the Civil Judge issued notices and no injunction was granted by the said

Court. It was also submitted that another Original Suit No. 174 of 2006 was filed through the brother-in-law of the plaintiff before the Civil Judge

(Junior Division), Meerut on 22.5.2006, in which similar relief was prayed, namely, that the defendants-appellants be restrained from publishing the

books written by G. Ram. The defendants-appellants submitted that the Civil Judge (Junior Division), Meerut, granted an ex parte injunction

restraining the defendants-appellants from publishing or selling the books written by G. Ram. Against this injunction, the defendants-appellants

preferred an appeal before the District Judge and by an order dated 31.5.2006, the injunction granted by the Civil Judge was stayed by the

District Judge and the parties were directed to maintain status quo.

5. Apart from the aforesaid, it was further alleged by the defendant-appellants that another Suit No. 560 of 2006, Dinesh Tyagi v. Ashok

Prakashan, was also instituted before the Civil Judge (Junior Division), Bulandshahr, in which similar relief for injunction was prayed for and that

the Civil Judge by an order dated 31.5.2006, refused to grant an injunction. Consequently, the defendant-appellants submitted that four suits of a

similar nature, in which more or less identical reliefs were prayed and an effort was made by the plaintiff to obtain an injunction order against the

appellants. The defendant-appellants submitted before this Hon"ble Court that their firm Ashok Prakashan has the exclusive copyrights of the title

of the book, which had been duly registered under the Copyright Act and that the books written by G. Ram has also been registered under the

Copyright Act in the name of the firm since the year 1999-2000. It was also submitted that the author G. Ram had given a no objection certificate

and had assigned his copyright in favour of the appellants upon receiving a lump sum payment towards remuneration.

6. The defendant-appellants further submitted that an agreement between the appellants and G. Ram was also executed wherein G. Ram

acknowledged the appellant as the owner of the copyright. The defendant-appellants have annexed the certified copy of the plaint filed by the

plaintiffs in various Courts and have also annexed the certificates issued under the Copyright Act indicating the registration of the copyright in

favour of the firm as well as the assignment deed executed by the author G. Ram. It was also alleged that since the year 2001, the books were

being written by J. Ram as per the new syllabus which was in the knowledge of G. Ram and submitted that in view of the aforesaid documents, the

plaintiff had no prima facie case nor the balance of convenience was in his favour. Further, the plaintiff would not have suffered any irreparable

injury, if the injunction had not been granted. On the other hand, the defendants-appellants are suffering irreparable injury by the grant of the

injunction which cannot be compensated in terms of money.

7. Heard Sri M.K. Gupta, the learned Counsel for the defendants-appellants and Sri Murlidhar, the learned senior counsel alongwith Sri Ajit

Kumar, and Anoop Trivedi, the learned Counsel for the plaintiffs-opposite parties.

8. Sri M.K. Gupta, the learned Counsel for the appellants urged that the suit filed by the plaintiffs was not maintainable, being a second suit filed on

the same cause of action and was also barred u/s 10 of the Civil Procedure Code. The filing of the earlier suit was concealed by the plaintiff in the

present suit and such concealment of a material fact disallowed the plaintiff for the grant of an injunction as the plaintiff had not come to the Court

with clean hands. It was also urged that the suit ought to have been instituted in the Court of Civil Judge and could not be instituted before the

District Judge.

The appellants are the owners of the copyright and that an assignment deed is also in their favour. There was no urgency in the matter and the court

below committed an illegality in granting an ex parte injunction. The learned Counsel further submitted that there is an urgency in the matter

inasmuch as the academic session starts from 1.7.2006 and the books are normally sold in the market in the month of June, 2006 and that is why

the appeal is required to be heard during the summer vacation.

9. On the other hand, Sri Murlidhar, the learned senior counsel for the respondents submitted that there is no urgency in the matter for the appeal

to be taken up for consideration during the summer vacation. The appellant could have filed an application under Order XXXIX, Rule 4 of the

CPC read with Rule 13 of the General Rules (Civil) before the District Judge and that urgent matters could be entertained by the civil court, where

the defendant could apply for the vacation of the ex parte injunction. It was also submitted that the District Judge had the jurisdiction to entertain

the suit, being the Principal Court and that the suit was not barred u/s 10 of the Code of Civil Procedure. Sri Ajit Kumar, advocate also appearing

for plaintiffs-opposite parties, submitted that the appeal is matter of record and that Annexures-2 to 23 annexed to the stay application filed before

this Court are such documents which were not part of the record of the court below, and submitted that the such documents could not be

considered by the Court unless these documents were admitted in evidence under Order XLI, Rule 27 of the Civil Procedure Code. In support of

his submission, the learned Counsel relied upon a Full Bench decision of this Court in the matter of Zila Parishad, Budaun and Others Vs. Brahma

Rishi Sharma, It was also submitted that the defendant-appellant is a professional litigant and that more than 200 cases are pending in the civil

courts. The plaintiff-opposite party also denied that the defendants were the owners of the copyright or that the author had assigned his copyright

in favour of the defendants. Since 6.7.2006, has been fixed by the court below, there was no urgency in the matter and this Court should not

interfere in the matter and should delegate the defendants-appellants to appear before the court below on the date fixed.

10. In rejoinder, Sri Gupta submitted that the provision of Order XLI, Rule 27 is in the realm of a procedural law and procedural law is a

handmaid of justice and should not be considered in a manner which could lead the Court helpless in doing substantial justice between the parties.

Further, in any case, the admission of the plaintiff before this Court can always be considered without calling for additional evidence. Apart from

this, the appellants have also filed certified copies of various documents which could be looked into by the Court in view of the Sections 65 and 74

of the Evidence Act and Section 48 of the Copyright Act.

11. In the light of the aforesaid submissions, in it is clear that two brothers, namely, the defendants, were in the publishing business and the third

brother, namely, G. Ram was the author. G. Ram was writing the books and the other two brothers were publishing and selling the books. It was

more or less a family business which continued for more than two decades. The author died and the plaintiff is unable to enjoy the fruits left by his

late father. Consequently, a litigation has now started between the son of the author and his uncles.

12. The bone of contention of the plaintiff is, that upon the death of his father, he inherited the copyright of the books written by his father. On the

other hand, the defendant-appellants' contention is, that the copyright was assigned in favour of the firm during the life time of the author and that

the copyright was duly registered under the Copyright Act. The question to be considered is, who owns the copyright? Whether the author

assigned the copyright in favour of the firm or whether the plaintiff inherited the copyright? These questions would eventually be decided by the

court below after evidence is led by the parties. It is not necessary for this Court to consider these matters at this stage inasmuch as the injunction

application could be decided otherwise.

13. One thing which is glaring is that the books written by G. Ram was being ""published by the firm of the defendants for the last several years, and

that royalty was being paid. This is admitted by the plaintiff in his plaint. As per the plaint, the controversy has arisen only after the author's death,

when royalty was not paid by the defendants and that the books were sold as J. Ram. The allegation in the plaint is, that the plaintiff inherited the

copyright upon his father's death and that the royalty was not being paid to him.

14. In view of the aforesaid, can a temporary injunction be granted by the court below? Before any order is to be passed, the Court must be

satisfied, that a strong prima facie case is made out by the plaintiff and that the balance of convenience was in favour of the plaintiff and that refusal

to grant an injunction would cause an irreparable loss and injury to the plaintiff. It is settled law that all the three ingredients, as stated aforesaid,

should be present before the Court could grant an injunction. The burden of proof that all the three Ingredients are existing is upon the plaintiff

Merely because the plaintiff has proved that he has a prima facie case by itself would not entitle him to get an injunction as a matter of right,

especially if the balance of convenience does not justify the granting of the injunction.

15. The Supreme Court in a large number of cases has held that a party is not entitled to get an order of injunction as a matter of right. The grant of

an injunction is within the discretion of the Court, to be exercised with caution, and that the injunction should be exercised in favour of the plaintiff

only if it is proved to the satisfaction of the Court that unless the defendant was restrained by an order of injunction, an irreparable loss or damage

would be caused to the plaintiff during the pendency of the suit.

16. In the present case, the only-ground alleged in the plaint is, that the plaintiff is the son of the author and had inherited the copyright upon his

father's death. Nothing has been stated about irreparable injury or balance of convenience. In fact upon a perusal of the plaint and the application

for grant of injunction, I find that none of these two conditions exists.

17. The defendants are publishing the books and selling them for the last several years. The author died in the year 2004, nothing has been alleged

by the plaintiff that the defendants were not selling the books in the year 2004 or 2005. In fact the defendants have alleged that the plaintiff

conspired by circulating a forged letter of the Chief Secretary to the Government of U.P. as well as of the Chief Minister, indicating therein that the

books published by the defendants-appellants had been banned by the State Government. This fact has not been denied and it leads to an

irresistible conclusion that the defendants had published these books in the year 2004 and 2005 and were also selling them. Therefore, in the

opinion of the Court, no Irreparable injury was being caused to the plaintiff since the defendants were selling these books prior to the death of the

author and even after the death of the author in the year 2004.

18. In the opinion of the Court, irreparable injury would be caused to the defendants-appellants if they are restrained from publishing or selling the

books in question. On the other hand, the plaintiff will not suffer any loss and, In the event, the plaintiff succeeds in his suit, he could be

compensated by way of damages. Even otherwise, the plaintiff has filed for a suit for the rendition of account where the matter with regard to the

sale of the books, etc., would be accounted for and appropriate compensation damages alongwith royalty, etc. would be considered in the event

the plaintiffs suit is decreed. Therefore, the balance of convenience does not lie in favour of the plaintiff.

19. There is another aspect pf the matter, Order XXXIX, Rule 3 of CPC provides that where it is proposed to grant an injunction without giving

notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be

defeated by the delay,

20. The power to grant an injunction is an extraordinary power vested in the Court which is to be exercised after taking into consideration all the

facts and circumstances of the case. The Courts are required to be very cautious while exercising such power. It is mandatory for the Court to

record the reasons, where it appears that object of granting an injunction would be defeated by the delay.

21. In the present case, from a perusal of the injunction order, I find that no reasons has been recorded indicating that the object of granting an

injunction would be defeated by the delay if notices are issued to the opposite parties. The only reason recorded is that the suit would be

frustrated, if an interim injunction is not granted since the defendants have been continuously infringing the copyright. This finding, arrived at, by the

trial court is, not based on any cogent reason. The plaint does not indicate that the defendant had been continuously infringing the copyright. In fact

nothing has been stated as to when and at what point of time the defendant-appellants had started infringing the copyright of the author G. Ram.

22. In view of the aforesaid, I find that the court below had committed a manifest error in granting an ex parte injunction in favour of the plaintiff. In

the opinion of the Court, the court below should not have issued an ex parte injunction, and that too, on the last working date of the Court. In my

view, the application for injunction ought to have been considered by the Court after notices were issued to the opposite parties. Consequently, at

this moment, I do not find that the basic ingredients for the grant of injunction existed. Further, the mandatory provisions of Order XXXIX, Rules

3, C.P.C. was not complied by the court below. Consequently, the injunction cannot continue any further.

23. In view of the aforesaid, the effect and operation of the Injunction order dated 29.5.2006, passed by the Incharge District Judge, Meerut in

Original Suit No. 1 of 2006 shall remain stayed till further orders of the Court.

24. In view of the aforesaid, I do not find it feasible to dwell upon the other grounds raised by the appellants and the plaintiff opposite party.

25. Since 6.7.2006, has been fixed for the appearance of the defendants-appellants. I direct the defendants-appellants to appear before the court

below on the said date and file their reply/objections. The court below shall consider the injunction application afresh and shall pass such and

further orders after hearing the parties within six weeks from the date of the production of a certified copy of this order.

26. It is made clear, that any observation or finding given in this order are only prima facie opinion of the Court and the court below shall not be

Influenced by any observation or finding given in this order while considering the injunction application.

27. List this appeal for admission and for orders before the appropriate Court in the third week of August, 2006.

28. Certified copy of this order to be made available to the parties, upon payment of usual charges, within four days.