

(1995) 02 DEL CK 0075

Delhi High Court

Case No: Suit No. 2640 of 1993

Wiley Eastern Ltd. and Another

APPELLANT

Vs

Indian Institute of Management

RESPONDENT

Date of Decision: Feb. 1, 1995

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 20

Citation: (1995) 1 AD 1021 : (1995) 58 DLT 449 : (1995) 32 DRJ 553 : (1995) 110 PLR 63

Hon'ble Judges: R.C. Lahoti, J

Bench: Single Bench

Advocate: Rajiv Nayar and H.A. Ahmadi, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) I.A. No. 6521/94 has been filed by the defendant under Order 7 Rule 10A and 11 of the CPC seeking rejection of the plaint or its being returned for presentation to proper court for want of territorial jurisdiction in this court to try the suit.

(2) The plaintiff No.1 is a printing and publishing house, also marketing books and situated at Delhi. plaintiff No.2 Prof. U.K. Shrivastava is an employee of the defendant Indian Institute of Management at Ahmedabad (Gujarat). plaintiff No.2 has been in the employment of defendant for about twenty years. plaintiff No.2 is co-author of a book titled "Quantitative Techniques for Managerial Decisions" (hereinafter called "the book", for short).

(3) The facts leading to the filing of the suit may briefly be stated. According to the plaintiffs, some one claiming to be a student studying in the Institute (the defendant) sent an anonymous letter dated 29.6.92 wherein he alleged the book, co-authored by plaintiff No.2 and published by plaintiff No.1, having simply lifted material from three other books by three different authors without giving any reference in the book and thereby a breach of copyright of such other authors

having been committed. The defendant intending to conduct an investigation into the professional conduct of plaintiff No.2, appointed a committee of experts which gave its finding. The Committee found plaintiff No.2 guilty of plagiarism. The finding has been communicated to plaintiff No.2. The Committee's findings also found their way to the local press. According to the plaintiffs all this has seriously affected the said book commercially and in its marketability. The intellectual property rights of the plaintiffs have been intervened and infringed providing a cause of action to them. The plaintiffs have sought for the following reliefs (to quote from the plaint):-

"A)A. decree for Rs. 5,01,000/ in favor of the plaintiffs and against the defendant along with interest at the rate of 24% per annum from date of institution of this suit" until realisation of the decretal amount.

B)A decree of declaration declaring as illegal, arbitrary, false, frivolous, invalid and unenforceable, the anonymous letter dated June 9,1992, the defendant committee's reports dated August 17,1992 and September 28, 1992 i.e. Annexure-A, B and F respectively with the plaint.

C)A decree of mandatory injunction directing the defendant to withdraw the aforesaid. anonymous letter dated June 9,1992, the reports dated August 17, 1992 and September 28,1992 and the allegations and/or the alleged findings made therein i.e. Annexure A, B and F with the plaint.

D)Award costs of the suit in favor of the plaintiffs and against the defendant.

E)Grant such other further relief in favor of the plaintiffs and against the defendant as may be deemed fit, just and proper."

(4) Vide para 19, it is stated that this Court

"HAS the jurisdiction to try and entertain this.. suit as the copyright in the said book vest in plaintiff No.1 at Delhi and the alleged finding relate to the said book and Therefore, part of the cause of action has arisen in Delhi business (sic) within the territorial jurisdiction of this Hon"ble Court."

(5) The defendant on being served with the summons in suit has filed I.A. NO. 6521/94 submitting that no cause of action has arisen to the plaintiffs and certainly not within the jurisdiction of this court; the plaint is liable to be rejected because it does not disclose cause of action; in any case the plaint is liable to be returned to the plaintiffs for presentation to-proper court (which would be a court at Ahmadabad)as the suit does not lie within the territorial jurisdiction of this Court.

(6) In reply to this application the plaintiffs have taken a stand which it , would be-more appropriate to reproduce from their reply itself :-

"....this Hon"ble Court does have jurisdiction to try this present suit since the plaintiff No.1, in whom the copyright in the said book vests, has its registered office within the territorial jurisdiction of this Hon"ble Court. Accordingly, since this present suit is

for infringement of intellectual property rights which vest in plaintiff No 1. "this Hon"ble Court does have jurisdiction to try this present suit. Further, u/s 62(2) of Copyright Act 1957 this Court has jurisdiction to try present suit as the plaintiff No.1 has its registered office within the territorial jurisdiction of this Hon"ble High Court,

(7) At the time of hearing, the learned counsel for the plaintiffs has taken a very specific stand that what was being sought for by the plaintiffs was enforcement of "author"s special right" within the meaning of Section 57(1)(b) of the Copyright Act, 1957.

(8) A few provisions of the Copyright Act, 1957 are relevant and hence reproduced hereunder since they would be required to be referred hereafter:

"57.Author"s special rights -

(1)Independently of -the author"s copyright, and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right to claim, the authorship of the work as well as the right to restrain or claim damages in respect of-

(A)any distortion, mutilation or other modification of the said work; or

(B)any other action in relation to the said work which would be prejudicial to his honour or reputation.

(2)The right conferred upon an author of a work by sub-section (1) , other than the right to claim authorship of the work, may be exercised by the legal representatives of the author."

"62.Jurisdiction of Court over matters arising under this Chapter-

(1)Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district Court having jurisdiction.

(2)For the purpose of sub-section (1),a "district court having jurisdiction" shall, notwithstanding-anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain."

(9) On the facts already stated, whatever cause of action has arisen to the plaintiffs, it is at ahmedabad The anonymous letter had originated and was delivered at ahmedabad The defendant appointed a Committee of Enquiry which conducted the enquiry, gave its finding and the finding was communicated to plaintiff No.2, all at ahmedabad Under the provisions of Code of Civil Procedure, any suit arising out of

any cause of action based on the above said events could have been filed only at ahmedabad However, Section 62 of Copyright Act gives an extended meaning to the " District Court having jurisdiction". It permits any suit in respect of the infringement of copyright or any other right conferred by the Copyright Act being instituted before a District Court within whose jurisdiction the person instituting the suit or other proceedings or where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain. Inasmuch as the plaintiff No. 1 carries on business within the territorial jurisdiction of this Court, this Court has jurisdiction to try the suit, submitted the learned counsel for the plaintiffs.

(10) The contention of the learned counsel for the plaintiffs suffers from a fallacy which is not far to seek. Section 57 of the Act speaks of "author's special rights". It does not speak of publisher's or owners' special rights. "Action prejudicial to his honour or reputation" within the meaning of Section 57(l)(b) is also referable to the author only. When a suit is filed for enforcement of a special right u/s 57 then the words"- where there are more than one such persons any of them"- as occurring in Section 62(2) would mean all and only such persons who were enforcing their special rights u/s 57. To illustrate, if there are more authors than one and if they file a suit for enforcement of a special right referable to in Section 57 then by reference to Section 62, they may file a suit in any District Court having jurisdiction within the local limits of "whose jurisdiction any one of them (i.e. such others) actually and voluntarily resides or carries on business or personally works for gain. Here the plaintiff No. 1 is not an author. He cannot be said to be enforcing a special right u/s 57. Its carrying on business in Delhi is wholly irrelevant for the purpose of determining jurisdiction by reference to Section 62 of the Copyright Act. A plaintiff (plaintiff No.2 in this case) not entitled to institute a suit at Delhi cannot be permitted to file a suit at Delhi by joining in the suit as co-plaintiff someone actually and voluntarily residing or carrying on business or personally working for gain at Delhi though such other plaintiff (plaintiff No. 1 in this case) does not have any special right referred to in Section 57.

(11) For the foregoing reasons, it is held that the suit as framed does not lie within the territorial jurisdiction of this Court.

(12) I may with advantage quote the following observation made by the High Court of Madras in Brooke Bond India Limited vs. Balaji Tea (India) Pvt. Limited 89 L.W. 551 which are very apposite :- "

"THE intention behind S. 62(2) of the Copyright Act is to save the wronged person whose copyright has been infringed from the trouble or inconvenience of going to sue the defendant at another place which may very often be a far away place. It is well known that the authors of literary, dramatic, musical and artistic works in this country are mostly in penury. The action was not intended to help huge business establishments with branches all over the country to drag a small trader to a Court

far away from his place of business with a view to stifle his defense."

THE defendant is at Ahmedabad. It is an educational institution: It has apparently been dragged to Delhi by plaintiff No. 1 who appears to be an established big industrial house and for whom it will be convenient to settle the case at Delhi rather than at Ahmedabad

(13) Having formed the above said opinion, it is not necessary to examine the other contention that the plaint does not disclose a cause of action. Charging a book with plagiarism does not amount to infringement of copyright relating to that book. Assuming that the plaintiffs or any of them has been defamed then the defamation has taken place at Ahmedabad though the plaint as framed does not specifically plead a claim for compensation for the tort of defamation. It was contended by the counsel for the defendant that holding of a preliminary enquiry by an educational institution against its employee to find out the professional standard of the latter does not amount "to taking an action in relation to the said work". So also, holding of an enquiry by an educational institution against its own employee cannot be said to be an act prejudicial to the honour and reputation of the employee". Be that as it may, the validity of such contention is left to be determined by the competent court before whom the plaint would now be presented by the plaintiffs.

(14) I.A. No. 6521/94 is allowed in part. As this Court does not have territorial jurisdiction to try the suit the plaint is directed to be returned to the plaintiffs through their counsel for presentation to proper court under Order 7 Rule 10A (1) CPC.