

(2013) 03 DEL CK 0275

Delhi High Court

Case No: FAO (OS) 163 of 2013

Jagran Publication Pvt. Ltd. and
Another

APPELLANT

Vs

Press Trust of India

RESPONDENT

Date of Decision: March 22, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4, Order 7 Rule 11, 151

Citation: (2013) 54 PTC 220

Hon'ble Judges: Sanjay Kishan Kaul, J; Indermeet Kaur, J

Bench: Division Bench

Advocate: Atul Y. Chitale and Mr. K.M. Shukla and Mrs. Sanyukta Mukherjee, for the Appellant; Pratibha M. Singh, Sudeep Chatterjee and Mr. Ashwin Kumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Caveat No. 275/2013

1. Since learned counsel for the respondent/caveator has entered appearance, the caveat stands discharged.

CM No. 4916/2013

Allowed subject to just exceptions.

FAO (OS) No. 163/2013 and CM Nos. 4914-4915/2013

2. The present appeal is directed against the impugned order dated 16.01.2013 disposing of various applications. These applications are IA No. 733/2013 (u/O 7 R 11 CPC), IA No. 11449/2011 (by the appellant for impleadment of Jagran Prakashan

Limited, Kanpur) and IA Nos. 2459/2011(u/O 39 R 1 and 2 r/w. Section 151 CPC by original plaintiff) and IA No. 11450/2011 u/O 39 R4 CPC by the appellants).

3. The dispute pertains to the claim of infringement of copyright. The suit has been filed by the respondent. The subscription arrangement for receiving the material from the respondent was by Jagran Prakashan Limited, Kanpur. It appears that there are some inter se disputes between the appellants and the Kanpur entity as they claim to be governed by different Boards. The subscription was being paid by the Kanpur entity. A communication was received by the respondent on 21.01.2010 sent by the Kanpur entity stating that in future billing to Bhopal and Rewa entities, which were under the appellants, should be done directly to the said entities and that they would not be responsible for the same. This was consequently followed up by a letter dated 13.02.2010 sent by the respondent to the appellant. Thus, Kanpur entity clearly indicated its intention not to be liable for the two publications coming out from Bhopal and Rewa which were being maintained by the appellants. Since the appellants did not pay, the suit for infringement of copyright was filed.

4. The appellants seek to rely upon some inter se arrangements with the Kanpur entity but the fact remains that they have not paid a penny to the respondent. Not only that, when the suit and the interim applications were listed, a direction was passed on 01.04.2011 calling upon the appellants to deposit Rs. 20 lakhs in FDR within one week in order to enable the appellants-entities to use the material of the respondent. Even this amount was not paid while the appellants continued to use the feed from the respondent. It also appears from the different orders passed by this court on 28.03.2012 and 18.10.2012 that incorrect and false stands were taken before the learned single Judge by the appellants.

5. Now coming to the applications in question, insofar as seeking to implead the Kanpur entity is concerned, the impugned order rightly rejects the application filed by the appellants. The dispute is a matter inter se the Kanpur entity and the appellants and the respondent as the plaintiff being the dominus litis cannot be compelled to add a third party. Not only that, once the third party has washed its hands off the liability to pay charges for use by the Bhopal and Rewa entities, prima facie there is infringement by the appellants of the copyright of the respondent if they continue to use the material of the respondent without paying charges for the same. The presence of the Kanpur entity is certainly not required for determining the claim of violation of copyright as made by the respondent.

6. We are unable to accept the plea of the learned senior counsel for the appellants that there is any multiplicity of proceedings which would arise for which purpose he seeks to rely upon the judgments in [Firm of Mahadeva Rice and Oil Mills and Others Vs. Chennimalai Goundar](#), and [Amit Kumar Shaw and Another Vs. Farida Khatoon and Another](#). The disputes inter se the Kanpur entity and the appellants are not to be resolved in the suit in question and that appears to be the endeavour of the appellants, which is not permissible taking into consideration the narrow scope of

the controversy as per the suit filed by the respondent where no relief has been claimed by the respondent against the Kanpur entity.

7. Learned single Judge is also right in rejecting the application under Order 7 Rule 11 of CPC by the appellants. In fact, the plea was based only the ground that the suit was filed without any cause of action which ex-facie is incorrect and really speaking no substantive plea has been urged before us by the learned senior counsel for the appellants.

8. As far as the aspect of interim relief is concerned, which has been decided by the impugned order on the application filed under Order 39 Rules 1 and 2 by the respondent and under Order 39 Rule 4 by the appellant, it is apparent from what has been stated in the order that a statement was made on behalf of the appellants that they were not using the feed at all since 30.05.2012. It is also undisputed that the amount of Rs. 20 lakhs has not been deposited by the appellants.

9. Learned senior counsel for the appellants states that in the application under Order 39 Rule 4 CPC, the reason for use of the feed up to 30.05.2012 has been given.

10. Be that as it may, neither the payments were made for the same nor are there any arguments submitted before the learned single Judge as recorded in that behalf. Not only that, as far back as 20.02.2010 was a letter addressed by the appellants to the respondent that they were not interested in availing the services of PTI and yet they continued to use the same. It is in these circumstances that the interim injunction was confirmed which really partakes the nature of an interim order following the statement made on behalf of the appellants. In fact, we are informed that there are contempt proceedings pending qua the breach of the directions by the appellants, but that is an aspect we are not called upon to comment at this stage.

11. We find the appeal completely meritless and wastage of judicial time. We dismiss the appeal and the applications with costs of Rs. 50,000/- payable to the respondent.