

(2018) 07 DEL CK 0543

In the Delhi High Court

Case No : CS(COMM) 96, 133 OF 2018, IA No.4926 OF 2009, 8383 OF 2013

Asian Indigenous And Tribal Peoples

APPELLANT

Vs

South Asia Human Rights Documentation

RESPONDENT

Date of Decision : 31-07-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 39 Rules 1, Order 39 Rules 2, Order 39 Rules 2A, Order 39 Rules 3

Citation : (2018) 07 DEL CK 0543

Hon'ble Judges : YOGESH KHANNA, J

Bench : Single Bench

Final Decision : Allowed

Judgement

YOGESH KHANNA, J

IA No.1657/2017 in CS(COMM) 96/2018

1. This application is filed by the plaintiff under Order XXXIX Rule 2A CPC. The plaintiff instituted this suit seeking permanent injunction restraining

infringement of copyright, unauthorised and illegal usage, storage, delivery up, rendition of accounts etc. The plaintiff filed an application

No.13854/2006 under Order XXXIX Rules 1 and 2 CPC seeking ex-parte injunction restraining the defendant publishing/passing off the copyright

work.

2. On this application the Court passed an order dated 13.12.2006 as follows:

â??Notice for 16.1.2007.

This is an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure seeking an adinterim ex-parte injunction

order against the defendants from publishing/ passing off the copyrighted works

of the plaintiff as their work. The case of the plaintiff is that it is a registered public charitable trust. Its aim and objects are to promote and protect the rights of indigenous and tribal peoples in Asia; providing accurate and timely information to national human rights institutions, the United Nations and its specialised mechanisms; conducting research, campaigning and lobbying on country situations or individual cases; providing legal, political and practical advice to indigenous peoples organisations and doing many other activities relating to the indigenous and tribal peoples in Asia. The plaintiff in this regard has published a book with the title ""Racism Against Indigenous Peoples"".

It is mentioned at the very opening of the book that copyright of the same rests with ""The International Work Group for Indigenous Affairs (IWGIA) and Asian Indigenous and Tribal Peoples Network-(AITPN)"" i.e. the plaintiff.

It is alleged that the defendants who are also operating and working in the same field have published a book by the name of ""Racial Discrimination:

The Record of Bangladesh"" and in the said book it has picked up passages from the book of the plaintiff and have incorporated the same in their book

without acknowledging that the same have been taken from the book of the plaintiff. To make good the submission, learned counsel for the plaintiff

has drawn my attention to some passages appearing at pages 205, 206 and 218 of the plaintiff's book and the incorporation of the same passages by

the defendants in their book at pages 529, 530 and 531. The details of other offending passages are also mentioned in the plaint. It is submitted by

learned counsel for the plaintiff that the defendants are not only indulging in plagiarism but are also infringing the copyright of the plaintiff.

Having regard to the averments made in the plaint, I am of the view that the plaintiff has made out a case for an ex-parte-adinterim injunction. I,

therefore, restrain the defendants from further publishing their books with the title ""Racial Discrimination: The Record of Bangladesh"" and ""The Racial

Discrimination: The Record of India"" or any other book which contains passages from the book of the plaintiff. Compliance of Order 39 Rule 3 of the

Code of Civil Procedure be made within three days.â??â?

3. It is alleged this Court passed an order restraining the defendants from further publishing their books viz. ""Racial Discrimination: The Record of

Bangladesh"" and ""Racial Discrimination: The Record of India"" or any other

book which contain passages from the copyrighted book of the plaintiff.

4. By its Order dated 13.12.2006 passed in IA. No. 13855/2006, this court also appointed a Local Commissioner with a specific direction ... to visit the

premises of the defendants ... to seize the books and any other offending material,...

5. In furtherance of this court's Order dated 13.12.2006 the Local Commissioner visited the defendants premises on 18.12.2006 and seized various

infringing copies. It is alleged the hard disk of the defendants which contain the copyright violative material falls under the offending material and /

or shall constitute an offending material.

6. It is alleged the Local Commissioner, during the commission, inter alia, was made aware of the fact the defendants are passing off plaintiffs

copyrights material on their computers via their web-site i.e. <http://www.hrdc.net/sahrdc> and, further, the said copyrighted material is being stored in the defendants computers, hard disks etc. and it deserves to be seized.

7. However, the defendants' representatives refused to cooperate in the implementation of this Court's Order dated 13.12.2006 in its letter and spirit.

The defendants' representatives refused to remove the infringing material and, further, did not allow the same to be done. The Local Commissioner in

its Report dated 18.12.2006 had recorded "...The representatives of the defendants and the law officers refuse to remove the infringing material and

was not allowing it also. The infringing material are on web site mentioned below; <http://www.hrdc.net/sahrdc/hrfeatures/HRFII.html>

<http://www.hrdc.net/sahrdc/hrfeatures/HRF20.html> <http://www.hrdc.net/sahrdc/publication/SAHRDC.html>.

8. A typed true copy of the original proceeding sheet prepared by the Local Commissioner's at the defendant's premises on 18.12.2006 along with its

Annexure-A is also annexed.

9. It is argued it was expected after the interim order passed by this Court, the defendants shall refrain from publishing and passing-off the copyright

violative material of the plaintiff and shall not indulge in any activity that shall interfere with and obstruct the administration of justice but the

defendants are keeping the plaintiff's copyrighted material in their hard disks and, hence, from the said hard disks are uploading and / or

maintaining the said copyrighted material onto their website i.e. <http://>

www.hrdc.net/sahrdc and, consequently, publishing and passing off the same as theirs, selling and/or offering for sale the publications that are the subject-matter of the present case.

10. It is argued, the defendants act of creating and disseminating the copyright violative material via electronic means and / or via the internet amounts

to publishing of the same and therefore the defendants ought to be restrained from indulging in such activities. Further, publishing the copyright

violative material is directly and completely in violation of this Court's Order dated 13.12.2006. It is argued the defendants, in violation of this Court's

aforesaid order, are knowingly and willing publishing, passing-off, selling the copyright violative material of the plaintiff for which they have been

specifically restrained and thus committing contempt of this Court. It is alleged the defendants violated the orders even as late as on 20.04.2013 and

on 16.01.2007 and the plaintiff even moved an application IA No.8383/2018.

11. The plaintiff apprehends the defendants may have broken the seal and let-loose the books seized and handed over to the defendants on superdari

and the defendants be directed to produce the books before this Court.

12. The counsel for the defendant on the other hand has denied the defendants being selling and/or offering the copyright violated books.

Rather in Order dated 16.01.2007 this Court notes :

IA No.13854/2006. ... Learned counsel for the plaintiff points out that despite the Order of the Court defendants are continuing to sell the books

which fact is denied by the learned counsel for the defendant...

13. Further in reply to IA No.8383/2018 in para 7 and 8 the defendant alleged:

7. That the contents of para 7 are misconceived and denied. It is wrong and denied that the website has been redesigned malafide. It is wrong and

denied that the article "The Establishment of the Permanent Forum: The Possible Position of Indigenous Peoples" infringes copyright or that it has been

unlawfully converted into an unprintable version. The order dated 13.12.2006 of this Hon'ble court restrains the defendants from further publishing

books with the title "Racial Discrimination: The Record of Bangladesh" and "Racial Discrimination: The Record of India", or any other book which

contains passages from the book of the plaintiff "Racism against Indigenous People". It is denied that the copyright of the plaintiff is being violated in

contempt of the said order of the Hon'ble Court as alleged or at all. It is specifically denied that the articles - ""The Establishment of the Permanent

Forum: The Possible Position of Indigenous Peoples"", ""Elusive Peace in the Chittagong Hill Tracts"" and ""The World Conference on Racism: A Case

of the Pot Calling the Kettle Black"" - violate the copyright of the plaintiff. The articles are solely the copyright of the defendant and are as a result

maintained on the website of the defendant. It is wrong and denied that the publication ""The Establishment of the Permanent Forum: The Possible

Position of Indigenous Peoples"" is being offered for sale or that the defendants are making wrongful profits from the same. In fact, as a way of

abundant caution none of the articles mentioned in the paragraph under have been sold since the defendant received notice of the present proceedings.

It is reiterated that the defendants have not indulged in any activity that may interfere and or obstruct the administration of justice.

8. That para 8 of the application as stated is completely misconceived and denied. It is denied that any copyrighted material has been uploaded and or

sold or offered for sale on the defendants' website. It is denied that there has been any willful disobedience of the Hon'ble Court's order dated

13.12.2006. It is wrong and denied that the defendants have been making profits by selling copyrighted materials of the plaintiffs or that they have

caused any wrongful loss to the plaintiff or that they have wrongfully gained in the past six years.â??

14. The learned counsel for the defendants submit the defendants have never violated the order dated 13.12.2006 and rather have removed the

contents/passages on which the plaintiff claimed to have a copyright but admittedly, the plaintiff is an ex-employee of the defendant and per allegations

of defendant some of its material has been copied by the plaintiff of the defendant's copyright and for which a separate civil suit is filed by the

defendant and is pending.Â

15. Whether the material alleged is the copyright of the plaintiff or of the defendant, in view of para 7 and 8 of the reply above, the fact need to be

adjudicated during the trial. Qua making an order dated 13.12.2006 absolute the defendant in all fairness had conceded and hence IA No.13854/2006

is allowed and the order dated 13.12.2006 is made absolute. Since there exist a dispute qua the ownership of alleged copyright material in other

disputed books; the IA Nos.8383/2018 and IA No.1657/2007 are kept pending till after the evidence is recorded. However in the meanwhile, the

plaintiff may inspect the seized material on an application to remove his apprehension.Â

16. Thus the application No.13854/2006 is allowed and applications IA Nos.1657/2007 and 8383/2018 are kept pending till after the evidence.Â Â

17. To come up for argument on IA No.4926/2009 on 15.11.2018.Â Â