
(2006) 07 DEL CK 0140
In the Delhi High Court
Case No : A.A. No. 67 of 2003

Brigadier Man Mohan Sharma (Retd.) FRGS

APPELLANT

Vs

Lt. Gen. Depinder Singh

RESPONDENT

Date of Decision : 28-07-2006

Acts Referred:

Copyright Act, 1957 — Section 19A

Citation : (2007) 1 ARBLR 133

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Anjali Sharma, for the Appellant; Roxna Swami, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The applicant is a retired Army Officer. When the applicant retired in the year 1985 from the Army, he launched his own publication, namely, M/s. Trishul Publications of which he is the sole proprietor. It was earlier known as Dattatreya Prakashan and was owned by somebody else from whom he purchased the business interests therein.

2. The respondent is also a retired Army Officer who retired from service in the year 1988. He is the author of book titled "IPKF in Srilanka". This book was published by predecessor in interest of the applicant, namely, Dattatreya Prakashan. For this publication, an agreement was entered into between the applicant and the respondent in September, 1991. Second edition of this book was published in May, 1992 by applicant's publication M/s. Trishul Publications. The applicant acknowledges that this book was first published in November, 1991 and was appreciated for the excellent production that it was. Major "English Dailies" took out stupendous review of this book. Though second edition came out immediately in May, 1992 and, as per the applicant he consistently publicized the second edition, potential in the book remained dormant till 2000. Thereafter the career graph of the book turned upwards and soared. It was mainly because Army Headquarter selected the book for promotion examination w.e.f. July, 2002

as per its letter dated 31.1.2000. At present the book is prescribed for the examination held in the year 2002 and to be held in the year 2003.

3. There was sudden spurt in the sale of the book and the applicant was planning to come out with third edition, when he received letter dated 31.8.2000 from Mr. Upender Arora enclosing there with letter dated 28.8.2000 written by the respondent to Mr. Arora. Mr. Arora is the sole proprietor of another publication known as 'Natraj Publishers' situated at Dehradun. As per letter dated 28.8.2000, the respondent author of the book had approved a reprint of the said book "IPKF in Sri Lanka" by M/s.Natraj Publishers subject to the applicant's approval. According to the applicant it was not permissible for M/s.Natraj Publishers to reprint the book. However, eventually to uphold the traditions of Army he gave approval for reprint of 1000 copies of the book which was meant to be a one time arrangement. He emphatically conveyed the same to respondent as well as Mr. Arora vide letter dated 2.9.2000 and 5.9.2000 respectively. In April 2001 Mr. Arora floated a check list wherein the price of the book had been hiked from Rs. 225/- to Rs. 395/-. This was done without any reference to the applicant who perceived it as underhand dealing by the respondent in connivance with Mr. Arora. Several letters were addressed by the applicant to the respondent warning him that he was permitting an illegal transaction inasmuch as, as per the agreement of the respondent with the applicant, it was the applicant who had sold rights to publish this book and no parallel edition or versions of the book were permissible by anybody else without the applicant's consent in writing. However, applicant's letters proved to be of no avail and yielded no results. In these circumstances vide various from 3.5.2001 to 23.6.2001 the applicant informed Mr. Arora and the respondent as under:

- a)Only one reprint of one thousand copies, as requested for, was permitted;
- b)Natraj Publishers (the defendant No. 1 hereto) was required to pay Rs. 25,000/- (Rupees Twenty five thousand only) to Trishul Publishers (i.e. the proprietorship concern of the applicant, for the use of the composed matters;
- c)The use of the Natraj Logo was not permitted on the jacket and was only permitted on the title page;
- d)the copy right page No. (iii) or the back side of the half title (no. ii) was to carry a noting " First published by Trishul Publications 216/28, Noida. This edition under permission of Trishul publications.
- e)It was stipulated that the book (reprint) would not be redesigned.

4. Thereafter the applicant went ahead with the third edition of the said book in May, 2001 and copies were also sent to Mr. Arora as well as respondent giving them an indication that it was he who had right to publish this book and he had authorised Mr. Arora for a limited reprint of the said book. Mr. Arora also published "parallel edition" of the book and not limited reprint that had been

sanctioned by the applicant without any permission from the applicant or paying any consideration to the applicant. At the instance of the respondent publication of such parallel edition by Mr. Arora, according to the applicant, is violation of the Agreement between the applicant and respondent and is also an actionable crime. It also amounts to violation of applicant's copyright of the said book. This parallel publication is perceived as piracy, plagiarism and forgery for which the applicant sent detailed report to the Copyright Board in terms of Section 19A of the Copyright Act for necessary administrative action.

5. Because of this parallel publication, the applicant also alleges that he has suffered losses which are quantified to the tune of Rs. 8,43,425/- with the following break-up:

a) Towards complimentary copies Rs. 41,000/- b) Investment locked up Rs. 2,50,140/- c) Loss of annual profits Rs. 3,00,000/- d) Copies received back Rs. 72,285/- e) Towards bulk purchases Rs. 1,25,000/- f) Towards annual publicity Rs. 55,000/- (At the rate of Rs. 5,000/- per year) TOTAL AMOUNT Rs. 8,43,425/-

6. The applicant had issued a notice dated 10th May, 2002 to the respondent as well as Mr. Arora requiring them to desist from the distribution of the offending said parallel edition of the book. However, instead the respondent addressed letter dated 20.6.2001 terminating the agreement between the parties. Thus disputes have been arisen and this application is filed for appointment of arbitral Tribunal as according to the applicant, following issues have arisen:

a) Whether a sum of Rs. 8,43,425/- (Rupees Eight lakhs, forty three thousand, four hundred and twenty five only) is payable by the Respondent to the Applicant and interest payable thereupon; and

b) Whether the respondent is required, along with Mr. Arora, to withdraw the offending publication from the market and desist from publishing and distributing further copies of the same.

7. It is stated in this application that following are the relevant clauses which give exclusive right to publish this book in question titled "IPKF in Sri Lanka"

2. The author(s) hereby assigns to the publishers, during the legal terms of the copyright, including any renewals thereof, the exclusive rights to produce and publish the work in a volume form in any part of the world in the original language in which it is written as also to license its translations in any other languages and publication of any other editions, but the copyright in the work shall remain vested in the authors. The authors shall not during the continuance of this agreement publish or cause to be published in any part of the world any copy of the work or any translation thereof save as herein provided.

3. No parallel edition/versions.

During the continuance of this agreement, the authors shall not without the

consent of the publishers prepare or edit for any other publisher or cause to be published any work on the same subject the sale of which may prejudice or may reasonably be regarded as likely to prejudice the sale of the work.

8. Since Agreement contains Clause 17 which is an arbitration clause, present petition is filed for appointment of an Arbitrator. This clause is in the following terms:

7. Arbitration

If any question, difference or dispute shall arise between the AUTHOR(S) and the PUBLISHERS relating to this Agreement or any matter arising there from or incidental thereto, the same shall be submitted to the arbitration of two persons (one to be named by each party) and in case of the said arbitrators not agreeing, then it may be submitted to the award of an umpire to be appointed by the arbitrators in writing before proceeding on the reference. The decision of the arbitrator or, in the event of their agreeing of the umpire appointed by them, shall be final and conclusive. The provisions of the Indian Arbitration Act 1940 and the Rules there under any statutory modifications thereof shall be deemed to apply to the reference.

9. The respondent has filed his reply challenging the maintainability of the petition on various grounds. It is contended that the present application is an abuse of law; application has not come to court with clean hands and has suppressed true and material facts; the subject matter of the present petition is already subjudice in a civil suit which is pending in Dehradun. It is submitted that in the entire petition the petitioner has not even whispered about the litigation pending in Dehradun which is a suit filed by Mr. Arora against the parties hereto claiming relief of permanent and mandatory injunction. It is further submitted that the present application is not maintainable also on the ground that it is filed after submitting first statement of dispute in the aforesaid suit which was filed in the year 2002. It is sought to argue that reference of dispute to arbitration would amount to simultaneous continuance of two independent legal proceedings on the same subject matter which must be assiduously avoided.

10. On merits the Explanation given by the respondent is that the agreement in question was entered into between the respondent and an establishment known as `Dattatreya Prakashan" which was signed on behalf of Mrs. Bholi Sharma. The respondent further submits that there has never been any formal information to the respondent of the applicant being the successor in interest of the said publisher Dattatreya Prakashan. The respondent had never entered into any agreement with the said M/s. Trishul Publication and, Therefore, there is no privity of contract between the respondent and Trishul Publication. It is also submitted that though first publication was published in September, 1991 and second in 1992, thereafter for some years the book was out of print and it is obvious that the applicant had lost interest in further publication of his book. By his letter dated 11.11.1992 the applicant also indicated his dissatisfaction with

this book. Vide another letter dated 1.6.1993, the applicant wrote to the respondent stating that this book had not been up to his expectation and since it was a 'dead stock' it was pushed at lower price. By letter dated 28.10.1997 the applicant wrote to the respondent stating that a thorough market survey had been carried out by them and he had come to the conclusion that there is not enough demand for the book warranting a special reprint. It was also stated that the applicant had checked up with M/s. Lancers Publishing House, but had drawn a blank.

11. Subsequently however, the Respondent was dismayed to receive a communication from the applicant complaining that he was entering into an illegal agreement with Mr. Arora. The respondent replied with a formal letter dated 20.6.2001 expressing his surprise and pointing out that the applicant's earlier letter of 1993 and 1997 and his earlier assent to Mr. Arora had meant that the agreement stood cancelled. Nevertheless in case there was any doubt, the respondent formally terminated the agreement with the applicant. Thus according to the respondent when the book started receiving due attention it deserved, and the Army Authorities also chose it for promotion examination by the Army Headquarter, the applicant suddenly felt that this book had substantial prospects and he could earn good money and because of this he started putting spokes into the venture of Mr. Arora and the respondent. Irritated by such communications of the applicant, Mr. Arora has filed a suit for permanent and mandatory injunction in the court of District Judge Dehradun wherein the publication of the book and all issues are being adjudicated and determined by the said court. The said respondent Therefore, prays that this petition be dismissed.

12. The admitted facts which appear on record are that the first edition of the book was published in September, 1991 and thereafter second edition was published in the year 1992. Book remained out of print thereafter. The applicant claims that he is the successor in interest of the earlier publisher with whom the respondent author of the book had entered into an agreement for publication of this book. Even if it is presumed that applicant inherited the rights from his predecessor, one thing is clear, namely, applicant had lost interest in further publication of this book. An author may have varied reasons for writing a book. Apart from the fact that publication of his work may reap in some financial gains, the more important motive is to get intellectual and mental satisfaction. On the other hand the sole motive of a publisher in publishing the book is to earn profits. Therefore, if a particular edition of a book is not appealing to the readers and there is not much sale or prospects of sale, the publisher would be reluctant to invest money and print other editions. It appears, that actually happened in the instant case. The applicant wrote letter dated 11.11.1992 indicating his dissatisfaction with the publication of the book. In this letter which is hand written he wrote:

sending you herewith a copy of the Review of the book - also two more units

saying No to the book. 1991-92 has been a bad year for Library Grants. And if we remind the wholesalers they send the books back. One has to go slow on reminders but I got persistent because of your letter that there be No delay in finalizing the accounts.

Any service for me,

With best wishes & regards

Man Mohan

13. Thereafter vide another letter dated 1.6.1993 the applicant wrote to the respondent stating that the book had not been up to his expectation and since it was a "dead stock" it was pushed at lower price. The applicant was, Therefore, not amused by the quality of this book and he always thought that he will not even be able to recover the investment in publication of the said book. This position remained for quite a few years even thereafter. In the year 1997 applicant wrote another letter dated 28.10.1997 wherein he stated that a thorough market survey had been carried out by him and he had come to the conclusion that there is not enough demand for the book warranting a special reprint. This is what he wrote in this letter:

With reference to our last tele-conversation, I have carried out a thorough market survey and come to the conclusion that there is no large enough demand for the book warranting a special reprint- I have tried to check up from Lancers but drawn a blank. Bharat Verma is a good businessman and has perhaps received same demand from his foreign contacts of which his staff are not aware. He will do a good job for the Book and you may kindly authorise him to publish. No problem. I have, however, a suggestion. You may reshape the book - a new book titled "Failure of IPKF in Srilanka" and draw lessons from it for posterity....

14. The applicant was, thus, clearly of the opinion that this book had no demand and, Therefore, there was no purpose in having another reprint. He dropped the idea of reprinting himself like a 'hot potato'. He even suggested the respondent to come out with another version of the book and according to him only with the suggested improvements in the contents of the book, the book will become marketable. Insofar as this book is concerned he had clearly given a green signal to the respondent to authorize Bharat Verma to publish the said book.

15. By the aforesaid acts, the applicant manifestly made it clear that he had abandoned the book and had terminated the agreement by his own act and conduct . Therefore, he is now estopped from asserting the agreement of September, 1991.

16. From the aforesaid letters the respondent rightly concluded that the applicant was no longer interested in publishing the book as he did not consider it profitable enough the agreement between them executed in September, 1991 stood terminated and the respondent could do as he chose with the book. Furthermore, due to reluctance and hesitation of the applicant the respondent's

book had been out of print from many years which was last published in the year 1992. The respondent author of the book, had always felt that it was a good book and he had the right to have it fully disseminated which the applicant was not doing. At this juncture in the year 2000 the respondent was approached by one Shri Upendra Arora, sole proprietor of Natraj publishers with a request to allow him to print the book. The Respondent gave his assent by letter dated 28.8.2000, stating that he had no objection to Natraj re-printing the book. No permission of any nature was required from the Applicant, nevertheless, out of courtesy, the Respondent suggested to Natraj Publishers to also obtain the consent of the Applicant. Even though the Respondent had not addressed the applicant directly the former subsequently received a letter from the Applicant dated 6.9.2000 acknowledging that he had received communication from Natraj Publishers and that they should go ahead. By this letter again the Applicant had clearly forfeited all the rights in connection with the said book. After this communication by the Applicant, the Respondent granted permission to Natraj Publishers for the reprinting of his book. It is relevant to mention here that a similar letter of consent was given to Mr. Arora of Natraj Publishers by the Applicant by letter dated 2.9.00 to go ahead with the reprint of the book. Since, then, if not earlier, the Applicant ceases to have any right or interest in the said book and the Applicant is estopped by his own act and conduct to assert any right in the said book.

17. Once read in the aforesaid context and in the totality of the circumstances, it would be clear that the plea of the applicant now that had only given permission to reprint the book and not to publish any other edition is clearly an after thought. Therefore, I am of the opinion that there is hardly any dispute which needs to be referred for arbitration, more particularly with the abandoning of the book by the applicant the necessary consequence would be determination of the agreement as well which contains arbitration clause.

18. There is yet another aspect because of which this application is not to be entertained at this stage. After the success of the book the applicant realized that it had potential and started asserting the right over this book. Mr. Arora who was given permission to publish the book challenged this right and has already filed suit which is pending in the court of District Judge, Dehradun and the issues involved are identical as raised by the applicant in this application. The applicant has even concealed all these facts in this application.

19. Keeping in view the result of the aforesaid discussion, this application requires to be dismissed. It is ordered accordingly.