
(1978) 09 DEL CK 0025
In the Delhi High Court
Case No : C.R. 111 of 1978

Co-op for American Relief

APPELLANT

Vs

P.N. Krishna Murthy

RESPONDENT

Date of Decision : 08-09-1978

Acts Referred:

Citation : (1978) 14 DLT 221

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : F.C. Bedi, for the Appellant;

Final Decision : Dismissed

Judgement

H.L. Anand, J.—Defendants, Cooperative American Relief Every where, CARE, and others, in two consolidated suits by plaintiff, P.N. Krishnamurthy, based on the latter's claim to copyright in the work entitled "LAKSHMAN KILLS A TIGER", challenge an order of the trial Court directing the discovery by the defendants of certain documents on an application of the plaintiff under Order 11 Rules 12, 15 and 18 read with Section 151 of the Code of Civil Procedure. The facts and Circumstances leading to the challenge may be briefly stated.

2. plaintiff, Krishnamurthy, who claims to be the author of story entitled "LAKSHMAN KILLS A TIGER, which has been copyrighted in his favor, alleges that CARE, under license from the plaintiff, entered into contracts with "CHILDREN ARE PRECIOUS", a name and style in which the plaintiff carries on printing and publication business, for the printing and publication of the said story "in the form of a cartoon booklet", in various Indian languages and in different "quantities". According to the plaintiff, in terms of the various contracts, "CHILDREN ARE PRECIOUS" were to be responsible for supervision of printing, production, packing and forwarding of the copies of the booklet to the various points of distribution and received approximately Rs. 2 lakhs from CARE in consideration of services rendered, besides a sum of Rs. 4,000/- towards

preparation of art work in respect of the book in each language. According to the plaintiff, last of these contracts was entered into on or about September 15, 1970, with regard to the printing of 1.5 million copies of the booklet in Malayalam for the State of Kerala. By a letter of December 29, 1970, the arrangement is claimed to have been unilaterally and without justification terminated by CARE. The two suits filed by the plaintiff for permanent injunction with regard to the threatened infringement of copyright and recovery of damages for infringement and rendition of accounts, are based on the allegations that notwithstanding the aforesaid arrangements, the copyright in the work throughout vested in the plaintiff and did not at any time belong to CARE or was never assigned to it. The suits, which were consolidated, are resisted by CARE, inter alia, on the ground that the copyright in the book and/or translations vest in CARE: that the registration of copyright had been wrongly obtained by the plaintiff, and that, in any event, the plaintiff had assigned the copyright to CARE and had waived objection to the printing, publication and distribution of the book by it. The principal question in controversy between the parties in the suits is as to the suits of the property in copyright, particularly in the context of the employment by CARE of the plaintiff or the assignment from the CARE for the plaintiff for the preparatory study and subsequent supervision of the printing and publication of the cartoon booklet. Issues were framed in January 1973. plaintiff has already closed his case. On March 3, 1977 while the last witness of the defendants was under cross-examination, counsel for CARE wanted to prove in evidence through the witness certain receipts which had not been produced at the earlier stage of the trial. These receipts purported to be signed by the plaintiff. The trial Court allowed CARE to prove these receipts observing that ""The plaintiff will, of course, be entitled to lead evidence as to these receipts by way of rebuttal or Explanation". These receipts were exhibited as Ex. Dw 4/1 to Ex. Dw 4/8. The plaintiff's application under Order 11 Rules 12, 15 and 18 read with Section 151 of the Code of Civil Procedure, made on March 14, 1977, is an apparent sequel to the production of these documents and the observation of the Court reserving for the plaintiff the right of rebuttal in respect of these documents. By the application, the plaintiff sought discovery from CARE of 25 documents, including books of accounts of CARE for the period February 1968 to August 1968, receipts, vouchers, bills, etc. in respect of the study carried out by plaintiff between February and June 1968, and transfer agreement between CARE and USAID with regard to the study between the said period. The plea of the plaintiff was initially turned down by the trial Court by a rather cryptic order which was set aside in revision by this Court, Despande, J., with a direction to the trial Court to consider each of the documents sought to be discovered and decide the question of discovery with reference to their relevance and admissibility. The impugned order is the result of that consideration by the trial Court. The trial Court has directed discovery in respect of the documents referred to in the list except documents mentioned at Serial Nos. 6, 10 and 11 of it.

3. In the course of arguments in support of the rival contentions, counsel for

CARE and plaintiff, Krishnamurthy, who argued himself with considerable confidence and skill, raised two questions for consideration :--

(1) Whether the partition was maintainable in view of the limited jurisdiction of this court u/s 115 of the Code of Civil Procedure.

(2) If so, whether the discovery has been properly ordered.

Question No. 1.

4. What are the limits of the revisional jurisdiction of the Court, is the first question that must be considered, and is a question that appears to be an apparition of considerable frequency, ever since the days of the Privy Council. Time and again, Courts have emphasised the rather limited nature of this jurisdiction, but in spite of it High Courts have equally frequently found themselves exercising the jurisdiction in spite of what may have appeared to be oft-delineated limits. Part of the judicial controversy has been as to whether an order amounted to a "case" that had been "decided" or not, an aspect which has, fortunately, become purely academic with the addition of an Explanation to Section 115 of the Code, which gives the expression "case decided" the widest possible amplitude, obviating all unnecessary controversies in that behalf. The other aspect that has often vexed courts is as to the nature and ambit of the jurisdictional error or infirmity, which would attract the revisional jurisdiction of this Court. Earlier decision on the question had taken a very narrow view of the expression "jurisdiction" so as to virtually exclude errors of law which were within the jurisdiction. In a revealing summing up of the position, Mathew, J., who spoke for the Supreme Court in the case of M.L. Sethi, has observed that as a result of later thinking, "the difference between jurisdictional error and error of law within jurisdiction" had been Reduced "almost to vanishing point" with the result that "any error of law can be reckoned as jurisdictional" adding that the position appeared to have come perilously close to saying that there is jurisdiction if the decision was right in law, but none if it was not.

5. It would thus appear that if the traditional concept of jurisdiction were applied to the decision of a Court directing discovery under Order 11, the order would always be within jurisdiction if the Court was properly seized of the suit, hut on a proper construction of the expression "jurisdiction", there would be error within jurisdiction if, for example, order of discovery was made without the conditions, envisaged by the order and the rule concerned, being satisfied. In that view, Therefore, an order of discovery, where no document was specified or an order of discovery which by its very nature was an exercise in fishing and rowing, to look for pieces of evidence that may reinforce a party's case, the orders would still be within the revisional jurisdiction of this Court because the Court would have acted with material irregularity in the exercise of its jurisdiction, for, the jurisdiction to order discovery itself was circumscribed by the conditions, which were not satisfied. Where such an order is challenged, it would be open to this Court, Therefore, to see if the order of discovery was within the terms of the

provision, which empowers the Court to make it. That exactly is the plea of the petitioner in the present case and I do not, Therefore, see how the petition is not maintainable, irrespective to how this Court may ultimately rule on the plea.

Question No. 2

6. Whether the impugned order has been made in proper exercise of the power under Order 11 in relation to questions in controversy and the nature of the documents sought to be discovered, is the only other question that falls for consideration.

7. Before embarking on an examination of the various items of documents sought to be discovered, it is important to bear in mind what, according to defendant's application, and his contentions urged at the hearing, was the real object of the application. The material question in controversy between the parties in the two suits is whether the copyright in the book in question vests and throughout remained vested in the plaintiff or belonged to CARE either because CARE or USAID had financed the project of study which enabled the plaintiff to give the ultimate shape to the booklet or because of any assignment or waiver. An important aspect of the matter is if the basic work had been completed before he entered into various arrangements with CARE or accepted CARE's assignment to supervise the printing and publication of the booklet. An important fact of this is the two stages of the project. The first stage relates to the evaluation study and the second the supervision of printing and publication. The nature of the payments made to the plaintiff by CARE from time to time also assume considerable importance in this context. The basic purpose of the plaintiff, however, in seeking discovery was to demolish the cash sought to be set up by the CARE, inter alia, by the production of receipts referred to above at the late stage of the trial and to find material, if possible, which may show that neither CARE nor USAID could in law hold the property in copyright in any work in India or the arrangement that may have been made between USAID and CARE or CARE and the Central Government visualised that neither CARE nor USAID would claim copyright. One of the avowed anxiety of the plaintiff has been to salvage as much of documentary evidence as possible from a possible cloak of privilege against compulsory disclosure which USAID was perhaps entitled, to an extent, to claim by virtue of diplomatic immunity. Another anxiety that appears to be obvious was to get an opportunity to look around the books of accounts and records of CARE for possible material, which may provide the basis for the plaintiff's contention with regard to the suits of copyright or to support the claim in relation thereto.

8. It would be useful to consider the claim of discovery with reference to the various documents in the backdrop of the aforesaid facts and circumstances. According to the plaintiff's application, the documents set out in the list annexed to the application were "very material and on production would impeach the case set up by defendant No. 1, both in its written statement and in the statement on oath as DIW4 of Mr. Desmond Ignatius, a Deputy Assistant Director of the

defendant No. 1". The list enclosed is composed of 25 items. The various items of documents could be conveniently classified into five categories. In Category I would fall the books of accounts and related documents of CARE and would cover items Nos. 1 and 2. In Category II would come various agreements between CARE and USAID and this would cover items Nos. 3, 12 and 16. Category III would cover Indo. CARE agreements and would include items Nos. 5 and 7, Category IV would the plaintiff's letter to CARE and would include items 13 to 15, 17 to 25. The last category would be miscellaneous, which would include programme plans of CARE (item No. 4), and records of certain Central and State Governments with regard to the activities of CARE (item No. 8 and item No. 9).

9. So far as Category IV is concerned, that consists of letters said to have been written by the plaintiff to CARE and it will be outside the provision with regard to discoveries. The plaintiff is entitled to produce copies of these letters and call upon CARE to either admit or deny that the originals were sent to it or to seek a direction for the production of the originals. None of these could form subject matter of a discovery order. Counsel for CARE frankly conceded that as and when their productions sought, such of the letters as were in fact sent by the plaintiff to CARE would be produced. An order for discovery in respect of this Category could not be justified.

10. The Category of miscellaneous documents relate to the programme, plans of CARE, records of the Central and State Governments with regard to the work of CARE and reports and letters relating thereto. No serious attempt was made on behalf of the plaintiff to justify an order of discovery with regard to this category. An order for discovery in respect of this Category would be equally unjustified.

11. As for Categories II and III, there can be little doubt that the agreements entered into between CARE and the Government of India, CARE and USAID, would be relevant for the determination of the question as to the copyright, because these two sets of arrangements would ordinarily deal with the question as to the property in copyright in respect of the publications that CARE may undertake and the discovery order with regard to these would appear to be eminently justified. Counsel for the defendants was unable to assail the order to the extent it related to this Category except on the ground that there was no definite indication that either of the two sets of arrangements made any provision with regard to copyright. That, to my mind, would not be material so long as these arrangements would ordinarily deal with the questions of the various publications which would be undertaken by CARE and although the possibility that these agreements do not contain such provision could not be discounted, plea for discovery of these documents could not be said to be a fishing or roving inquiry. The discovery order would, Therefore, appear to be eminently justified so far as these categories are concerned.

12. That leaves for consideration included in Category I and consisting of the books of accounts of CARE and receipts, vouchers and bills, etc., in respect of the period between February 1968 to August 1968 and February 1968 and June 1968

respectively, being items Nos. 1 and 2 of the list of documents. The main controversy between the parties has been with regard to the order for the discovery of these documents. Mr. Bedi counsel for CARE, made a frontal attack on the impugned order with regard to these two items on a number of grounds. In the first instance, it was urged that the records relate to the period prior to the last agreement of September 15, 1970, and could not, Therefore, be either relevant or admissible. This contention is wholly unsustainable inasmuch as it has been a common case of the parties that the parties were dealing with each other during the period prior to the aforesaid agreement and in particular between February 1968 and August 1968, and it was during this period that the study and evaluation of the nutrition communication media was being carried out by the plaintiff in conjunction with CARE. Interestingly enough, the whole controversy with regard to the discovery of documents was triggered off by receipts, Ex. D. W. 4/1 to D. W. 4/8, all of which relate to the period between February 1968 and which were produced by CARE. Secondly, it was urged that neither the books of accounts nor the receipts would have any relevance to the question of copyright. This contention is wholly misconceived because the nature of payments made by CARE to the plaintiff would be indicative of the precise relationship between the parties, the purpose of the payments and could throw light on the question as to whether these payments were consistent with the case of one or the other of the parties. It would not be out of place to mention that the defendants have themselves produced the receipts referred to above primarily to show the nature of payments so as to demolish the case sought to be put up by the plaintiff, and that being so, further disclosures with regard to similar documents could not be said to be irrelevant even on the defendants own showing. Thirdly, it was contended that in its reply to the list of documents, CARE has already explained that CARE did not maintain books of accounts in the traditional sense in which they were understood in India and that receipts, vouchers and bills, etc. with regard to payments mad to the plaintiff had already been produced, and that, in any event, vouchers, as normally understood in India, were not maintained by the defendants. The defendants have also furnished certain other information with regard to these two categories of documents. This contention, however, ignores the requirement of law that where discovery is ordered, it has to be made on an affidavit. The disclosures made by CARE in reply to the application do not conform to that legal requirement. If what the defendants have stated in reply to the list of documents be their only Explanation or be exhaustive of the disclosures that could be made by the defendants, all that remains to be done is that defendants would make these disclosures on an affidavit in accordance with law. There can be no doubt that the discovery is with regard to documents and an order of discovery could not extend to the compilation of the document that does not exist . If the defendants do not maintain books of accounts as commonly understood in India or do not maintain vouchers and other supporting documents as is the practice in India, it is for the defendants to discover on oath what they maintained and have in their possession and on such discovery being made, it would be for the plaintiff to

explore other possibilities to have the relevant material produced on the record. Lastly, it was urged that while seeking a discovery order with regard to the books of accounts and receipts, vouchers, etc., the plaintiff has failed to specify a particular entry or a particular receipt or voucher. This contention is also misconceived because it was neither necessary nor possible for the plaintiff seeking a direction with regard to discovery to specify a specific entry or a specific document and it was sufficient if the plaintiff indicated a class of documents which could be relevant in the context of the questions in controversy between the parties. It is only after the documents have been discovered and are then sought to be produced or inspected that the party seeking discovery would be required to show how they are entitled to the production of specific documents that have been discovered. Unless a party discovers the documents on affidavit, how is it possible for the party seeking discovery to pinpoint a particular document. It is, Therefore, not possible to find fault with the order of discovery in so far as it relates to this Category.

13. In the result, the petition succeeds in part to the extent indicated above and the order of the trial Court is modified accordingly. In the peculiar circumstances, there would, however, be no costs.

14. Criminal Miscellaneous Applications No S. 934 of 1978 and 941 of 1978 were not pressed and are, Therefore, dismissed.