

**(2002) 08 DEL CK 0101**

**In the Delhi High Court**

**Case No : I.A. 3408 of 2002 in Suit No. 790 of 2002**

FE Engineering and Consultancy Pvt. Ltd. and Another

APPELLANT

Vs

LG Cable Ltd. and Another

RESPONDENT

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**Date of Decision : 07-08-2002**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2  
Copyright Act, 1957 — Section 14, 2, 49, 6

**Citation : (2002) 08 DEL CK 0101**

**Hon'ble Judges : Dr. M.K. Sharma, J**

**Bench : Single Bench**

**Advocate : P. Chidambaram, Vijayalakshmi Menon and Ekta Kapil, for the Appellant; Rajeev Dhawan Sunil Malhotra and Arvinder Kaur for Defendants 1 and 2, for the Respondent**

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## **Judgement**

Mukundakam Sharma, J.—After arguments of the parties were heard on the application under Order 39, Rules 1 & 2 of the CPC and the order was reserved, the parties filed further pleadings relating to the said application and, Therefore, I heard the parties once again on 16.7.2002 and Therefore, the order was reserved. Now, after going through all the pleadings of the parties, I propose to finally dispose the application filed by the plaintiffs under Order 39, Rules 1 & 2 of the Code of Civil Procedure.

2. The plaintiffs herein filed a suit against the defendants alleging infringement of copy right and have sought for a decree of permanent injunction against the defendants restraining the said defendants, their servants, agents and all other acting on their behalf from infringing the copy right vested with the plaintiff No. 1 in respect of Annexures "A" and "C" i.e. Live Line Installation Procedure and Manual and also from desisting them from copying and exploiting the drawings and descriptions contained in the aforesaid two manuals and also from using and applying and/or exploiting the infringing work being Annexure-E in any work or contract awarded to the defendants.

3. Along with the aforesaid suit, an application under Order 39, Rules 1 & 2 of the CPC was filed in this Court, on which notice was issued. On service of notice, defendants have entered appearance and have filed their written statement and reply to the injunction application refuting the allegations in the plaint and also in the injunction application. As the rejoinder to the application was filed during the course of arguments, a sur reply is filed by the defendants to which objection was raised by the plaintiffs on the ground that new facts have been stated. Therefore, the matter was re-heard by me as stated hereinbefore. By this order, I propose to dispose of the said application.

4. It is alleged that the plaintiff No. 2 has been in the business of installation of Optical Ground Wire (OPGW in short) since 1982. It is also stated that the plaintiff No. 2 has installed till the year 2000, 3500 kms. of OPGW in fully live line conditions. The plaintiffs, it is stated, worked out and developed manuals being Annexure A & C, for fully live line installation under Indian conditions and, Therefore, the plaintiff No. 1 holds and is the proprietor of the copy right for the aforesaid work of live line installation procedure and manual. It is stated that the unique technique of installation of Optical Ground Wire (OPGW) by replacement of existing ground wire in fully live line conditions was developed by Mr. Masami Obara, Managing Director of the plaintiff No. 2. It is alleged that considered expertise, money and efforts have been put in to develop the said know-how, process and manual. The said manuals describe in detail, with complete diagrams and drawings, the entire process and know-how.

5. It is stated that in or around January, 1998 M/s. Power Grid Corporation of India awarded a contract in favor of plaintiff No. 2 and the said contract was for Live Line Installation of Optical Ground Wire. While accepting the aforesaid contract, the plaintiff No. 2 confirmed to M/s. Power Grid Corporation of India that it would, shortly, incorporate a wholly owned Indian subsidiary pursuant to which plaintiff No. 2 was incorporated with effect from 19.8.1998. For implementation and execution of the aforesaid contract, plaintiff No.2 had to engage sub-contractors and the said work was divided in two parts and allotted to sub-contractors. One such sub-contractor was defendant No. 2 and the other was given to plaintiff No. 2 to carry out the work in part of the areas. A copy of the Live Line Procedure and Installation of Manual was submitted to M/s. Power Grid Corporation of India in or around October, 1998 and the same was approved on 31.12.98. The defendant No. 2 was also handed over a copy of the said manual.

6. The Power Grid Corporation of India, in 1999, invited fresh bids for fully live line installation of OPGW in the Eastern region. It is stated that the plaintiff No. 1 submitted its bid of the said tender. However, the said tender was awarded to defendant No. 1. The defendant No. 1 claimed to have a process for fully live line replacement of existing ground wire by OPGW and submitted a manual along with its bid. The plaintiff has no quarrel to the aforesaid manual submitted by the defendant No. 1 as the same was totally different from the manuals of the

plaintiff. The aforesaid life line installation technique of the defendant No. 1, as disclosed from the manual, was based on Meito Style Handing Pulley Block. However, the said technique of defendant No. 1 was not suitable for the Indian conditions, as a very heavy equipment was required, which could not be always transported to the site. It is alleged that in or around February, 2002, the plaintiff No. 1 came to know that the defendant No. 1 instead of using its own method, know-how and manual for executing the OPGW project in the Eastern Region was illegally and wrongfully using or planning to use 1998 and/or 2000 Manual describing the technology and know-how as developed by the plaintiffs, in which plaintiff No. 1 has a copy right. The defendant No. 1 also submitted to the Power Grid Corporation of India an Installation Manual, which it is alleged, is a reproduction of plaintiff No. 1 is manual and received approval for the same from M/s. Power Grid Corporation of India, on 6.2.2002. It is alleged that the said manual of the defendant No. 1 contains drawings and knowledge, which are identical to those used in the manual of the plaintiff No. 1. It is also alleged that the defendant No. 1 has merely copied the manual of the plaintiff No. 1.. It is as against the aforesaid manual, the present suit is filed along with the present application.

7. The defendant in their written statement and reply to the injunction application refuted all the allegations and submitted that there was no violation of any copy right by the defendants in any of their manuals. It was stated by the defendants that the technology of Installation of Optical Ground Wire by replacement of ground wire in fully live line conditions was in the public domain in the 1980s which is also supported by the OPGW String Method Report, which was available in the year 1987 and also that the MEC developed a support roller used by the defendants to whom it was licensed in 1991. It was also stated that standard texts for sagging were available in 1996 and that the defendants have experience of such installation and completed a contract for fully live conditions in Korea during the period 1994-1997. It was also stated that the defendants have used their own skill and judgment in producing their own manual and the essential technology and diagrams used the defendants are entirely based on the five steps, which is a part of the fully live wire technology, which have been taken from the MEC Agreement and have nothing to do with the plaintiffs manual. It was categorically denied that there was any infringement and violation of copy right, if any, of the plaintiffs and that the application for injunction is liable to be dismissed.

8. In the light of the aforesaid pleadings of the parties, I heard the learned counsel appearing for the parties and also perused the documents placed on record. The relevant issue, Therefore, which arises for my consideration in this application is whether there is any copy right infringement by the defendants because of some alleged similarities in some drawings and certain sentences used in the two manuals of the plaintiffs and the defendants. However, before advertng to decide the aforesaid issue, it would be necessary to understand and recapitulate what the right of copy right is and when the same could be said to

have been infringed and whether under such circumstances an injunction should be granted.

9. The case of the plaintiffs is that some drawings and certain sentences representing core skills have been copied by the defendants and, Therefore, there is an infringement of the copy right of the plaintiffs. As against the said submissions of the plaintiffs, it was submitted by the defendants that a comparison of the layout and design would indicate that both the manuals of the plaintiffs and the defendants are entirely different and, Therefore, no case of infringement arises.

10. The law relating to copy right is set out in the Copy Right Act enacted in the year 1957. Section 2 (c) of the said Act defines the artistic work whereas Section 2(o) defines the literary work. The word "copyright" is defined u/s 14 when it states that copy right means the exclusive right to do or authorise doing of any of the acts in respect of a work or a substantial part thereof. Any action including the following actions is copy right:-

(a) .....

(b) to reproduce the work in any material form.

11. Therefore, in order to bring in an action within the four corners of Section 14 of the Act, to show infringement and violation of copy right, it must be shown that there is a reproduction in material form of a work or substantial part thereof in respect of which there is an exclusive right. It was the contention of the counsel for the plaintiffs that in the light of the aforesaid provisions it is important to ask the questing as to what is the substantial part of the plaintiff's work, which is allegedly infringed. In order to substantiate his conclusion that the phrase "substantial part" means the essential or material part of the work or leading features of the work, the counsel relied upon the decisions in LADBROKE (FOOTBALL) LTD. v. WILLIAM HILL (FOOTBALL) LTD. reported in (1964) 1 WLR 273 and in LED BUILDERS v. EAGLE HOME PROPERTY LTD. reported in 35 IPR 215 as also the case of R.G. Anand Vs. Delux Films and Others,

12. In the case of Ladbroke (Football) Ltd. (supra) it was held that the question whether one has copied a substantial part, depends much more on the quality than on the quantity of what he had taken. It is how the court has recorded its findings:--

"If I am so far right, then the question remains was there sufficient copying to amount to infringement of the respondents copyright in their relevant coupon? Upon the premise supposed, my answer to this question is clearly in the affirmative. It is not in doubt that what amounts in any case to substantial reproduction within the meaning of Sections 6 and 49 of the Copyright Act again cannot be defined in precise terms but must be a matter of fact and degree. It will, Therefore, depend, not merely on the physical amount of the reproduction, but on the substantial of that which is taken."

13. In the case of R.G. Anand (supra), the law relating to copyright was broadly summarised by the Supreme Court after a review of all the authorities, as under:--

"46. Thus, on a careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge:--

1. There can be no copyright in a idea, subject-matters, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyright work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case, the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal limitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is not see if the reader, spectator or the viewer after have read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where, however, apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental, no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy, it must be proved by clear and cogent evidence after applying the various tests laid down by the case law discussed above.

7. Where, however, the question is of the violation of the copyright of stage play by a film producer or a Director the takes of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader perspective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeking the film gets totality of impression that the film is by and

large a copy of the original play, violation of the copyright may be said to be proved."

14. In the light of the aforesaid position, the law on infringement of copyright is well-settled and well-crystallised. Quality and substantiality are the two touchstones on the basis of which such allegations are to be tested. Therefore, it would be my endeavor to test and analyze the facts of the present case in the light of the aforesaid well-settled law in respect of infringement of copyright.

15. Counsel appearing for the defendants also made a submission that a relief of injunction should not be granted only upon establishing a possible cause of action and without laying down foundation of a strong prima facie case. It was submitted that while considering a case for grant of injunction, due importance must be given to various factors including the public interest and the imminent need. The said submission would be considered and discussed at the appropriate stage hereunder.

16. In order to support his contention that there was infringement and violation of the copyright held by the plaintiffs, reference was made to various diagrams contained in Annexures "A" & "E", the respective manuals of the plaintiffs and the defendants and also to some key passages and words occurring in Annexures "A" & "E". It was specifically alleged that the diagram, as shown in Annexure-A at pages 31, 32, 46, 47, 48, 67 and 68 are copied in the documents of the defendants in the Annexure-E at pages 168, 169, 176, 179, 180, 181, 191, 192, 193. It was also submitted that likewise key passages and words in Annexure-A at pages 63 and 64 have been copied in Annexure-E at pages 188-189. A comparative chart of the aforesaid drawings/diagrams, passages and words was furnished by the plaintiffs for my careful perusal.

17. It was submitted on behalf of the plaintiffs that the documents and drawings of the defendants in their manual as also the text, to which reference was made, are nothing but blind copies of the documents, drawings and text of the plaintiffs and no independent labour, capital or skill of the defendants is involved in the aforesaid documents, drawings and text. I may, Therefore, proceed for making a comparative study of the said drawings, documents and text to find out the merit and substance of the said submissions. The diagram at page 168 of Annexure-E is said to be a reproduction and copy of the drawings of the plaintiffs at page 31 of the Annexure-A. I have made a comparative assessment of both the drawings and upon such assessment, I am of the considered opinion that the said drawings are part of the technology, which is available in the public domain for a long time. Further, the said drawing is for clearance and check on the existing transmission lines belonging to Power Grid Corporation of India and as such lay out of towers, conductors, existing GSW/GW position is common and the same both for the plaintiffs and the defendants. It cannot, Therefore, be said that in the aforesaid drawing of the defendants there is violation of infringement of copyright.

So far the drawings of the plaintiffs at page 32 and of the defendant No. 1's manual at page 169 are concerned, the same analogy applies and, Therefore, in respect of the same also I am of the considered opinion that there is no infringement of any copyright as alleged by the plaintiffs.

So far as the drawing at page 46 of Annexure-A of the plaintiff is concerned, it was contended that the plaintiff No. 2 has mentioned the word "sag" in its drawing by mistake and that the same mistake is committed by the defendant No. 2 by mentioning "sag" in the above drawing. It was also submitted that the plaintiff No. 2 in the aforesaid drawing has made a mention of the word "compass" as the same is a Japanese-English word, whereas the defendant No. 2 used the words "transit and scope" instead of "compass" for the theoretical purpose but in the drawing they have used the same word "compass" as used by the plaintiffs. On the basis of the same, it was submitted that the drawing at page No. 181 is a reproduction of the drawing of the plaintiffs appearing at page No. 46.

The defendants, however, submitted that the word "sag" mentioned in the LG drawing between tower No. 2 and tower No. 3 is correct and not a copy of the alleged mistake of the drawing of the plaintiffs. The same was supported by the defendants on the ground that the drawing of the plaintiffs is for installation of ADSS cable as shown in their drawing and the LG drawing is for installation of OPGW. It was also submitted that in ADSS installation, existing earthwire is not retrieved but the OPGW installation, earthwire is retrievable. The procedure being totally different in the two installations, it was submitted that the word "sag" used by the defendants in their drawing between tower No. 2 and tower No. 3 is not a mistake.

18. So far the two drawings are concerned, since they describe the method of sagging, the drawing has to be similar. The only grievance of the plaintiffs, as raised herein is with regard to use of words "sag" and "compass" in the drawings by the defendants on the ground that the word "sag" was a mistake whereas "compass" is a word only used in Japan. The defendants have given some Explanation with regard to user of the word "sag" contending, inter alia, that the said user is a correct expression and there is no mistake. So far the use of the word "compass" is concerned, it is the case of the defendants that the same is an English word and is used for a name of instrument used in site surveys for magnetic directions. It is also stated that the defendants are using a Japanese technique being MEC technology and, Therefore, use of the word "compass" cannot be said to be amounting to violation and infringement of copyright.

19. It was also sought to be submitted by the plaintiffs that what is stated at page No.179 of Annexure-E by the defendants in their manual is a blind copy of what is stated by the plaintiffs at pages 46 of Annexure-A. The main thrust of the arguments of the counsel for the plaintiffs was in respect of the table given for measuring Span for Sag-Dip. The defendants have stated that the table prepared by the defendants is based on "Standard for Sagging Work", issued in 1996,

which is Annexure-G to the written statement. It was also pointed out that the terms used in the table are dissimilar. It was further submitted by the defendants that the information as given in the said table is available in the public domain and, Therefore, no skill and labour could be said to be involved in compiling the aforesaid table. Therefore, it would be necessary for me to find out if the expressions appearing at pages 181 and 176 could be said to be copies of whatever is appearing at page 46 of Annexure-A.

20. It was the submissions of the counsel appearing for the plaintiffs in relation to page 181 vis-a-vis page 46 that the plaintiffs had mentioned the word "sag" in the aforesaid drawing, by mistake, and the user of the word "compass" was made because it is a Japanese -English word. Referring the said expressions used by the defendants also at page 181, it was submitted by him that the same mistake, as committed by the plaintiffs is also committed by the defendants by using the word "sag" and instead of using the word "compass" the defendants used the words "transit and scope" in the theoretical purpose but in the drawing they had used the expression "compass", which indicates that the same is, Therefore, a copy of the plaintiffs.

21. In *BILLHOFER MUCHINENFABRIK GMBH v. T.H. DIXON AND Co.* reported in (199) Fleet Street Reports 105, it was held by the court that in considering the question of casual connection, i.e. whether the alleged infringement was copied from the copyright work, it is the resemblances in essentials, the small, redundant, even mistaken elements of the copyright work, which carry the greatest weight. It was also held that this is because they are lest likely to have been the result of independent design and that such resemblances may lead the court to conclude that everything in the alleged infringement was copied. It was further held that on the other hand, when the court has decided that some parts were copied and others were not, the question whether they amounted to a substantial parts, depends upon whether they were sufficiently important and that is particularly true when they amount only to a certain specific numbers, positions and dimensions. On the basis of the said ratio of the decision, it was submitted that the test of substantiality is crucial and, Therefore, the court is always to see and find out if there is substantial sequence or importance of the similarities and whether the same covers only an insignificant area with no substantial significance or importance.

22. Even assuming the word "sag" was mistakenly used and the word "compass" was also complied by the defendants in their drawings, the same cannot lead to the conclusion that the said similarities cover a substantial area or the area of substantial importance. Only because the word "compass" is used, which is also an English dictionary word or even assuming that the word "sag" was mistakenly used, although the same was not admitted by the defendants contending, inter alia, that the same word "sag" was used by the defendants in terms of OPGW installation, as against installation of ADSS by the plaintiffs in their drawings, the same is not within the domain of substantiality and, Therefore, only because of

the aforesaid similarity, it cannot be said that copy right is violated.

23. So far the table for measuring Span for Sag-Dip, appearing at page 176 of the defendants Annexure-E is concerned, it is to be kept in mind that the said table is based on standard for sagging work issued in 1996, which is appearing as Annexure-G of the written statement. The aforesaid standard for sagging work, which was issued in 1996 is an information available in the public domain and, Therefore, the table of the defendants cannot be said to be a reproduction or copy of the plaintiffs work.

I have also carefully perused the terms used in the said table. Except for one or two expressions, remaining terms are dissimilar and, Therefore, it cannot be said that the said table is also copy and/or reproduction of the original.

24. So far the drawings at pages 179 & 180 of Annexure-E vis-a-vis pages 47 & 48 of Annexure-R are concerned, the same is standard form of drawings, taken from common source in public domain and the same is to be mentioned for the existing earthwire, which is already in operation on PGIL transmission line and, Therefore, no copyright could be claimed in respect of the same. No individual skill or labour is involved in compiling the same as the same are common engineering formulae and such drawings are not substantial part of the manual as the same were not procedural/working drawings required for the installation of OPGW.

25. One of the main thrust of arguments of the counsel appearing for the plaintiffs regarding infringement and violation of copyright, was in respect of page 188 of Annexure-7 as against page 63 of Annexure-A. It was submitted that the textual reference in the aforesaid page of the defendants is reproduction of the textual material of the plaintiffs. The said expressions are part of the safety measures which were required to be followed strictly and, Therefore, the expressions being a part of the safety measures have to be common and no complaint could be made against them only because the sequence used is the same. The words safety belts, safety shoes and safety helmets are common and necessary words used for working at heights. The expression in page 63 and 64 are the standard terms for safety measures and weather conditions and they are part of common expression and, Therefore, no claim for exclusive use could be made nor such use of common words could amount to an infringement of copyright. It is true that while using the words "Foggy", "Lightening", "And other bad weather" same expressions and words have been used by the defendants. The said expressions relate to the weather conditions and the same also have to be common. The similarities in the aforesaid expression even if assumed to be similar, the same cannot be said to be similarity of fundamental or substantial character and, Therefore, no injunction could be granted only on the basis of such insignificant similarity.

The drawings at page 66, 68 and 69 in Annexure "A" have been also comparatively assessed b me as against drawings at page 192, 191 and 193.

Such a comparative assessment indicates that the drawings of the towers in respective manuals are similar. But the said towers are the towers of Power Grid and, Therefore, there would be definite similarity in both sets of drawings of the towers. The location of the flags in the towers by the plaintiffs and the defendants have been shown at different except for one location. In both the sets of drawings the expression working area is used, which is capitalised by the plaintiffs to buttress their submissions. However, the said expression is a common and standard expression used or a place where workers are permitted to work and is also a part of the safety measure and condition. No exclusive copyright could be claimed by the plaintiffs to such expressions which are commonly used and standard expressions in the industrial arena.

26. Having examined the allegations of the plaintiffs, at length, I am of the considered opinion that although there is some similarity at some places of one or two pages of the manual, the same cannot be said to be substantial reproduction of the works of the plaintiffs and, Therefore, prima facie I am not satisfied to grant an injunction in favor of the plaintiffs, as sought for in this application. This is, however, my tentative opinion, at this stage, which shall be subject to the test to be applied at the time of trial and after the evidence is received. I may also hasten to add that the plaintiffs have not been able to make out a strong prima facie case for grant of an injunction. However, during the trial it would be open to the plaintiffs to establish their allegations and prove that there is, in fact, infringement of copyright as alleged by the plaintiffs. Therefore, no injunction, as sought for, is granted in the present case. The application stands disposed of in terms of the aforesaid order.

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Pleadings in respect of the suit are, however, complete. The matter shall be listed before the Joint Registrar on 16.9.2002 for admission/denial of documents and before the court on 24.10.2002 for framing of issues.