(2005) 03 DEL CK 0201

In the Delhi High Court

Case No : IA 6084/02 in CS (OS) 1076 of 2002

Hind Samachar Limited and Others APPELLANT

Vs

Indian Newspaper Society and Another RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Citation : (2005) 119 DLT 570 : (2005) 81 DRJ 452

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : H.L. Tiku and Yashmeet, for the Appellant; Sandeep Sethi and Sumeet Mehta, for defendant No. 1 and Arun Kathpalia, for defendant No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Present order disposes of I.A.6084/02 seeking to restrain defendant No. 1 from preparing and circulating MRV-3 and/or any other such document and subsequent MRVs without the plaintiff''s publication "Punjab Kesari-Delhi". Mandatory injunction is also prayed for to be issued to defendant No. 1 to include the name of "Punjab Kesari-Delhi" in its MRV for the month of March 2002 and onward on the basis of statement submitted by the plaintiffs.

2. plaintiff No. 1, Hind Samachar Ltd is a company incorporated under the Companies Act having its registered office at Hind Samachar Building, Civil Lines, Jallandhar, Punjab. It has a branch office at Delhi at premises bearing municipal No. 2, Printing Press Complex, Wazirpur DTC Depot, Delhi. plaintiffs 2 and 3 are the Directors of plaintiff No. 1. plaintiff No. 3 also claims to be a shareholder of plaintiff No. 1. Defendant No. 1 is a society registered u/s 25 of the Companies Act, 1957. Inter alia, objects of defendant No. 1 is to promote and safeguard the business interests of its members incidental to the production of their publications and to take suitable action in respect of such businesses as are affected by legislation or commercial transactions.

3. plaintiffs assert that plaintiff No. 1 is engaged in printing and publishing of 4 newspapers in Hindi, Punjabi and Urdu, being:

1. Punjab Kesari - Delhi

2. Punjab Kesari - Jallandhar

3. Hindi Samachar

4. Jagbani - Jallandhar

4. s per the plaintiffs, plaintiff No. 1., by virtue of being a printer and publisher of the afore-noted 4 publications holds 4 memberships with the defendant No. 1, each membership pertaining distinctly to each of the publications afore-noted. According to the plaintiff, right to be represented at dealings of the plaintiff No. 1 with defendant No. 1 is through a duly appointed nominee. For the publication "Punjab Kesari-Delhi", plaintiffs assert that the appointed nominee is plaintiff No. 3. According to the plaintiffs, defendant No. 1 is bound to act, in relation to the publication "Punjab Kesari-Delhi" only through plaintiff No. 3 and none else.

5. Importance of membership of defendant No. 1 is stated to be that one of the major sources of revenue of newspapers is from advertisements published in the newspaper. These advertisements are received from accredited advertising agencies. Relating to the advertisements, the beneficiary effects payment to the accredited advertising agency, which in turn makes payment to the newspaper. With a view to maintain final discipline and ensure safety of the business interest of its members, defendant No. 1 entered into agreement(s) with advertising agencies who thereupon came to be regulated by the, "Rules governing accreditation of advertising agencies and ruling of the defendant society".

6. With a view to achieve the objective aforesaid, defendant No. 1 has developed a system of monitoring the timely payments by the accredited advertising agencies to the members of defendant No. 1.

7. How this is achieved, is explained by the plaintiffs by stating that defendant No. 1 prepares monthly review and verification (MRV). This monthly MRV is prepared on the basis of details supplied by the members as per "MRV return form". This form furnishes details of outstanding bills raised for previous publications in respect of each accredited advertising agency. Based thereon, defendant No. 1 takes action as is necessary qua defaulting agencies.

8. Grievance of the plaintiffs is to the fact that the MRV return submitted by plaintiff No. 3 for the publication "Punjab Kesari-Delhi" pertaining to the month of February 2002 did not find itself being incorporated in the MRV (II) i.e. the second month of the calendar year 2002 i.e. February 2002. plaintiff asserts that this a deliberate abdication of duties of defendant No. 1 for the reason, in the absence of MRV statement, defendant No. 1 would be prohibited from taking action against a defaulting accredited advertising agency.

9. According to the plaintiffs, this action of defendant No. 1 is at the behest of

defendant No. 2, Sh. Vijay Kumar Chopra who is also a Director of plaintiff No. 1.

10. defense of defendant No. 1 is that signatures of plaintiff No. 3, Sh. Arvind Chopra have been forged on the plaint and that no resolution has been passed by plaintiff No. 1 authorising plaintiff No. 2 and plaintiff No. 3 to initiate any legal proceedings on behalf of plaintiff No. 1.

11. On merits, defendant No. 1 pleads that in the past, MRVs in respect of publications of plaintiff No. 1 were received from the registered office at Jallandhar under the signatures of Sh. Vijay Chopra, defendant No. 2 who is the Chairman and Managing Director of plaintiff No. 1. It is stated that under the guise of the suit, plaintiffs 2 and 3 are attempting to change this status i.e. all MRVs being received from the head office. It is stated that defendant No. 1 received MRV for month of February 2002 pertaining to Punjab Kesari-Delhi" under signatures of one, Sh. Vinod Verma, a business officer of plaintiff No. 1 and being not in accordance with the past practice, it wrote to the Chairman-cum-Managing Director of plaintiff No. 1 i.e. defendant No. 2 about the receipt of said MRV. It received a letter dated 14.5.2002 from defendant No. 2 informing that the MRV aforesaid pertaining to Punjab Kesari-Delhi was without authority and required the defendant No. 1 to rely on only said MRV as emanated from the registered office at Jallandhar. In the written statement, defendant No. 1 specifically pleads "the consolidated MRV returns in the 4 publications of Hind Samachar Ltd including Punjab Kesari-Delhi have always been submitted from the head office of the company at Jallandhar. Clearly, through internal arrangements, the MRVs of Punjab Kesari-Delhi, were being earlier sent to the head office, which then complied the information for all the 4 publications and sent the MRV returns to the defendant."

12. Since learned counsel for the plaintiff heavily relied on an admission of defendant No. 1, I would be advised to note the same at this stage itself since I am referring to the defense of defendant No. 1. In para 1.2 of the written statement on merits, defendant No. 1 has stated as under:-

"1.2 In response to the contents of para 1.2 of the plaint the defendant society states and submits that plaintiff No. 3, Sh. Arvind Chopra is the authorised representative in respect of the publication, Punjab Kesari-Delhi of the member company viz. Hid Samachar Ltd only for the limited purposes of inclusion in the annual hand book of the defendant society."

13. It is however explained in para 5 of the written statement that the said representation is only relevant for the purposes of the annual hand book published by defendant No. 1 and is not relevant for the purposes of MRV returns.

14. In para 14 of the written statement, defendant No. 1 states that all MRV returns have at all times, been filed from the head office of Jallandhar under the signatures of defendant No. 2 who is also the printer and publisher of all the publications, including Punjab Kesari -Delhi.

15. defense of defendant No. 2 is that the board has never authorised plaintiffs 2 and 3 to institute any suit on behalf of the plaintiff No. 1 It is asserted that from its inception, all books of accounts are maintained at Jallandhar. Said books of account are prepared in respect of publications, including Punjab Kesari-Delhi. Under Article 124 of the Articles of Association of plaintiff No. 1, it is Chairman cum-Managing Director who is the person empowered to sign all receipts of money paid to the company. It is asserted that in respect of publication, Punjab Kesari-Delhi the past procedure has been that the Delhi office forwards to the head office all vouchers, debit and credit in original, on the basis of the which accounts are drawn. Based on these accounts, MRV returns are prepared.

16. It is asserted by defendant No. 2 that the issue raised in the suit pertains to the internal management of the affairs of plaintiff No. 1, ad judicatory proceedings relating to the internal management of the company are pending before the Company Law Board, vide company petition No. 76/1999. It is accordingly stated by defendant No. 2 that by way of the present suit, plaintiffs 2 and 3 are wanting to get de-facto and de-jute control of the Delhi office.

17. During arguments, learned counsel for the parties did not dispute that proceedings u/s 397 of the Companies Act were pending before the Company Law Board.

18. Fulcrum of the submission made by Sh. H.L. Tiku, learned senior counsel for the plaintiffs was the admission of defendant No. 1 that each publication had a separate accreditation as also the admission that plaintiff No. 3 was the recorded nominee to represent Punjab Kesari-Delhi in its dealings with defendant No. 1. Counsel urged that said two admissions were sufficient to grant the interim relief prayed for. In relation to the defense and documents relied upon during arguments by counsel for the defendants, Sh. H.L. Tikku, learned senior counsel urged that the defendants were selectively showing documents to this Court.

19. Per contra, Sh. Sandeep Sethi, learned Senior Counsel for defendant No. 1 and Sh. Arun Kathpalia, learned counsel for defendant No. 2 urged that the dispute being essentially relating to the internal management of plaintiff No. 1, this court should not pass any interim orders and should require plaintiffs 2 and 3 to seek appropriate remedy before the Company Law Board. Alternatively, learned counsel urged that nomination of plaintiff No. 3 with defendant No. 1 pertained only to the annual hand book published by defendant No. 1 and it had no concern with the right to furnish monthly MRVs. Counsel urged that in the past, monthly returns pertaining to Punjab Kesari, Delhi may have been on some occasion signed by plaintiff No. 3, but the same was forwarded along with MRVs of the other two publications under one common forwarding letter issued under the signatures of defendant No. 2. Counsel urged that by means of an interim injunction, status quo has to be maintained and not disturbed.

20. It is settled law that an interim mandatory injunction would be issued to restore status quo ante in exceptional circumstances. The exceptional

circumstance being to restore the position between the parties which existed prior to the offending acts having been committed by the offending party.

21. Since the authenticity of the documents filed and relied upon by the parties was not in dispute, it would be advisable to refer to the letter dated 7.5.2002 and the MRV return form submitted there under pertaining to the return of Punjab Kesari-Delhi for the month of February 2002. The said letter was been received by defendant No. 1 on 7.5.2002 itself. The letter is addressed under the signatures of Sh. Vinod Verma, business officer of the Hind Samachar Ltd, Delhi. The MRV return form has been singe by plaintiff No. 3.

22. Dispute surfaced when the said letter was written for the reason defendant No. 1 did not accept this letter and cause pleaded in the suit is non acceptance of the return under this letter. It has to be noted that when the return aforesaid was received by defendant No. 1, it responded vide letter dated 10.5.2002 seeking clarification from defendant No. 2.

23. Past practice has been relied upon by the defendants. What are the documents which further the defense taken?

24. Letter dated 16.4.2001 addressed to defendant No. 1 under the signatures of defendant No. 2 as also letters dated 19.5.2001, 18.6.2001, 7.7.2001, 6.8.2001, 6.9.2001, 8.12.2001 and 5.1.2002 evidence that all MRV return forms were being submitted under cover of one letter under signature of defendant No. 2. Not only that, some of the MRV returns pertaining to Punjab Kesari-Delhi were even being signed by defendant No. 2 For example, MRV form pertaining to March 2001, MRV form pertaining to May, 2001 and MRV form pertaining to June 2001 show that these forms relating to Punjab Kesari-Delhi were signed by defendant No. 2.

25.I t is obvious that in the past, some of the MRV forms pertaining to Punjab Kesari-Delhi were being submitted under signatures of defendant No. 2, some were being submitted under signatures of defendant No. 3, but the covering letter was emanating from the head office at Jallandhar under signatures of defendant No. 2. It has to be noted that 4 MRV return forms pertaining to the 4 publications were being submitted under cover of one common letter the signatures of defendant No. 2.

26. Learned counsel for the plaintiffs relied upon the following definition in the Articles of Association of defendant No. 1:

"Representative'' means where the context permits either a member personally or an individual duly appointed by a member under these articles to represent him."

27. Learned counsel also relied upon the rules and regulations governing accreditation of advertising agencies and especially Rule 45 which reads as under:-

"Members of the society are free to appoint whomsoever they like as their representatives provided the said representatives are not classified as advertising agencies and do not function as advertising agencies."

28. As noted above, defendants explained the said article and rule respectively are applicable to annual hand book of the defendant society.

29. Point urged on the issue of the Rules and Articles of Association as afore-noted requires consideration, but issue at the present stage is of passing interim orders.

30. Evidence on record as brought before the Court suggests that MRV returns of all four publications of plaintiff No. 1 were being submitted under a covering letter signed by defendant No. 2 before on 7.5.2002. This position was sought to be altered by plaintiff Nos. 2 and 3. Principle of interim injunction being to maintain "status quo ante bellum" i.e. to maintain a status before the war, facts of the present case do not warrant the issuance of any interim directions as prayed for as the same woolgather the status which existed and was sought to be altered by plaintiffs 2 and 3, when letter dated 7.5.2002 was addressed to defendant No. 1, which letter was not acted upon. Effect of relief if granted, would be to direct defendant No. 1 to alter the status quo which was existing.

31. The second reason which compels this Court not to grant the interim relief prayed for is that the dispute as laid, concerns the internal affairs and management of plaintiff No. 1 Issue relates to the accounts of plaintiff No. 1. Since parties are already before the Company Law Board in proceedings u/s 397 of the Companies Act, appropriate forum would be the Company Law Board.

32. I.A. 6084/02 is dismissed. No costs.

