
(2006) 01 DEL CK 0169

In the Delhi High Court

Case No : CCP No. 117 of 2005 in CS (OS) No. 518 of 2004

Jasubhai Digital Media Pvt. Ltd. and Another

APPELLANT

Vs

Vogel Media International GmbH and Others

RESPONDENT

Date of Decision : 12-01-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, Order 7 Rule 10, Order 7 Rule 10A, 24

Citation : (2006) 128 DLT 413 : (2006) 90 DRJ 449

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Amarjit Singh, V. Mohini and Vintee Singh, for the Appellant; Sudhir Chandra Binny Kalra, Shwetasree Majumdar and Ishani Sahiwal, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—On 27.10.2005 when this application came up for the first time, this Court had issued notice to show cause as to why notice on the contempt petition should not be issued. Notice was accepted on behalf of the alleged contemnors and it was directed that reply could be filed within three weeks. However, today Mr. Sudhir Chandra, the learned senior counsel appears on behalf of the alleged contemnors and states that at this stage when the question of issuance of notice in the contempt petition itself is to be decided, no reply would be necessary and he is ready and willing to argue the case as it is. Accordingly, the parties were heard on the question of whether any notice on the contempt petition could be issued at all or not.

2. Mr. Amerjit Singh, who appears on behalf of the defendants submitted that the plaintiffs have been guilty of contumacious conduct amounting to willful defiance of orders passed by this Court. He, Therefore, contended that the plaintiffs were clearly guilty of civil contempt under the Contempt of Courts Act, 1971 (hereinafter referred to as the `said Act"). He submitted that by virtue of the

order dated 22.11.2004 this Court had directed that the plaintiffs shall file an amended plaint. The Court concluded as under:-

For the forgoing reasons, this Court must conclude:

(i) The suit which is instituted on the re-presentation of the plaint in the competent court after its return by the Court which lacked the jurisdiction is a freshly instituted suit within the meaning of the provisions of the CPC and shall be governed by the provision of Order VII Rule 10 and 10A. Such a suit will be tried de novo in accordance with the provisions of the Code.

(ii) Any proceedings taken up and orders made in the suit during its pendency before the court which lacked necessary jurisdiction come to an end as soon as the order for the return of the plaint is made by the said court.

(iii) If the plaintiff on the return of the suit consider it necessary that any interim protection granted to him under the orders of the Court which lacked jurisdiction should be continued, he must approach the competent Court with a fresh application for grant of such a relief and it will be for the said Court to consider the application on its merits.

(iv) The return of the plaint for want of jurisdiction whether pecuniary or territorial cannot be equated to the transfer of the suit or proceedings either by virtue of Section 24 CPC or owing to any other statutory change.

3. The background of the passing of the said order is that, initially, the plaint was filed by the plaintiffs before this Court and when the lower limit of the pecuniary jurisdiction of this Court was raised from Rs. 5 lacs to Rs. 20 lacs, the matter stood transferred to the District Court by operation of law. The suit was registered before the District Court as Suit No.250/2003. Before the District Court the plaintiffs moved an application as a result of which the valuation of the suit was enhanced and the suit, Therefore, went beyond the pecuniary jurisdiction of the District Court. In view of this amendment made by the plaintiffs before the District Court, the District Court did not have any further pecuniary jurisdiction in the matter and the District Court returned the plaint under Order 7 Rule 10 on 30.04.2004. The said plaint was re-filed before this Court on 20.05.2004 and the suit was registered in this Court as CS(OS) No. 518/2004 which is the current suit.

4. Mr. Amerjit Singh contended that despite this sequence of the events and the order passed on 22.11.2004 which clearly indicated that the present suit was not a continuation of the suit filed before the District Court, the plaintiffs have in their amended plaint filed on 9.12.2004 attempted to show that the same is in continuation of the suit filed before the District Court. He particularly referred to the title borne on the amended plaint which shows that the present suit was renumbered whereas, in point of fact, as per the order dated 22.11.2004 it should have been shown as a fresh suit. Secondly, he pointed out that it was not a case of transfer of files as indicated in the Explanation paragraph to the

amended plaint wherein the plaintiffs contended as if the files were transferred from the District Court to this Court implying thereby that this was the same suit. He also contended that the plaintiffs indicated in the note itself that the amended plaint filed on 09.12.2004 was in consonance and in compliance with the order dated 22.11.2004, implying thereby that the amendments carried out were authorized by this Court. According to him, these acts on the part of the plaintiffs amounted to a clear case of contempt. Mr. Amarjit Singh also contended that in is No.3124/2005 filed by the plaintiffs under Order 22 Rule 10 CPC, similar averments amounting to contempt have been made. Insofar as this last contention is concerned, I may deal with it straightaway inasmuch as by an order passed today itself the said application stands dismissed as withdrawn in view of subsequent developments. So, this grievance does not survive.

5. Having heard counsel for the parties on the question of issuance of notice on the contempt application, I find that the most material aspect is that this entire issue has been debated upon and this Court has expressed an opinion by virtue of the order dated 05.10.2005 on the defendant's application being is No. 102/2005. These very arguments which have been raised by the defendant in support of this contempt application were also before this Court when the said is No. 102/2005 was being considered. It is well settled that the question of contempt is essentially one between the Court and the contemnor and a party to the proceedings merely acts as an informer. It is, Therefore, clear that the Court, when it passed the order dated 05.10.2005, was made aware of all these factors which are being re-agitated today before me in support of the contempt application. However, the Court while disposing of the application being is No.102/2005 by a detailed order on 05.10.2005 did not think it fit to take notice suo moto of issuing contempt notices even though, it held in paragraph 10 of the order that the plaintiffs had shown scant regard for the provisions of the CPC and that they were wrongfully treating the present suit as a continuation of the previous suit and that they had sought to make amendments in the plaint which were unauthorized. Although, the Court made these observations, the ultimate conclusion that was arrived at was that the amended plaint filed on 09.11.2004 be rejected in toto and the plaintiffs be directed to file a fresh amended plaint within one week. The fresh amended plaint was filed on 09.11.2005 which, as yet, has not been taken on record as there is serious opposition by Mr Amarjit Singh. Of course, that is the subject matter of a different application and I need not to go into that aspect for disposal of the present application.

6. Mr Amarjit Singh, relied upon three decisions, one of the Privy Council, one of the Allahabad High Court and one of the Madras High Court. The decisions are:-

1. AIR 1945 134 (Privy Council)
2. Ramesh Chandra Srivastava Vs. J.R. Chaudhury and Others,
3. Advocate General of Madras Vs. Amanullakhan, Advocate, Salem 1,
7. Mr Singh laid stress on the Privy Council decision and particularly upon the

passage at page 36 thereof, wherein, it is observed that "If in the course of a case a person persists in a line of conduct or use of language in spite of the ruling of the presiding Judge he may very properly be adjudged guilty of contempt of Court, but then the offence is the disregard of the ruling and setting the Court at defiance." He also referred to the decision of the Allahabad High Court and referred to paragraph 7 thereof which has a further reference to the decision of the Supreme Court in the case of Dhananjay Sharma Vs. State of Haryana and Others, which essentially provides that anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice, renders himself liable to be dealt with in accordance with the Act and no Court should ignore such conduct which has the tendency to for sake public confidence in the judicial institutions. He also referred to the Madras High Court decision to indicate that legal practitioners are not merely agents of parties pleading a particular case, but are officers of Court expected to assist in the administration of justice and to sustain the unimpaired dignity of Courts, by all means in their power.

8. All these observations are unexceptionable but the question is whether in the present situation a case for issuance of notice to the alleged contemnors has been made out or not. In my view, because this Court had, in detail, considered all these submissions in its order dated 05.10.2005 and this Court having stopped short there of issuing notices of contempt despite being aware of the entire circumstances, the question of taking such an action does not arise. It may be argued that at that point of time no contempt application was not pending and, Therefore, the Court did not view the matter in the same perspective as is being projected in the present application. However, it is my view that the party merely acts as an informer and all the information was available to the Court on 05.10.2005 when it passed the order and even made the observations and directions noted above. Therefore, the Court not having taken any action earlier would definitely come in the way of issuance of notice on this contempt application at this stage particularly because the foundations of the contempt i.e. the first amended plaint of 09.12.2004 and the application under Order 22 Rule 10 are not on record. In this view of the matter, this application for contempt stands dismissed.