
(2007) 06 OHC CK 0025
In the Orissa High Court
Case No : FAO No. 423 of 2006

Lark Book Publishers and Another

APPELLANT

Vs

Girija Nandini Praharaj and Another

RESPONDENT

Date of Decision : 19-06-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1, 151

Copyright Act, 1957 — Section 14, 14(1), 17, 22, 72

Citation : (2007) 2 OLR 348 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : Pitambar Acharya and Associates, for the Appellant; B.H. Mohanty and Associates, for the Respondent

Judgement

A.S. Naidu, J.—The order dated 28th October, 2006 passed by the learned District Judge, Cuttack in I.A. No. 162 of 2006 arising out of Original Suit No. 4 of 2006 refusing to vacate the order dated 21.9.2006 passed in the said I.A. granting ad interim injunction against the Defendants is assailed by the latter in this appeal filed under Order 43, Rule 1 read with Section 151 of the Code of Civil Procedure.

2. The aforesaid O.S. was filed by the present Respondents claiming to be the legal heirs and successors of late Rai Bahadur Gopal Chandra Praharaj. The dispute is with regard to the steps taken by the Defendants for reprinting of an Oriya Lexicon i.e., "PURNA CHANDRA ORIYA BHASAKOSH", a unique compilation made by late Praharaj. According to the Plaintiff-Respondents, they have exclusive copyright over the aforesaid Oriya Bhasakosh and the action of the Defendants to reprint the same without obtaining any permission from the Plaintiffs amounts to infringement of such right. They filed the aforesaid Original Suit praying to restrain the Defendants by a decree of permanent injunction from publishing the said Bhasakosh in any form whatsoever in future. They also prayed to direct the Defendants to hand over all copies of the re-printed Volume-

I already published, or to deposit the same in Court for delivery to the Plaintiffs within a time stipulated and for other consequential reliefs.

3. Admittedly, late Raibahadur Gopal Chandra Praharaj made compilation of the aforesaid Oriya Lexicon "PURNA CHANDRA ORIYA BHASAKOSH" comprised of seven volumes which was published between the years 1931 to 1940 by late Bisawanath Kar on behalf of the Utkal Sahitya Press, a Publishing House. Late Praharaj died on 16th May, 1945. According to the Plaintiff-Respondents after the death of late Praharaj several disputes cropped with regard to the assets left by him and they being the legal representatives and successors inherited the same after prolonged legal battle. Unfortunately however without intimating the Plaintiffs in a clandestine manner Defendant No. 1, a Printer and Publisher of Books, and Defendant No. 2, its owner, having no semblance of right, title or interest over the aforesaid Oriya Bhasakosh in order to defraud the Plaintiffs brought out a re-print of Volume-I thereof. Coming to know about the said fact, the Plaintiffs filed the aforesaid O.S. along with the aforesaid I.A. praying for grant of ad interim injunction against the Defendant-Appellants.

4. The learned District Judge after hearing the Plaintiffs on 21st September, 2006 granted ex parte ad interim injunction restraining the Defendant-Appellants from publishing the said Oriya Bhasakosh or offering for sale until further orders.

5. After receiving notice, the Defendant-Appellants appeared before the Court below and filed a petition to vacate the said interim order mainly on the ground that the suit was not maintainable and under law there was no restriction for them to reprint the Bhasakosh in question. Referring to Section 22 of the Copyright Act (hereinafter called "the Act") it was averred that copyright subsisted within the lifetime of the author or until sixty years from the beginning of the calendar year next following the year in which the author died. As late Praharaj, the admitted author of the Bhasakosh died on 16th of May, 1945, the period of sixty years computed from 1st January, 1946 expired on 31st December, 2005. Thereafter there was no prohibition to reprint and publish the Bhasakosh by others as the property right of the legal representative or assignees came to an end by virtue of the aforesaid statutory provision. It was averred that Volume-I of the Bhasakosh was ready and huge amount of money had been spent for reprinting the same. As the suit was not maintainable, it was a fit case where the ad interim order of injunction passed by the Court below should be vacated.

6. The prayer of the Defendants was strongly resisted by the Plaintiffs. The District Judge, as would be evident from the impugned order, heard learned Counsel for the parties in extenso. After discussing the pros and cons he came to the conclusion that all the three ingredients, viz. prima facie case, balance of convenience and irreparable injury, required for grant of ad interim injunction had been satisfied, and made the ad interim injunction absolute.

7. Mr. Acharya, learned Counsel for the Appellants, painstakingly took this Court

through different provisions of the Copyright Act and the decisions. According to Mr. Acharya, in consonance with Section 22 of the Act, copyright subsists in any literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author until sixty years from the beginning of the calendar year next following the year in which the author dies. He submitted that admittedly the author of the aforesaid Oriya Bhasakosh died on 16th May, 1945. In consonance with the aforesaid Section 22, copyright subsisted till sixty years commencing from 1st January, 1946. Thereafter there was no bar to reprint and publish the said Bhasakosh. In other words, according to Mr. Acharya, as by efflux of time the Plaintiffs had lost their exclusive right, the suit itself was not maintainable and as such the finding of the Court below that the Plaintiffs had a prima facie case was not correct and therefore the interim order restraining the Defendants from publishing the aforesaid Bhasakosh was absolutely illegal and the same is liable to be set aside.

8. In support of his submission, Mr. Acharya apart from referring to different Sections of the Act, relied upon the decision of the Supreme Court in the case of Indian Performing Right Society Ltd. Vs. Eastern Indian Motion Pictures Association and Others, In the said decision the copyright of a music composer or lyricist was the subject-matter. In an appeal preferred u/s 72 of the Act the High Court held that unless there was a contract to the contrary, a composer who composes a lyric or music for the first time for valuable consideration for a cinematography film does not acquire any copyright either in respect of film or its sound track which he is capable of assigning and that under proviso (b) to Section 17 of the Act, the owner of the film at whose instance, the composition is made, became the first owner of the copyright in the composition. The facts of the said case are distinctly separate from that of the case at hand.

9. Mr. Acharya also relied upon another decision of the Supreme Court in the case of Gramophone Company of India Ltd. Vs. Birendra Bahadur Pandey and Others, but after perusing the same this Court finds that the facts of the said case were also different from that in the present case.

10. Mr. B. H. Mohanty, learned Senior Advocate, appearing for the Plaintiff-Respondents, at the other hand, strongly repudiated the submission of Mr. Acharya. According to Mr. Mohanty, whether the suit is maintainable or the relief sought can be granted or not depends not only on interpretation of law, but also facts. The submission that the suit was not maintainable could not be considered by the Court below at the time of considering the interim application, i.e. at the threshold when the trial had not commenced. Thus the ground on which the Defendants prayed to vacate the interim order was not sustainable in law, inasmuch as all the aspects of the suit have to be dealt with in course of hearing which was not to be done at the stage of consideration of a petition filed under Order 39, Rules 1 and 2 Code of Civil Procedure. According to him, the learned District Judge after considering all aspects, applying his mind and finding that the ingredients necessary for granting an interim order of injunction had been

satisfied had passed such order and therefore rightly refused to vacate the said order. In such circumstances the impugned order does not call for any interference of this Court.

11. Mr. Mohanty, further submitted that if the Defendants are permitted to reprint, publish and sell the Bhasakosh the legal rights of the Plaintiffs would be infringed and they will suffer irreparable loss which cannot be compensated in terms of money and there being no infirmity or illegality in the orders of the District Judge granting ad interim injunction against the Defendant-Appellants and refusing to recall the same, this Court may not interfere in the matter.

12. Mr. Mohanty further submitted that preparation of a dictionary (Bhasakosh) on a particular language/subject involves considerable amount of labour, skill and judgment. Copyright therefore subsists in a dictionary for the arrangement, sequence or idioms, etc. of a dictionary cannot be appropriated by another and, as such, the right is not governed u/s 22 of the Act. He also submitted that the Copyright Act was enacted in the year 1967. Before the said Act, copyright in India was governed by British Act of 1911 by virtue of Indian Copyright Act, 1914. It is submitted that in the 1911 Act, right of a legal heir of the author was well protected even after expiry of the period of copyright. Their right is also protected by the 1957 Act. According to Mr. Mohanty, a cumulative reading of the 1911, 1914, 1957 and 1967 Acts would lead to an irresistible conclusion that the natural proprietary right is not defeated or circumvented by the period specific u/s 22 of the Act.

13. Mr. Mohanty drew attention of this Court to Sub-section (4)(b) of Section 79 of the Act which deals with repeals, savings and transitional provisions. Sub-section (4) of Section 79 stipulates that where copyright subsists in any work immediately before commencement of the Act, the rights comprising such copyright in Section 14 in relation to the class of works to which such work belongs, and where any new rights are conferred by that section, the owner of such right shall be the person who was the first owner of the copyright in the work under any Act repealed by Sub-section (1) or his legal representatives.

14. Emphasising the term "legal representative" appearing in Section 79, Mr. Mohanty submitted that the rights of the Plaintiffs who are the legal heirs of the admitted author are also protected and, as such, the submission of the Defendants that the suit is not maintainable is misconceived.

15. After patiently hearing the learned Counsel for the both sides, meticulously going through the pleadings of the parties, carefully examining the legal provisions and diligently considering the matter in issue, this Court finds that all the submissions raised by Mr. Acharya before this Court relate to the merit of the suit. Therefore, this Court feels that it would not be prudent to adjudicate the matter at this stage which may pre-judge the issue in the suit. Law is well settled that while considering an interim application it would be sufficient for the Plaintiff to satisfy the Court that he had a fair question to raise as to existence of his

right, and that ends of justice and equity warrant that such right should be preserved until disposal of the suit. At that juncture it is not required for the Plaintiff to prove his right and it would be sufficient if he can prima facie satisfy the Court that he has got a good case to go to the trial.

16. After hearing the learned Counsel for the parties and going through the provisions of Act and the decisions relied upon, this Court feels that it is not a case where the plaint ought to have been rejected at the very threshold. The Plaintiffs had a presentable case and the same had to proceed up to its logical end after giving opportunity of hearing to all the parties.

17. The question as to whether the suit is governed u/s 22 of the Copyright Act and as to whether the said provision at all applies to a dictionary and as to whether in view of Section 79(4)(b) and the relevant provisions of the 1911 and 1914 Acts, the rights of the legal heirs subsist after the period specified in Section 22 of the Act are aspects which have to be dealt with and answered in the suit itself and therefore this Court refrains from expressing any opinion at this stage as the same would amount to prejudging the issues. Thus it is revealed that the Plaintiffs have a prima facie case and the balance of convenience tilts in their favour. The other ingredient, i.e. irreparable injury, also tilts in favour of the Plaintiffs. The conclusions arrived at by the Court below appear to be just, proper and in consonance with the materials available and this Court declines to interfere with the impugned order.

18. It is submitted that the first volume of the Bhasakosh has already been published. The Bhasakosh in question is a master-piece and there is no doubt about it. If the first volume has already been published, it would not be prudent to keep the same away from the general public. Therefore this Court directs that if a suitable petition is filed by the Defendants before the Court below disclosing the number of copies printed and published, the said Court after granting opportunity of hearing to the Plaintiffs may pass suitable orders, and if necessary appoint a suitable person or agency to sell the copies of the Bhasakosh already published and pass such order as may be necessary for depositing the entire sale proceeds in Court. If moved, the Court may also consider as to whether the amount spent by the Defendants towards printing and publishing the First Volume can be disbursed. Printing and publishing of other volumes would depend upon the result of the suit and so also the entitlement to the amount lying in deposit in Court after payment of the printing cost to the Defendants, if so directed. This Court further directs the Court below to dispose of the suit within a period of four months, if there will be no impediment. Parties are directed to cooperate with the Court.

The FAO is accordingly disposed of.