

(1994) 01 DEL CK 0010

In the Delhi High Court

Case No : Interim Application No's. 3592 and 6466 of 1993 and Suit No. 759 of 1993

Mahanagar Telephone Nigam Limited and Others

APPELLANT

Vs

Tata Press

RESPONDENT

Date of Decision : 11-01-1994

Acts Referred:

Citation : (1994) 53 DLT 234 : (1994) 28 DRJ 541

Hon'ble Judges : J.K. Mehra, J

Bench : Single Bench

Advocate : A.K. Sikri, M. Sikri, M.M. Sharma, Vikram Dholakia, S.K. Kapoor, A.H. Desai, Sunil Gupta and A.K. Verma, for the Appellant;

Judgement

J.K. Mehra, J.

(1) The plaintiff has filed this suit, alleging that the defendant in intending to publish yellow pages the defendant known as Tara Press Yellow Pages (hereinafter referred to as the "yellow pages") is in violation of the Rule 458 of the Indian Telegraph Rules, 1951. The plaintiff has also filed with the plaint aforesaid application under Order 39 Rules 1 and 2 of CPC being I.A. 3592/93 seeking an interim injunction restraining the defendants from printing and/or publishing and/or advertising and/or distributing the "Yellow Pages" booklet to anyone. No ex-parte interim injunction was granted in this case and notices were issued to the defendants who have since filed reply to the injunction application. The case of the plaintiff mainly is that the publication and printing of the said yellow pages in the form sought to be published by the defendant is nothing but publication of a parallel directory in an abridged form on the line of the yellow pages which are at present forming a supplement to the directory of the telephone subscribers being got printed by the plaintiff. It is further contended by the plaintiff that bulk of the entries of the "yellow pages" are mere list of telephone subscribers listed Trade-wise free of charge and only a small number of such parties are coming forward with advertisements in the said "yellow

pages" and to the extent that the "yellow pages" can be described as a list of telephone subscribers and that would be deemed to be publication of a telephone directory as contemplated by the aforesaid Rule 458 of Indian Telegraph Rules. Counsel for the plaintiff has contended that the aforesaid rule should receive widest possible interpretation and that any limited interpretation would only defeat the intention of the rule and make it redundant. Counsel has cited the meaning given to telephone directory in certain dictionaries such as Webster wherein it has been given the following meaning:-

"CLASSIFIED section of telephone directory listing subscribers by the type of business or service they offer".

And new Oxford English Dictionary wherein directory is defined as under:-

"A book containing an alphabetical or classified ,list of the people in some category, e.g. telephone subscribers or clergy with information about them."

(2) In the same dictionary yellow page have also been separately dealt with which is as under:-

"(PROPRIETor Yname for) the classified section of or supplement to a telephone directory, printed on yellow paper and listing firms, products and services."

(3) The claim of the plaintiff both in suit as also injunction application has been contested by the defendants. Counsel for defendants has cited Collin dictionary wherein the expressions "Directory", "Classified Directory", "Commercial Directory or Trade Directory" and "Telephone Directory" are explained as under:- "Directory" noun list of people or businesses with information about their addresses and telephone numbers: "Classified Directory" list of businesses grouped under various headings, such as computer shops or newsagents: "Commercial Directory or trade Directory" book which lists all the businesses and business people in a town; "Telephone Directory" book which lists all people and business who have telephones, in alphabetical order with their phone numbers.

(4) He has argued that the expressions "Commercial Directory or Trade Directory" convey quite distinct and different meaning from "Telephone Directory" and they cannot be deemed to be the same. He also cited Black's Law Dictionary wherein word "Directory" is explained as under:-

" Directory", Book containing names, addresses, and occupations of inhabitants of city. Also any list or compilation, usually in book or pamphlet form, or persons, professional organisations, firms or corporations forming some class separate and distinct from others, e.g. telephone directory, lawyer's directory, hotel directory etc."

It is further contended that the order on the interim injunction application which was passed against the plaintiff was also challenged both before the City Civil Court and Bombay High Court as well as Supreme Court and in all these for a the plaintiffs failed and to that extent the Court here should also stay its hands from

granting any injunction. They have been to the Supreme Court twice, once against the interlocutory order being revised by the Trial court as also the High Court and second time when the appeal against the final judgment was admitted but no interlocutory order was granted to the plaintiff and on each occasion. Supreme Court dismissed the SLP. Secondly, it is alleged that not only a similar injunction application had failed at Bombay but the publication of yellow pages by different publishers has gone on for quite some time and that even recently another publication, which is not even on yellow pages but is on white pages, published by Business India known as "Business Pages", has been published known "Exporter's Yellow Pages". It has also been published recently and the plaintiffs have not taken any action against any of those thereby by their own conduct they are deemed to have waived their right and are estopped from challenging or objecting to any such publication. They have also cited instances of "Sell Pages"" which has been published for the past several years (since 1984) and in that particular publication even plaintiffs advertisements have appeared in the 1990 Edition of Sell pages.

(5) The defendant has also contested the applicability of Rule 458 on various grounds. Firstly they contended that the rule itself has no application to their publication because the title of the rule which reads "Publishing of telephone directory, but the rule in its body does not repeat the expression telephone directory but merely states "except with the permission of telegraph authority no person shall publish any of telephone subscriber" which would suggest the words "telephone directory" in the title of the rule and intended to mean list of telephone subscribers only. It is further contended that no such restriction could have been imposed under the Rules as such the rule was ultra virus Section 7 of the Indian Telegraph Act which lays down the rule making powers of the Telegraph authority. They have further contended that the said Rule 458 is also ultra virus the Constitution of India being violative of Article 14, 19(1)(a) and 19(1)(g), and lastly counsel of the defendant contended that the Supreme Court while dismissing the SLP on 15.3.93 observed that no interim injunction should be granted particularly in the light of the such publications having been in vogue for a long time.

(6) The defendant also moved a substantive application u/Section 10 of CPC being I.A. No. 6466/93 praying for the stay of the present suit pending hearing and final disposal of the suit No. 6026/92 at Bombay. It has been pointed out that the suit has since been disposed of by a judgment of the City Civil Court which has been decided against the plaintiff and an appeal against the said judgment is still pending before Bombay High Court. The Bombay Suit was also for the stay of publication of similar yellow pages of this very defendant at Bombay and the issues raised by the plaintiff before the Court at Bombay were substantially the same. The other ground of opposition also which had been taken before the Court at the time of arguments apart from the matter being directly covered by the judgment of Bombay Court, are it has been further urged on behalf of the defendant that the controversy in the present suit itself would be

barred by the principle of rest judicator inasmuch as Bombay City Civil Court has finally disposed of the suit and it is now only an appeal which is pending before the High Court of Bombay.

(7) In support of its application u/Section 10 the defendant has filed copies of the plaint at Bombay apart from the various orders passed in the proceedings at Bombay which I have perused in support of their contention that the Court should not proceed with the trial of this suit as the matter in issue in the present suit is directly and substantially in issue in the Bombay suit which happens to be previously instituted suit between the same parties. They have, however, not challenged the jurisdiction of this Court to deal with the interim relief applications even if the provisions of Section 10 of CPC impose a bar to the trial of a particular suit. The Counsel for the defendant however, states that in the light of their contention that the suit itself is not maintainable the suit in any event should not be proceeded with and even the interlocutory applications should not be entertained.

(8) I have considered the various contentions and would like to deal with the second application first. I have compared the plaint before the Bombay Court as also before this Court and also the other annexures filed with the application. I find that the matter in issue before this Court in the suit is in fact directly and substantially in issue in the previously instituted suit at Bombay. Not only that I find that in the body of the suit before Bombay Court the venue of the publication of yellow pages both at Bombay and Delhi have been referred to and the prayer also is not limited only to the publication of yellow pages at Bombay. In that view of the matter I hold that the bar of Section 10 CPC would be attracted in and as such the proceedings in the suit have to be stayed. Therefore, I allow this application and stay the suit pending final disposal of the suit at Bombay.

(9) Counsel for the defendant also raised the plea of the present suit being barred by the principle of res-judicata. On their own showing appeal against the final judgment of the Court at Bombay is still pending. As such it cannot be said that any matter in issue before the Bombay Court stands finally adjudicated upon and for that reason I cannot entertain the plea of res-judicata. This plea is Therefore rejected.

(10) By the stay of the suit u/s 10 of CPC the jurisdiction of Court to entertain and deal with interim applications seeking urgent relief in the interest of justice is not taken away. The Court can hear such applications and pass such interim orders as may be deemed appropriate and it is in the light of this legal position that I proceeded to hear both the parties in respect of the injunction application.

(11) In support of his contention Mr. Sikri has strongly relied upon the observations by B.N.Kirpal, J. on a similar application in an earlier suit against another party namely Mtnl Vs.ABI Overseas Ltd. Suit No. 127/88.I may point out that this particular order of the Single Bench of this Court while disposing of that

interim application was brought to the notice of the Hon^{ble} Supreme Court and that with full awareness of what had been held in this order, the Supreme Court rejected the contentions of the plaintiff on both the occasions. Further- more, I may point out that while disposing of the application the Court had declined the injunction though on a different ground i.e. of non-impleadment of telegraph authorities and since relief had been declined the defendant in that suit did not take the matters any further by filing any appeal against the reasons given in such an order, as there was no occasion for challenging the said order and testing it in appeal. In that order, however, this Court had held that Rule 458 does apply to cases similar to defendants yellow pages though it also states that said rule does not preclude permission to be granted to more than one person to publish telephone directory. The Court in that very order had held "merely because business of the plaintiff may be adversely affected by the defendant publishing yellow pages is not sufficient to enable the plaintiff in this case to ask for an injunction against the defendant". The intention of the rules has to be drawn from the context in which those were framed. In 1951, there was no publication like the yellow pages in vogue. My attention is drawn to the certain guidelines which the department had come out within the year 1971 for allowing publication of directories. A perusal of the said guidelines shows that the intention of the rule as reflected in the guidelines is primarily to avail of some revenue for publication of such telephone directories by other parties as certain rates had been prescribed as the fee for permission and that to secure indemnity for the department against any action or adverse claim that the Department may be exposed to on account of such publication. Nothing further has been indicated to me as the intention behind the rule. Furthermore, no penalties have been provided for any violation of this rule, though there does exist authority for making such rules laying down penalty or fines etc. In the Bombay suit the Court has already declared Rule 458 as ultra virus the Act as also Constitution of India and the said rule has consequently been struck down. In the light of such controversy awaiting final adjudication at Bombay it will not be appropriate for me to pronounce either way in respect of the legal validity or applicability of the said rule. I have compared the publications of the defendant with that of the "Business Pages" and "Exporters" Yellow Pages". The defendants yellow pages are a compilation of various persons in different businesses and professions and they do not include the name of any person who does not belong to any particular business or class of business or profession such as housewives or students. It is conceded by the defendants Counsel that there are a large number of free entries in their publication which have been included primarily with the object of making a publication more comprehensive and informative for information of the various businesses. In the light of the above I think the main consideration before Court in dealing with the present applications should be that of balance of convenience as I do not wish to pronounce on the merits of the plaintiffs case due to pendency before Bombay Court. The main contention of the plaintiff is that they at present are getting the directories published through a contractor who has been conceded the benefit of revenue that he may earn from

the yellow pages which appear as a supplement to the plaintiff's telephone directory and it is on account of possibility of earning adequate profit that the contractors can be lured not only to print the directories for the plaintiff free of charge which otherwise would have cost the plaintiff about Rs. 600.00 per set of directory which would cost the plaintiff an enormous amount but have come forward to pay royalty to the plaintiff. It is further conceded that at present there is no imminent danger of any loss as the present contractor has contracted to publish directory for the next five years and has also committed to pay to the plaintiff a royalty of Rs. 80 crores. On the other hand, the defendants have alleged that they had already committed Rs. 1.7 crores which at the time of arguments was mentioned as having swelled to Rs. 4 crores by way of expense which has already been incurred in compiling the Tata Press Yellow Pages, Delhi, proof copy and arranging for the paper required to turn out the final prints and if injunction is granted all this expense and effort will go waste. In the light of these facts and keeping in view the totality of circumstances I am of the view that balance of convenience is in favor of the defendant and as such, am not inclined to grant an injunction against defendant, I, however, think that it will be in the interest of justice if the defendants are put to certain terms which are as under:- (1) The defendant shall deposit in this Court a sum equal to the royalty provided in the Guideline No. VI(c) and also the defendant should file in this Court within two weeks from today an indemnity bond in terms of Guideline No. Iii which reads as under:-

"THE publishers shall keep the P&T Department indemnified against all actions, proceedings, claims and demands whatsoever made against the department by reason of anything contained in the directory, so published."

(2) The defendant shall not make use of the plaintiff's software for publishing or printing their Yellow Pages. This order shall apply only to the Tata Press Yellow Pages, Delhi-1994 and will be without prejudice to the respective rights and contentions of the parties either in this suit or in the proceedings before the Bombay Court, nor will it be treated as an expression of opinion on the merits of either party's case in the suit. In the circumstances of the case, parties are left to bear their own costs. Both I. As. No.3 592/93 and 6466/93 are disposed of in the above terms. Suit No 759/93. In the light of the order passed on I.A 6466/93 application today, the suit is adjourned sine die to be revived, if required, after the final disposal of the suit filed in Bombay Court.