

(1970) 12 CAL CK 0002
In the Calcutta High Court

Case No : Appeals from Original Order No"s. 203 and 258 of 1966

Maheswar Swain

APPELLANT

Vs

Bidyut Probha Art Press and Another

RESPONDENT

Date of Decision : 16-12-1970

Acts Referred:

Calcutta City Civil Court Act, 1953 — Section 5(2)
Civil Procedure Code, 1908 (CPC) — Section 2(4)
Copyright Act, 1957 — Section 62

Citation : AIR 1971 Cal 455 : 75 CWN 944 : (1972) 1 ILR (Cal) 135

Hon'ble Judges : P.N. Mookerjee, J;Amiya Kumar Mookerji, J

Bench : Division Bench

Advocate : Beni Madhav Sett, for the Appellant;Goutam Prasad Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

P.N. Mookerjee, J.—These appeals are by the plaintiff and they arise out of two suits for damages, injunction and other reliefs in respect of an alleged infringement of the plaintiff"s copyright against the defendants.

2. The suits have been dismissed by the learned Judge of the City Civil Court on the preliminary ground that the suits were not entertainable by the said court.

3. The short question, which arises for consideration in these appeals, is whether the learned Judge of the Court below was right in his aforesaid view.

4. The suits in question were, obviously u/s 62 of the Copyright Act and, under that section, such suits have to be instituted in the "district court having jurisdiction" vide Sub-section (1). For the meaning of the expression "District Court" one has to turn to Section 2(4) of the Code of Civil Procedure, and, on the question of jurisdiction, the immediately relevant sections will be Sections 19 and 20 of the Code. The Copyright Act, in Sub-section (2) of Section 62, contains an extension of this jurisdiction.

5. It is clear from the above that, in order that the City Civil Court would be entitled to entertain the present suits under the above law, it must be a "district court having jurisdiction" within the meaning of the above Sub-section (1), read with or in the light of Section 2(4) of the CPC and the relevant jurisdictional provisions, as mentioned hereinbefore. The immediate enquiry, therefore, will be whether the City Civil Court would, in the instant case, satisfy the above test.

6. There is no dispute that the defendants here are residents within the local limits of the jurisdiction of the City Civil Court so as to attract Section 20(a) of the Civil Procedure and make the said Court the proper forum under that section for institution of the present suits, if the said Court is otherwise competent for the purpose. Same would also be the conclusion under the provision for extended jurisdiction, as contained in Section 62(2) of the Copyright Act, as the plaintiff here carries on business within the said local limits.

7. The point, therefore, will be whether the City Court can be held to be "the principal civil court of original jurisdiction" for the aforesaid purpose within the meaning of Section 2 Sub-section (4) of the Code of Civil Procedure.

8. It is obvious that, u/s 5 of, the Calcutta City Civil Court Act, the instant suits, being of value, less than Rupees 50,000/-, would be entertainable only by the City Civil Court under Sub-section (2) of the said Section 5 to the exclusion of all other courts, including the High Court. In the circumstances, the City Court may well be regarded as "the principal civil court of original jurisdiction" for purposes of the instant suits within the meaning of Section 2, Sub-section (4) of the Code of Civil Procedure.

9. In the above view, the Calcutta City Civil Court will be "the principal civil court of original jurisdiction," within the local limits of which the defendants of the instant suits reside and the plaintiff also carries on business. That court, therefore, will be the appropriate court and the proper forum for entertaining and trying the present suits, it being, for that purpose, the "district court having jurisdiction", within the meaning of Section 62(1) of the Copy write Act, satisfying, as it does, the relative tests under Sections 2(4) and 20 of the Code.

10. The matter, considered above, may also be looked at from another point of view to lead to the same result. Prior to the Calcutta City Civil Court Act, this High Court, in its original jurisdiction, would have been the principal civil court of original jurisdiction, within the local limits of which the defendants reside and the plaintiff also carries on business, and, accordingly, these suits would have been entertainable by this High Court in its original jurisdiction. After the enactment of the City Civil Court Act, however, in view of Section 5 of the said Act, that jurisdiction has clearly been taken away from this High Court and vested in the City Civil Court under Sub-section (2) of Section 5, read with Sub-section (1). This is clear, on a reading of the said Section 5, the two reservations in Sub-sections (3) and (4) not being relevant for our present purpose. That position is also affirmed by Sub-section (5) of the said Section 5. Clearly, therefore, the

change, introduced by the City Civil Court Act to the relevant law, as noticed above, would make the City Civil Court, for purposes of the present suits, the "principal civil court of original jurisdiction" within the local limits whereof the defendants reside and the plaintiff also carries on business. From this point of view also, the City Civil Court will be the court, in which the present suits ought to be filed.

11. In the above view of the matter, we hold that the learned trial Judge was wrong in holding that the City Civil Court had no jurisdiction to entertain and try the present suits and in directing return of the plaints for presentation to the proper court and that order must be set aside.

12. It is also interesting to note that, although the learned trial Judge has directed return of the plaints for presentation to the proper court, it would be difficult to find out, to which court the plaints can properly be presented, if the City Civil Court be not the proper Court for the purpose. So far as this High Court in its original jurisdiction is concerned, whatever other tests it may satisfy in that connection, it is obvious that, in view of Section 5 of the City Civil Court Act, it cannot entertain the present suits and there will be no other court,--not to speak of "district Court",--which can entertain the instant suits on the allegations, made in the plaints, if the City Civil Court has to be excluded.

13. We need only add that the view, which we have taken above, would be supported by the decision of Fletcher, J. in *Kedarnath Mondal v. Gonesh Chandra Adak* 12 Cal WN 446 (447). That decision, although relating to a different Act, would support our point of view on principle, as the Act, considered there, was, so far as the present point is concerned, almost in *pari materia* with the Copyright Act. Our view would also be supported, on principle, by the observations in the Bench decision of this Court in *Samir Kumar Banerjee v. Sm. Sujata Banerjee* (1966) 70 CWN 633 and the decision of the Supreme Court in *Raja Soap Factory and Others Vs. S.P. Shantharaj and Others*, at p. 1450. The decision of this Court, reported in *Shaikh Hyat Mahomad v. Shaikh Mannu*, 45 Cal LJ 71 = AIR 1927 Cal 290 would be clearly distinguishable and would have no application here. But we may point out that the comments, made therein, against the decision in (1908) 12 Cal WN 446 (447) may require reconsideration, as the earlier decision (*Hafiz Aminuddin Ahmed v. G.L. Garth* (1899) 3 CWN 91), which was taken as the basis for those comments, would itself be distinguishable and would not support the same. In (1899) 3 CWN 91 (*supra*), the question was whether the original side of this Court was subordinate to the appellate side and that question was, as it appears to us, rightly answered in the negative by the Bench. In *Hyat Mahomed and Others Vs. Shaikh Mannu and Others*, , reliance was placed on the above decision for the purpose of holding that the original side of this Court was not subordinate to the Appellate Bench on that side. The analogy is hardly correct or convincing and the above view may well be open to question.

14. The decision reported in *S. Dharmalinga Nayakar Vs. D. Balasubramania*

Ayyar and Another, also, is clearly distinguishable as the relative or corresponding and relevant statutory provisions, there under consideration, namely Sections 3 and 16 of the Madras City Civil Courts Act, 1892, and Section 13 of the Old Copyright Act of 1914, were differently worded with this very material difference that the Madras City Civil Court had no exclusive jurisdiction but only a limited concurrent jurisdiction with the High Court and could not be called a principal Civil Court of original jurisdiction so as to satisfy the test of a District Court or Court of a District Judge to enable, or entitle it to assume jurisdiction under the Copyright Act.

15. In the above view of the matter, we would allow these appeals, set aside the impugned decision of the learned trial Judge and direct that the suits in question be entertained by the City Civil Court and tried out in accordance with law.

16. There will be no order for costs in any of those appeals.

Amiya Kumar Mookerji, J.

17. I agree.