

(2013) 03 KAR CK 0069

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3428 of 2012 (IPR)

Mr. H.S. Gadhadar and Another

APPELLANT

Vs

Times Publishing House Limited and Others

RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 39 Rule 1, Order 39 Rule 2
Press and Registration of Books Act, 1867 — Section 20, 5, 6

Citation : (2013) 3 KarLJ 531 : (2013) 4 KCCR 3201

Hon'ble Judges : L. Narayana Swamy, J

Bench : Single Bench

Advocate : Sudipto Sarkar, for M/s. Cariappa and Company, for the Appellant;
Uday Holla for M/s. Holla and Holla for Caveator, for the Respondent

Final Decision : Dismissed

Judgement

L. Narayana Swamy, J.—This appeal is filed by the first defendant in O.S. No. 8530 of 2011 on the file of the XVIII Additional City Civil Judge at Bangalore against the order dated 3rd February, 2012 passed on the Application I.A. No. 1 filed under Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC" for short) injunctioning the appellant from taking publications using the impugned titles "Financial Times" and/or "FT", in any manner, pending disposal of the suit. The brief facts, which led to the filing of this appeal, are as follows.--

The appellant 2 entered into "Financial Times Content Syndication Agreement" (hereinafter referred to as the "syndication agreement") effective from 1st June, 2011. By virtue of the said syndication agreement, the appellant 2 is licensed to use content published by The Financial Times Limited in all stipulated printed editions of the newspapers "The Financial Express" and "The Indian Express". As such, the appellant was using the contents of the Financial Times. The respondent filed the said original suit on the file of the City Civil Court, Bangalore seeking injunction against the appellants 1 and 2 herein and

defendants 3 to 5 in the said suit. It was contended by the respondent that the appellant 2 had contravened the provisions of the Press and Registration of Books Act, 1867 (hereinafter referred to as "the PRB Act"). The Court below, on 5th December, 2011, passed an ex parte order of interim injunction restraining the defendants from using the titles "Financial Times" and/or "FT". The appellants had filed an application under Order 39, Rule 4 of CPC for vacation of ex parte order. The Financial Times Limited also filed an application for impleadment. The Court below, without considering the case of the appellants, had allowed the application I.A. No. 1 and the impleading application filed by the respondent came to be dismissed.

2. The learned Senior Counsel appearing for the appellants submitted that the plaintiff has not approached the Court with clean hands and is guilty of suppressio veri and suggestio falsi. He submitted that the request of the appellant to treat the application filed under Order 39, Rule 4 of CPC, as objection to I.A. No. 1; and the contents of the application have not been considered as the defense raised by the appellants. As the suit filed by the Financial Times Limited in O.S. No. 7087 of 1993 came to be dismissed, against the same an appeal came to be filed in RFA No. 193 of 2003 and the same is pending consideration by this Court. The order passed in the suit and also the pendency of RFA has also not been considered. Hence the same is an error committed by the Court below. The impleading application filed by Financial Times Limited was dismissed on the ground of the order passed in O.S. No. 7087 of 1993 and filing of Appeal in RFA No. 193 of 2003, is also an error. The learned Senior Counsel submitted that the order of the Court below in the instant suit without hearing the Financial Times Limited, is in violation of principles of natural justice. The Trial Court further committed an error in holding that using the contents of "The Financial Times" and/or "FT", is violation of Sections 5 and 6 of the PRB Act, since the same do not apply to the instant case. The learned City Civil Judge failed to appreciate that the appellants herein do not require any approval from a Magistrate empowered to authenticate declaration u/s 6 of the PRB Act for publishing syndicated content, etc. since the appellant has not committed any violation of the PRB Act and since the same is not applicable in view of the syndication agreement, the question of equitable relief of injunction being granted does not arise. It is also further submitted that the order passed in the instant suit is bad for non-joinder of necessary party, i.e. the Financial Times Limited. The order of the learned City Civil Judge is in error in observing that the issue No. 3 in O.S. No. 7087 of 1993 filed by the Financial Times Limited, London has nothing to do with the grounds urged in the instant suit. The correctness of the order or otherwise in O.S. No. 7087 of 1993 could have been considered only after allowing the impleading application filed by the Financial Times Limited, London. Hence, it is submitted to allow the appeal.

3. The learned Counsel for the plaintiff-respondent herein supports the impugned order and submitted to dismiss the appeal. The learned Senior Counsel appearing for the plaintiff-respondent submitted that the respondent is carrying-

out the business of printing and publishing an English Newspaper titled "Financial Times" which is being published in Bangalore and New Delhi for the past several years. The said newspaper is being published by the respondent in compliance of the PRB Act. The appellants are also carrying out the same business from Bangalore. It has been contended that the appellants have used the contents of "The Financial Times" and/or "FT" in contravention of the statutory provisions of PRB Act. The syndication agreement said to have been entered into by the appellants with the Financial Times Limited, London itself is in contravention of the PRB Act since "The Financial Times" London has not taken permission under the PRB Act and hence the syndication agreement itself is illegal. The respondent, in compliance of the PRB Act, is carrying out printing and publishing of a newspaper titled "Financial Times" and/or "FT", and the same was objected by Financial Times, London by filing suit in O.S. No. 7087 of 1993. Since the suit O.S. No. 7087 of 1993 came to be dismissed, an appeal in RFA No. 193 of 2003 has been filed. When such being the case the question of entering into syndication agreement by the appellant, is illegal and the same is in violation of Sections 5 and 6 of the PRB Act. The learned Senior Counsel further submitted that the Financial Times, London itself is the appellant in the appeal before this Court and when the suit filed by the same party has been dismissed, the question of allowing the application filed for impleadment will be nothing but an entry through the backdoor, which is not permissible in law. Rightly the Civil Court had rejected the impleading application. Hence, it is submitted to dismiss this petition.

4. Heard both. The point that arises for consideration in this appeal is whether the Trial Court has committed an error in allowing I.A. No. 1. My answer would be in the negative for the following reasons.

5. The suit was filed by the Financial Times, London in O.S. No. 7087 of 1993, who filed an application under Order 1, Rule 10 of CPC seeking permission of the Court to get itself impleaded as defendant 6. It is pertinent to refer that the plaintiff in O.S. No. 7087 of 1993, which filed the suit against the plaintiff in this appeal on the ground that it was the prior user of the title "Financial Times" and/or "FT", the plaintiff committed an act of infringement and passing off using "Financial Times" and/or "FT" as title in their publications. The very same contentions are raised in the instant suit by the plaintiff against the appellants. The appellants who were publishing the contents of "Financial Times" and/or "FT" on the basis of the syndication agreement with the Financial Times Limited, London was the plaintiff in O.S. No. 7087 of 1993. In the said suit issue No. 3 was framed and the same has been answered against the plaintiff. When the impleading applicant has lost the suit filed and is before this Court in RFA No. 193 of 2003 and has also filed application to obtain an interim order from this Court, the question would be whether such person is entitled for relief by allowing his application for impleadment? The said question has been answered by the Trial Court by rightly rejecting the application and the reasons assigned are in consonance with the provisions of Code of Civil Procedure, 1908. Hence, I

find no error passed by the Court below in rejecting the application for impleadment.

6. The second question is, whether is it open to the appellants herein to enter into a syndication agreement with the Financial Times Limited, who was the plaintiff in O.S. No. 7087 of 1993? In order to answer this question, Sections 5 and 6 of the PRB Act are to be read together. The same read as under:

5. Rules as to publication of newspapers.--No newspaper shall be published in India, except in conformity with the rules hereinafter laid down:

(1) Without prejudice to the provisions of Section 3, every copy of every such newspaper shall contain the names of the owner and editor thereof printed clearly on such copy and also the date of its publication

(2) The printer and the publisher of every such newspaper shall appear in person or by agent authorised in this behalf in accordance with rules made u/s 20, before a District, Presidency or Sub-Divisional Magistrate within whose local jurisdiction such newspaper shall be printed or published and shall make and subscribe, in duplicate, the following declaration:

I A.B., declare that I am the printer (or publisher, or printer and publisher) of the newspaper entitled.... and to be printed or published, or to be printed and published, as the case may be at....

And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted.

(2-A) Every declaration under rule (2) shall specify the title of the newspaper, the language in which it is to be published and the periodicity of its publication and shall contain such other particulars as may be prescribed.

(2-B) Where the printer or publisher of a newspaper making a declaration under rule (2) is not the owner thereof, the declaration shall specify the name of the owner and shall also be accompanied by an authority in writing from the owner authorising such person to make and subscribe such declaration.

(2-C) A declaration in respect of a newspaper made under rule (2) and authenticated u/s 6 shall be necessary before the newspaper can be published.

(2-D) Where the title of any newspaper or its language or the periodicity of its publication is changed, the declaration shall cease to have effect and a new declaration shall be necessary before the publication of the newspaper can be continued.

(2-E) As often as the ownership of a newspaper is changed, a new declaration shall be necessary.

(3) As often as the place of printing or publication is changed, a new declaration shall be necessary:

Provided that where the change is for a period not exceeding thirty days and the place of printing or publication after the change is within the local jurisdiction of the Magistrate referred to in rule (2), no new declaration shall be necessary if:

(a) a statement relating to the change is furnished to the said Magistrate within twenty-four hours thereof; and

(b) the printer or publisher or the printer and publisher of the newspaper continues to be the same.

(4) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave India for a period exceeding ninety days or where such printer or publisher is by infirmity or otherwise rendered incapable of carrying out his duties for a period exceeding ninety days in circumstances not involving the vacation of his appointment, a new declaration shall be necessary.

(5) Every declaration made in respect of a newspaper shall be void, where the newspaper does not commence publication:

(a) within six weeks of the authentication of the declaration u/s 6, in the case of a newspaper to be published once a week or oftener; and

(b) within three months of the authentication of the declaration u/s 6, in the case of any other newspaper,

and in every such case, a new declaration shall be necessary before the newspaper can be published.

(6) Where, in any period of three months, any daily, tri-weekly, bi-weekly, weekly or fortnightly newspaper publishes issues the number of which is less than half of what should have been published in accordance with the declaration made in respect thereof, the declaration shall cease to have effect and a new declaration shall be necessary before the publication of the newspaper can be continued.

(7) Where any other newspaper has ceased publication for a period, exceeding twelve months, every declaration made in respect thereof shall cease to have effect, and a new declaration shall be necessary before the newspaper can be re-published.

(8) Every existing declaration in respect of a newspaper shall be cancelled by the Magistrate before whom a new declaration is made and subscribed in respect of the same:

Provided that no person who does not ordinarily reside in India, or who has not attained majority in accordance with the provisions of the Indian Majority Act, 1875 (9 of 1875), or of the law to which he is subject in respect of the attainment of majority, shall be permitted to make the declaration prescribed by this section, nor shall any such person edit a newspaper.

5-A. x x x

6. Authentication of declaration.--Each of the two originals of every declaration so made and subscribed as is aforesaid, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made:

Provided that where any declaration is made and subscribed u/s 5 in respect of a newspaper, the declaration shall not, save in the case of newspapers owned by the same person, be so authenticated unless the Magistrate [is, on inquiry from the Press Registrar, satisfied] that the newspaper proposed to be published does not bear a title which is the same as, or similar to, that of any other newspaper published either in the same language or in the same State.

Deposit.--One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature, or [other principal Civil Court of original jurisdiction for the place where] the said declaration shall have been made.

Inspection and supply of copies.--The Officer-in-charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.

A copy of the declaration attested by the official seal of the Magistrate, or a copy of the order refusing to authenticate the declaration, shall be forwarded as soon as possible to the person making and subscribing the declaration and also to the Press Registrar.

7. As per Section 5 of the PRB Act, it is mandatory for printers and publishers of every newspaper to be published in India, to appear in person or by its agent before the District, Presidency or Sub-Divisional Magistrate within whose legal jurisdiction such newspaper shall be printed or published to make a declaration. This fact has been reiterated in the judgment of this Court reported in the case of Times Publishing House Ltd. Vs. The Financial Times Ltd., wherein it is held that there is no right to publish a newspaper in India without compliance of the provisions of the Press and Registration of Books Act, 1867. When such mandatory provisions are made, the said Sections have to be accepted and followed by all the Newspapers, Printers and Publishers. This mandatory provision has been violated by the appellant herein who entered into a syndication agreement with the Financial Times, London. The very syndication agreement itself is illegal and in violation of Sections 5 and 6 of the PRB Act. The Court below has rightly referred the judgments in the case of Times Publishing House Limited, Bangalore; and in the case of Times Publishing House Limited v. The Registrar of Newspapers of India, in Writ Petition Nos. 20093 and 20094 of 2009 disposed of on 15th April, 2010. The respondent herein, who had taken permission under the provisions of the PRB Act to print and publish the newspaper titled "Financial Times" in India and use "Financial Times" and/or "FT"

and when that is its statutory right, the same could not be encroached upon by the appellants herein. The documents produced by the defendants and the paper cutting of Financial Express shows that the Financial Express has used the title "Financial Times" and "FT" at the top and it would definitely misguide the readers. Secondly, when the appellants are legally not permitted to use the same and when they are using "Financial Times" and/or "FT" illegally, that itself is sufficient to grant injunction against the appellants and rightly the same has been granted by the Court below as per Annexure-B. It has been printed at the top "by special arrangement with" and further with big letters "FT"; and on similar lines is the "Financial Express Volume Nos. 24 and 198". This, printing and using of Financial Times, is illegal and contrary to the provisions. The contentions of the Financial Times, London were dismissed declaring that the plaintiff in O.S. No. 7087 of 1993 cannot use "Financial Times" and/or "FT" against all other printers and publishers to use "Financial Times" and/or "FT" which belongs to respondent-plaintiff herein.

8. Under these circumstances, the Trial Court has rightly examined the case of the appellants and allowed I.A. No. 1 and I do not find any infirmity and error in the order. The point formulated is answered accordingly. Appeal accordingly is dismissed.