

(1993) 02 DEL CK 0028
In the Delhi High Court
Case No : C.R. No. 100 of 1993

M/s. Super Cassette Industries Ltd.

APPELLANT

Vs

M/s. Bathla Cassettes India (P) Ltd.

RESPONDENT

Date of Decision : 04-02-1993

Acts Referred:

Citation : AIR 1994 Delhi 237 : (1993) 1 ARBLR 538 : (1997) 50 DLT 7 : (1993) 25 DRJ 410 : (1993) RLR 243

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Swatantar Kumar with N.K. Bhardwaj, for the Appellant; Ajay Sawhney with M.L. Mangla, for the Respondent

Judgement

1. Mr. Swatantar Kumar, appearing for the petitioner, at the outset submitted that instead of treating this petition as Revision, it be treated as an Appeal (FAO):
2. The point in controversy is with regard to the maintainability of this petition. The submission of the respondent had been that the petitioner ought to have filed an application under Order 39, Rule 4 for vacation of the ex parte injunction before the trial court, instead of approaching this Court either in the revision or in appeal. Hence, neither the appeal nor the revision is maintainable in the facts and circumstances of this case.
3. In order to appreciate the objection, the brief facts of the case are that M/s. Bathla Cassettes Industries Private Ltd. filed a suit seeking declaration u/s 60 of the Copyright Act (hereinafter called as the "Act") on the ground of groundless threats extended by the defendants M/s. Super Cassettes Industries Ltd. (petitioner herein) and also sought injunction. The allegation of the plaintiffs in the plaint were that it was manufacturing and marketing pre-recorded audio Cassettes under its brand name "LARA". Apart from Punjabi, Bhojpuri, Hindi songs, its company has also been manufacturing and marketing the cassettes of devotional songs. That apart, the plaintiff-company has also been manufacturing and marketing musical cassette titled "AKRAM RAHI (DARD KA RAHI) TERI GALI

WICHON". The plaintiffs' name has been synonymous to excellent quality and good tapes. The audio cassette contains songs which had been originally sung by Pakistani Artists and producers of such musical works when the record first came into existence was a Pakistani national or a company incorporated under the laws of Pakistan. The Pakistani songs are reproduced in India by a number of different manufacturers under their name and title. For the said musical work no copyright subsists under the Indian Law. The defendant M/s. Super Cassettes Industries Ltd. has been falsely claiming itself to be the assignee of the said work in India whereas in fact no such assignment exists or is enforceable as there does not exist any agreement since Pakistan is not a signatory to phonograms convention. Therefore no exclusive right to these songs can be claimed by the defendants in India. It was further alleged in the plaint that the defendants were wrongfully issuing threats to the plaintiffs, its stockiest agents/retailers. Pursuance to the verbal threats, the defendant has also issued a warning notice in the "Sandhya Times" dated 5th January, 1993 in respect of such work. On account of these threats and warnings, the plaintiff's business has been interfered with. It was in this background that the suit u/s 60 of the Act was filed.

4. The Trial Court granted the injunction ex parte and at the same time restrained the defendants (present petitioner) from interfering with the business of manufacture and sale of musical work namely "AKRAM KARAH (DARD KARAH) TERI GALI WICHON" carried on by the said plaintiffs. It is in fact against this ex parte injunction granted by the Addl. District Judge that the petitioners have come to this Court challenging the same inter alias on the ground that the impugned order passed by the Addl. District Judge is without jurisdiction as the Court below had no right vested in it to grant such an injunction. At best the Trial Court could have granted the injunction as stipulated u/s 60 of the Act, but the impugned restraint order is beyond its jurisdiction.

5. Section 60 of the Act is reproduced as under :

SECTION 60 :

"Where any person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright, any person aggrieved thereby may notwithstanding anything contained in Section 42 of the Specific Relief Act, 1877 institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit -

(a) obtain an injunction against the continuance of such threats, and

(b) recover such damages, if any, as he has sustained by reason of such threats :

Provided that this section shall not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him."

6. The provisions of Section 60 make it clear that if a person is threatened with any alleged infringement of copyright and if, in fact, the actions of the persons threatened do not constitute any infringement of the legal rights of the person who makes such threats, he can file a declaratory suit and obtain an injunction against the continuance of such threats. He can also obtain damages which he may have sustained by reason of such threats. These provisions are designed to protect a person against any wrongful threats relating to infringement of copyright and the only relief which can be asked for is an injunction against the continuance of such threats and damages occasioned by reason of such threats. The proviso to this Section makes this position amply clear because it provides that this section will have no application if a person, who has made such threats, commences and prosecutes with due diligence an action for infringement of the copyright claimed by him. Once a suit is filed for infringement of the copyright by the person who has given the threat, the suit u/s 60 becomes infructuous as the Section ceases to apply in such a situation. In the case in hand, the plaintiffs before the trial Court had filed a suit u/s 60 as is apparent from the copy of the plaint which is filed herewith and in that suit he has sought the declaration to the effect that the defendant M/s. Super Cassettes Industries Ltd. is not the exclusive owner of the musical work i.e. Pakistani song sung by the Pakistani artists and that the alleged assignment has no force in law because no such assignment is in existence nor Pakistan is a signatory to the phonogram convention, Therefore, the defendant company cannot claim exclusive right. Further injunction was sought on the ground that the defendants were issuing verbal threats as well as by means of warning notice which tantamounts to interfering with the business of the plaintiffs. It is in this suit that the order was passed. Admittedly the suit as framed is what is envisaged u/s 60 of the Act. Injunction sought has flown from the principal pleadings as contained in the suit itself. Counsel for the respondent contended that there can be a comprehensive suit u/s 60 as well as for perpetual injunction. There is no quarrel with this proposition of law but the bare reading of the plaint shows that it was a suit simplicities u/s 60 of the Act. No grounds have been laid in the suit itself by which it can be inferred that it was a suit for perpetual injunction also. Merely saying that the perpetual injunction be granted is not enough. Perpetual injunction dehors the principal pleadings is redundant. The sum total of the reading of the plaint shows that it is a suit u/s 60 of the Act. The prayer has to be in consonance with the main pleadings. It is doubtful whether such an injunction could have been granted under the provision of Section 60 of the said Act and prima facie the injunction appears to be without jurisdiction.

7. Having come to this conclusion the question is when the order is without jurisdiction, should the party be asked to move an application under Order 39, Rule 4 or can he come in appeal against such an order? In such a situation, the petitioner cannot be forced to go to the trial Court and move an application for vacation of ex parte injunction. The remedy is also by way of appeal. If the ex parte injunction had been granted by the trial Court within his jurisdiction, then

of course the remedy for the petitioner was to ask for vacation of the same before the same Court. But in this case having held that prima facie it was not within the jurisdiction of the trial Court to pass such an injunction, the appeal is maintainable.

8. I accordingly hold that the injunction as granted was beyond the jurisdiction of the trial Court and set aside the impugned order and remand the case back to the trial Court to decide it in accordance with law.

9. Order accordingly.