

(2000) 11 DEL CK 0006

In the Delhi High Court

Case No : OMP. No. 194 of 2000 and OMP No. 234 of 2000

National Publishing House

APPELLANT

Vs

Mr. Amit Sachdeva
 Mr. Amit Sachdeva Vs National
Publishing House

RESPONDENT

Date of Decision : 21-11-2000

Acts Referred:

Citation : (2001) 3 AD 21 : (2001) 90 DLT 697 : (2001) 57 DRJ 859 : (2001) 2 RAJ 270 : (2001) 3 RCR(Civil) 182

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Ms. Anjana Gosaien and Mr. Sanjiv Kakra, for the Appellant; Mr. Sanjiv Kakra and Ms. Anjana Gosaien, for the Respondent

Judgement

Vikramajit Sen, J.—By these orders I shall dispose of OMP 194/2000 filed by the National Publishing House (Publisher) Vs. Amit Sachdeva (Author) and OMP No. 234/2000 filed by Amit Sachdeva (Author) against National Publishing House (Publisher) hereinafter. Both the Petitions are u/s 9 of the Arbitration and Conciliation Act 1996. In the first Petition the Publisher has prayed for an injunction restraining the author from cancelling the Agreement dated 16.3.1998 and also from transferring/assigning the publication rights of the book MICRO ECONOMICS PARTS 1 and 2 FOR B.COM.(HON.), DELHI UNIVERSITY. In the second Petition the author has prayed for an injunction restraining the Publisher from selling the Reprint 2000 of the books "Micro Economic Theory Applications Part I" and "Micro Economic Theory Applications Part II".

2. The Agreement dated 10th March, 1998, between the parties postulates inter alias as follows:

"3. That the author before handover the manuscript to the publishers shall thoroughly revise, edit and correct the manuscript.

6. That the author also hereby further agrees that the publishing and selling

rights of the work and all subsequent editions thereof shall be exclusively vested in and remain with the publishers, during the legal term of copyright.

8. That the copyright of the work shall belong to the publishers during the legal terms of copyright and the author also agree that he will not write, compile, edit or revise any similar work for any other publisher not will (Sic.) will give help and advice nor become party in any way to any similar publication during the existing terms of copyright by implication in the text book, it would be mentioned (C) Copyright Amit Sachdeva and so long as the publishing and selling rights of the work vest in and remain with the publishers, will not publish or permit to be published (C) an abridgement of the said work. (similar work or similar publication in this paragraph means a work or publication on the same subject for use in any province of India as the work or publication which is the subject matter of this agreement."

9. That the author undertakes to edit and revise within two months of receiving a request from the publishers this work and all subsequent editions of the work, that may be called for and should be refuse, neglect or be unable to do so for any reason or by death, the publishers shall arrange for revision of the work by someone else. The expense of revising and preparing each such further edition for press shall be paid by the publishers but be borne by the author.

11. That if the publishers shall at the end of five years from the date of issue of the work or any time thereafter notify to the author that the demand for the work has ceased, then this agreement shall be considered as terminated and the right to print and publish the work shall revert to the author and the publishers shall handover to the author all negatives and positives at the actual cost price paid by the publishers."

3. It appears that disputes between the parties had arisen pursuant to the author's letter dated 10.6.2000, which contains various complaints including outstanding payments. The author had stated that he would treat the contract as called off and would be free to get the books published from any other source. He also complained that the publisher had been publishing books on the same subject of another author through its sister concern "which obviously comes in competition to my books". All these assertions and terms were negated by the publisher in terms of his letter dated 13.6.2000 in which it also made a reference to its previous letter dated 27.4.2000. This letter is of some relevance because receipt thereof had been vehemently denied by Learned Counsel for the author. Reference to this letter had also been made in a subsequent Legal Notice dated 19th June, 2000 which substantially reiterated the contentions voiced in the publisher's letter dated 13.6.2000. This letter was also replied to by the author by his letter dated June 22, 2000 in which he has, inter alia, raised a claim for damages for criminal conspiracy at Rs.21,10,000/-. This letter was again replied to by the Learned Counsel for the publisher and in paragraph 6 it has been asserted that the publisher had requested the author, vide letter dated 27th April, 2000 for the revision of the book in accordance with the terms and

conditions of the contract.

4. I feel constrained to remark that the language used by the author in his communication with the publisher and its advocate is, however wronged the author may feel, so intemperate as would not behave hope a person having an outstanding academic record and claiming to enjoy a successful authorship. It is also incongruous for a person of this background to contend the non-receipt of the letter dated 27.4.2000, when receipt thereof has not been controverted. This letter became relevant for the reason that it was in reply to the letter dated 22.4.2000 by which the author had requested the publisher not to publish further reprints in the two books till the revised texts/matters had been incorporated. Learned Counsel for the publisher had sought leave to file the letter dated 27.4.2000 in the course of arguments which I had declined. However, as mentioned above there is adequate reference to the contents of this letter in other correspondence.

5. Neither of the parties has disputed the existence of an arbitration clause. It would, therefore, be inappropriate for the Court to enter into the contention and controversies raised by either side since the adjudication of these issues should appropriately be carried out by the Arbitral Tribunal. The only question for determination is whether the parties are entitled to interim relief, in anticipation of the reference of the arbitration. In this context arguments centered on the legal rights of the parties viz.-a-viz. the tenure of the agreement. It was contended by Learned Counsel for the publisher that on a reading of the sundry clause of the Agreement, it would be at once apparent that the publisher had a right over the work/book for a period of five years. Reliance was also placed on Section 19 of the Copyright Act, 1957. It was her contention that although the Contract clearly sets down the period of assignment as five years, Sub-Section (5) of Section 19 also prescribes that if the period of assignment is not stated, it shall be deemed to be five years from the date of its assignment. The arguments to the contrary, of Mr. Sanjiv Kakra, Learned Counsel for the author, was that the Copyright remained with the author as per the hand written terms incorporated into Clause 8. He strongly contended that the foremost reason for the termination of the contract was because the publisher was marketing a rival/competing book. It was his case that even if it be assumed that the publisher was not in any manner connected with the publication of this rival book, since it was admittedly a distributor, a clash of interests had irrepressibly occurred. He drew my attention to the fact that a perusal of "Annexures K and L" would show that in the proofs/manuscript the name of the author had not been mentioned and reproduction or transmission of the work could only be carried out with the written permission of the publisher. When the book was finally published, the Copyright was explicitly mentioned to be that of the author, and reproduction or transmission was notified to be permissible only with the written consent of the author. This amply substantiates according to Mr. Kakra that the parties completely implemented the hand-written amendments carried out into the Agreement dated 16th March, 1998, extracts of which have been reproduced in

the beginning hereof. He has contended, and in my view rightly so, that if a contract contains written and printed clauses it is the written terms which would prevail on the printed terms in case of inconsistency. He had placed reliance on the authority of Noorbhai Gulam Hussein Makali and others Vs. M. Allabux & Co., 42 Ind. Cas. (1917) 820 and China Cotton Exporters Vs. Beharilal Ramcharan Cotton Mills Ltd., . Mr. Kakra also relied on the decision in William Butler Yeats Vs. Prof. Eric Dickinson and Others, AIR 1938 Lah 173 in which it was held, in the backdrop of the author having reserved the entire. Copyright of the volume to himself, that the agreement merely amount to a publication agreement and could not be regarded as an assignment of Copyright right.

6. It has not been disputed before me that the Contract dated 16th March, 1998 was the usual contract executed by the publisher with its various authors. Recent decisions handed down in all legal systems akin to ours in the realm of standard form contract have leaned in favor of the individual who has signed a contract drafted by the author. In this genre of cases, terms attempting to exclude the liability of the party who has drafted the standard form agreement, have been judicially interpreted in a manner whereby the burden was cast in favor of the individual. This reasoning, in my opinion, calls to be extrapolated to the facts of the present case. Although some of the terms of the contract appear to indicate that the publisher had a right for a period of five years, the hand written inclusion into Clause 8 should be given its full application. If this be so, there appears to be no manner of doubt, as subsequently clarified in the published version of the work, that the Copyright vested with the author. The reasoning in William Butler Yeats's case convinces me to view the agreement between the parties as one where there was no assignment of the Copyright and was more in the nature of conveying the license to print, publish and sell the works.

7. The author has made out a convincing prima facie case Therefore for the grant of the injunctions prayed for by him. The Copyright belongs to him and he should be left unfettered to enjoy the fruits of his labour/work. Learned Counsel for the publisher had contended, during the pendency of the Arbitration Proceedings, that nether of the parties should deal with the book any further. Although, this at first flush appeared to be conducive to the balancing of convenience, it subsequently appeared to me to be inopportune, since neither party would benefit from the status quo and it would negate the rights, established prima facie, in favor of the author. The publisher can claim appropriate relief, inter alia, in the nature of rendition of accounts and damages in the context of subsequent publication carried out by the author. The publisher is not left without remedy. On the contrary if the publication of the work is interdicted and frozen, it may render it outdated if the Arbitration Proceedings are protracted over some years. In this case, it is the author who would suffer irreparable injury.

8. In this analysis, OMP No. 194/2000 is dismissed and OMP No. 234/2000 is allowed and the publisher National Publication House, its agents, employees etc. are restrained from reprinting any of the Books Micro Economics Parts 1 and 2

for B. Com.(Hons.) Delhi University or from reprinting any portions thereof. As it had been clarified that there are no further copies of the reprint 2000, a restraint order in this regard is no longer relevant.

9. There shall be no order as to costs, as the conduct of the author is not without blemish.