

(2023) 08 DEL CK 0010

In the Delhi High Court

Case No : Civil Suit (COMM) No. 586 Of 2021, I.A. No. 15144 Of 2021

Scientific International Private Limited

APPELLANT

Vs

Kalyani Publishers & Ors.

RESPONDENT

Date of Decision : 02-08-2023

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A
Specific Relief Act, 1963 — Section 14, 41

Citation : (2023) 08 DEL CK 0010

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Udit Chauhan, Aditya Prakash Arora, Parul Malik, Khalid Ali, Vijay Pal Dalmia, Rajat Jain

Final Decision : Allowed

Judgement

C.Hari Shankar, J

I.A. 15144/2021 (under Order XXXIX Rules 1 and 2 of the CPC)

1. Defendant 3 is the author of a number of books, which form the subject matter of dispute in the present case. As the author of the books, copyright in the books vested with Defendant 3. Defendant 3 vide agreement dated 18 October 1979, granted the exclusive right to Defendant 1 to publish the books. The right was to continue during the legal term of the copyright in the books which, as Mr. Udit Chauhan acknowledges, would expire 60 years after the death of Defendant 3, who was still alive.

2. The following clauses of the said agreement may be reproduced thus:

1) The PUBLISHER shall publish the work and shall have the sole and exclusive right to do so during the legal term of copyright he shall also have the sole control of the paper, format, type, jacket, production, publication, advertising, price, sale and terms of the sale etc. of the works but the copyright apart from the publishing rights, shall remain vested in the AUTHOR.

10) Should the work become out of print and remain so for six months and should the PUBLISHER neglect to reprint within a period of twelve months after receipt of notice in writing from the AUTHOR then this AGREEMENT shall be cancelled and all rights in the work shall revert to the AUTHOR and the AUTHOR shall then be entitled or he shall exercise his rights within one month to purchase from the PUBLISHER all or any plates, moulds, engraving or the like produced specially for the work at the cost price less a reasonable amount for wear and tear.

3. On 3 August 2021, Defendant 3, through Counsel, addressed a legal notice to Defendant 1, alleging that Defendant 1 had breached the terms of the agreement dated 18 October 1979 and, therefore, calling upon Defendant 1 to (i) transfer to Defendant 3 the balance amount of royalty due to be paid to him, (ii) transfer, to Defendant 3, all remaining stocks of books/transcriptions/translations/softcopies or any other material in any form whatsoever, related to books originally authored or co-authored by Defendant 3 which were in the possession of Defendant 1 and (iii) cease and desist from publishing any books which were authored or co-authored by Defendant 3 including any abridgment or translation thereof.

4. Fifteen days' time was granted to Defendant 1 to comply with these directions.

5. Vide email dated 26 August 2021, Defendant 3, through Counsel, revoked the license agreement dated 18 October 1979 supra and, further, again requested Defendant 1 to comply with the requests already contained in the earlier notice dated 3 August 2021. A final opportunity, till 31 August 2021, was granted to Defendant 1 to do so.

6. The aspect of whether Defendant 1 did, or did not, comply with the said requirements, is not particular relevance to the dispute at hand.

7. Consequent to the above, on 1 September 2021, Defendant 3 executed an agreement with the plaintiff, granting the plaintiff exclusive license for the publication, distribution and selling of the following books, which were enlist in Annexure A to the said agreement (herein after "The Copyrighted books").

8. On 21 October 2021, Defendant 1 filed CS 8632/2021 before the Ludhiana District Court, seeking a declaration that the termination of the license agreement dated 18 October 1979 by the notice dated 26 August 2021 was bad in law and, further, seeking specific performance of the agreement dated 18 October 1979. Though the said suit continues to remain pending before the learned District Court, learned Counsel are ad idem that no interlocutory orders have been passed in the said suit, either staying the effect of the communication dated 26 August 2021 or otherwise.

9. In the interregnum, the plaintiff addressed a communication dated 5 August 2021, to Defendant 1, calling on Defendant 1 to cease and desist from continuing

to publish and sell the copyrighted books covered by the license dated 1 September 2021 *supra*.

10. On Defendant 1 failing to confirm the said request, the plaintiff instituted the present suit before this Court on 15 November 2021.

11. While issuing summons in the suit on 22 November 2021, this Court by way of, *vide ad interim relief*, recorded the undertaking of Defendant 1 not to release or distribute any of the copyrighted books, which were also enlisted in the said order.

12. It appears that, despite the said undertaking, the copyrighted books, as published by Defendant 1, were being sold by Lyall Book Depot which, accordingly Mr. Chauhan, was a proprietorship of the husband of Defendant 1. This prompted the plaintiff to file an application in the present suit under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (CPC) in which, *vide order* dated 21 March 2022, the interim injunction issued against Defendant 1 was also extended to Lyall Book Depot. That aspect, however, is not of particular significance in the present case.

13. In these circumstances, Mr. Chauhan seeks an interlocutory injunction restraining the defendant, Lyall Book Depot as well as all others acting on their behalf, from publishing, distributing or selling any copies of any of the copyrighted books enumerated in Annexure A to the license dated 1 September 2021 as well as in the order dated 22 November 2021 passed by this Court.

14. Responding to the submissions of Mr. Udit, Mr. Vijay, learned Counsel for the defendant submitted that there could not, in any event, be any injunction against sale, by Defendant 1, of books of Defendant 3, which were published by him prior to 19 August 2021. Mr. Udit does not dispute this position; however, he does submit that it is difficult to ascertain, from the market, whether the books which are circulating were actually published by Defendant 1 prior to 19 August 2021 or later. In any event, that aspect need not detain the present order as this order cannot cover books which are already in the market.

15. Insofar as the rights of Defendant 1 to publish the books of Defendant 3 are concerned, Mr. Vijay submits, very fairly, that his only case, at least at this point of time, has to be that the termination of the license agreement dated 18 October 1979, *vide notice* dated 26 August 2021, was bad in law. Though he also sought faintly to suggest that the termination was effected by Defendant 3 in connivance with the plaintiff, there is really no material on the basis of which the allegation of connivance can be substantiated, even *prima facie*.

16. Insofar as the illegality of the termination, *vide notice* dated 26 August 2021, of the license dated 18 October 1979, is concerned, Mr. Vijay draws attention to Clause 10 of the agreement dated 18 October 1979, already reproduced in para 2 *supra*. He submits that, as Clause 10 was the only clause in the agreement dated 18 October 1979, envisaging its termination, and as the circumstances

envisaged in Clause 10 had not occurred, the determination of the license dated 18 October 1979, was itself bad in law.

17. The issue of illegality or otherwise of the termination, vide notice dated 26 August 2021, of the license agreement dated 18 October 1979 is already sub judice before the learned District Court at Ludhiana. At present, this Court is addressing an application under Order XXXIX Rules 1 and 2 of the CPC, which requires the Court to take a prima facie view in the matter. Defendant 1 having elected to challenge the termination, dated 26 August 2021, of the license agreement dated 18 October 1979, before the learned District Court at Ludhiana, and having failed to obtain, till date, any interim relief in the said proceedings, at a prima facie stage, the said termination cannot be treated as illegal.

18. Among other things, the issues of applicability of Section 14 read with Section 41 of the Specific Relief Act, 1973 may also arise in this context. I do not intend to say anything more in this regard as the issue is at large before the learned Ludhiana District Court.

19. Insofar as the present proceedings are concerned, the plaintiff is undoubtedly the holder of a license agreement dated 1 September 2021, whereby exclusive license for publication, distribution and selling of the books has been granted to him by Defendant 3. No proceeding has been initiated by Defendant 1 to challenge the said issuance of license dated 1 September 2021 to the plaintiff or seeking any declaration that the said license is illegal or bad in law. In these circumstances, at a prima facie stage, the plaintiff cannot be deprived of the benefits which accrue to it under the license dated 1 September 2021.

20. The inexorable sequitur would be that, by virtue of the exclusive right conferred, on the plaintiff, by the license dated 1 September 2021, to publish, distribute and sell the copyrighted books enlisted in Annexure A to the said agreement, no other person can be entitled to exercise the said right, during the subsistence of the license dated 1 September 2021.

21. In view thereof, pending disposal of the suit, there shall be an interim injunction restraining Defendant 1, as well as Lyall Book Depot, as well as any other person acting on their behalf, from publishing, distributing or selling any of the books enlisted in the Annexure A to the license agreement dated 1 September 2021, as also listed in para hereinabove.

22. I.A. 15144/2021 stands allowed in the aforesaid terms.

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23. Pleadings in the suit are complete.

24. List before the learned Joint Registrar (Judicial) for admission/denial of the documents and marking of exhibits on 8 September 2023, whereafter the matter would be placed before the Court for case management hearing and further proceedings.

25. On the said said date, learned Counsel are directed to come prepared with jointly suggested issues as well as a joint schedule for recording of evidence.