

(2010) 01 DEL CK 0347

In the Delhi High Court

Case No : I.A. No's. 1654, 1655 and 1656 of 2009 in CS (OS) No. 840 of 2006

South Asia Human Rights Documentation Trusts and Others APPELLANT
Vs

Sh. Suhas Chakma and Others RESPONDENT

Date of Decision : 08-01-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 151

Citation : (2010) 3 ILR Delhi 11 : (2010) 42 PTC 323

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : D.K. Aggarwal and V.K. Singh, for the Appellant; Prantap Kalra, for D-1 and 4 and Nitesh Kumar Singh, for D-2 and 3, for the Respondent

Judgement

Manmohan Singh, J.—This order shall dispose of the three pending applications filed by the plaintiff, the details of which are given as under:

- a) IA No. 1654/2009 under Order 1 Rule 10 CPC by the plaintiff for impleadment of South Asia human Right Documentation Centre Pvt. Ltd. as a co-plaintiff No. 5 to the preset suit.
- b) IA No. 1656/2009 an application filed by the plaintiff for condonation of delay in filing of application under Order 1 Rule 10 CPC.
- c) IA No. 1656/2009 filed by the plaintiff u/s 151 CPC for substitution of plaintiff No. 3.

2. The plaintiffs filed the present suit for permanent injunction restraining infringement of copyright, unauthorised downloading, misappropriation and illegal use of database, delivery up, rendition of accounts, damages and for passing off. The case of the plaintiffs is that the defendant plagiarized the original literary work of the plaintiffs and that the defendants had also dishonestly downloaded the database of the plaintiffs and were continuing to use the confidential unpublished research data dishonestly to the detriment of the plaintiffs.

3. plaintiff No. 1 is a registered Public Charitable Trust founded on 16.10.1993. The plaintiff No. 1 trust conducts research in human rights violations and abuses worldwide and in a particular South Asia, with a view to disseminating the result of the research for the benefit of the general public and the international institutions and community, to undertake research and publication of educational material(s) on human rights.

4. It is the case of plaintiff that to execute and advance the above objects of the plaintiff-Trust the plaintiffs incorporated and established a private limited company by the name of South Asia Human Rights Documentation Centre Pvt. Ltd. as a wholly owned private company for carrying out research, documentation, and reporting on human rights issues. It is alleged that the trustees of the plaintiff No. 1 were the promoters of the company and subscribed to the share capital of the company.

5. The plaintiff categorically stated that whatever work is carried by the company is done and executed for and on behalf of the plaintiff trust. The plaintiffs and the South Asia Human Rights Documentation Centre Pvt. Limited are the joint and several owners of the copyright in the literary works produced under the aegis of the South Asia Human Rights Documentation Centre Pvt. Limited. In para 4 of the plaint, it is asserted that the company is wholly owned and controlled by the plaintiff Trust and the Trust has the right over all the material produced by it.

6. The suit was filed on 15th May, 2006 and an ex parte ad interim injunction was granted in favour of the plaintiffs on 18th May, 2006. Written statement was filed by the defendants wherein they raised several preliminary objections to the suit. One of the objections taken by the defendants was that the plaintiffs were not the owners of the copyright and that the copyright belonged to the company and as such the suit was not maintainable. The replication to both the written statement was filed by the plaintiffs on 7th August, 2006. On the basis of pleadings of the parties, issues were framed in the suit on 21 .04.2008 and issues No. 1, 2, 3 & 4 were treated as preliminary issues. They are reproduced below:

i) Whether the plaint has been signed and verified by a competent person and the suit has been duly instituted? OPP

ii) Whether the defendants 2 and 3 are not necessary and/or proper parties? OPD 2 and 3

iii) Whether the suit is bad on misjoinder of causes of action as alleged in para (iii) of the preliminary objections in the written statement of the defendants 1 and 4? OPD 1 and 4

iv) Whether this Court does not have jurisdiction to entertain, try and decide the suit? OPD 1 and 4

7. During the course of hearing of preliminary issues on 27th November, 2008, the counsel for the plaintiffs offered to implead the company namely South Asia

Human Rights Documentation Centre Private Limited as a co-plaintiff. He also offered to produce a fresh resolution of the trustees of the plaintiff trust showing that the filing and prosecution of the present suit was duly authorized by them. This Court then passed the following order:

During the course of hearing on preliminary issue Nos. 1 to 4, counsel for the plaintiff states that he will implead South Asia Human Rights Documentation Centre Private Limited as a co-plaintiff with a board resolution passed by the said company. He also states that he shall be filing a resolution conforming that the Board of Trustees had permitted and authorized institution of the present suit and the Resolution dated 27th March, 2006 was passed by the Board of Trustees of plaintiff No. 1. Counsel for the plaintiffs prays for and is granted three weeks time to file applications for the said purpose. Relist on 5th February, 2009.

8. The application being IA No. 1654/2009 has been filed in pursuance of the order dated 27.11.2008.

9. I shall take up the first application being IA No. 1656/2009 filed by the plaintiff for condonation of delay in filing the application under Order 1 Rule 10 CPC.

10. The plaintiff sought condonation on the ground that the drafting counsel of the plaintiffs was out of station for several days for personal reasons and the application could not be prepared and filed in time as the plaintiffs could not avail legal help for some time. The delay is neither malafide nor callous and the application is formal in nature. Moreover, the delay has not caused any prejudice to the defendants nor has it delayed the process of court.

11. It is pertinent to mention here that during the course of hearing on preliminary issues No. 1 to 4, counsel for the plaintiffs stated that he will implead South Asia Human Rights Documentation Centre Pvt. Ltd. as a co-plaintiff with the requisite Board Resolution passed by the said company. This Court granted three weeks time to file the impleadment application on 27th November, 2008. The present application being IA No. 1654/2006 was filed on 2nd February, 2009 after a delay of 46 days.

12. The defendants have raised various objections in allowing the present application on the ground that vide order dated 27.11.2008, this Court permitted the plaintiffs to prefer the application within three weeks, however, the said application has been filed 46 days after the expiry of three weeks granted by the Court. The learned Counsel for the defendants argued that it is deliberate act on the part of the plaintiff to delay the matter on one pretext or the other. After considering the submissions of the parties I am of the considered view that the present application be allowed as the plaintiff has been able to assign sufficient reasons in the application for condonation of delay. Thus, in the interest of justice, equity and fair play that the application filed by the plaintiff is allowed. IA is disposed of.

13. Now I shall take up the application under Order 1 Rule 10 CPC being IA No. 1654/2009 which has been filed in pursuance of order dated 27.11.2008. The plaintiffs also filed an application being IA No. 1655/2009 for substitution of plaintiff No. 3.

14. The plaintiffs prayed that since the suit is in the preliminary stage, the company shall be impleaded as co-plaintiff No. 5 to the suit to obviate all technical objections. The defendants will suffer no prejudice if the company is impleaded as prayed and the application is being made bonafide and in the interest of justice.

15. It is also stated in the application that trustees of the plaintiff trust held a meeting on 13th December, 2008 at their office at B-6/6, Safdarjung Enclave Extension, New Delhi noticing that in the resolution dated 27th March, 2006, the name of the plaintiff trust was wrongly shown as South Asia Human Rights Documentation Centre Trust. Therefore, Trustees of the plaintiff trust passed a fresh resolution on 13th December, 2008 stating that they had authorized the filing of the present suit and that the said suit be continued to be pursued and empowered and authorized the trustees again to take all necessary steps for prosecution of the suit.

16. A resolution is also passed to the effect that the South Asia Human Rights Documentation Trust as the parent body are the owners of the copyrights, infringement of which has been complained of in the suit. At any rate the trust and the company own the copyrights in the works jointly and severally. They approved of the filing of the suit and also consented to be a co-plaintiff in the suit.

17. The first submission of the defendants is that the plaintiff's action of not impleading the South Asia Human Rights Documentation Centre Pvt. Ltd. cannot be termed as bona fide when they had taken specific objection to the point of locus standi of the plaintiffs to file the present suit in their written statement on the grounds that since the trust is not the original owner of the copyright, it cannot file the suit without joining the company.

18. It is argued that the plaintiffs cannot be allowed to rectify their deliberate, conscious mala fide action after almost three years of institution of the suit by filing the present application for impleadment. The plaintiff in para 7 of the plaint stated that the plaintiff trust own the company and therefore, has locus standi to file the present suit. In the impleadment application, however, it was asserted by the plaintiff trust that trustees of the plaintiff No. 1 were the promoters of the company and they subscribed to the share capital of the company as trustees of the trust.

19. It is submitted by defendant Nos. 2 and 3 that at the time of registration of the trust there were three trustees as shown by the trust deed dated 16th October, 1993 namely Mr. Ravi Nair (plaintiff No. 2), Dr. Arun Mehta and Mr. Suhas Chakm (defendant No. 1). However, at the time of incorporation of the

company, there were only two promoters and shares holders of the company namely Mr. Ravi Nair (plaintiff No. 2) and Mr. Suhas Chakma (defendant No. 1), who were the only two subscribers to the MOA and AOA of the company. The authorized share capital of the company was Rs. 50 lac. It is contended that the claim of the plaintiffs is false from the fact that at the time of incorporation of the company, Dr. Arun Mehta was still trustee; however he was never made a promoter/director/share holder of the company.

20. It is further contended that in view of the averments made in the plaint as well as in the replication to the effect that the plaintiff trust has exclusive rights over the violated copyrighted articles, there arises no need, necessity or occasion of impleading the company in the suit.

21. It is also pointed out that in para 9 of the IA No. 1654/2009 the plaintiffs averred that the trustees had a meeting on 13th December, 2008 and noticed that in the resolution dated 27th March, 2006 the name of the plaintiff trust was wrongly shown as South Asian Human Right Documentation Centre Trust (hereinafter "SAHRDCT"). It is submitted that plaintiffs had filed a board resolution dated 27th March, 2006 authorizing the plaintiff trust (SAHRDCT) filing the present suit against the defendants herein. The defendants took a specific objection to that effect, however, in their replication the plaintiffs mentioned the name of trust as SAHRDCT and took below mentioned stand:

It is misconceived, incorrect and denied that South Asia Human Rights Documentation Centre Trust does not exist as alleged.... It is incorrect and denied that the board resolution dated 27th March, 2006 passed by the plaintiff trust is false, baseless, manufactured and illegal as alleged or at all. A proper board resolution to institute the present suit exists and has been filed in this Hon'ble Court along with the plaint.

22. It is asserted that the plaintiff deliberately and malafidely did not implead the company as the plaintiff knowing it fully well that the trust did not have locus standi to file the present suit. It is alleged that plaintiff Nos. 2,3 & 4 conspired together to transfer 50% shares of the defendant No. 1 namely Mr. Suhas Chakma in the company fraudulently and dishonestly and were very well aware that in case they make the company a party, the defendant No. 1 would come to know about their illegal and unlawful action. Therefore, they deliberately did not make the company a party to the present suit.

23. Defendant Nos. 1 and 4 also contended that they took a specific objection with respect to the locus standi of the trust in preferring the present suit in its written statement filed on 1st July, 2006. However, in the plaint the plaintiffs have specifically pleaded that South Asia Human Rights Documentation Centre Pvt. Ltd. (the company) is wholly owned company of South Asia Human Rights Documentation Trust ("the Trust") and therefore the Trust has locus standi to file the present suit. Defendant Nos. 1 and 4 also raised objection in their written statement and specifically pointed out:

3(ii). That the alleged board resolution dated 27th March, 2006 passed by the "South Asia Human Rights Documentation Centre Trust" is completely false, baseless, manufactured and illegal. That, "Sough Asia Human Rights Documentation Centre Trust" does not exist at all.

24. To the aforesaid specific objection of the defendants, the plaintiffs in their replication replied as under:

4.2 para 3(ii) of the written statement is misconceived and wrong. It is misconceived, incorrect and denied that South Asia Human Rights Documentation Centre Trust does not exist as alleged or at all. The plaintiff trust is also known by this name. It is incorrect and denied that the Board Resolution dated 27th March, 2006 passed by the plaintiff trust is false, baseless, manufactured and illegal as alleged or at all. A proper board resolution to institute the repent suit exists and has been filed in this Court along with the plaint.

(Emphasis supplied)

25. It is further stated that in view of the fact that the defendants in their written statement dated 1st July, 2006 had specifically pointed out that the alleged board resolution dated 27th March, 2006 had been that of "South Asia Human Rights Documentation Centre Trust", there was no occasion for the alleged trustees of the trust to have noticed the same on 13th December, 2008 as alleged/submitted in the present applications. The plaintiffs have perjured themselves all through the pleadings of the present suit.

26. It is submitted that the defendant No. 1 herein was/is the 50% share holder of the company. The proceedings with regard to the fraudulent transfer of the 50% shareholding of the defendant No. 1 to the defendant Nos. 3 and 4 herein and, consequently, the issue of ownership of the company is pending before this Court in (FAQ (SB) No. 4/2008) and the Company Law Board (Company Petition No. 21/2008) and the competent Criminal Court (CC No2206/2001 of 2008) wherein summons have already been issued to the defendant No. 2 herein and the company for having committed the offence of forgery, cheating etc.

27. It is argued that in view of the pleadings made in the plaint that the company is wholly owned by the trust, neither was there nor is there now, any reason/occasion for the plaintiffs/applicants to offer for such impleadment and the plaintiffs are under a duty to make good their pleadings.

28. The next application being IA No. 1655/2009 is filed by the plaintiffs herein seeking substitution of the plaintiff No. 3 namely Mr. Vittal Rao with one Ms. Rineeta Naik. It is submitted that plaintiff No. 3 had resigned as a trustee of the plaintiff trust and Ms. Rineeta Naik has been inducted into the Board of Trustees.

29. It is contended by defendant Nos. 2 and 3 in this respect that the plaintiff No. 3 resigned on 28th February, 2008, however, the said fact has been brought to notice of this Court after an unexplained delay of almost a year. The

defendants also questioned the purported appointment of Ms. Rineeta Naik as a trustee of the trust on the ground of not being appointed by the Settler Trustee as per the mandatory requirement contained in Clause VIII of the Trust Deed dated 16.10.2009. Clause VIII is reproduced as under:

...the power to appoint a new trustee shall vest in the settler trustee who shall make the appointment only in consultation with the managing trustee.

30. It is stated that in response to the said objection, the plaintiffs filed a letter on 31st August, 2009 purportedly written by the settler trustee dated 29th May, 2009 whereby it was proved that the appointment of Ms. Rineeta Naik has been made by the trustees. It is argued that the plaintiffs have procured the letter dated 31st August, 2009 only after the objections were raised by the defendants, therefore, no reliance can be placed on the said letter dated 31st August, 2009 purportedly written by the Settler Trustee.

31. I have gone through the pleadings in the application as well as the plaint and documents placed on record.

32. The principle under Order 1 Rule 10 CPC is to save bona fide plaintiffs from being non-suited on technical ground but at the same time, the Court has to see that a valuable right acquired by the defendants should not be defeated. It is also the duty of the Court to see that the necessary and proper party is to be impleaded for the determination of the real matter in dispute. It is also settled law that the question must be decided with reference to the averments in the plaint in order to decide the application and a Court is not required to adjudicate upon the objection raised by the non-applicant, the Court has to record only a prima facie finding to find out whether the application is bona fide.

33. It is settled law that while considering the application under Order 1 Rule 10 CPC, the Court may at any stage of the proceedings add parties which are the proper and necessary parties in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. There is no requirement of law that such application must be made at any particular stage of the trial. Under the said provision the Court can add a party at any stage of the proceedings see *Gurmauj Saran Baluja Vs. Mrs. Joyce C. Salim and Others*, .

34. Similarly the Court has also the power to substitute the plaintiff in the suit where it is doubtful that it has been instituted in the name of the right plaintiff if the Court is satisfied that the suit has been instituted through bona fide mistake. It is also not necessary at this stage of the proceedings to consider the merit of the suit while deciding the application under Order 1 Rule 10 CPC.

35. As appeared from the objections raised by the defendant Nos. 2 & 3 as well as defendant Nos. 1 & 4, various objections have been raised in allowing the prayer made in the application. I find that all the objections raised by the defendants are on merit which ultimately have to be considered at the

appropriate stage of the proceedings after allowing the defendants to file the amended written statement on allowing the application for impleadment of the said party.

36. It is settled law that in order to avoid multiplicity of litigation and also conflicting decisions being passed in different suits on the same matter, the Court should always allow the necessary party to be impleaded in the suit. Another fact of the matter is that during the hearing of the preliminary objection on 27.11.2008 three weeks" time was granted to the plaintiffs for the said purpose.

37. Considering the overall circumstances of the matter, the IA No. 1654/2009 is allowed and the South Asia Human Rights Documentation Centre Private Limited is arrayed as plaintiff No. 5. Similarly IA No. 1655/2009 is also allowed and Ms. Rineeta Rao is substituted as plaintiff No. 3 in place of Mr. Vittal Rao. Hence both the above said applications are allowed subject to payment of Cost of Rs. 30,000/- to be paid by the plaintiffs to the defendants within two weeks. The cost shall be shared by both set of defendants No. 1 & 4 and defendants No. 2 & 3 in equal proportions. The amended memo of parties is taken on record.

CS(OS) No. 840/2006

The amended plaint be filed by the plaintiffs within four weeks from today with advance copy to the learned Counsel for the defendants who may file the written statement to the amended plaint within four weeks thereafter. The defendants are at liberty to raise all the objections available to them as raised in the above said IAs No. 1654/209 and 1655/2009 in accordance with law. The parties are also directed to file the original documents, if necessary, within eight weeks from today.

List before the Joint Registrar on 14th May, 2010.