
(1971) 07 MAD CK 0041

In the Madras High Court

Case No : O.S. App. No. 91 of 1963 and Memo of Objections

Srimagal and Co.

APPELLANT

Vs

Books (India) Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 13-07-1971

Acts Referred:

Copyright Act, 1957 — Section 18, 19, 30

Citation : AIR 1973 Mad 49 : (1972) 85 LW 682

Hon'ble Judges : K. Veeraswami, C.J.;Raghavan, J

Bench : Division Bench

Judgement

K. Veeraswami, C.J.—The defendant appeals from a decree of Kailasam, J. granting the first plaintiff-respondent, a sum of Rs. 2,500 by way of damages for infringement of the first plaintiff's copyright in the Tamil translation of the autobiography of the late Pandit Jawaharlal Nehru. It appears that some time in 1936. Thiru Sa. Ganesan had been permitted by Pandit Nehru in about 1955 authorised the first plaintiff to translate the autobiography and sell the same. The first plaintiff coming across sales of translations by the defendant exchanged notices in about 1959 complaining of infringement of his copyright and damages which eventually led to the suit. In July 1957 the defendant had printed 1200 copies of which 200 were said to be complimentary copies. Of the remaining 1000, 957 copies were sold by him which resulted in a profit of Rs. 2,000. In November 1957 the first plaintiff had printed 15000 copies of the book and made arrangements to publish the same as a popular edition at Rs. 3 a copy. It has been found that for each copy. It has been found that for each set the first plaintiff would that for each set the first plaintiff would have made a profit of Rs. 1.36. The learned Judge found that there was infringement by the defendant of the copyright and allowed damages as we mentioned at the outset.

2. Two points are urged by the appellant, one based on Section 19 read with Section 18 of the Copyright Act, 1957 and the other as to the quantum of damages. On the first, the contention is that whereas Section 19 is specific that

no assignment of a copyright in any work shall be valid unless it was in writing signed by the assignor or by his duly authorized agent, there was no such assignment at all by the author to the first plaintiff. The learned Judge held that no particular form of assignment under S. 19 was required and it would suffice if the assignment could be called out in writing from some document and that the assignment had been authorized by the author is evident from his signature or that of his authorized agent. We do not think that there is any substance on the point based on Section 19.

Among the documents filed for the first plaintiff was Ex. P-28(a), which in brief contains the entire history of the earlier assignment in favour of Sa Ganesan and the later assignment in favour of the first plaintiff after cancellation of the first. It is evident from this letter that the earlier assignment was canceled by Pandit Nehru in view of the acrimony following the failure of the assignee to remit the royalty to the author. This document brings out clearly that the author had as a matter of fact given permission to the first plaintiff to bring out his own translation and that Sa Ganesan or his assignees had no right whatever to publish the autobiography any more. This is what that letter said:

"He (Pandit Nehru) has in fact given the permission to Books (India) Private Ltd., 135 Coral Merchant St. P. B. No. 1 1803. Madras 1 to bring out a Tamil edition of his autobiography. This was done in the beginning of 1957 and had been brought out, and it is this firm that has the right now and your publishing or selling the book is an infringement of their right. It is open to that firm to take any steps in this matter they consider fit and proper."

This letter was written by Pandit Nehru to the defendant on 4th April 1959 and the letter was signed by Pandit Nehru's Assistant Private Secretary, in our view, the requirement of Section 19 is fully satisfied by this document. That section requires no doubt that an assignment to be valid should be in writing signed by the assignor or by his authorized agent. The argument is that the assignment in its origin should be in writing signed by the author or by his authorized agent. We do not think that is indicated by the section. The only requirement is that the assignment should be in writing signed by the assignor or by his duly authorized agent. If the assignment appears from any document and it is signed by the assignor or by his authorized agent the statutory requirement is fulfilled. We agree with Kailasam, J. that Ex. P-28(a) is in compliance with the requirements of Section 19. As to the ground based on Section 30, we are satisfied that the licence was meant to be exclusive.

That is also clear from Ex. P-28(a). But Pandit Nehru, the second plaintiff, was willing to condone the defendant so far as the infringement of his defendant so far as the infringement of his copyright is concerned, All that he wanted was that in future he should not publish any copy of the translation of the translation of the autobiography. In view of this we think that the learned Judge was right in the view he took that the licence was exclusive only from that point of time until which the author was prepared to treat the infringement as condoned which

implied that licence upto that point was not exclusive.

3. That brings us to the second ground relating to damages. We think that the contention in this behalf is correct; because the first plaintiff is not entitled to calculate damages in both ways, both on his loss and on the basis of the profits of the defendant on the sale of 957 copies of the letter. Damages represent the loss. The loss may be ascertained either by the profit which the first plaintiff could have made or the profit which the defendant had actually made on the defendant had actually made on the defendant had actually made on the sale of 957 copies. But the loss cannot be calculated by including both. In our opinion therefore, at the rate of Rupees 1.36 for each copy the loss which the first plaintiff would have incurred on 957 copies which the defendant had sold would be about Rs. 1,300. This is what the first plaintiff would be entitled to by way of damages. We therefore limit the decree for damages to that sum and to that extent we allow the appeal. In other respects, the appeal will stand dismissed. Parties will receive and pay proportionate costs throughout.

In view of what we have observed earlier, the memorandum of objections are also dismissed.

4. Appeal partly allowed.