
(1995) 04 DEL CK 0057

In the Delhi High Court

Case No : Interim Application No. 10461 of 1993 and Suit No. 2713 of 1993

Sunil Aggarwal and Another

APPELLANT

Vs

Kum Kum Tandon and Others

RESPONDENT

Date of Decision : 28-04-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Copyright Act, 1957 — Section 18

Citation : (1995) 2 AD 627 : (1995) 33 DRJ 599

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Advocate : P.M. Singh and B. Bhattacharya, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) This order disposes of the plaintiffs' prayer for the grant of ad-interim injunction.

(2) The suit is for permanent injunction restraining infringement of copyright, passing of and other reliefs.

(3) The plaintiffs are publishers of books. The plaintiffs have published a book "After 10 + 2 What". The book was written by Ms. Kum Kum Tandon, the defendant No.1. The book has gained popularity and achieved substantial sales figures as mentioned in para 5 of the plaint. The defendant No.1 has published through defendants No.2 and 3 two books entitled "Kum Kum Tandon Career Planner - After 10+2 and Beyond What, Where and How". The first book relates to professions which are associated with commerce and humanities category. The second book deals with vocations which fall under the science and technology category. These two books contain extracts and sections copied verbatim from the plaintiffs' book, copyright in which vests with the plaintiff. As such the defendants have infringed the copyright of the plaintiffs. The plaintiffs have sought for an interim injunction restraining the defendants from publishing and

printing any book with a title reproducing or having deceptively similarity with any part of the plaintiffs' title of the book "After 10+2 What", and/or which may amount to infringement of plaintiffs' copyright in the said book or which may amount to passing off the defendants' book as that of the plaintiffs.

(4) Merely because the words "After 10+2 What" also occur in the long title of the book published by the defendants, I am not satisfied that prima facie a case of passing off is made out. However, the question of infringement of copyright needs to be examined in little more details.

(5) The plaintiffs have filed a set of the books published respectively by the plaintiffs and by the defendants. With the permission of the Court, the counsel for the plaintiffs has highlighted several portions in the two books a comparative reading whereof does show several passages from the plaintiffs' book having been picked up and reproduced or used in the defendants' book. A comparative chart of several such passages has been prepared and filed by the plaintiffs as annexure A with the plaint. Prima facie there has been an infringement of copyright.

(6) However, the more vital issue on which learned counsel for the parties have concentrated at this stage is: whether there was an assignment of copyright to the plaintiffs by the defendant No.1, the author? The deed of assignment is in the form of a letter dated 10th May, 1989. This document is not disputed. What has been disputed is its legal impact. It is reproduced hereunder :- "Ms Kum Kum Tandon Dtd. May 10, 1989 116-118 , Jodhpur Officer's Hostel, Pandara Road, New Delhi - 110 003. Dear Ms. Tandon, This is to confirm our discussions earlier, regarding your writing the book

"AFTER10+2 What?" 1. All rights (copyright etc.) shall be assigned to Sunil Aggarwal (Series Editor and Publisher). 2. You will be given credits as the Author. 3. Royalties (based on copies of the book sold) will be payable at 3.33% on the first 10,000 copies sold, and thereafter at 5% of the cover price of the book. Please note that these are on the cover price (i.e. paid by the end-buyer), and not on the net sale price (i.e. paid by the distributors after deducting their margins). 4. You intend completing the book by June end 5. We agree to a non disclosure of any information which may adversely affect the venture. 6. Should we decide to use your information in other books, you will be compensated on the basis of proportion of pages in the other book(s) of information published, and the other book's price. Thereafter, the same royalty terms will apply. I am sure this is the beginning of a long and mutually fulfilling author-publisher relationship. Yours sincerely, Sunil Aggarwal"

(7) The core of controversy is term No.1 of the letter. According to the plaintiff the rights had stood assigned to the plaintiff by the letter. According to the defendants, the rights were to be assigned at a later date by executing a deed of assignment which never came to be executed and as such there was no assignment at all.

(8) For the present, I am excluding from consideration yet another document dated 14th November, 1990 whereby some of the terms of the letter dated 10th May, 1989 were altered, because the receipt of that letter from the plaintiff is disputed by the defendant No.1. It is not denied that amount of royalty to the tune of Rs.77,752/90 through several cheques as mentioned in para 8 of the plaint between the dates 14.3.90 and 28.8.93 was received by the defendant No.1 from the plaintiffs.

(9) Learned counsel for the plaintiffs has submitted that use of the words 'shall be assigned' does not have the effect of postponing the event of assignment which had taken place legally and simultaneously with the signing of the letter by the parties. In any case the letter had the effect of creating an 'equitable assignment' in favor of the plaintiffs providing them with the requisite locus standi and cause of action.

(10) Section 18 of the Copyright Act, 1957 confers ownership rights in a copyright on the assignee. The term 'assignment' is not defined. The only requisites of an assignment vide Section 19 are that it has to be in writing and must clearly indicate the rights proposed to be assigned.

(11) An 'equitable assignment' may be created by agreement expressed or implied. An agreement which contemplates that a future document of assignment is to be executed has been held to take effect as an 'equitable assignment'. An 'equitable assignment' if it purports to assign the whole of the copyright, is not a partial assignment merely because it is equitable. (Halsbury's Law of England Vol.9 para 870, page 556). The law implies a term that an assigner shall not do anything that will render what he has assigned valueless as by publishing a similar work. (ibid, para 872 page 557).

(12) "COPINGER and Skone James" on copyright states vide para 5.10 (at page 107, 1991 Edition) :-

"AN oral or implied assignment of copyright might even if the consideration was executed,(e.g. payment of an outright fee for the work), be treated as an equitable Assignment. A mere receipt for the purchase-money may, under some circumstances, amount to an assignment of the copyright. Since no particular form of words is required to constitute an assignment it has frequently been a matter of difficulty to determine, upon the construction of a particular document, whether it is an assignment, or bare license. It is, however, necessary to distinguish a legal assignment from an agreement to assign which gives only equitable rights likely to be defeated by a bona fide purchaser for value without notice of the equitable rights."

(13) In the "Modern Law of Copyright - Laddie, Prescott & Victoria (1980 Edition), it is stated vide para 10.25, at page 337 :-

" ownership in equity can arise in a number of ways; (I) under an agreement to assign the copyright. Where the work is already in existence the intended

assignee becomes the owner in equity if the contract is one which is specifically enforceable."

(14) Iyenger in his commentary on The Copyright Act, 1957 (1983 edition) has also stated (at page 136) that a mere agreement to assign gives equitable rights that is, it operates as an equitable assignment of the copyright; the plaintiff could maintain as an equitable assignee of the copyright, an action for damages for infringement of copyright.

(15) Relying on the above said authorities I hold that there was at least an equitable assignment of copyright by the defendant No.1 to the plaintiff's on 12.5.89, the date on which the letter dated 10.5.89 was signed by defendant No.1.

(16) This finding of assignment is fortified by the events of the plaintiffs having made the publication in the year 1990, selling the book ever since then and the defendant No.1 having continued to accept payment of royalty on several dates between 14.3.90 and 28.8.93.

(17) The plaintiffs have made out a strong prima facie case. The balance of convenience lies in their favor and they are sure to suffer an irreparable injury unless protected.

(18) It is directed that during the pendency of the suit, the defendants shall remain restrained from infringing the copyright in the book "After 10+2 What?" vesting in the plaintiffs.