

(2011) 01 DEL CK 0165

In the Delhi High Court

Case No : Writ Petition (C) 3570 of 2007

Surinder Prakash Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Citation : (2011) 1 AD 718 : (2011) 177 DLT 369 : (2011) 45 PTC 353

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Neeraj Grover and Samir Garg, for the Appellant; Mohan Vidhani, for R 3, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.

CM No. 13240/2010 (for restoration)

For the reasons stated therein, the application is allowed. The petition is restored to file. The application stands disposed of.

W.P.(C) No. 3570/2007

1. With the consent of the counsel for the parties, the petition is heard finally.
2. The challenge in this writ petition is to an order dated 31st January 2007 passed by the Copyright Board ("Board") allowing an appeal filed by the Respondent No. 3 herein against the order dated 23rd December 2005 passed by the Registrar of Copyright ("Registrar").
3. The Petitioner herein filed a set of six applications on 17th February 2005 in respect of artistic works which, according to the Petitioner, were computer outputs of basic work created by an artist in the nature of caricatures drawn by pencil. According to the Petitioner, these were entitled to protection under the Copyright Act, 1957 ("Act").

4. The Petitioner states that on 26th February 2005, he had filed a complaint with the Delhi Police against infringement of certain other artistic works already registered with the Registrar by certain persons importing towels bearing the said artistic works of Petitioner's ownership. On 3rd March 2005, the Petitioner was informed that Respondent No. 3 firm was in possession of huge quantities of infringing goods. The Petitioner has brought this fact to the notice of Delhi Police. A raiding party was formed and the premises of Respondent No. 3 were raided and huge quantity of infringing goods were seized. An FIR No. 81 of 2005 was registered at Police Station Chandni Chowk against the partners of Respondent No. 3 for the offence of Section 63 of the Act. It is stated that thereafter on 4th March 2005 an undertaking was executed by one of the partners, Shri Janak Raj Arora admitting the Petitioner to be the owner of the copyright in respect of the original artistic works. Bail was granted to Shri Janak Raj Arora (one of the partners of Respondent No. 3) on 4th March 2005.

5. On 19th April 2005, the Respondent No. 3 filed objections before the Registrar to the grant of registration in respect of the six applications filed by the Petitioner. Respondent No. 3 also filed a suit, CS(OS) No. 781 of 2005 in this Court for cancellation of the deed of undertaking dated 4th March 2005.

6. Before the Registrar who took up the six applications of the Petitioner for consideration, one of the issues that were framed was whether the objections were time barred. The other issues related to the merits of the applications, including whether the Petitioner herein was using the said artistic works in relation to goods and whether the objections could be sustained and the registration denied. By an order dated 23rd December 2005, the Registrar rejected the objections of the Respondent No. 3 and decided all the issues in favour of the Petitioner. Specific to the issue of limitation, the Registrar held that the case would have been time barred if it could be proved that not only the objector was an interested party under Rule 16 of the Copyright Rules, 1958 ("Rules") but also that he had been duly informed in time by the applicant about the application for registration. The Registrar proceeded to hold that the objector was not an interested party and, therefore, the applicant was not obliged to inform him under Rule 16 of the fact of having filed the applications for registration of the copyright. Consequently, the objections were held to be time-barred.

7. In the appeal filed by Respondent No. 3 before the Board, the same issue concerning limitation was addressed. By the impugned order dated 31st January 2007, the Board held that since no time limit had been prescribed for a person not interested to file an objection, rule of common sense and natural justice dictated that "it has to be within a reasonable time immediately after the person comes to know about the filing of application." Consequently, it was held that there was "nothing wrong in the objection filed by the Appellant with the Registrar on this score." The Board proceeded to allow the appeal on the other issues concerning the merits as well, and directed the entries made in the

Register of Copyrights to be expunged.

8. The first submission by Mr. Samir Garg, learned Counsel appearing for the Petitioner is that the Board erred in holding that the objections filed by the Respondent No. 3 were not barred by limitation. He referred to Rule 16(3) and 16(4) of the Rules and submitted that when admittedly the objections were filed beyond thirty days of the filing of the application for registration, and there was no provision for condonation of delay, the objections were clearly time barred. He further submitted that the finding of the Registrar that the Respondent No. 3 was not an interested person, was not set aside by the Board. Even as regards the knowledge of the Respondent No. 3, the raids were admittedly conducted on 4th March 2005 and even if that was to be taken to be the date of knowledge, the objections were filed only on 19th April 2005, i.e. more than 30 days thereafter.

9. Appearing for the Respondent No. 3, Mr. Mohan Vidhani, learned Counsel submits that there was no provision in the Act for advertisement of the filing of an application seeking registration of a copyright. Secondly, knowledge of the filing of the application would ordinarily be only after the registration is granted. In the circumstances, the decision of the Board that the objections could be filed "within a reasonable period immediately after the person, i.e., the objector comes to know of the filing of the application", was reasonable one and did not call for interference.

10. In order to appreciate the above submissions, a reference may be made to relevant Rules. Rules 16(3) and 16(4) of the Rules read as under:

16. Application for Registration of Copyright

...

(3) The person applying for registration shall give notice of his application to every person who claims or has any interest in the subject-matter of the copyright or disputes the rights of the applicant to it.

(4) If no objection to such registration is received by the Registrar of Copyrights within thirty days of the receipt of the application by him, he shall, if satisfied about the correctness of the particulars given in the application, enter such particulars in the Register of Copyrights.

11. In the present case, the applications seeking registration of the copyright in question were filed admittedly on 17th February 2005. Further, there was no occasion for the Petitioner to presume that the Respondent No. 3 was disputing the rights of the Petitioner or that Respondent No. 3 had any interest in the said applications. Consequently, in terms of Rule 16(3), there was no requirement for the Petitioner to have given notice of the said applications to Respondent No. 3. The finding in this regard in favour of the Petitioner by the Registrar has not been disturbed by the Board and this Court also concurs with the said finding.

12. Under Rule 16(4), an objection has to be filed within thirty days of the filing

of the application for registration. It is correct that under the scheme of the Act and Rules there is, unlike in the case of a trademark, no provision for advertisement of an application. A person objecting to the grant of registration can possibly know of the filing of an application only after the registration is granted. The remedy for such a person is to file an application for rectification thereafter. That by no means permits the Respondent No. 3 to file objections beyond the period of thirty days after the filing of the application. In fact, the Respondent No. 3 has filed such rectification applications in relation to certain other registrations.

13. This Court is unable to appreciate the impugned order of the Board which holds that the objections could be filed within a "reasonable time" after the objector coming to know of the filing of the application seeking registration. There is no such provision under the Act or the Rules. In any event, in the objections filed in the present case, nowhere has the Respondent No. 3 stated as to when it came to know of the filing of the applications by the Petitioner. For the thirty-day period to be computed in terms of Rule 16 (4), the exact date of coming to know of the filing of an application would become a question of fact for which evidence would have to be led. With Respondent No. 3 not even making an averment in this regard, there was no question of computing any thirty-day period in terms of Rule 16 (4) from the date of such knowledge.

14. Viewed from any angle, therefore, the objections filed by Respondent No. 3 on 19th April 2005 long after the expiry of thirty days from the filing of the applications by the Petitioner for grant of registration, were time barred under Rule 16(4) of the Rules. Consequently, the impugned order of the Board holding that the objections filed by the Respondent No. 3, were not time barred is hereby set aside.

15. Since the objections filed by Respondent No. 3 have been held to be time barred, there is no need to examine other issues on merits. The objections should be treated as having been rejected. Consequently, the impugned order of the Board is set aside and the order dated 23rd December 2005 of the Registrar is restored.

16. The writ petition is allowed but, in the circumstances, with no order as to costs.