
(1966) 05 CAL CK 0001
In the Calcutta High Court
Case No : Suit No. 550 of 1966

The West Bengal Board of Secondary Education	APPELLANT
Vs	
The Standard Book Co. and Others	RESPONDENT

Date of Decision : 23-05-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15
Constitution of India, 1950 — Article 226
Copyright Act, 1957 — Section 14, 2(a)(iii), 54(b), 55(2)

Citation : 70 CWN 1130

Hon'ble Judges : S.P. Mitra, J

Bench : Single Bench

Advocate : Sankar Ghosh, for the Appellant; S.K. Acharya, for the Respondent

Judgement

S.P. Mitra, J.—The West Bengal Board of Secondary Education has made this application, inter alia, for an injunction restraining the defendants from printing or publishing or selling "Notes on Parijat Readers, Book One". This is a text book in English for Class VI. It consists of 17 writings in prose and 12 in verses. The name or names of the author or authors of the writings in prose does not or do not appear in the book. Of the 12 verses also 3 are by anonymous authors and the rest by well-known English poets. The petitioner's complaint is that the defendants have published a book called, "Notes on Parijat Readers, Book One" and are selling that book in the market by infringing the plaintiff's copy-right in the original text book.

2. Mr. S. K. Acharya, learned Counsel for the respondents, contends that the application is not maintainable, A copy of a so-called assignment, says Mr. Acharya, has been annexed to the petition by the alleged author of the prose writings and anonymous verses which does not appear to be a genuine document. The assignment is dated the 9th April 1965. With reference to a book "published by the West Bengal Board of Secondary Education" ; whereas, the book in question, it appears, was first published in 1965. Secondly Mr. Acharya

says that assuming that there has been an assignment, it is an assignment without consideration and, therefore, void.

3. I do not think that for the purpose of this interlocutory application, it is necessary to go into the question of assignment. Admittedly, the prose writings are anonymous and some of the verses are also anonymous. Mr. Acharya himself said that in a case like this, only a publisher could institute the suit. I agree with this contention of learned Counsel for the respondents. Section 54(b) of the Copy-right Act, 1957, inter alia, provides that the owner of the copy-right shall include in the case of an anonymous literary work the publisher of the work. Then section 55(2) says that where, in the case of a literary work, a name purporting to be that of the publisher appears on copies of the work as published, the person whose name appears shall, in any proceeding in respect of infringement of copy-right in such work, be presumed, unless the contrary is proved, to be the publisher of the work.

4. On the opening page of this text book it has been printed in bold letters as follows :

Published under the authority and on behalf of the West Bengal Board of Secondary Education.

On the next page it is stated that the book has been "published by John Brown, Oxford University Press, Faraday House, Calcutta-13."

5. These two endorsements taken together prima facie convey to me the impression that John Brown of Oxford University Press has published this text book under the authority and on behalf of the West Bengal Board of Secondary Education. The Board, therefore, as the publisher of this text book is, in my opinion, entitled to maintain this action. Lord Hanworth, M.R. said in *Hogg v. Toye & Co. Ltd.*, (1935) 1 Ch. 497 at p. 511 :

I am going to take it that the words "Privately printed for A. Lewis" are sufficient to satisfy the words that there is the name of a publisher "indicated thereon in the usual manner". What does the clause then provide ? It states that a person whose name is so indicated "shall be presumed to be the owner of the copy-right in the work for the purposes of proceedings in respect of the infringement of copy-right therein". That seems to me in clear terms to indicate that for the purposes of the proceedings the person who can say that he bears the name indicated on the work is to have a locus standi as the plaintiff to enforce his rights against an infringer. He can without disclosing the true author's name stop the infringement

To my mind, the above principles apply to the facts of this case.

6. As regards the verses of well-known poets included in this text book, it seems to me that the plaintiff can claim a copy-right in the selection of the poems as in the case of *Macmillan and another v. Suresh Chandra Deb*, reported in 17 Cal. at page 951.

7. I am, therefore, of opinion that in this interlocutory application, it is enough that the plaintiff's name appears as the publisher of the text book and there is no difficulty about the maintainability of this action.

8. The next point of Mr. Acharya is that a proper affidavit of competency has not been filed by the person who has verified the plaint and the petition. A copy of this affidavit of competency has been shown to me. It is an affidavit of Amalendu Gupta, who says that he is the Deputy Secretary of the Board ; as such Deputy Secretary he is acquainted with the facts and proceedings relating to this suit; and he is competent to verify the plaint herein and also to affirm affidavits and other documents to be filed in Court.

9. My attention has been drawn to the judgment of Buckland, J. in *International Continental Cautchone Compagnie v. Mehta Company*, reported in 31 C.W.N. 1030. In this case a suit was filed by a Company and the plaint was signed and verified by one of its constituted attorneys and principal officers, but was not accompanied by an affidavit as to his competency to verify the plaint. It was held that the competency of the officer to verify the plaint must be supported by an affidavit. The learned Judge has also made a passing observation that it is necessary in the case of a pleading filed on behalf of a Corporation to establish that the person signing it is authorised to do so.

10. Reliance was also placed on the judgment of Banerjee, J. in *Ukhra Forest and Fisheries Limited v. Sub-Divisional Land Reforms Officer, Asansol and others*, reported in 69 C. W. N. at page 325. In this case Banerjee, J. was dealing with rule 15 of the Writ Rules on the Original Side of this Court which runs thus : "Where the petitioner is a company or a corporation there should be appended an affidavit of competency. Where the petitioner or the respondent is a corporation, the provisions of Order XXIX of the CPC in so far as they are applicable, shall apply."

11. Banerjee, J. has criticised the affidavit of competency filed in these proceedings in these words : "The idea of the deponent of the affidavit is that because he is a Director of the petitioner company, he is as much competent and authorised to move this Court and to sign and verify the writ petition. Now, a Director, because he is one amongst the several Directors of a Company, is not entitled to commence an action on behalf of the Company at his own individual choice. He may do so provided he has the sanction or approval of the Board of Directors or is generally authorised by the Board to initiate, commence or defend proceedings on behalf of the Company. It is not merely acquaintance with facts and circumstances of the action that confers the competency. He must prove that he is authorised to initiate or defend an action on behalf of the Company. An affidavit of competency must indicate how he is so competent."

12. Banerjee, J. was dealing with an application under Article 226 of the Constitution and made the above observations with reference to rule 15 of the Writ Rules. In these applications there is no scope for trial on evidence.

13. In the present application, however, we are concerned with rule 8 of Chapter VII which runs thus : "Where any person, other than the party pleading, verifies a pleading under Order VI, rule 15 of the Code his fitness to so verify shall be proved by his affidavit at the time the pleading is presented. Pleadings shall include complaints, written statements, petitions, statements of facts and counterstatements of facts."

14. Pursuant to this rule affidavits of competency are filed on the Original Side of this Court. It seems to me that the affidavit of competency in the instant case complies with the well established practice of this Court. If the respondents had any doubts as to the competence of the Deputy Secretary to verify the plaint or the position, the point should have been specifically taken in the affidavit-in-opposition to enable the plaintiff to produce the authority. But that has not been done. All that is stated in paragraph 31 of the affidavit-in-opposition of Mukul De, affirmed on the 25th April 1966 is that "the plaintiff is not authorised to file any suit." In these circumstances. I am unable to uphold the contention that in the absence of a proper affidavit of competency either the plaint or the petition should be thrown out.

15. It was then contended that in this application the plaintiff has asked for the entire relief it has claimed in the suit and, as such, no order for injunction should be made. The answer to this point is that there are many reported decisions which show that interlocutory injunctions have been granted in such cases. Reference may in this connection be made to *Tonson v. Walker*, 36 E.R. 1017 and to AIR 1935 282 (Lahore) . Secondly, in the suit itself, the plaintiff has claimed a perpetual injunction. At the moment, we are concerned with whether the plaintiff is entitled to a temporary injunction pending the disposal of the suit. I do not think therefore, that there is any substance in this point of learned Counsel for the respondents.

16. I now come to the merits of this application. In the text book on the reverse of the opening page, it is stated :

Copy-right of the Book and every part of it, including the arrangement, illustrations etc. is exclusively reserved to the West Bengal Board of Secondary Education. No part of the Book can be printed or published or no explanatory book or any abridgment thereof or what is commonly known as note book can be prepared without the express written permission of the West Bengal Board of Secondary Education. Any infringement of the copy-right or preparation of notes of the book in any manner would be severally dealt with and make such publishers liable to damages.

17. Then in the last two lines of the "Introduction," it is stated "Teachers are advised not to allow pupils to make use of any key-book for this course."

18. In spite of these warnings, the covering page of the respondents' "Notes on Parijat Readers" bears the name--

Board of Secondary Education, West Bengal.

at the top. The name of the Oxford University Press has also been printed on the left column of this covering page under the words:

Notes on Parijat Readers?Book one.

19. The manner in which this covering page has been printed, conveys, in my view, the information that this note book has been published with the permission of the Board of Secondary Education. It is a misleading cover page which, in my judgment, should not be allowed to remain.

20. Coming now to the two pages on "Contents", I find that the titles and the numberings of the subjects and verses are exactly the same as in the plaintiff's text book.

21. To the notes themselves principally two objections have been raised on behalf of the plaintiff. The first is that in making the summaries of the prose writing and verses, the author of these notes has made adaptations from and substantial use of the plaintiff's material. And the second is, that the literal translations into Bengali of these prose writings and verses could never be included in these notes without the plaintiff's permission.

22. In paragraph 9 of the petition, it is alleged that "The defendants have in the said "Notes on Parijat Readers" copied the said stories and each of them have reproduced substantial portions thereof and/or have made summaries thereof and have infringed the copyright of the petitioner in the said stories and each of them."

23. In paragraph 11 of the petition, it is alleged that "All copies of the said work entitled "Notes on Parijat Readers" are infringing copies of the petitioner's said work and/or are the property of the petitioner and the defendants by selling or disposing of the same have converted the same to their own use."

24. In other words, the plaintiff's case is based on infringement of copyright, Now, for the purposes of the Copyright Act, 1957, (Section 14) "Copyright" means the exclusive right, inter alia, in the case of a literary work, to do and authorise the doing of, inter alia, any of the following acts, namely :--

(i) to reproduce the work in any material form;

(ii) to publish any translation of the work

(iii) to make any adaptation of the work :

"Adaptation" means, inter alia, in relation to a literary work, any abridgement of the work : Section 2(a) (iii).

25. It appears, therefore, that "abridgements" and "translations" can both constitute infringement of a copyright. I would first deal with "abridgements."

26. In Halsbury's Laws of England, 3rd edition, volume 8, Article 777 at page 427, it is stated "Copying does not constitute an infringement of copyright unless a substantial part of the work is copied, and the question whether the part taken is substantial is one of fact. In judging this question the value and the quantity taken must be considered, for if a vital part of a book has been taken for use in another publication, although such part constitutes but a small proportion of the entire text, the sale of the author's original work may be prejudiced, and the Court will not look merely at isolated passages, but will consider the two works as a whole to see whether there has been any such prejudicial infringement. For the same reason the use of even a small portion of the other work will be restrained, if it is used in a work which competes with the author's work".

27. In Copinger on "Copyright" 9th edition at page 154, it is stated : "It is thought that the question whether abridgements, precis, synopses and similar works infringe copyright must now depend upon the answer in each case to the question whether the production has involved a substantial use of copyright material or only of ideas and information. Any work which consists of extracts from the original either verbatim or with colourable alterations of language would constitute an infringement. On the other hand mere epitoms of the plot of a novel or of the development of a learned work would not.....".

28. The general principle relevant to this case seems to be that if in making those summaries the writer of the notes has made substantial use of the copyright material the publication of these "notes" should be prevented, I have compared the original text with the summaries. I give below the following examples.

(1) In Lesson No. 1 the story of "The Sleepless King" has been narrated. In the original text, the first paragraph runs thus : "There was once a King. This King lived in a distant land. He was ill and he did not sleep at night. His servants sang for him. He did not sleep. They played some music for him. He did not sleep. They told him some stories. Still he did not sleep. They sang some more songs and they played some more music. They told him some more stories. Still he did not sleep."

29. This paragraph has been summarised as follows : "Once a King was ill. He could not sleep at night. His servants tried very much to lull him to sleep. They played music, sang songs and told stories for the King. Still the King did not sleep."

(2) In Lesson No. 5 there is an essay called "India (Bharat)". The first paragraph of the Lesson is : "The name of our country is India. We also call it Bharat. It is a big country. Very few countries in the world are as big as India. There are many States in India and some of these are as big as some of the countries in the world. Some States are bigger than others. Madhya Pradesh is the biggest State in India and Kerala is the smallest."

30. The summary in the notes is : "The name of our country is India or Bharat."

There are many States in this big country. The biggest State is Madhya Pradesh and the smallest is Kerala."

(3) The first verse in the text book is called "The Aeroplane." The first two stanzas of this verse run thus :

A silver flash
In the summer sky,
An aeroplane
Is passing by.
Over the streets and
over the town,
On through the night when
the sun goes down ;
Over the land and over the sea--
A few more days and where
will it be ?

31. The substance has been stated thus : "An aeroplane is passing by in the summer sky. The aeroplane is passing through streets and towns and over land and sea."

(4) The last verse is a prayer. It says:

Father, we thank Thee
for the night
And for the pleasant
morning light,
For rest and food and
loving care.
And all that makes the
world so fair.
Help us to do the thing
we should.
To be to others kind
and good.

In all we do, in all we say.

To grow more loving every day.

32. The substance is : "We thank our Father for the night and for the morning light. We also thank him for rest, food and loving care. We pray to him to help us and to be kind and good to others and to be more loving everyday."

Upon comparing the original texts and these summaries and substances prima facie it appears that the allegation of the plaintiff in paragraph 12 of the petition that "the object and purpose of the publication of "Notes on Parijat Readers" by the defendants is that students may read only the said "Notes on Parijat Readers" and not the said book published by the plaintiff", is justified. From this point of view, these notes complete with the original text and should, in my opinion, be discouraged. I can quite imagine that students who memorise the summaries and substances for getting through their examinations need not read the originals at all. This is a pernicious practice which should be put an end to in the general interest of education and advance of learning in our country.

33. With regard to translations of the original text, there is no difficulty because literal translations into Bengali have been made in every case without the plaintiffs permission.

34. I hold, therefore, that the "abridgements" and the "translations" aforesaid, prima facie, infringe the plaintiff's copyright. The interim order of injunction made by Mr. Justice A. N. Sen in this matter on the 25th March 1966 should be made absolute. This is not a case in which I can ask the respondents to keep accounts so that damages suffered by the plaintiff, if any, may easily be ascertained. In this application, we are concerned with the minds and the methods of teaching of a large section of the student community ; and in my opinion the petitioner has made out a case for an injunction.

35. I, therefore, make an order that the interim injunction, granted by A. N. Sen, J. be made absolute but these injunctions would be confined to the jacket or cover page of the "Notes on Parijat Readers"; the two pages giving the "Contents"; the summaries of prose writings ; the substances of the verses ; and the translation into Bengali both of the writings in prose and of the verses. The costs will be costs in the cause.

On the oral application of learned Counsel for the defendant No. 2, I extend the time for the defendant No. 2, to file its written statement by to-morrow, Mr. Mitter, the petitioner's Counsel has no objection to this order being made.