

(2020) 02 DEL CK 0468

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 223 Of 2019

Vasundhara Prakash

APPELLANT

Vs

Half Baked Beans Literature Pvt. Ltd. & Ors.

RESPONDENT

Date of Decision : 19-02-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 1 Rule 10, Order 6 Rule 17

Citation : (2020) 02 DEL CK 0468

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Rahul Ajatshatru, Prachi Nirwan, Pranjal Shekhar, Sugandha Khaitan, Savni Endlaw, Sidharth Chopra, Devvrat Joshi

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. The present petition has been filed challenging the impugned order dated 3rd January, 2019 by which Respondent No.3/Defendant No.3 i.e.,

Amazon Seller Services Pvt. Ltd. (hereinafter, "ASSPL") has been deleted from the array of parties.

2. A suit for infringement of copyright was filed by the Petitioner/Plaintiff - Ms. Vasundhara Prakash (hereinafter, "Plaintiff") seeking an

injunction against the publisher i.e., Respondent No.1/Defendant No.1 - Half Baked Beans Literature Pvt. Ltd. (hereinafter, "Defendant No.1"), the printer i.e., Respondent No.2/Defendant No.2 - DE Unique Printers (hereinafter, "Defendant No.2") and

ASSPL. The injunctions sought were for restraining the infringement of the Plaintiff's copyright and for taking down the alleged infringing

copy of the book from Amazon platforms. Along with the suit, an application for

interim injunction was also filed by the Plaintiff.

3. The case of the Plaintiff in the suit is that the Plaintiff and Defendant No.1 had entered into a Publishing Agreement dated 4th December, 2017.

The book had graphic and written content. After the book was written and finalised, disputes arose between the Plaintiff and Defendant No.1 as

various defects which had been pointed out by the Plaintiff had not been addressed by Defendant No.1. On 11th April, 2018, the Plaintiff revoked her authorization to Defendant No.1 to publish the book.

4. On 11th April, 2018, an email was addressed by the Plaintiff to amazon.co.in (ASSPL) stating that a copy of the book was found listed on the

platform and calling upon ASSPL not to deal in or list the book. The said email was replied to by ASSPL on 12th April, 2018 assuring the Plaintiff that

the book would be removed from the website. According to the Plaintiff, despite the said assurance being given, the book was not removed, leading to

the filing of the suit for infringement in May, 2018.

5. The contention of ASSPL is that it had already deleted the listing from its portal and since it is only an intermediary, deletion from the array of

parties was also sought by means of an application under Order I Rule 10 CPC.

6. Ld. counsel for the Plaintiff submits that in the meantime, the book has been converted into digital form and was made available on global platforms

i.e., www.amazon.com and www.amazon.uk. In view of this, the Plaintiff moved an application under Order VI Rule 17 CPC for amending the plaint

as well as an application under Order I Rule 10 CPC for impleadment of Amazon.com, Inc. and Amazon EU SARL i.e., the entities which were

making the said book available in digital form, as Defendants. Notices are stated to have been issued in the said applications and the same are

pending. However, vide the impugned order dated 3rd January, 2019, ASSPL's application under Order I Rule 10 CPC for deletion from the array

of parties was taken up and allowed.

7. The grievance of the Plaintiff is that the role of ASSPL is significant in this matter as there are two violations by ASSPL. Firstly, ASSPL did not

take down the listing within the mandatory period of 72 hours from receipt of the notice and secondly, it is claimed that ASSPL had passed the book to

its global group companies for listing the same in its digital version on Kindle devices. Accordingly, Ld. counsel for the Plaintiff submits that the deletion

was erroneous and, in any case, the entire matter ought to have been adjudicated along with the Plaintiff's applications under Order I Rule 10

CPC and Order VI Rule 17 CPC. Further, the emails exchanged between the parties are relied on to argue that despite assurance being given by

ASSPL, it failed to take down the listing and hence, ASSPL has violated the Information Technology (Intermediaries guidelines) Rules, 2011

8. On the other hand, Id. Counsel for ASSPL submits that the role of intermediaries like Amazon is very clear. As per the Intermediary Guidelines the

obligation on intermediaries is limited to taking down the listing and nothing more. Id. counsel relies upon the clarification dated 18th March, 2013

issued by the Ministry of Communications and Information Technology to submit that intermediaries are only required to acknowledge the complaint

within 36 hours and redressal can take place within a period of one month. It is her submission that the suit was filed before the completion of a month

and hence, the allegation that the Intermediary Guidelines have been violated is not made out in the present case.

9. On a question being put as to the role of ASSPL in making the digital copies of the book available to www.amazon.com and www.amazon.uk, Id.

counsel for ASSPL submits that ASSPL had not given www.amazon.com and www.amazon.uk access to the book and that a categorical statement

to this effect has been made in ASSPL's rejoinder in its application under Order I Rule 10 CPC. Id. counsel for ASSPL further urges that the

application under Order I Rule 10 CPC would not affect the outcome of the application under Order VI Rule 17 CPC.

10. She submits that the role of ASSPL is merely of assisting/aiding and there was no access given to the book. The two platforms are

www.amazon.com and www.amazon.uk being independent entities, ASSPL has no role to play in the digital version of the book being made available

on these platforms. This contention is disputed by the Plaintiff on the ground that it was ASSPL which first listed the book on its website and it was

ASSPL which gave access to the book to www.amazon.com and www.amazon.uk.

11. The Court has considered the rival contentions of the parties, as also the impugned order dated 3rd January, 2019. The Trial Court has taken up

the matter in a piecemeal manner. A mere statement by ASSPL that it did not make the digital version of the book available to its global platforms

cannot be straight away accepted. The fact that the digital version of the book was made available on the Kindle platform shows that a deeper enquiry would be required. The same would be a question of trial. During the pendency of the application under Order VI Rule 17 CPC and the application under Order I Rule 10 CPC seeking impleadment of the global platforms, deletion of ASSPL has been directed by holding that ASSPL had not â??conspiredâ?, â??abettedâ?, â??aidedâ? or â??inducedâ? the listing of the book on amazon.com and amazon.uk. Such a finding could not have been arrived at in a premature manner in as much as the platforms fall under the same umbrella of Amazon.com, Inc., though they are different juristic entities.

12. The Trial Court has observed that though the Plaintiff has placed on record some screenshots to allege that the book is being sold through www.amazon.com and www.amazon.uk, there are no allegations in the Plaintiffâ??s application under Order I Rule 10 CPC that the book has been made available on ASSPLâ??s e-portal.

13. The relevant pleadings in the Plaintiffâ??s reply to ASSPLâ??s Order I Rule 10 CPC application and the rejoinder in respect of the global listings are set out herein below:

Plaintiffâ??s Reply to ASSPLâ??s application u/O I Rule 10 CPC

â??4. It has come to the knowledge of the Plaintiff that Defendant No. 1 has either acting on its own or in collusion / collaboration with

Defendant No. 3 made the infringing version of the Plaintiffs work available for hire and sale across the world on several jurisdiction(s)

and at least in the United States of America on the website www.amazon.com which is owned by Amazon.com, Inc., having its address at

P.O. Box 81226, Seattle, WA 98108-1226, United States of America, and in the United Kingdom through the website www.amazon.co.uk

owned and controlled by Amazon EU SARL, UK Branch; having its office at 1 Principal Place, London, Worship Street, EC2A 2FA, United

Kingdom. It is also pertinent to mention that Amazon.com Inc, owns its widely popular electronic reader-software Kindle. Defendant No. 3

has, along with Amazon.com, Inc., digitized the Plaintiffs work into its digital e-book / Kindle format(s) and has offered the same across the

world either singularly at various price points (\$1.01 in the US and Â£1.49 in the

UK, respectively) and have also bundled the same in their collective bundled library offered/called as "Kindle Unlimited". The Screenshot(s) in relation to Plaintiffs work on website www.amazon.com is being filed in the present proceeding and is marked and annexed hereto as "Annexure B1". The corresponding terms and conditions form the website www.amazon.com as available therein is being filed in the present proceeding and is marked and annexed hereto as "Annexure B2". The Screenshot(s) in relation to Plaintiffs work on website www.amazon.com is being filed in the present proceeding and is marked and annexed hereto as "Annexure C1" and the corresponding terms and conditions form the website www.amazon.co.uk as available therein is being filed in the present proceeding and is marked and annexed hereto as "Annexure C2". The various Amazon companies have, converted the Plaintiffs work into their digital format and stored it at their server(s), which is without permission of the Plaintiff, and tantamount to infringement of Plaintiff's copyright. Also, they have offered Plaintiff's work for sale or limited reading (as the case may be), therefore the Plaintiff is entitled rendition of their accounts disclosing the number of sales made and revenue generated, by respective website and such other reliefs as available to the Plaintiff under the law.

ASSPL's Rejoinder in its application u/O I Rule 10 CPC

4. The contents of paragraph 4 are denied for being false. It is denied that the Defendant No. 3 colluded/ collaborated with the Defendant No. 1 to make the Impugned Book available for hire and sale across the world. It is vehemently denied that the Defendant No. 3 has converted the Impugned book into a digital format and that the Defendant No. 3 is storing the same on its server without the permission of the Plaintiff, and that the Defendant No. 3 has offered for sale or limited reading the Impugned Book. It is reiterated that the e-format of the Impugned Book is listed on the Defendant No. 3's website by a third party. Insofar as paragraph 4 pertains to Amazon.com, Inc and Amazon EU SARL, it is submitted that the Defendant No. 3 is an independent legal entity that is not involved in the day-to-day activities of Amazon.com, Inc and Amazon EU SARL. As such, the contents of paragraph 4 pertaining to these entities are denied as they pertain to third

party information. Reliance is placed on paragraph 4 of the Preliminary Objections above.â??

14. A perusal of the pleadings above shows that there are extremely contested factual issues. It is extremely early in the proceedings for the trial

court to conclude that the two global platforms being distinct and separate legal entities, ASSPL cannot be held liable for their day to day functions and

would therefore not be required to continue appearing in the matter. The ideal course of action that the Trial Court ought to have followed would have

been to consider the allegations in the Plaintiffâ??s reply to the Order I Rule 10 CPC application that ASSPL had assisted/aided the global platforms

withâ?? theirâ?? digitalâ?? copiesâ?? asâ?? also the responses toâ?? theseâ?? allegations.â?? The question as to whether ASSPL had provided the digital

copy of the book to theâ?? twoâ?? globalâ?? platformsâ?? wouldâ?? beâ?? consideredâ?? asâ?? partâ?? ofâ?? theâ?? saidâ?? two applications.

15. Under these circumstances, this Court is of the opinion that this matter deserves to be remanded back to the Trial Court and the application ought

to be adjudicated afresh. It is, accordingly, directed that the two applications under Order I Rule 10 CPC and Order VI Rule 17 CPC be heard

together by the Trial Court. All the applications shall be heard together and the issues raised shall be comprehensively decided. This Court, at this

stage, is not commenting on whether ASSPL had fulfilled its obligation(s) or not, inasmuch as there are various factual issues which have been raised

by both the parties.

16. The impugned order is, accordingly, set aside and the matter/application is remanded back to the Trial Court for fresh adjudication, as directed

above. It is clarified that the observations made in the impugned order or in the present order would not affect the adjudication of the said applications

by the Trial Court. Let a copy of this order be sent to ADJ-05, South East, District Saket Court, New Delhi in TM No.80/18 titled Vasundhara

Prakash v. Half Baked Beans Literature Private Ltd. & Ors.

17. The petition is disposed of in the above terms. All pending applications are also disposed of.