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P.N. Krishna Murthy Vs. Cooperative for American Relief Everywhere

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SooperKanoon Citation : sooperkanoon.com/680153

Court : Delhi

Decided On : Oct-31-2000

Reported in : 2000VIIAD(Delhi)1009; AIR2001Delhi258; 88(2000)DLT506; 2001(2)RAJ87

Judge : Arun Kumar and; A.K. Sikri, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 2, Rule 2

Appeal No. : RFA Nos. 379 and 313 of 1998, RFA. No. 379 of 1998, RFA. NO. 313 OF 1998,

Appellant : P.N. Krishna Murthy ;cooperative for American Relief Everywhere

Respondent : Cooperative for American Relief Everywhere;p.N. Krishna Murthy and Another

Advocate for Def. : Mr. Arjun Pant, Adv.

Advocate for Pet/Ap. : Mr. Arun K. Sinha, Adv

Judgement :

ORDER

A.K. Sikri, J.

1. These are two cross appeals filed against judgment and decree dated 4th May, 1998 passed by learned Additional District Judge. By the impugned judgment and decree the two suits of the plaintiff were decreed (one for injunction and the other for damages and rendition of accounts although in the cause title, reference is made to Suit No. 250 of 1990 only) in the following terms:

1. Consequently, the plaintiff is hereby granted a decree restraining the defendants from infringing the copyright ownership of the plaintiff permanently in any manner.

2. The defendants No. 1 to 6 shall hand over the copies of the infringing Malayalam Edition within two months from today to the plaintiff.

3. The decree for Recovery of Rs. 2,31,000/- (Rs. two lakh and thirty one thousand) in favor of the plaintiff and against the defendants No. 1 to 5 Along with costs of the suit is also passed with interest at the rate of Rs.18% P.A. from the date of suit till date of realisation. No decree against defendant No. 6.

4. No relief against defendant No. 6 and the case against defendant No. 6 shall be deemed to have been dismissed as no cause of action shown against defendant No. 6, so far damages and rendition of accounts is concerned. The defendant No. 6, will however deliver the copies lying at the press or elsewhere in the premises, to the plaintiff in respect of Malayalam Edition. The other defendants No. 1 to 5 shall also deliver the copies of infringing Malayalam Edition within two months as above.

2. Appeal No. 313 of 1998 is filed by defendants 1 to 5. Defendant No. 1 is Cooperative for American Relief Everywhere Inc. (hereinafter referred to as CARE, for short) and defendants 2 to 5 were its officials. Defendant No. 6 is the printer who is arrayed as respondent no.6 in this appeal. Appeal No. 379 of 1998 is filed by Shri P.N. Krishnamurthy, who was the plaintiff in the two suits. He is not too happy with generic language and extent of the injunction order and wants injunction on more explicit and punctilious terms. He is also feeling restive about the quantum of damages granted to him which are much below his expectations and miles away from his percept.

3. Since plaintiff is appellant in one appeal and defendants 1 to 5 are the appellants in other appeal, in order to avoid any confusion, parties are referred to as 'plaintiff' and 'CARE'. The printer - M/s. Prasad Process (Private) Ltd., who was defendant-6 in the suit is referred to as 'defendant No. 6'.

4. After giving the background in which two appeals have come to be filed in this Court, it would be appropriate to narrate the apologue which have scripted the two suits filed by the plaintiff. The plaintiff is writer of a children's story books under his pseudonym Raj Krishan Murthy. He is the author of story titled 'Lakshman Kills A Tiger' with ownership of copyright No. 4681/69 dated 21st March, 1969. He is carrying on business under the name and style of M/s. Children Are Precious C-1, Nizamuddin East, New Delhi, which firm undertakes the printing and production of the books of the plaintiff. CARE is an organisation incorporated in United States of America. It is interested in forwarding of overseas aids voluntarily. In India, it has its office Headquarters at B-28, Greater Kailash, New Delhi-48, and branches all over India.

5. CARE wanted to distribute the story - 'Lakshman Kills A Tiger' written by the plaintiff among children of various villages in the States in India, in their 'Mid Day Meal Project'. Story was to come in comic form. CARE, under license from the plaintiff, entered into a contract with M/s. Children Are Precious (hereinafter referred to as CAP, for short) for printing and publication of the said story in the form of cartoon booklet. As per this contract, CAP were to print and publish the said comic book. About 41.25 lakhs of the copies of the book were published up to August 1970 in Hindi, Halbi, Kannada, English, , Gujrati, Marathi and Punjabi under the name of the appellant and under his copyright. The distribution and circulation of the book was restricted to the region of the concerned language. On 15th September, 1970 CARE entered into a contract with CAP for printing of 15 lakh copies of booklet in Malayalam language in the State of Kerala under license from the plaintiff. However, on 29th December, 1970, defendant No. 2 on behalf of CARE terminated the contract. CARE however, thereafter, placed order dated 10th May, 1971 with respondent no.6 for printing and publication of the aforesaid comic book in Malayalam language. On coming to know of this, plaintiff was infuriated. His precious asset was pilfered and filched by the defendants. They had

plundered and molested his prized possession. According to the plaintiff, he being the owner and copyright holder of the story in question, the act on the part of CARE in getting the books published from respondent No. 6 and distributing the same clearly amounted to infringement of his copyright. Defendants were fully aware of the copyright of the plaintiff and still they committed breach of his copyright in the said booklet. In order to halt any further pillage and piracy, the plaintiff decided to put shackles on them. The plaintiff, therefore, filed a suit for injunction on 6th December, 1971 against all six defendants with the following prayer :

6. For a permanent injunction restraining the defendants, its servants, agents or other authorised representatives from printing, publishing the book 'Lakshman Kills A Tiger' in any language and/or in any way distributing the same in Kerala or any part of the Union of India or abroad and to produce and deliver up to the Court all infringing copies in the power and possession of the defendants and to restore the same to the plaintiff under Section 58, Copyright Act, 1957.

7. In the application for ad-interim injunction filed by the plaintiff, learned Trial Court believing the statement contained in the aforesaid affidavit as honest and truthful, passed the following order dated 3rd May, 1972 :

'Reply to the application made by the plaintiff on last date of hearing has been filed. Counsel states that it would take him substantial time for collecting the documents referred to by the plaintiff in the application and, therefore, some substantial time may be allowed for doing the needful. As regards the application for injunction, it is stated that the defendants have put in an affidavit stating that the book in dispute is not being printed, published or sold not the defendants have any intention to do so during the pendency of the suit and counsel for the defendants Shri Y. Kumar Advocate undertakes on behalf of the defendants that the defendants would not print, publish or sell in any form or translation, the book in question during the pendency of this suit. In view of what has been mentioned in the affidavit filed by the defendants and the undertaking given by the counsel on behalf of the defendants, I think no further action in regard to injunction application is required. To come up for filing of the documents on 21-7-72. As regards the

application for contempt, I would like to hear counsel on the point whether any enquiry should be held in the circumstances of the case. To come on the date fixed.

8. On 6th October, 1972, with the leave of the Court under Order II Rule 2 of the Code of Civil Procedure, the plaintiff filed second suit for recovery of damages for infringement after defendants submitted accounts with regard to infringing copies. Both the suits were tried together thereafter.

9. The defendants do not dispute that the plaintiff is the author of the book in question. However, in the written statement filed by the defendants 1 to 5, main defense on merits was that the ownership of the copyright did not vest in the plaintiff. It was claimed that plaintiff was in service of the CARE and it was under order of the CARE and for valuable consideration that the said story was written by the plaintiff and therefore the ownership of the copyright vested with the CARE. The work of translating the original texts was given to the plaintiff and he was paid for the said work. So the copyright of the translation vested with the CARE. The printed books were the property of the CARE so it could be distributed by the CARE. In the alternative, the stand taken by the CARE was that the copyright of the book in question was assigned by the plaintiff to the CARE and the CARE was also given a license to exploit, publish and prominently declare the ownership of the copyright and therefore in getting books printed by it from respondent no.6, the CARE had not committed any breach of the alleged copyright of the plaintiff.

10. Following issues were framed by the Trial Court :

1. In the plaintiff copyright holder of the story titled 'Lakshman Kills a Tiger'? O.P.P.

2. Has there been any waiver of copyright on the part of the plaintiff? O.P.D.

3. Does the copyright vest in defendant No. 1 by employment of the plaintiff or by assignment? O.P.D.

4. Is the suit not maintainable under the Indian Copyright Act? O.P.D.

5. Does the copyright of the plaintiff not extend to translation? O.P.D.

6. Is the suit barred under Order 2 Rule 2 of C.P.C.?

7. Has this court no jurisdiction to try this suit? O.P.D.

8. Is the plaintiff entitled to rendition of accounts? O.P.D.

9. Relief?

Additional Issue:

Does the Publication in the Malayalam Edition amounts to an infringement of the plaintiff's copyright? O.P.D.

11. Thereafter, the suit went on for trial which was lengthy and time consuming. Some witnesses of the defendants were not available at times. Some were examined on commission. To catch them became cumbersome. The parties with their lawyers hopped from country to country in order to approach them. therefore, although the plaintiff's evidence had concluded way back in the year 1973, it took many years to complete defendants' evidence. Hundreds of documents were produced on either side. Elaborate arguments were advanced. Both parties filed lengthy written submissions. Ultimately the learned Additional District Judge rendered impugned judgment and decree dated 4th May, 1998 whereby both the suits filed by the plaintiff stand decreed in the terms already reproduced above. However, both the parties are dissatisfied and have preferred the appeals to this Court.

12. It is not necessary to state here the findings recorded by the learned Trial Court on each of the issues. Suffice is to state that all the issues were decided in favor of the plaintiff. On the basis of the evidence produced on record, Trial Court held that the plaintiff is the copyright holder of the story titled 'Lakshman Kills A Tiger'. There was no waiver of this copyright on the part of the plaintiff. The story was not written by the plaintiff while in the employment of the CARE and infact there was no such employment at all as per which the CARE had instructed the plaintiff to write story in question or its translation in different languages. There

was no assignment of this copyright by the plaintiff in favor of the CARE. therefore, by printing of the book in question by the CARE through respondent no.6-printer, defendants had infringed the copyright of the plaintiff for which the plaintiff was entitled to injunction, rendition of accounts and damages. In the detailed judgment written by learned Additional District Judge, after analysing the evidence and material on record in the light of various provisions of the Indian Copyright Act, 1957 and the judgments cited by both the parties, the aforesaid findings were recorded.

13. Before we deal with the exact nature of grievance of both the parties to this judgment, it would be apposite to highlight the following salient aspects and/or admitted facts as deciphered by the learned Additional District Judge:

1. Undisputedly the story was written by the plaintiff in the first instance, earlier to the date of entering into an arrangement/contract between CARE and CAP under license from the plaintiff.

2. The contract between CARE and CAP related to the printing of the book in question in various languages. License was given by the plaintiff for entering into such contract. If the copyright of the book in question vested in CARE there was no need for entering into such a contract for translation of the book in different languages. Likewise, there was no necessity of entering into contract dated 15th September, 1970 for publication of the book in Malayalam language.

3. Copyright of the book in question had been obtained by the plaintiff being CR No. 4681//69 dated 21st March, 1969.

4. While the copyright had been obtained by the plaintiff during March, 1969, the contract for publication of the book in Malayalam language was entered into in September, 1970. In this contract, there was no mention about the copyright ownership with the CARE. The Trial Court has observed in the impugned judgment that it was easy for the defendants to incorporate this term of ownership of the copyright in contract, had the copyright vested with the defendants. From the various clauses stipulated in Agreement dated 15th September, 1970 it becomes clear that it was a contract for translation, illustration of art work,

preparation, production, printing and publication and entire work was entrusted with the plaintiff under his supervision and control. He, as proprietor of CAP carried out the printing, publication and production of the book.

5. Even in other contracts relating to publication of the book in other languages, like hindi, halbi, english, etc. there is no clause in the contract that the ownership of copyright shall vest in the the CARE and that any work done with regard to preparation of text, illustration of the art work and production of the book shall vest in the CARE. If the work was undertaken by the plaintiff while in the alleged employment of the CARE for which he was purportedly paid, such a clause could have been easily incorporated. This show that the contract in question related to placing order with the plaintiff for translation of the book belonging to the plaintiff in other languages, preparing illustration of the art work and printing and publishing the same under his supervision. Thus, as per the contract, only part which the CARE had to play was placing of the order for supply of the book in different languages (and in Malayalam language as per contract dated 15th September, 1970) and nothing more.

6. The clinching evidence was in the form of citation at the back of the cover that copyright in the book in question vested with the plaintiff. When the books prepared, published and printed by CAP, under the supervision of the plaintiff, were supplied to and distributed by the CARE which contained the remarks that the copyright vest with the plaintiff and when there was no evidence to show that the CARE had at any time objected to the same, it was misconceived on the part of CARE to allege that copyright of the book in question vested with CARE.

7. The small number of the books in English were also distributed to institutions in India and abroad. All the copies of the book carried print-line declaration, which is mandatory under the Press and Registration of the Books Act, showing that it was produced and published by CAP and that all copies declared the international copyright of the plaintiff.

8. If at all the ownership of copyright vests with the defendants, then it was easy for the defendants to get the book published from any other printer and publisher and not particularly from the plaintiff.

9. Although aforesaid material hardly leaves any doubt about plaintiff's ownership in the book/story in question, even if some lurking doubt persisted the same stood buried from the evidence that the manuscript of the book was returned to the plaintiff by defendants. In that way if the original manuscript is with the plaintiff, then the defendants cannot claim their ownership of copyright in that manuscript. Manuscript is the best proof of ownership of copyright.

10. Deciding the question of assignment against the CARE, learned Additional District Judge observed that there is no dispute that the defendants have not claimed any assignment of the ownership of copyright. Their claim is that the copyright vests in them and the book was written and translated for the employer by the employee during employment. None of the modes have been claimed for assignment of the ownership of copyright which have been prescribed under Section 19 of the Copyright Act, 1957 and as per which the assignment will be for a limited period of five years. The right of waiver, relinquishment or giving up of copyright requires a notice in writing as prescribed under Section 21 of the Copyright Act, 1957. It requires publication also in the Official Gazette by the Registrar of the Copyrights. So all these defenses of waiver/relinquishment/giving up of ownership of copyright cannot be claimed by the defendants.

All these established facts on record put a seal of approval on the plaintiff's claim that it is in fact he and not the CARE who enjoys the copyright in the story/book viz. 'Lakshman kills a Tiger'.

14. Once the issue of copyright is determined, answer to the issues relating to infringement does not pose any problem. Things get unfolded based on admitted facts. There is no dispute that even after the termination of the contract with the CAP, proprietorship concern of the plaintiff, the CARE got the books printed and published from respondent No. 6 in Malayalam language. Infact when the copyright of the book vested in the plaintiff, the CARE had no right to get the book in question published in any language from any other person. Even during the subsistence of that contract, as noticed above, contract with CAP only related to translation, publication of art work, printing and publication of the said book and therefore, even during the subsistence of the contract, the book could be got

printed only through CAP in terms of the contract and from no other printer/publisher. therefore, there is a clear infringement of plaintiff's copyright in the said book and in view thereof plaintiff is entitled to the injunction as well as rendition of accounts and damages on this account.

15. Coming to the Appeal filed by CARE (being RFA. No. 313 of 1998), learned counsel appearing on behalf of CARE submitted the same very arguments which were advanced before the Trial Court and are noticed in the impugned judgment. However, he was not able to shake the findings recorded by the learned Trial Court on various issues reference to which is made above. He had no answer to the salient aspects/admitted facts enumerated above. On the other hand, Mr. Krishnamurthy, plaintiff who appeared in person, took us through the relevant portions of the pleadings, various documents and evidence of the witnesses in support of the conclusion arrived at by the learned Trial Court in so far as they relate to the vesting of copyright with the plaintiff and infringement thereof by the CARE. After giving our considered thought to all the aspects we are in agreement with the findings recorded by the learned Trial Court on this aspect and hold that copyright of the book in question vest with the plaintiff who is the owner of the book and the CARE had infringed this copyright by getting it printed and published from respondent no.6 and/or other printers in Malayalam language and/or in other languages. We will revert to the question of relief given by the learned Trial Court while dealing with the appeal of the plaintiff. therefore, so far as the appeal filed by the CARE is concerned we find no merit in the same and it is accordingly dismissed with costs.

16. Learned counsel appearing on behalf of respondent No. 6, argued that there was no cause of action disclosed against respondent No. 6 as is clear from para 3 of the plaint itself. He further pointed out that in the written statement filed on behalf of respondent No. 6 it was categorically mentioned that there were no infringing copies with the respondent no.6. He also pointed out that respondent No. 6 was now facing liquidation. In any case, if there are any copies, plates, negatives, photographs, etc. with respondent no.6 it should be returned to the plaintiff as required under the provisions of Section 58 of the Copyright Act, 1957.

17. Let us now deal with the Appeal No. 379 Of 1998 filed by the plaintiff. The grievance of the plaintiff against the impugned judgment and decree is primarily two fold:

i. the injunction which is given against the defendants does not fully protect his interest. Injunction, according to him required exactitude and should have been granted in the terms prayed by him. His submission was that the injunction granted by learned Additional District Judge restraining the defendants from infringing the copyright ownership of the plaintiff permanently in any manner is vague and generic.

ii. the money decree in the sum of Rs. 2,31,000/- passed in favor of the plaintiff is too inadequate According to him, the learned Trial Court has passed the decree on the presumption that infringing copies that were got printed and published were only 15 lakhs in number whereas the number of infringing copies is much more. Moreover, the formula adopted by the learned Trial Court in calculation of damages is also not correct.

18. In so far as the first grievance of the plaintiff is concerned, it poses no difficulty and we agree that the injunction to which the plaintiff is entitled to, in the facts and circumstances of this case, should be more specific and in clear terms. Accordingly, relief Nos. 1 and 2 as granted by the learned Additional District Judge would be substituted with the following reliefs:

1. Plaintiff is hereby granted a decree of permanent injunction restraining the defendants, its servants, agents or other authorised representative from printing and publishing the book 'Lakshman Kills A Tiger' in any language and/or in any way distributing the same in Kerala or any part of Union of India or abroad.

2. The defendants 1 to 6 shall hand over the copies of the infringing Malayalam edition or any other edition in any language printed and published by them. The defendants are also directed to hand over to the plaintiff used or intended to be used plates, negative, photographs, etc. of the book - 'Lakshman Kills A Tiger' prepared by them for the purpose of publication of the said book in Malayalam or any other language.

19. Now we proceed to address ourselves on the quantum of damages. It may be mentioned here that in the appeal filed by CARE (being RFA No. 313 of 98), the CARE itself has admitted that plaintiff is the writer of the story titled 'Lakshman Kills A Tiger'. It has also been admitted that CARE under the license from the plaintiff entered into a contract with CAP for printing and publication of the story - 'Lakshman Kills A Tiger' in the form of cartoon booklet. Further, as already observed above, whether the contract with CAP was of printing of the book in other languages and this contract was entered into with the consent of the plaintiff and therefore CARE had no right to get the said book printed or published in Malayalam or any other languages from any other printer-respondent No. 6. This would be the position whether the contract with CAP was in existence or not. However, the CARE admittedly got the said book published and printed in Malayalam and other languages from respondent No. 6 (or may be from other printers as well) and this is clear case of infringement of the copyright of the plaintiff in the book in question. In view of this, plaintiff becomes entitled to the damages for such an infringement. The plaintiff had filed a suit for rendition of accounts as well and plaintiff is entitled to succeed here also. However, CARE has not rendered/produced the accounts and its conduct in this respect is highly deplorable, to say the least. On 8th December, 1971, the learned Trial Court ordered notice of the suit, and directed the defendants to maintain true accounts and submit the same. Subsequently, on 10th March, 1972 the defendants 1 to 5 filed a 'nil' statement of accounts and stated in their affidavit - 'that the defendant (CARE) is an international voluntary agency and faithfully keeps all accounts and documents as required by law. Some documents are forwarded to its Head Office at New York certain others are handed to international agencies through whom it receives funds and grants and its own account is maintained and is in its custody; These can always be made available to the court if and when required. There is no danger of the books being destroyed, spirited away or any fictitious account being prepared, or not produced in court if the court so orders.' In order dated 3rd May, 1972 the statement of CARE's counsel was noted to the effect that substantial time be given for the production of records. It has taken contradictory and varied stand at different stages of the proceedings. therefore, the plaintiff had filed an application on 14th March, 1977 under Order XI Rule 12,

15 and 18 of the Code of Civil Procedure for production of CARE's related books of accounts and records, its agreements with US AID and also with Government of India. On 4th January, 1978, learned Trial Court held these documents to be relevant and allowed the application. Against this order the CARE preferred Civil Revision 111 of 1978 in this Court by taking the stand that proper books of accounts and records are maintained and the same would be produced at the relevant time. This Revision Petition was disposed of by order dated 8th September, 1978. Pursuant to this order, CARE filed affidavit dated 16th October, 1978 before the Trial Court stating that CARE did not maintain books of accounts in India, as normally understood and it used to prepare only a statement showing receipts of amounts and/or disbursements of amounts and this statement used to be forwarded by it to its headquarter at New York. It was further stated that CARE was not even having copies of its financial statements. Thereafter, during the cross-examination conducted on 12th February, 1981, DW-3: Mr. Desmond Ignatious, stated :

'regular books of accounts are required to be maintained and are being maintained at the headquarters of the defendant no.1 in New York. I cannot say if entries with regard to financial transactions of defendant in India were recorded in those books of accounts maintained at New York. I did not write to New York office for ascertaining the facts of account books after the order of Mr.Justice H.L.Anand.

20. However, thereafter the CARE came out with the stand that whatever record was available in New York office, even that had been destroyed. This is clear from the following statements of Mr.Desmond Ignatious made on 23rd July, 1987, 7th December, 1987 and 12th May, 1988:

Mr. D.G.Ignatius disclosed on 23-7-1987:

'I did try to enquire from my office i.e. the accounts and finance dept. whether the plaintiff has been actually paid the amounts mentioned in Ex.DW4/1 to 8. But I could not get the information as to the record has been destroyed. I made the inquiry in the year 1977.'

Mr.D.G.Ignatius continued on 7-12-1987:

'We have destroyed all records pertaining to finance. By financial record I mean books of accounts, receipts, bills and all files containing those related documents. I do not remember for what years those records have been destroyed. I can give definite date about the time, date month and the year when the financial record was destroyed, after going through the financial department.'

Mr. Ignatious further disclosed on 12-5-1988:

All financial record with defendant No. 1 up to the year 1982 have been destroyed i.e. the latest destruction was sometimes during this year, i.e. during the last few months.... The financial records for 1968 to 1974 was destroyed somewhere in 1974 or 1975 but I am not sure. They may have been destroyed even before. This destruction for the said year was before 1978 in any way....

21. The aforesaid shift in stand from time to time clearly gives an indication that CARE did not want to produce the books of accounts. It is not understood how the books of accounts and records for the years 1974-75 would be destroyed within few years i.e. in the year 1978 as per the statement made by DW-3. CARE knew that plaintiff had even filed suit for rendition of accounts which was pending. Not only this, it further shows that in Civil Revision Petition filed in this Court and in affidavit dated 16th October, 1978 filed in the suit, CARE had taken false stand inasmuch as in these proceedings although affidavit is filed in 1978 stating that the statements showing receipts of amounts and disbursement of amounts used to be prepared were forwarded to its headquarter in New York, however, thereafter on 23rd July, 1987, DW-3 had stated that when the enquiries were made from the head office in the year 1977, it was informed that the records have been destroyed. If DW-3 had come to know in the year 1977 itself, that the record had been destroyed how it conceal this fact in its affidavit filed on 16th October, 1978 and make a contrary statement. It is, therefore, clear that CARE had intentionally kept away the records from the Court. It was a motivated move. However, when the affidavit dated 16th October, 1978 itself is false, we are not inclined to accept what is stated in the said affidavit about not maintaining the books of accounts in India, as normally understood in India. It is unbelievable that there would be no account of income and receipts and expenditure incurred by CARE on the project

in question or for that matter about printing and publications of the infringing book in different languages. CARE had employed subterfuge by filing such an affidavit in making the Court believe their version and thereafter coming with the story of destruction of records. It is a common saying that in order to cover a lie or a false statement, a person tells hundred lies. However, in the process contradictions appear and the lie gets revealed. It is actually this which has happened in the instant case as well. It was infact contended by the plaintiff that the intentional and mischievous concealment of the material from the Court points to continued infringement of a very large magnitude. As would be noticed later, the plaintiff submits that even from the available record one can infer that infringement was to the tune of Rs.9.874 million copies but in reality it could be far more.

22. Once it is established that the CARE has intentionally not rendered the accounts relating to the printing and publication of the infringing books, adverse inference has to be drawn against it. Infact, Trial Court has adopted this course and in our opinion rightly so.

23. In the absence of definite material about the printing and publication of the infringing copies and the cost/price thereof one will have to gather the same by inference to be drawn from whatever material that is available on the record. Plaintiff undertook this exercise by pointing out to certain material on record to which we will now advert to.

RE: NUMBER OF COPIES

In the letter written to the Income Tax authorities by the CARE, the CARE has mentioned that during the subsistence of contract i.e. up to July 1970 with CAP, a total of 4.126 million copies were published in Hindi, Halbi, English, Kannada, Marathi, Gujrati, Punjabi and Bengali. In the cross-examination of the plaintiff, the CARE had itself put the following question to the plaintiff which indicates that 14 million copies of the book were printed in all, by that time, under this project:

'Q : Have you got any idea of the final beneficiary of the said books with regard to the 14 million or thereabout books printed?'

When such a suggestion is coming from the CARE itself, which is indicative of the number of copies of the infringing book printed and published, it can reasonably be inferred that at least 14 million copies of the book in question were printed and published in various languages. Out of this, 4.126 million copies were printed and published under the contract with the plaintiff. Thus the infringing copies may be calculated as 9.874 million (i.e. 14 million - 4.126 million = 9.874 million).

RE:COST/PRICE OF THE BOOK

It is the case of CARE that book in question was to be distributed and infact distributed among the children free of cost. A1- though the plaintiff has tried to contend that it was not so, there is nothing on record to suggest that the book had any price tag and/or any price was charged while distributing the books to the children. In so far as cost of printing is concerned, again there is no conclusive evidence to this effect. Rather, even as per the plaintiff's own showing, different circumstances suggest different cost which could be 30 paise per copy, 70 paise per copy or even Rs.3.63 paise per copy. The plaintiff has, in his argument, tried to show the aforesaid costs on the basis of cost of project. etc. This may not be a proper yardstick to measure and compute the costs of printing the book in question.

'It is not proved on record that the book in Malayalam language was a priced book and that it was being sold in the market by the defendants. On the other hand the plaintiff has also not proved, that the net profits he could have earned from the publication of the book, and that was the loss he had suffered. No such plea, no evidence and no proof. It is also a case of the parties, that the book was meant for free distribution in the State of Kerala. The plaintiff was to charge his professional fees, which could not be denied by the defendants.

25. In the given situation, we feel that the formula adopted by the Trial Court in awarding damages could be the only proper course. The Trial Court has taken the cost of publication of the book at Re.1.00 and has awarded 17.50% of the same to the plaintiff. However, the Trial Court has taken infringing copies as 15 lakhs only whereas, as per our findings recorded above, it is 9.874 million copies (i.e. 98 lakhs and 74 thousand). We are conscious of the argument of the plaintiff that

17.50% of this cost which is taken as the basis by the Trial Court was the amount which the plaintiff would have received had there been printing and publication of the book in question by the plaintiff as per contract dated 15th September, 1970 and the plaintiff is not claiming the said cost but is claiming the damages on account of infringement. However, in the absence of any other yardstick, even for the purpose of damages we consider 17.50% of the cost as reasonable particularly when the book is not a priced one and royalty in the normal course, would be attracted on the basis of the price of the book. therefore, we feel that if the plaintiff is given 17.50% of the cost and if the cost of printing and publication of the book is taken as Re.1.00 that would be an adequate compensation to the plaintiff. Calculating in this manner, plaintiff would be entitled to Rs.17,27,950/- for 9.874 million copies. Adjusting the amount of Rs.35,000/- already received, the balance would come to Rs. 16,92,950/- (Rupees Sixteen Lakhs Ninety Two Thousand and Nine Hundred and Fifty only).

26. The plaintiff has also claimed exemplary damages. No doubt conduct of the CARE during the proceedings before the Trial Court has not been proper. However, one has to keep in mind that the project in question for which the book was to be distributed and infact distributed to the poor children was a benevolent project of public service. The books were distributed free of cost to the children and therefore we do not deem it fit to grant any exemplary damages against the defendants. This prayer of the plaintiff stands rejected.

27. The Trial Court has awarded interest 18% per annum from the date of institution of the suit on the compensation awarded by it. Considering all the facts and circumstances of this case and in particular the fact that we have enhanced the compensation appreciably, the period involved as well as the rate of interest prevalent in international commercial transactions, we are of the view that award of interest 18% per annum would be on a higher side and instead granting interest 12% per annum from the date of institution of the suit would meet the ends of justice. It is ordered accordingly.

28. In view of the aforesaid discussion, judgment and decree passed by the learned Trial Court stands modified and the amended decree is :

1. Plaintiff is hereby granted a decree of permanent injunction restraining the defendants, its servants, agents or other authorised representative from printing and publishing the book 'Lakshman Kills A Tiger' in any language in and /or in any way distributing the same in Kerala or any part of Union of India or abroad.

2. The defendants 1 to 6 shall hand over to the plaintiff the copies of the infringing Malayalam edition or any other edition in any language printed and published by them. The defendants are also directed to hand over to the plaintiff used or intended to be used plates, negative, photographs, etc. of the book - 'Lakshman Kills A Tiger' prepared by them for the purpose of publication of the said book in Malayalam or any other language.

3. The decree for recovery of Rs.16,92,950/- (Rupees Sixteen Lakhs Ninety Two Thousand and Nine Hundred and Fifty only) in favor of the plaintiff and against defendants 1 to 5 Along with cost of the two suits is also passed with interest 12% per annum from the date of institution of the suit till date of realisation. During the pendency of this appeal, by interim orders certain amount was deposited by CARE in this Court. Needless to mention, in satisfying the decree, CARE shall be entitled to adjustment of this amount.

4. No relief is granted against defendant No. 6 and the case against defendant No. 6 shall be deemed to have been dismissed as no cause of action is shown against defendant No. 6 so far as damages and rendition of accounts is concerned. Defendant No. 6 will however deliver the copies of the infringed book as well as plates, negatives, photographs etc. used or intended to be used for the production of such infringing copies, if still lying at its press or elsewhere in the premises, to the plaintiff. Defendants 1 to 5 shall also deliver the copies of the infringing Malayalam edition and/or in other edition Along with plates, negatives, photographs, etc. used or intended to be used for production of such infringing copies to the plaintiff. Defendants 1 to 5 and defendant no.6 shall comply with this direction within two months.

5. The plaintiff shall also entitled to the costs in Suits as well as in Appeals.

Decree sheet in the aforesaid terms be prepared.

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