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Wiley Eastern Ltd. and ors. Vs. Indian Institute of Management

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Court : Delhi

Decided On : Nov-06-1995

Reported in : 1995IVAD(Delhi)990; 61(1996)DLT281; 1995(35)DRJ522

Judge : M.J. Rao and; Usha Mehra, JJ.

Acts : Copyright Act, 1957 - Sections 62(2)

Appeal No. : First Appeal No. 78 of 1995

Appellant : Wiley Eastern Ltd. and ors.

Respondent : Indian Institute of Management

Advocate for Pet/Ap. : Rajiv Nayar and; H.A. Ahmadi, Advs

Judgement :

M. Jagannadha Rao, J.

(1) This appeal is by the plaintiffs 1 & 2 against the order of the learned Single Judge dated 21.2.1995 made in I.A. 6521/94 in Suit 2640/93. The I.A. was filed by the defendant/respondent under Order 7,Rule 10A and 11 Civil Procedure Code seeking rejection of the plaint or for return of the same for presentation to the proper Court for want of territorial jurisdiction at Delhi. The learned Single Judge, under the impugned order, allowed the said application in part holding that the High Court at Delhi does not have territorial jurisdiction to try the suit and directed

the plaint to be returned to the plaintiffs through their counsel for presentation to the proper Court under Order 7, Rule 10A (1) CPC. Aggrieved by the said order, the plaintiffs have preferred this appeal.

(2) The 1st plaintiff is Wiley Eastern Limited, New Delhi and the 2nd plaintiff is Prof. U.K. Srivastava, resident of Ahmedabad. The defendant is the Indian Institute of Management, Ahmedabad. The appellants filed the suit for declaration that the anonymous letter dated 29.6.1992 referred to in the plaint, the defendant committee's reports dated 17.8.1992 and 28.9.1992 were arbitrary, void and unenforceable and that the plaintiffs should have a mandatory injunction directing the defendant to withdraw the aforesaid anonymous letter and the reports mentioned above, and that the plaintiffs are entitled to a decree against the defendant for Rs. 5,01,000 with 24% interest from the date of suit.

(3) The 1st plaintiff is a publishing house of books and has its office at New Delhi. The 2nd plaintiff, Prof. U.K. Srivastava is a co-author along with Mr. G.V. Shenoy and Mr. S.C. Sharma of a book entitled 'Quantitative Techniques for Managerial Decisions'. The 1st plaintiff claims that the copyright for the said book vests in the 1st plaintiff, while the 2nd plaintiff and two others abovementioned are the authors of the book. The defendant is a reputed educational institution at Ahmedabad. The 2nd plaintiff is an employee of the defendant for about 20 years.

(4) It appears that there was an anonymous letter dated 29.6.1992 addressed to Mr. Devender Singh, Sac Coordinator of the defendant alleging that the above book published by the 1st plaintiff had simply lifted material from three other books by Baumol, Levin and Wagner without giving any references to the said foreign authors. Though the 1st plaintiff had published the book co-authored by the 2nd plaintiff in 1983, the anonymous letter came up in 1992. The defendant then wanted to conduct an investigation into the professional conduct of the 2nd plaintiff and had,therefore, appointed a committee which gave its report dated 17.8.1992 (Annexure-B to the plaint). Then the 1st plaintiff publisher wrote on 27.8.1992 to the defendant (Annexure-C) expressing concern at the possible consequences of the defendant attempting to comment upon the questions of plagiarism and intellectual property rights in the said book which vested in the 1st plaintiff. The

committee set up by the defendant gave its report and an article about the same was published in the 'Gujarat allegation on 2.9.1992. The 2nd plaintiff in his letters dated 6.6.1992 and 11.9.1992 (Annexures D & E) denied that there was any plagiarism or copying by authors of the book. Thereafter, the committee appointed by the defendant gave a further report on 28.9.1992 (Annexure-F) and therein, according to the appellants, made comments on the intellectual property upon which the 1st plaintiff had certain rights. The plaintiffs are aggrieved by the reports of the committee dated 17.8.1992 and 28.9.1992 and raised various questions in the suit. The plaint further states that the defendant is threatening to take punitive action against the 1st plaintiff as is evident from the minutes of the meeting of the committee dated 5.1.1993 (Annexure-G), and that the 1st plaintiff had sent a legal notice on 4.2.1993 (Annexure-H) whereby the defendant was called upon to stop permitting the committee to make further investigations into allegations of plagiarism. The 1st plaintiff called upon the committee to tender an unconditional apology. The plaintiffs assessed damages at 5,01,000 and stated that the defendant was bound to withdraw the anonymous letter as well as committee's reports dated 17.8.1992 and 28.9.1992. On these allegations the suit was filed in the High Court of Delhi in November,1993. In the cause of action paragraph (paragraph 19) it is stated as follows:-

'19. This Hon'ble Court has the jurisdiction to try and entertain this present suit as the copyright in the said book vests in plaintiff No.1 at Delhi and the alleged findings relate to the said book and thereforee part of the cause of action has arisen in Delhi (business) within the territorial jurisdiction of this Hon'ble Court.'

(5) In I.A. 6521/94 filed by the defendant it stated that the plaint does not disclose any cause of action against the defendant, and that the defendant is entitled to conduct an inquiry against its employee, the 2nd plaintiff and could also go into the charges of plagiarism against him and that the same cannot be deemed an infringement of any copyright. It is,therefore, stated that even on the allegations made in the plaint, no case of infringement of copyright is made out against the defendant and,therefore, the plaint does not disclose any cause of action. The plaintiffs are not entitled to the damages of Rs. 5,01,000 nor to the injunctions prayed for. The committee's reports related only to the proceedings undertaken by

the defendant against its own employee. By merely conducting an internal inquiry into the conduct of the 2nd plaintiff as to whether he is guilty of plagiarism, there is no infringement of copyrights of the 1st plaintiff. The ingredients of Section 51 of the Copyright Act,1957 are not satisfied so as to raise any plea of infringement. Without prejudice to the aforesaid contention it was also submitted that the comments made in the committee's reports come within the exceptions mentioned in Section 52 of the Copyright Act. The plaintiffs have not come to the Court with clean hands. The 2nd plaintiff had filed a W.P. before the Gujarat High Court for quashing the disciplinary proceedings on 6.1.1993 and the said writ petition was allowed by a learned Single Judge on 29.9.1993. But an L.P.A. has been filed on 27.10.1993 which was listed on 8.11.1993. A copy of the L.P.A. was supplied to the 2nd plaintiff on 29.10.1993 because he had filed a caveat. The L.P.A. was admitted on 8.11.1993 and the Judgment of the learned Single Judge was stayed. Both the plaintiffs have suppressed these facts. It was submitted that the plaint was liable to be rejected under Order 7, Rule 11 Civil Procedure Code as well.

(6) The other co-author, Mr. Subhash C. Sharma, has filed Civil Suit No. 178/94 in the City Civil Court at Ahmedabad against the defendant and claimed damages of Rs. 1 lakh, and the plaintiff had suppressed the said facts also. On the question of jurisdiction it is stated in paragraph 12 of the is as follows:- '12. That without prejudice to the aforesaid, the defendant/applicant herein respectfully submits that no cause of action in the present case arises within the territorial jurisdiction of this Hon'ble Court. The entire proceedings in question were conducted in Ahmedabad. Defendant Institute is located at Ahmedabad. The appointment of the plaintiff No.2 was in Ahmedabad and the plaintiff No.2 was working for gain also at Ahmedabad. This Hon'ble Court would,therefore, not have the territorial jurisdiction to try the present suit because the cause of action,if any, does not arise within the territorial jurisdiction of this Hon'ble Court. It is respectfully submitted that there is no infringement of copyright in the present case and if at all the plaintiff has any grievance against the reports of the committee, which were also confidential in nature, he must redress his grievance before an appropriate forum which would have the territorial jurisdiction to try the suit. It is submitted that if at all any cause of action is shown, it would be only in Ahmedabad and,therefore, the competent Court to try the present suit would be the City Civil Court at Ahmedabad.

(7) The defendant also prayed for return of the plaint under Order 7 Rule 10 CPC.

(8) The learned Single Judge in his order dated 21.2.1995 returning the plaint under Order 7 Rule 10 recorded in paragraph 7 that the counsel for the plaintiff had taken a very specific stand that what was being sought for by the plaintiffs was enforcement of 'author's special right' within the meaning of Section 57(1)(b) of the Copyright Act,1957. The following is the extract of paragraph 7:-

'7. At the time of hearing, the learned counsel for the plaintiffs has taken a very specific stand that what was being sought for by the plaintiffs was enforcement of 'author's special right' within the meaning of Section 57(1)(b) of the Copyright Act,1957.'

(9) The learned Single Judge held that if that be so, the cause of action so far as the 2nd plaintiff is concerned,namely, prejudice to his honour or reputation could only be in Ahmedabad and he could not maintain the suit in Delhi. So far as the 1st plaintiff publisher was concerned, if the above submission of the learned counsel was to be accepted, the Court must proceed on the basis that the 1st plaintiff was not relying on any infringement of its copyright. Even otherwise, a reading of Section 62(2) of the Act would show that as long as the 1st plaintiff is not a co- author, that plaintiff could not be said to be enforcing any special rights under Section 57 when it had none. The fact that the 1st plaintiff carried on business at Delhi was wholly irrelevant for the purpose of determining jurisdiction under Section 62. The 2nd plaintiff was not entitled to sue at Delhi as he could not be permitted to do so by joining a co-plaintiff (1st plaintiff), who did not have any special rights referred to in Section 57 even though the 1st plaintiff might be having business in Delhi. On these reasoning, the learned Single Judge came to the conclusion that the suit as framed did not lie within the jurisdiction of the Delhi High Court. He also observed that the defendant is at Ahmedabad. It is an educational institution. It has apparently been dragged to Delhi by plaintiff No.1, who appears to be an established big industrial house and for whom it will be convenient to settle the score at Delhi rather than at Ahmedabad.' The learned Single Judge thereafter observed that it was not necessary to go into the question whether the plaint did not disclose any cause of action(This is because of the

confession of plaintiff-appllant's counsel set out above). Even otherwise charging the book with plagiarism did not amount to infringement of copyright relating to the book. Assuming that the plaintiffs were defamed, such defamation took place only at Ahmedabad. Holding of the inquiry by an educational institution against its own employee could not be said to be an act prejudicial to the honour and reputation of that employee. On this basis, the learned Single Judge directed the return of the plaint for presentation in the proper Court under Order 7 Rule 10 CPC.

(10) In this appeal, various contentions have been raised by the learned counsel for the appellants. At the outset, he submitted that his concession as recorded in paragraph 7 of the Judgment (extracted above) is not correct and that the 1st plaintiff is claiming an independent right,namely, the right relating to infringement of the copyright, and that this aspect has been raised in the counter filed by the appellants/plaintiffs to the I.A. filed by the defendant. We have permitted the counsel on both sides to argue the question as to whether the 1st plaintiff is independently entitled to file the suit on the ground of infringement of copyright and for this purpose, it has become necessary to go into the question whether the plaint discloses any real cause of action for the 1st plaintiff.

(11) The discussion can,therefore, be divided into the following:- (1)Whether the 2nd plaintiff can file the present suit in Delhi. (2)Whether the 1st plaintiff can file the suit on the basis of infringement of copyright under Section 62 of the Copyright Act. Point 1 : So far as the right of the 2nd plaintiff is concerned, not much argument was advanced before us by the learned counsel for the appellants. Under Section 57(1)(b) of the Copyright Act,1957 an author has certain special rights even after assignment of copyright. He has a right under clause (b) of Section 57(1), if any action is taken in relation to the said work which is prejudicial to his honour or reputation. If,therefore, the 2nd plaintiff wants to contend that any inquiry conducted by the Institute at Ahmedabad and any publicity given thereto has adversely affected his honour or reputation, then the 2nd plaintiff can sue but he can sue for damages for breach of his honour or reputation only in the Court which has jurisdiction over the Institute at Ahmedabad. By himself the 2nd plaintiff cannot have instituted the present suit at Delhi, inasmuch as such the suit is not for breach of copyright. thereforee, the first point is decided accordingly. This point

does not present any difficulty. Point 2: The question is whether the 1st plaintiff has made out a cause of action for filing the suit under Section 62 of the Copyright Act. Section 62 reads as follows:- '62. Jurisdiction of court over matters arising under this Chapter. (1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction. (2) For the purpose of sub-section (1), a 'district court having jurisdiction' shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.'

(12) It will be seen that sub-section (1) of Section 62 states that every suit or other civil proceeding arising under this Chapter in respect of infringement of copyright in any work or infringement of any other right conferred by the Act shall be instituted in the district court having jurisdiction. Sub-section (2) of Section 62 includes, in the category of the district courts having jurisdiction, a district court within whose local limits the plaintiff actually and voluntarily resides or carries on business or personally works for gain. The opening words in Section 62(2) 'For the purpose of sub-section (1)' are important and cannot be ignored. These words would mean that if a plaintiff is contending that there is infringement of copyright in any work or there is infringement of any other right conferred by the Act, as contemplated by Section 62(1), he can institute a suit, not only in the district court having jurisdiction, but also a Court which has jurisdiction over the place were the plaintiff is residing or is carrying on business or is personally working for gain. Section 62(2) has been held to be an exception to Section 20 Cpc, but even so, there must be a cause of action for the 1st plaintiff,namely, an infringement of copyright in any work or infringement of any other right falling within Section 62(1). Only then Section 62(2) shall apply.

(13) Now, the inquiry into the existence of a cause of action is also absolutely necessary when we are considering an application filed by the defendant under

Order 7,Rule 11 CPC. In fact, the learned Single Judge, in view of the concession made by the appellants' counsel proceeded to discuss the matter from the point of view of the 2nd plaintiff and whether the plaint is to be returned under Order 7, Rule 10 CPC. The learned Judge specifically stated that he was not going into the question of cause of action and rejection of plaint under Order 7, Rule 11 CPC. but inasmuch as the counsel for the appellants has now requested and has been permitted to urge the case for the 1st plaintiff also,namely, in regard to infringement of copyright or any other right, it has become necessary for us to go into that aspect also for the limited purpose of this appeal. If the learned Single Judge had confined himself to Order 7, Rule 10 Civil Procedure Code that was because of the concession made by the counsel for the appellants/plaintiffs. But if the learned counsel for the appellants wants to raise a contention in relation to cause of action relating to infringement of copyright and we permit him to do so, appellant cannot at the same time ask us not to go into the plaint allegations to find out if there are sufficient averments regarding infringement of copyright in detail and not a bare or vague allegtion about such infringement.

(14) We shall,therefore, proceed on the basis that if the 1st plaintiff is able to make out a case of infringement of copyright for the purpose of this I.A. under Section 62(1), then the plaintiff being a resident at Delhi can file a suit at Delhi, under Section 62(2). The question,therefore, boils down to whether the plaint allegations are sufficient in detail to show cause of action for the 1st plaintiff to claim infringement of copyright.

(15) Learned counsel for the appellants initially referred to Section 51 of the Copyright Act. In fact, in the I.A. filed by the defendant, it was clearly stated that Section 51 is not attracted so far the 1st plaintiff is concerned. thereforee, it is incumbent on the appellants to show, for the purpose of proving a cause of action, that there is infringement of the 1st plaintiff's right under Section 51(a). Reliance was then placed on sub-clause (b)(ii) of Section 51. It has,therefore, become necessary to extract Section 51 which reads as under:- '51. When copyright is infringed.- Copyright in a work shall be deemed to be infringed - (a) When any person, without a license granted by the owner of the Copyright or the Registrar of Copyrights under this Act or in contraventions of the conditions of a license so

granted or of any condition imposed by a competent authority under this Act - (i) does any thing, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or (ii) permits for profit any place to be used for the performance of the work in public where such performance constitutes an infringement of the copyright in the work unless he was not aware and had no reasonable ground for believing that such performance would be an infringement of copyright, or (b) when any person - (i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or (ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of copyright, or (iii) by way of trade exhibits in public,or (iv) imports into India, any infringing copies of the work. Provided that nothing in sub-clause (iv) shall apply to the import of two copies of any work, other than a cinematograph film or record, for the private and domestic use of the importer. Explanationn .- For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an 'infringing copy'.

(16) It will be noticed that sub-clause (b)(ii) of Section 51 states that there will be infringement if any person 'distributes' infringing copies of the work either for the purpose of trade or to such an extent as to affect prejudicially the owner of copyright. Learned counsel for the appellants fairly gave up this contention based on sub-clause (b)(ii) of Section 51 for there is no allegation in the plaint of any distribution of copies of the work by the defendant.

(17) Learned counsel then switched to Section 52. Section 52(1) is a lengthy section containing sub- clauses (a) to (y) and deals with the subject 'Certain acts not to be infringement of copyright'. Learned counsel for the appellants relied upon Section 52 (a) and (b) and the Explanationn thereto and contended that probing into the book of the 2nd plaintiff for the purpose of finding out whether there was any plagiarism and arriving at any such finding amounted to a 'dealing' which was not fair and,therefore, it would come within sub-clauses (a) and (b) of Section 52. (Another contention was raised based on the Explanationn below sub-clause (b), but the same was not pursued by the learned counsel for the appellants subsequently during his arguments.) Counsel confined himself to the question whether if the findings of the committee about plagiarism are not to be treated as a

'fair dealing,' then it would amount to infringement of copyright.

(18) Learned counsel for the respondent/defendant submitted that Sections 51 and 52 of the Copyright Act occupy different fields. While Section 51 mentions the situations in which a copyright can be said to have been infringed, Section 52 merely deals with acts which are not to be treated as infringement of copyright. He submits that assuming that a certain act does not come within Section 52, it does not automatically fall under Section 51 and become an act of infringement of copyright. Learned counsel submits that the 1st plaintiff has to succeed or fall on the question of cause of action for infringement by showing some act which comes within Section 51, and he cannot resort to Section 52 for that purpose.

(19) We are of the view that the contention of the learned counsel for the respondent is liable to be accepted. It is Section 51 alone that speaks of what is 'infringement' of copyright. If a particular act is not an infringement falling with any of the clauses of Section 51, then the Act cannot be an infringement. Section 51 being exhaustive as to what is infringement of copyright, resort to Section 52 is not permissible. That section,namely, Section 52 says, for example, that fair dealing with a literary, dramatic,musical or artistic work for the purposes of research or private study, or for purposes of criticism or review, ; or a fair dealing for purpose of reporting current events in a newspaper, magazine or periodical or by broadcast or in a cinematograph, do not amount to infringement of copyright. But by contending that the particular research, or private study or criticism or review is, on facts, not a fair dealing, for purposes of section 52, one cannot bring the said action within Section 51. For example, if it is not 'fair dealing' for purposes of Section 52, and if it amounts to defamation etc, then the remedy of the aggrieved person may be for damages. The basic purpose of Section 52 is to protect the freedom of expression under Article 19(1) of the Constitution of India- so that research, private study, criticism or review or reporting of current events could be protected. Section 52 is not intended by Parliament to negatively prescribe what is infringement.

(20) We, thereforee, reject the contention of the appellant based on Section 52. Assuming that action of the defendant does not amount to fair dealing, the action

cannot amount to infringement for purposes of Section 51 to provide a cause of action.

(21) Learned counsel for the appellants submitted that the existence or otherwise of infringement is a matter to be decided in the suit and not in this I.A. It is true that, it is a matter for adjudication in the suit. But where in the I.A. filed under Order 7, Rule 10 and Order 7, Rule 11 by the defendant a specific point is raised that there is no cause of action against the defendant under Section 51 even on the allegation in the plaint, then the Court has to decide this question by examining whether the plaint contains allegations which can bring the case under Section 51 and whether the allegation of infringement of copyright is a vague or bare allegation, unsupported by factual allegations necessary to bring the case under Section 21. thereforee, it is permissible to inquire whether the plaint contains any allegations to bring the case under Section 51.

(22) As already stated, the appellant conceded before the learned Single Judge that the 2nd plaintiff's reputation/honour being allegedly affected was the basis of cause of action. That is why, the learned Judge went only into the question under Order 7, Rule 10 Civil Procedure Code and not into Order 7 Rule 11. But in this appeal, counsel for appellant urged the case of 1st plaintiff, the alleged owner of the copyright and submitted that there was an infringement of his copyright falling within Section 62(1) and that,therefore, under Section 62(2) plaintiff, being a resident of Delhi, he could file the suit in Delhi. This submission has thereforee required us to first to find out if Section 62(1) was attracted and whether there was a cause of action by way of infringement of copyright, as disclosed in the plaint. The appellant having raised a contention of existence of a cause of action relating to infringement of copyright cannot - at the same time - contend that we cannot decide that question at this stage even by looking into the plaint and that this question should be decided only in the suit. In fact, we have granted the indulgence to the 1st appellant to argue questions which are indeed germane under Order 7, Rule 11 CPC. 1st plaintiff cannot blow hot and cold.

(23) For all the above reasons, the appeal is liable to be dismissed. On these conclusions, it would have been, in fact, open to us to reject the plaint under Order

7, Rule 11 CPC. But as the appellants' concession before the learned Single Judge - as recorded in para 7 of the Judgment, precluded the learned Single Judge from passing any order under Order 7, Rule 11, so far as 1st plaintiff was concerned, we do not think it necessary to pass an order under Order 7, Rule 11 in appeal. It will be sufficient to confirm the order returning the plaint for presentation to the proper Court.

(24) In the result, the appeal is dismissed. The plaint is directed to be returned to the plaintiffs' counsel for presentation to the proper Court under Order 7, Rule 10A(1) CPC.

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