

**Diamond Comic Pvt. Ltd. and anr. Vs. Raja Pocket Books and ors.**

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**Court :** Delhi

**Decided On :** Sep-16-2005

**Reported in :** 125(2005)DLT35; 2005(31)PTC378(Del)

**Judge :** Anil Kumar, J.

**Acts :** [Copyright Act, 1957](#) - Sections 19

**Appeal No. :** CS(OS) 1104/1999

**Appellant :** Diamond Comic Pvt. Ltd. and anr.

**Respondent :** Raja Pocket Books and ors.

**Advocate for Def. :** None

**Advocate for Pet/Ap. :** Amarjit Singh and; V. Mohini, Advs

**Judgement :**

**Anil Kumar, J.**

1. This judgment will dispose of plaintiffs' suit for injunction restraining infringement of copyright, rendition of accounts and damages etc filed against defendants in respect of character 'Shaktimaan'. The plaintiffs contend that plaintiff No.1 is a limited company and plaintiff No.2 is a director and the suit is signed, verified and instituted by Mr. Gulshan Rai, plaintiff No.2. Plaintiff No.1 is a leading printer and

publisher of authorized books including comic books and is popularly known as Diamond Comics and is engaged in said business for past 50 years. It was further contended that they have a large dealers network of around 5000 wholesale and retail sellers. The plea of the plaintiffs is that defendant No.3 director and producer of Serial 'Shaktimaan' entered into an agreement on 1st February, 1998 whereby exclusive copyright to illustrate, print and publish the character 'Shaktimaan' in the form of comic book were assigned. Pursuant to assignment of rights in the character 'Shaktimaan' the plaintiffs brought a comic book in the month of June, 1998 followed by different issues in successive months in 1998 and in February and March, 1999. The royalty under the terms of the deed of assignment dated 1.2.1998 at the rate of 7.5% per annum of the printed price were to be paid in advance, the details of which were given by the plaintiffs. The plaintiffs contended that they spend more than Rs.83 lakhs on publicity and advertisement of the comic 'Shaktimaan' and 50% of the revenue generated through advertisers and sponsored was duly paid to defendant No.3 from time to time.

2. The plaintiffs contended that by raising frivolous plea of breach of agreement/assignment, a notice was given by defendant No.3 to plaintiff which was received on 16th December, 1998 allegedly terminating the deed of assignment dated 1st February, 1998. The notice was replied by the plaintiffs' attorney vide letter dated 21st December, 1998 communicating categorically that deed of assignment was irrevocable and alleged termination was not within his competence, purview and jurisdiction. It was communicated to defendant No.3 that the right of the plaintiffs was absolute and also extended to the period subsequent to the period which was stated in the agreement in terms of clause 12 of the said agreement/deed of assignment.

3. The pleas and contentions raised by the plaintiffs in their reply dated 21st December, 1998 were not replied by the defendant No.3 rather further issues were raised. Thereafter defendant No.3 published a notice in the issue of 16th February, 1999 of Indian Express reporting that defendant No.3 has tied up with Mr. Vishwas Mohan of Virat fame and collaborated with Raj Comics, defendant No.2 with a view to come with a new series called Virat Comics for the purpose of illustrating, printing and publishing the character 'Shaktimaan' in the form of comic book. On

coming to know about it, the plaintiffs through their attorneys letter dated 18th February, 1999 called upon the defendant No.3 to explain about the illegal collaboration between them and defendant Nos.1 and 2. Defendant No.3 vide its reply 26th February, 1999 again raised pleas of termination of deed of assignment dated 1st February, 1999.

4. In order to resolve the issues between plaintiffs and defendant No.3. a meeting was arranged and in a meeting defendant No.3 claimed that the plaintiffs must use imported paper for the 9th issue of Shaktimaan. Thereafter another notice dated 19th April 1, 1999 was sent by the defendant No.3 again repeating the earlier allegations and claiming termination of assignment agreement. The defendant Nos.1 and 2 in collusion with defendant No.3 breached the plaintiffs' exclusive right to illustrate, print and polish the comic 'Shaktimaan' and circulated the same in May, 1999.

5. Since the defendant Nos.1 and 2 started infringing the copyright in the comic character 'Shaktimaan' of the plaintiffs, the plaintiffs objected to the illegal trade activities and contended that they have suffered losses to their reputation and the business. The plaintiffs therefore, for protection and enforcement of their legal rights filed the suit for permanent injunction and rendition of accounts and also prayed for destruction of infringing copies of the comic book along with all the negatives and plates.

6. Pursuant to the summons issued in the suit, appearance was put by the defendants through a counsel. The defendants filed a common written statement and the agreement dated 1st February, 1998, relied by the plaintiffs was admitted. On the plea of the learned counsel for the plaintiffs relying on Section 19(a) of [Copyright Act, 1957](#) that the assignor of the copyright can not revoke the assignment unilaterally and withdraw the copyright assigned to the assignee and could not reassign the same to any other persons and in case the assignor was aggrieved by any action of the assignee, assignor ought to have approached the copyright Board, an interim injunction was granted in favor of plaintiffs by order dated 16th March, 2005. Thereafter, the defendants failed to appear and consequently ex-parte proceedings were taken against them. Plaintiff, then filed

their evidence on affidavit and filed the affidavit of its director Mr. Gulshan Rai.

7. The plaintiffs' witness deposed that he was competent to sign, verify and institute the suit on behalf of plaintiffs and also deposed about plaintiff No.1 being a leading printer and publisher of various books and gave details of various other publications giving immense reputation to the plaintiffs which has also resulted in generation of substantial revenue from the sales of comic of the plaintiff No.1. The plaintiffs proved the agreement dated 1st February, 1998 and marked it as exhibit P1 to P2 by marking each page of the agreement. The deposition was made regarding assignment of character Shaktimaan in favor of plaintiffs by the defendant no.3. The details of royalty paid to the defendant no.3 were also proved and exhibited as P3 to P4. The details of the amount paid by the plaintiffs to defendant No.3 were also deposed and were marked and exhibited as Exhibit P6. The notice given by defendants for terminating the deed of assignment was exhibited as exhibit P7 to P8 and the letter dated 21st December, 1998 was exhibited as exhibit P9 to P11 by the plaintiffs.

8. The witness of the plaintiffs also deposed about the news item regarding rights given by defendant No.3 to defendant No.2 in respect of character Shaktimaan and the news item was marked and exhibited as P12. Plaintiffs also proved the letter dated 18th February, 1999 calling upon the defendant No.3 about his illegal acts and the same was exhibited as P13 to P14. And thereafter reply to the notice of defendant dated 29th April, 1999 was exhibited as exhibit P15 to P21.

9. The plaintiffs had supplied a copy of 9th issue of the comic to defendant No.3 under a covering letter dated 3rd May, 1999 which was marked and proved as exhibit P22 to P23 and also proved an illegal circular issued by the defendant No.3 in the trade circle which was exhibited as exhibit P24 to P25. The witness of the plaintiffs also proved the comic book printed and published by defendant Nos.1 and 2 which was marked and exhibited as exhibit P26.

10. The plaintiff No.2 as the witness also proved that defendants Nos.1 and 2 have no right and title, interest or justification to print or publish the character 'Shaktimaan' in the form of comic book for which the plaintiffs hold exclusive rights and even defendant No.3 does not have any rights after the assignment of all

rights to plaintiff Nos.1 and 2. thereforee defendant Nos.1 and 2 do not get any right nor could publish `Shaktimaan'. It was deposed that the defendants are infringing and/or abetting the infringement of plaintiffs copyright in the comic character Shaktimaan and are thus committing cognizable offence.

11. Though the written statements were filed by the defendants, however, the facts established on behalf of plaintiffs that defendant No.3 had assigned the rights in the character Shaktimaan by a deed of assignment dated 1st February, 1998 and the assignment was irrevocable, have not been rebutted by the defendants as no one has appeared on behalf of defendants nor any evidence has been led. The plaintiffs have also established that defendant Nos.1 and 2 do not have any right to print any comic with the character `Shaktimaan' as by the deed of assignments all the rights in the character Shaktimaan had been assigned to the plaintiffs.

12. The plea of the plaintiffs that for cancellation of deed of assignment, the defendant No.3 had to approach the copyright board under Section 19(a) as the power of revocation vests with copyright board only and the deed of assignment dated 1st February, 1998 has not been revoked by the copyright board and consequently defendant No.3 could not assign the rights in favor of defendant Nos.1 and 2 and the plaintiff continues to be the assignee of the rights in the character `Shaktimaan' is also justified under law and in the present facts and circumstances. If that be so the defendants no.1 and 2 do not have any rights in the character `Shaktimaan'..

13. Consequently, the plaintiffs have been able to prove that they have copyright in the character Shaktimaan which was assigned to them by defendant No.3 and the agreement has not been revoked. If that be so defendant Nos.1 to 3 have no right to infringe the copyrights of the plaintiffs in the character Shaktimaan nor they are entitled to bring out any comic book with character Shaktimaan or doing any act amounting to infringement or abatement to infringing of plaintiffs exclusive copyright in character 'Shaktimaan'.

14. Consider all facts and circumstances and the evidence produced by the plaintiff, I decree the suit of the plaintiffs and inject and restrain the defendants from printing, publishing or circulating the character 'Shaktimaan' in the form of a

comic book or to illustrate, print or publish and circulate the character Shaktimaan in any other form.

15. The plaintiffs have claimed a damages of Rs.50 lakhs, however, I feel that ends of justice would be adequately met if damages of Rs.8 lakhs are awarded and consequently I also decree the suit for recovery of Rs.8 lakhs in lieu of rendition of accounts. The plaintiff shall pay the court fee, if any, payable by him. A decree for mandatory injunction is also passed in favor of plaintiffs and against the defendants directing them to deliver to the plaintiffs all infringing copies of their comic Shaktimaan along with their transparency, prints, imaginations, photographs and other material used for the purpose of destruction of the same by the defendants. The cost of the suit is also awarded to the plaintiffs.

16. The suit is decreed in terms hereof and decree sheet be drawn up accordingly.

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