IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THURSDAY ,THE NINTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR

CIVIL MISCELLANEOUS APPEAL NO: 318 OF 2023

Appeal Under Order 43 Rule 1 of Code of Civil Procedure against the Order dated 29-03-2023 in I.A.No. 08of 2023 in C.O.S. No. 03 of 2023 on the file of the Hon'ble Additional Special Court in the Cadre of District Judge for Trial and disposal of Commercial Disputes at Hyderabad.

Between:

1. L. Prakasam Reddy, S/o. Narayana Reddy, Aged 73 years, Occ. Doctor, R/o. H.No. 4554, Road No. 15, New MIG Colony, Phase-2, Vidyut Nagar Colony, BHEL, Lingampally, Hyderabad -502 032, Telangana.
2. Dr. L. Gowri Sankar, S/o. L. Prakasam Reddy, Aged. 51 years, Occ. Medical Practitioner, C/o. L. Prakasam Reddy, H.No. 4554, Road No. 15, New MIG Colony, Phase-2, Vidyut Nagar Colony, BHEL, Lingampally, Hyderabad -502 032, Telangana.
3. Dr. T. Vidya Reddy, W/o. Dr. L. Gowri Sankar, Aged. 49 years, Occ. Medical Practitioner, C/o. L. Prakasam Reddy, H.No. 4554, Road No. 15, New MIG Colony, Phase-2, Vidyut Nagar Colony, BHEL, Lingampally, Hyderabad -502 032, Telangana.
4. Dr. L. Dhanalakshmi Devi, W/o. L. Prakasam Reddy, Aged. 58 years, Occ. Housewife, C/o. L. Prakasam Reddy, H.No. 4554, Road No. 15, New MIG Colony, Phase-2, Vidyut Nagar Colony, BHEL, Lingampally, Hyderabad -502 032, Telangana.
5. L.V. Naren Prakash Reddy, S/o. L. Prakasam Reddy, Aged. 34 years, Occ. Employee, C/o. L. Prakasam Reddy, H.No. 4554, Road No. 15, New MIG Colony, Phase-2, Vidyut Nagar Colony, BHEL, Lingampally, Hyderabad -502 032, Telangana.
6. CBS Publishers and Distributors Private Limited, , Through its Vice President, SH.S.K. Verma, S/o. late S.H.M.L. Verma, 204, Pattatgang, Industrial Area, New Delhi -110 092. **...APPELLANTS/ Defendants**

AND

1. Paras Medical Publishers, having its Registered Office at 5-1-475, First Floor, Putlibowli, Hyderabad -500 095, Rep., by its Sole Proprietor, Mr. Divyesh Kotari.

2. Mr. Divyesh Kothari, , S/o. Arvind M. Kothari, Aged 52 years, Occ. Proprietor of Paras Medicial Publisher, R/o. 3-6-69/B18, The Legend, 503, Avanthi Nagar, Basheerbagh, Hyderabad -500 029.

...RESPONDENTS/ Plaintiffs

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the Impugned Order and Decree dated 29.03.2023 passed by the Hon'ble Additional Special Court in the Cadre of District Judge for trial and disposal of Commercial Disputes at Hyderabad, in I.A.No. 08 of 2023 in C.O.S.No. 03 of 2023 pending disposal of the appeal.

Counsel for the Appellant: SRI VIVEK REDDY SENIOR COUNSEL FOR MS.PREETI KOLLURI

Counsel for the Respondents: SRI VIVEK JAIN

The Court delivered the following Judgment

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR

CIVIL MISCELLANEOUS APPEAL No.318 of 2023

JUDGMENT: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

This appeal is filed by the defendants against the order dated 29.03.2023 passed by the Commercial Court by which application for temporary injunction filed by the plaintiffs has been allowed and the appellants herein have been restrained from printing, publishing or distributing the eighth edition of the textbook, namely Fundamentals of Medical Physiology.

2. Facts giving rise to filing of this appeal in nutshell are that the appellant No.1 is a retired professor in Physiology with 45 years of experience in teaching, researching and practical experience in Physiology. The appellant Nos.1 to 5 are the authors of medical textbook, namely Fundamentals of Medical Physiology. The appellant No.1 has authored eight editions of the text book based on his continued research.

3. On 30.01.1999, the appellant No.1 entered into an agreement with the first respondent's publishing house for publishing a medical textbook, namely Fundamentals of Medical Physiology - second edition. Between the years 1999 and 2015, appellant No.1 published four editions of the medical textbook. Thereafter, the agreement was superseded and the appellants and the respondents entered into a fresh agreement on 18.04.2015 for publication of new edition of the medical textbook. The appellant Nos.1 to 5 by a letter dated 16.11.2022 terminated the agreement *inter alia* on the grounds that (a) respondents failed to make satisfactory efforts in publishing and marketing the textbook; (b) respondents failed to communicate the actual sales of the textbook; and (c) respondents did not make any efforts to increase the availability of the textbook.

4. Thereafter, appellant Nos.1 to 5 published eighth edition of the textbook in January, 2023 with the support of another publishing house, namely appellant No.6.

5. Thereupon, the respondents filed a suit against the appellants seeking relief of permanent injunction, damages to the tune of Rs.1 crore along with interest @ 18% and for the relief of rendition of accounts. Along with the plaint, the respondents filed an application seeking temporary injunction restraining the defendants from printing, marketing, distributing, reproducing, publishing or making alterations of the book, namely Fundamentals of Medical Physiology, Volumes I and II, in any manner.

6. The Commercial Court by an order dated 29.03.2023 *inter alia* held that the assignment agreement was executed between the parties under which the respondents/plaintiffs had been paying royalty regularly to the appellant Nos.1 to 5/defendant Nos.1 to 5. It was further held that the validity of termination of the agreement can only be considered after trial and for the purposes of consideration of interlocutory application, it has been held that assignment of copyright in favour of the respondents/plaintiffs is absolute. It was further held that the defences like undue influence and misrepresentation in respect of agreement

dated 18.04.2015 can be considered only during trial. Therefore, it was held that the respondents/plaintiffs have *prima facie* case. The Commercial Court further concluded that in case, the appellants/defendants are not restrained from any further publication of the book, the same shall result in huge loss to the respondents/plaintiffs. Accordingly, the Commercial Court allowed the application for grant of temporary injunction and restrained the appellants/defendants from printing, publishing, marketing or distributing or allowing any others on their instructions to print, market, publish, distribute or reprint of any of the previous editions, including the eighth edition of the book till disposal of the suit. In the aforesaid factual background, this appeal has been filed.

7. The learned Senior Counsel for the appellants while inviting the attention of this Court to the averments made in the plaint pointed out that no challenge has been made to termination of agreement and therefore, the suit is *prima facie* barred under Order II Rule 2 of the Code of Civil Procedure, 1908. It is also argued that the injury which

may be caused to the respondents/plaintiffs can be measured in terms of the damages. The attention of this Court has been invited to averments made in paragraphs 14 and 16 of the affidavit filed in support of the application for temporary injunction. It is further submitted that in the absence of any finding that the injury which may be suffered by the respondents/plaintiffs will be irreparable, the Court ought to have refused to grant temporary injunction. It is also contended that the agreement provides for payment of royalties and imposes obligation on the respondents/plaintiffs and therefore, the Commercial Court erred in treating the same as assignment. In support of the aforesaid submissions, reliance has been placed on the decisions of the Supreme Court in **Dalpat Kumar vs. Prahlad Singh**[1], **Seema Arshad Zaheer vs. Municipal Corporation of Greater Mumbai**[2], **Best Sellers Retail vs. Aditya Birla**[3], **I.S.Sikandar vs. K.Subramani**[4], **Mahinder**

[1] (1992) 1 SCC 719
[2] (2006) 5 SCC 282
[3] (2012) 6 SCC 792
[4] (2013) 15 SCC 27

Kaur vs. Sant Paul Singh[5] and **Mishra Bandhu Karyalaya vs. Shivratan Lal Koshal**[6].

8. On the other hand, learned counsel for the respondents/plaintiffs has submitted that the parties had entered into an assignment agreement on 18.04.2015 and if Section 18(2) read with Section 19(3) of the Copyright Act, 1957 is read in conjunction, it is evident that the same provides for assignment even on payment of royalty. It is submitted that the appellants/defendants did not raise any protest till 16.11.2022. It is also contended that the appellants/defendants have no right to unilaterally terminate the assignment agreement. It is contended that the respondents/plaintiffs are not required to challenge the unilateral cancellation of the assignment agreement and the remedy available to the appellants/defendants is under Section 57 of the Copyright Act. It is contended that the respondents/plaintiffs have a *prima facie* case in their favour and the Commercial Court has rightly granted the injunction as the respondents/plaintiffs would have

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[5] (2019) 9 SCC 358
[6] AIR 1970 MP 261

suffered irreparable loss, in case the injunction as prayed for is not granted. In support of the aforesaid submissions, the learned counsel has placed reliance on the decisions of the Supreme Court in **Martin Burn Limited vs. R.N.Bangerjee**[7], **Laxmikant V.Patel vs. Chetanbhai Shah**[8], **Midas Hygiene Industries (Private) Limited vs. Sudhir Bhatia**[9], **Sumtibai vs. Paras Finance Company**[10] and **The Chancellor Masters and Scholars of the University of Oxford vs. Orient Longman Private Limited**[11].

9. We have considered the submissions on both sides and have perused the record.

10. The distinction between the assignment of a copyright and licence thereof is well settled. Assignment transfers title in the copyright, whereas licence merely permits certain things to be done by the licensee. The title in the copyright is assigned to assignee, whereas the

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[7] AIR 1958 SC 79
[8] (2002) 3 SCC 65
[9] (2004) 3 SCC 90
[10] (2007) 10 SCC 82
[11] 2003 (67) DRJ 184

licence is personal. Before proceeding further, it is apposite to take note of the decisions of Supreme Court with regard to grant of injunction.

11. The Supreme Court in **Wander Limited vs. Antox India Private Limited**[12], while dealing with the issue whether a *prima facie* case is made out by the plaintiff in that case, held in paragraph 9 as under:

> **9.** Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated
>
> > "...is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies."

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[12] 1990 (Supp) SCC 727

> The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.

12. In **Gujarat Bottling Company Limited vs. Coca Cola**[13], the Supreme Court laid down the principles on the anvil of which the discretion of the Court to deal with the case of grant of interlocutory injunction can be exercised, namely (i) whether the plaintiff has a *prima facie* case; (ii) whether the balance of convenience is in favour of the plaintiff and (iii) whether the plaintiff would suffer any irreparable injury if prayer for interlocutory injunction is disallowed. In paragraph 43, it was held as under:

> **43.** The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests — (*i*) whether the plaintiff has a prima facie case;

[13] (1995) 5 SCC 545

(*ii*) whether the balance of convenience is in favour of the plaintiff; and (*iii*) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies. [See: *Wander Ltd.* v. *Antox India (P) Ltd.* [1990 Supp SCC 727], (SCC at pp. 731-32.] In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.

13. Thus, it is evident that the Supreme Court noted that the very object of grant of interlocutory injunction is to protect the party against injury by violation of his right by which he could not be compensated in damages in the action, if uncertainty were resolved in his favour at the trial.

14. In **Ambalal Sarabhai Enterprise Limited vs. K.S.Infraspace LLP Limited**[14], the Supreme Court in paragraph 16 has held as under:

> **16.** The cardinal principles for grant of temporary injunction were considered in *Dalpat Kumar* v. *Prahlad Singh* [*Dalpat Kumar* v. *Prahlad Singh*, (1992) 1 SCC 719], observing as follows : (SCC p. 721, para 5)
>
> > "*5.* ... Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely, one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise

[14] (2020) 5 SCC 410

> sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

15. In the backdrop of the aforesaid well settled legal principles, we may now advert to the facts of the case in hand. The plaintiff in order to prove a *prima facie* case is required to establish that there are serious questions to be tried in the suit. From the averments made in the plaint, it is evident that the following questions arise for consideration in the suit:

i) Whether the agreement dated 18.04.2015 executed between the parties is an assignment or a licence?

ii) Whether the plaintiffs are entitled to rescind the agreement and are entitled to the relief as sought for by them in the suit?

16. The agreement executed between the parties on 18.04.2015 is titled as "assignment agreement". Under clause (1) of the aforesaid agreement, the authors have transferred all intellectual property rights, including copyrights, in favour of the publisher. Clause (5) provides for royalties and accounting procedure. Therefore, the agreement appears to be an assignment agreement.

17. Thus, the plaintiffs have been able to make out a *prima facie* case as there are serious questions to be tried in the suit.

18. It is pertinent to note that balance of convenience lies in favour of the defendants in the suit as in case they are prevented from publishing the book, namely Fundamentals of Medical Physiology – Volumes I and II, the students would be deprived of the benefit of latest edition of the book.

19. Now we may advert to another essential ingredient for grant of injunction, namely irreparable injury. From the decisions referred to in the preceding paragraphs, it is

evident that the object of grant of interlocutory injunction is to prevent a party against an injury by violation of his right by which he could not be adequately compensated in damages in the action if the uncertainty were resolved in his favour at the trial. In the instant case, in paragraph 18 of the plaint itself, the plaintiffs have pleaded the damages suffered by them. Paragraph 18 is reproduced below for the facility of reference:

> 18. As per the Agreement, the Defendant No.1 is obligated not to act in a manner that would adversely affect the sale of the publication and in the event the Defendants No.1 to 5 do so, the Defendants no.1 to 5 have agreed to be liable for all the losses suffered by the Plaintiff caused by their actions. The Defendant No.6 in collusion with Defendants No.1 to 5 is printing, publishing and selling the said book at Rs.1,995/- MRP as purported 8th edition which is a clear breach of the Agreement dt. 18/04/2015. Therefore, the Defendants stand to illegally profit from such unauthorized publication of the book over which the Plaintiff has vested rights subsisting as on today. The Plaintiff states that it is entitled for Rs.2095/- MRP as compensation on every copy of the infringing book published and sold by the Defendants as loss of profits and damages and, the

> Plaintiff reserves its right to call upon the Statement of accounts of the Defendant No.6 to ascertain the same and amend the plaint if needed. Furthermore, the Plaintiff has 7th Edition books in stock which it is unable to sell on account of the circulation of the second edition in the market. Therefore, the Defendants are liable to pay the loss occasioned on the books that the Plaintiff is unable to print, publish and sell as until the date of realization of the suit. The Plaintiff estimates the total loss to his business at Rs.1,00,00,000/- as damages for the loss suffered by the Plaintiff on account of breach of Agreement by the Defendants No.1 to 5.

20. In the instant case, even though the plaintiffs have been able to establish a *prima facie* case in their favour, yet they have failed to fulfil the requirement to demonstrate that, irreparable injury, would be caused to them in case injunction as prayed for is not granted.

21. This Court is conscious of the scope of interference in an appeal with the order of injunction passed by the trial Court. In **Printers (Mysore) Private Limited vs.**

Pothan Joseph[15], the Supreme Court has dealt with the scope of reversal by a Court of appeal and has held as under:

> ...These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton (1942 AC 130) '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'.

22. In the instant case, the Commercial Court has failed to apply the well settled legal principles for grant of injunction, namely irreparable injury. Therefore, the case for interference in this appeal is made out.

23. For the aforementioned reasons, the order dated 29.03.2003 passed by the Commercial Court in I.A.No.8 of 2023 in COS.No.3 of 2023 is set aside. However, the respondent Nos.1 to 6 shall keep an account with regard to printing, marketing, publishing, distributing or reprinting any previous editions, including eighth edition of the medical book, namely Fundamentals of Medical Physiology

[15] (1960) 3 SCR 713: AIR 1960 SC 1156

– Volumes I and II, already marketed and shall produce the same periodically before the Commercial Court. The Commercial Court shall make an endeavour to dispose of the suit expeditiously.

24. In the result, the appeal is disposed of.

Miscellaneous applications, pending if any, shall stand closed.

Sd/- K. SRINIVASA RAO
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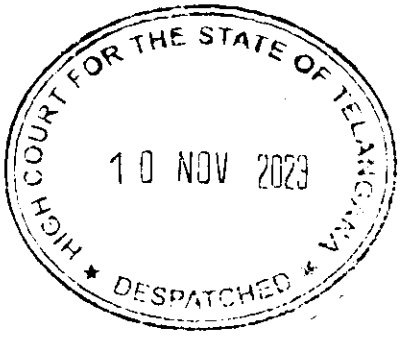
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JUDGMENT

CMA.No.318 of 2023

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