

The Press Trust Of India Limited vs Navbharat Press (Bhopal Pvt. Ltd.) And ... on 20 March, 2012

Author: Manmohan Singh

Bench: Manmohan Singh

..* HIGH COURT OF DELHI: NEW DELHI

Order passed on 20.03.2012
CS(OS) No. 146/2011

The Press Trust of India Limited Plaintiff
Through: Mr. Ashish Prasad, Adv.

versus

Navbharat Press (Bhopal Pvt. Ltd.) and Ors. Defendants
Through: Defendants are ex-parte.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.(Oral)

1. The present suit has been filed by the plaintiff for permanent and mandatory injunction(s) restraining the infringement of copyright, damages, delivery up etc. against the defendants for copying/reproducing, plaintiff's proprietary news articles without any authorization from the plaintiff.
2. Plaintiff is a premier news agency, which provides national and international news content to various newspapers, television/radio networks, websites and others subscribing to its services.
3. It is averred in the plaint that defendant No.1 runs an English as well as a Hindi Daily with circulation in Madhya Pradesh and the same is incorporated in the name of "Central Chronicle" and "Navbharat" defendant Nos.2 and 3 respectively, having its Head office at 3, Indira Press Complex, Ramgopal Maheshwari Marg, M.P. Nagar, Zone - 1, Bhopal - M.P. Both the newspapers "Central Chronicle" and "Navbharat" are printed and published by defendant No.1 from Bhopal.
4. Further, it is averred that the plaintiff company, being a premier news agency, inter alia, engages in collection and dissemination of news and photos to its subscribers. Plaintiff is the owner of copyright in the news articles authored by its employees, thus, the plaintiff has the exclusive right, inter alia, to reproduce the work in any material form, to make any translations, adaptation, and/or to communicate the work to the public under the provisions of the Copyright Act, 1957.

5. It is stated in the plaint that the reporters/correspondents etc. of the plaintiff contribute their skill, labour and intellectual capital to create and send the news items from their respective centers to the regional offices, which in turn, release the same after editing. The initials of the person who edits the copy and in some cases the initials of the operator who transmits the copy along with the time and date of such transmission appear at the end of the news item. The Plaintiff also runs its website <http://www.ptinews.com>. The news items which are released at any particular time are simultaneously updated on the said website and the news items which are released on a particular day cannot be modified/altered after the release.

6. The news articles as published in the newspaper of the defendants are verbatim copies and/or colourable imitation of works/news articles, copyrights in which vests with the plaintiff. A comparison of plaintiff's works and the subsequently published news articles by the defendants in their newspapers "Central Chronicle" and "Navbharat" clearly bring out that the defendants' publications are verbatim copy and/or colourable imitation of the works, copyrights in which vests with the plaintiff, thus infringing plaintiff's exclusive copyrights in the said works.

7. In the month of February 2010, Plaintiff came to know that the defendants, are copying and reproducing its proprietary news articles in their newspaper publications namely "Central Chronicle" and "Navbharat" without any authorization. The details of which are given in para 13 to 14 of the plaint.

8. Therefore, the plaintiff issued legal notice(s) dated 08.03.2010, 9.03.2010, 29.04.2010 to the editor of "Central Chronicle" and to the editor of "Navbharat"; requesting the defendants to refrain from the illegal act of using (reproducing) plaintiff's works/news articles in their newspaper. However, the defendant did not reply to any of the said legal notices of the plaintiff. The notice(s) dated 8.03.2010 and 29.04.2010 served on the editor of "Central Chronicle" were returned with an endorsement "Refused" on 11.03.2010 and 5.05.2010.

9. As per the plaintiff, it provides its news articles only to its authorised subscribers against a subscription fee. But, in the present case, defendants, without any authorization and despite plaintiff's legal notices, have been blatantly infringing the copyright of the plaintiff in the news articles, which vests with the plaintiff. Since the defendants are not subscribers to the services of the plaintiff, therefore, the defendants are not within their rights to use, copy and/or reproduce the work of the plaintiff for their economic gain. Such acts of the defendants constitute infringement of copyright under the provisions of Section 14 (a) (i) and Section 51 of the Copyright Act, 1957.

10. Despite plaintiff's request to discontinue its infringing acts, the defendants having continued to infringe the copyrights of the plaintiff. Defendants desire to gain profits by taking advantage of the labour and expenditure of the plaintiff in procuring news for the purpose of saving labour and expenses to themselves.

11. As the defendants made wrongful gain at the cost of plaintiff's labour and expenditure and caused incalculable harm and injury to the business, goodwill and reputation of the plaintiff, therefore, the plaintiff filed the instant suit for injunction on 20.11.2011.

12. The suit as well as the interim application was listed before the court on 21.01.2011 when summons were issued in the suit and an ex- parte ad interim injunction order was granted in favour of the plaintiff and against the defendants. Despite opportunities granted by the court, no written statement was filed on behalf of the defendants. Even the counsel for the defendants took discharge from the case on 01.11.2011, complaining that despite various reminders, the defendants were not giving her any instructions. Thereafter, vide order dated 08.12.2011 the defendants were proceeded ex-parte.

13. Plaintiff filed evidence by way of an affidavit Ex. PW1/A, of PW-1, Mr. Hirok Chowdhury, Senior Manager-HR & Personnel of the plaintiff who proved the following document:

- (i) Ex. PW1/1- A copy of the Letter of Authorization dated 21.11.2011.
- (ii) Ex. PW1/2- An internet printout form the website of the defendants.
- (iii) Ex. PW1/2A- An original printout of the Terms of Use of the plaintiff's proprietary material.
- (iv) Ex. PW1/3 (Colly)- The original printouts of the plaintiff's News item /work copyrights in which vests with the plaintiff.
- (v) Ex. PW1/4 (Colly)- The original News item /work published by the defendants.
- (vi) Ex. PW1/5 to Ex. PW1/8- The plaintiff's notices dated 08.03.2010, 29.04.2010, 09.03.2010 and 29.04.2010 along with receipts of registered post in original.
- (vii) Ex. PW1/9, Ex. PW1/10, Ex. PW1/11, Ex. PW1/12- The envelope with the endorsement "refused" in original along with the plaintiff's notices dated 08.03.2010 and 29.04.2010 in original.
- (viii) Ex. PW1/13 (Colly)- The original printouts of the plaintiff's news item/work copyrights in which vests with the plaintiff.
- (ix) Ex. PW1/14 (Colly)- The original news item /work published by the defendants.
- (x) Ex. PW1/15 (Colly)- The original printouts of the plaintiff's news item /work copyrights in which vests with the plaintiff.
- (xi) Ex. PW1/16 (Colly)- The original news item /work published by the defendants.

14. I have heard the learned counsel for the plaintiff and have also gone through the affidavit in ex parte evidence of the plaintiff, as well as the documents placed on the record. In evidence, the plaintiff has proved the averments made in the plaint and has also exhibited the relevant documents in support of its case. As no cross-examination of the plaintiff's witnesses was carried out, therefore, the evidence filed by the plaintiff has gone unrebutted. Therefore, the averments made by the plaintiff in the plaint are taken as correct deposition.

15. Considering these facts and circumstances of the case, I am of the view that the plaintiff is entitled to a decree for a permanent injunction.

16. Accordingly, the prayer of the plaintiff in terms of para (a) and

(b) of the prayer clause is allowed.

17. As regards the prayer for cost, rendition of accounts and damages which includes loss of business, reputation and goodwill in the market, since the above claimed amount is based on the assessments made by the plaintiff, I am of the view that a sum of Rs.5 lac can be reasonably awarded to the plaintiff as punitive damages in view of the judgment passed in the case titled as Time Incorporated vs. Lokesh Srivastava, 2005 (30) PTC 3(Del), wherein, this Court expressly recognized a third type of damages as punitive damages, apart from compensatory and nominal damages. The Court has made some relevant observations discussion on the aspect of punitive damages. It was observed:-

"The award of compensatory damages to a plaintiff is aimed at compensating him for the loss suffered by him whereas punitive damages are aimed at deterring a wrong doer and the like minded from indulging in such unlawful activities..."

"This Court has no hesitation in saying that the time has come when the Courts dealing actions for infringement of trademark, copy rights, patents etc. should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers who indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them."

18. One of the reasons for granting relief of punitive damages is that despite of service of summons/notice, the defendants chose not to appear before the court. It shows that the defendants are aware of the illegal activities otherwise, they ought to have attended the proceedings and put their defence to the action taken by the plaintiff. The defendants in the present case have maintained their silence, therefore, it is implicit that they have infringed the rights of the plaintiff. Under these circumstances, in order to avoid future infringement, this court is inclined to grant relief of punitive damages to the tune of Rs.5 lac in favour of the plaintiff to be recovered from the defendants.

19. Decree be drawn accordingly by the Registry.

20. The suit and pending application stands disposed of.

MANMOHAN SINGH, J.

MARCH 20, 2012