

COPYRIGHT – EXCLUSIVE RIGHT OF PUBLICATION – NOT MORE THAN TEN YEARS

Appellant: SAFDAR HUSSAIN

Respondents: Mst. NOSHI (NISHAT) GILLANI and others

Decision: Appeal dismissed on merits

Appeal was filed against the judgment and decree passed by the learned Additional District Judge, Lahore, whereby the plaint of suit for declaration and permanent injunction under the Copyright Ordinance, 1962 (“Ordinance”) was rejected under Order VII Rule 11 of the Civil Procedure Code (“CPC”), as barred by law under Section 14(1) of the Ordinance.

The Respondent, writer of the book “*Mohabbatain Jub Shumar Karna*” made an agreement on January 8, 1993 with the Appellant transferring all legal rights in relation to publication and publicity of the said book in his favour with no limit to the period. The publisher (Appellant) claimed that he invested huge amount, bore all necessary expenses and paid the agreed royalty/compensation to the Respondent and since the Appellant had exclusive and absolute right for publication of the said book for indefinite period, the Respondent could not publish the said book. After almost 5 years of execution of the agreement between the parties, on June 6, 1998, the Appellant filed a suit against the Respondent and obtained a restraining order against her. During the pendency of the said proceeding the Respondent filed an application under Order VII Rule 11 CPC read with Section 14(1) of the Ordinance stating that the suit is barred under the Ordinance. Order VII of the CPC deals with rejection of a plaint and Rule 11 reads as:

The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is under-value, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law.

Whereas, Section 14(1) of the Ordinance reads as:

Assignment of copyright.--(1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the, copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof:

Provided that, in case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence:

Provided further that, where the owner of the copyright in a work is the author of the work, no assignment of the copyright in the work or of any interest in such copyright shall be made, or if made shall be effective (except where the assignment is made in favour of Government or an educational, charitable, religious or non-profit

institution) for a period of more than ten years beginning from the calendar year next following the year in which the assignment is made; if an assignment of the copyright in a work is made in contravention of this proviso, the copyright in the work shall, on the expiry of the period specified in this proviso, revert to the author (who may reassign the copyright in the work subject to the provisions herein contained), or if the author be dead to his representative in interest.

Provided further that the copyright in an unpublished work assigned by its author to any person or organization for the specific purpose of its publication shall revert to the author if such work is not published within a period of three years from the date of its assignment;

The court observed that precise question raised was whether in the absence of any term mentioned in the agreement an author of a book can give the rights of publication to a publisher for an indefinite period.

The court observed that assignment of copyright includes the act of publishing a literary work and as per the statute meaning of publication is the showing of copies of work to the public in sufficient quantities. The statute stipulates that the maximum period of such assignment in cases other than Government, educational, charitable, religious and non-profitable institutions, is 10 years.

It further observed that the agreement between the parties reveals that exclusive right of publication of the said book was given to the Appellant. But any valid agreement is the one which is not barred by law and only those clauses are enforceable which are not in conflict with any statute. The author of a book may not specify the period of agreement but by operation of law its life can be curtailed to a defined period and its enforceability can always be questioned under Section 2(j) of the Contract Act, 1872. The court thus held that agreement binds the parties for 10 years and interestingly the suit was filed after 5 years and a restraining order was passed on June 8, 1998 by court, which continued till the plaint was rejected under Order VII Rule 11 CPC on February 2, 2009 and by that time almost seventeen years had lapsed since the agreement was executed. Consequently, the appeal filed by the Appellant was found merit less and was dismissed on merits.

