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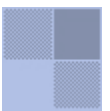
APPEAL AGAINST EXPUNGING ORDER PASSED BY COPYRIGHT BOARD IN RECTIFICATION PROCEEDING

Appellant: MUHAMMAD AKRAM RAHI.
Respondent: THE COPYRIGHT BOARD and others.
Decision: Appeal allowed setting-aside the impugned order passed by the Copyright Board being without jurisdiction.

This Appeal was directed by the Appellant against the impugned order communicated on behalf of Respondent No.1 (the Copyright Board) to remove the copyright entry entitled "IK AKRAM RAHI" (the poetry book) from the Copyright Register.

The brief facts are that the Respondents filed an application under section 41(2) of the Copyright Ordinance, 1962 to rectify the Register of Copyrights by expunging the entry of registration of the poetry book registered in favour of the Appellant. It was averred in the application that the poetry book consisting of 1406 pages was not an authentic work of the Appellant, rather it was plagiarized. References were made to some poems and songs written and sung by different persons in an endeavour to demonstrate claim of the Respondents that in fact, intellectual property rights regarding the same belonged to others which had been infringed by incorporating them in the poetry book of the Appellant as his original work. It was also claimed that the Respondents held ownership rights by way of assignment from some of the original authors and singers whose poetry or songs were included in the poetry book. A defense claim filed in the Birmingham High Court by the Appellant and his solicitor with a statement of truth in relation to eleven works included in the Poetry Book testified that they were not authentic or original work of the Appellant. As such, the Appellant had concealed material facts while applying and obtaining copyright in his name regarding the Poetry Book in violation of various provisions of the Copyright Ordinance.

The Appellant in his counter statement, resisted claim of the Respondent by submitting that he was a renowned poet, writer, singer, producer, compiler and composer and had released a number of music albums. He applied and obtained copyright of the Poetry Book with clean hands for protection of his intellectual property rights under section 39 of the Copyright Ordinance and the same was granted after following the due process of law. As such, the Appellant was an original singer, lyrics writer, composer and compiler of work incorporated in the Poetry Book.



The Copyright Board after hearing both the parties and examining the evidence on record opined that, prima facie, it appeared that the Poetry Book of the Appellant was not an authentic literary and original work rather, the same was plagiarized. Accordingly, the application for rectification was allowed and entry of copyright in favour of the Appellant was ordered to be expunged.

In an appeal against the said order of Copyright Board, the learned counsel for the Appellant raised a serious objection qua jurisdiction of the Copyright Board to hear and decide rectification applications based on infringement of intellectual property rights. He contended that forum of remedy for infringement of intellectual property rights had been streamlined by the establishment of the Intellectual Property Tribunal, which exercised exclusive jurisdiction with respect to infringement of intellectual property rights under all intellectual property laws included in the schedule of the IPO Act, to adjudicate all civil proceedings regarding infringement of intellectual property laws in substitution of various remedies before different forums under existing intellectual property laws by conferring an overriding effect to the IPO Act over all other intellectual property laws. Hence, the Copyright Board did not have jurisdiction to entertain and adjudicate upon the rectification application which was based upon claims of infringement of intellectual property rights of others. The point of jurisdiction was verbally but vociferously raised before the Copyright Board which went to the root of the case but no finding to this effect was rendered. The impugned order was therefore patently without jurisdiction, void ab initio and coram non iudice.

The learned counsel for the Respondents submitted that question of jurisdiction was not taken in writing in counterstatement, it could not be raised before the Court. That the question qua jurisdiction was misconceived for the reason that the jurisdiction vested with the Tribunal under the IPO Act is limited with respect to infringement of intellectual property rights under intellectual property laws. Whereas, the application for rectification did not question the infringement of any intellectual property right of the Respondents but merely sought rectification simpliciter on the ground that the Appellant had applied and obtained copyright of his poetry book by concealing material facts and as such, the same was erroneously granted to him. Therefore the matter exclusively fell within the jurisdiction of Copyright Board and the rectification application was rightly accepted.

The court observed that it was well settled in our jurisdiction that question of jurisdiction of an adjudicating forum had to go to the very root of the case and if such forum was not vested with the jurisdiction to decide the dispute or assumed jurisdiction not vested in it, the order passed by it was void ab initio and of no legal effect. When the court did not have jurisdiction, no consent or acquiescence could invest such court with such jurisdiction. It was well settled that point of jurisdiction was purely a question of law which could be raised even it had not been taken in writing, although propriety demands that it should be raised in the first instance. Since the impugned Order was silent with respect to the question of jurisdiction, or it was not raised at all, the Court in the Appellate jurisdiction which was a continuation of original proceedings found it obligatory to address the same.

Thus, the Court held that for the purposes of reconciliation of section 41(2) of the Copyright Ordinance with IPO Act, all cases of rectification could be conveniently divided into two categories. The first category of cases was of rectification simpliciter, being not based on any allegation of infringement or breach of any other intellectual property right under intellectual property laws included in the schedule of the IPO Act. The determination of rectification cases by the Copyright Board falling in the first category did not create any inconsistency with the jurisdiction of the Tribunal under the IPO Act which could conveniently be decided by the Copyright Board. However, there was an obvious and irreconcilable inconsistency with respect to second class of cases of rectification based on allegations of infringement of any existing intellectual property right under intellectual property laws included in the Schedule of the IPO Act. Therefore, where a rectification application contained allegations of infringement of intellectual property rights under the intellectual property laws included in the Schedule of the IPO Act, the jurisdiction to decide such an application would vest with the Tribunal in terms of Section 17, 18 and 39 of the IPO Act. As such, the claim of rectification filed by the Respondent seeking cancellation of entry of copyright made in favour of the Appellant and the jurisdiction to decide such a rectification application coupled with allegation of breach of intellectual property rights under intellectual property laws included in the Schedule of the IPO Act exclusively rested with the Tribunal created and existing under the IPO Act.

During the pendency of Appeal another Applicant filed CM application seeking to become a party in the said appeal as Respondent No. 3 which was dismissed by the court being not a necessary and proper party in the titled Appeal. Consequently, the Court allowed the Appeal setting aside the impugned order passed by Copyright Board being without jurisdiction, allowing the Respondent/Applicant to pursue their claims before the Tribunal subject to all just and legal exceptions.

