

MANU/CP/0002/2004

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BEFORE THE COPYRIGHT BOARD AT NEW DELHI

Case No. 18/2001

Decided On: 14.06.2004

R.P. Mittal **Vs.** Basant Industries

Hon'ble Judges/Coram:

Brij Kishore Sharma, Chairman, A.B. Shukla and S.R. Dongaonkar, Members

Counsels:

For Appellant/Petitioner/Plaintiff: S.K. Bansal, Adv.

For Respondents/Defendant: M.K. Miglani, Adv.

JUDGMENT

Brij Kishore Sharma, Chairman

1. This is an application, under Section 50 of the Copyright Act, 1957 for rectification of register of Copyrights. The applicant in this case is Shri R.P. Mittal who was in 1980 proprietor of the firm named as Messrs Basant Industries, NUNHAI, Agra. The firm was engaged in manufacturing and marketing of Diesel Oil Engines, Centrifugal Water Pumps etc. According to the applicant, in May 1980 he instructed a commercial artist Shri Safdar Hashmi to prepare an artistic label to be used in connection with the applicants business. Shri Hashmi prepared a label containing the word BI with device of panther. The words BI were supposed to be the first letters of the name of the firm Basant Industries.

2. In July 1980, the firm Basant Industries was converted into a partnership firm and the applicant continued to be a partner and the artistic work prepared by Shri Hashmi was used in connection with the business till 31.10.1995.

3. On 31.10.1995 the applicant retired from the partnership firm and immediately asked the continuing partners not to use the artistic design. He wrote a letter to the other partners.

4. On 27.12.1998 the applicant came across a caution notice published in a daily newspaper Amur Ujala by the non-applicant claiming to be the owner of the artistic work containing the word BI with a panther device. The applicant published a similar notice in Amar Ujala on 13 January 1999 claiming to be the owner of the said artistic work.

5. Next day the applicant served a notice on the Respondent asking that the Respondent should withdraw the said caution notice. On 3 February 1999 the applicant inspected the register of Copyrights and obtained a certified copy of the registration certificate. According to the applicant the respondents are not the owners or authors of the above said artistic work. He further states that Shri Rajeev Mittal whose name has been given in Para 7 of the registration certificate is not the author of the work. Shri Rajeev Mittal is one of the partners of the firm and he cannot be the author of the said artistic work.

The applicant further states that in the application the date of the first publication of the impugned artistic work given therein as 1967 is wrong. It was also submitted that if 1967 is to be taken as the year of first publication then the alleged author Shri Rajeev Mittal was a minor in 1967. According to the applicant the respondent has deliberately made wrongful and incorrect statement before the Registrar of Copyrights and has obtained the registration fraudulently.

6. The applicant therefore requests that the register may be rectified by expunging the registration.

7. The respondent Basant Industries in their reply state that the applicant remained proprietor of the firm only for six months in which duration, he has alleged that, the said artistic work was prepared. While the firm had been using it since 1967 and the said work has appeared in many documents. It is also stated that the applicant Shri R.P. Mittal was a party in several civil suits between the parties. The number of suits as well as the courts are given in the reply. Two cases are pending in the Court of District Judge, Agra, one in the High Court of Allahabad, another in the High Court at Delhi and two in different courts in Agra. Thus, there are six cases in different courts between Shri R.P. Mittal and Basant Industries. It was stated by the respondent that the constitution of the firm Basant Industries has undergone changes from time to time. It is also stated that Basant Industries was dissolved by a Deed of Dissolution on 10th January 1980.

8. Regarding preparation of artistic work by Shri Safdar Hashmi, in 1980 it is stated in the reply that the said artistic work was being used much earlier. As an annexure to the statement, the Respondent attached two documents, viz, a receipt containing an endorsement by a Labour Inspector dated 4th January 1972. This is a document written partly in hand by the Labour Inspector, Agra in which an employee has given receipt that he has fully and finally been paid by Basant Industries and he has no claim left and submitted his resignation forthwith. The other document submitted by the respondent is an agency agreement between the respondent and Messrs Daltex Port Said Company of Cairo, Egypt. This bears the seal of Embassy of India at Cairo and also the seal and signature of Shri S.K. Chibber, Attache Counselor) of the Embassy of India at Cairo. The date given is 23.12.1979. By these annexures the respondent has tried to show that the logo was in use before it was prepared by Shri Safdar Hashmi, artist in 1980. The respondent reiterated that disputed artistic work was being used in 1967.

9. Referring to the claim of the applicant owner of copyright in the said artistic work, it was submitted by the respondent that the applicant retired from the partnership firm Messrs Basant Industries on 31.10.1995 as a consequence of arbitration award which has been acted upon. Quoting the retirement deed dated 31.10.1995 the respondent reproduced Para 2, 3 and 4 of the retirement deed. Para 2 states that the retiring partners have retired on 31st October 1995 and have received the amount standing to their credit in the account books of the firm in full and final settlement of their share. It is further stated in that para "now the surviving/continuing partners are owners of all the assets and are liable to pay and clear all the liabilities of the firm.

10. In para 3 of the retirement deed it is stated "that all rights of the retiring partners in the firm will stand assigned to the surviving/continuing partners... In para 4 it is stated that "the surviving/continuing partners have taken over the firm Messrs Basant Industries and its units as a going concern as a whole with all its assets, liabilities and outstanding. The retiring partners have nothing to take from the continuing partners. The respondent also drew attention to Para 10 of the Partnership Deed dated 23rd May 1987 in which it was specifically laid down "that the partnership firm will not dissolve if

any partner wants to retire or leave the firm. The retiring partner or partners will only be entitled to amount standing to his or their credit in his or their account in the firm and shall not get any goodwill, quota rights or any other benefit regarding partnership".

11. It is also stated that the petitioner did not send any letter dated 31.10.1995 to the respondent claiming to be owner of the artistic work. The respondent denied that Shri Rajeev Mittal is not the true author of the artistic work. However, it was admitted that Shri Rajeev Mittal was a partner of Messrs Basant Industries. It was reiterated that the disputed artistic work was being used since 1967 and has appeared on all important documents and the letterhead of the respondent. The respondent also denied that the registration was obtained by concealment or fraud. The respondent has also submitted an affidavit by Shri Safdar Hashmi. In the affidavit submitted by the respondent, Shri Safdar Hashmi states that: "the logo of BI with devise of a panther was not designed by myself. He further avers "that I have not known to (Sic) Shri R.P. Mittal and I have never seen such design logo of BI with design of panther." He also denied that the certificate attached by the applicant purported to be given by Safdar Hashmi was not given by him.

12. The case was fixed for hearing before the Copyright Board for 5th April 2002. The applicant wrote a letter stating that he was going out of the country and would not be able to appear and requested for another date. The matter was again fixed for hearing before the Board in September 2002. The applicant requested for adjournment stating that the copy of the petition filed by him had been misplaced and was not traceable. This being the most untenable plea by the applicant, the Board observed that the applicant could have obtained a copy from his own lawyer or even the opposite counsel. He could have inspected the case file in the Registry and copied it. It was not the duty of the Registrar to supply him a copy of his own application. The respondent opposed the adjournment and showed a copy of the paper in Suit No. 477 of 1999 before Civil Judge, Agra to demonstrate that the applicant had attached a copy of the application in the suit filed before the Civil Judge. The Board proceeded to frame the issues and directed the parties to file their documents and affidavits and recorded that on the next hearing the matter will be heard finally and decided.

13. Shri O.P. Mittal, partner of Basant Industries in his affidavit stated that the registration of the copyright was obtained in accordance with the law. Regarding the firm it was stated in the affidavit that in April 1965 five persons agreed to commence a partnership business under the name and style of Basant Industries. On 1st April 1972 a fresh partnership deed was executed because Shri R.P. Mittal joined the partnership representing his HUF. On 1st May 1973 the constitution of the firm again changed because Shri Ram Kishan Mittal settled out of India and wanted to retire. On 28th January 1976 another partnership deed was drawn indicating certain changes in the share of the partners. In 1978 some members retired from the partnership and on 10th January 1980 Shri Om Prakash Mittal and Shri Ram Saran Mittal retired from partnership. On 1st July 1980 a fresh partnership deed was executed according to which Shri R.P. Mittal (HUF) and two others became partners of the firm. In 1987 a deed of retirement was executed and Shri Ram Saran Mittal retired. The remaining partners Shri R.P. Mittal and Shri Om Prakash Mittal continued the partnership and were joined by Shri Rajeev Mittal and Shri Vinay Mittal. The new partnership deed was executed on 23rd May 1987. On 31st October 1995 Shri Ram Prakash Mittal and Shri Vinay Mittal retired as partners and executed a retirement deed. By Paras 2, 3 and 4 they took their share of partnership and all assets, liabilities of the firm were taken over by the continuing partners. Along with the affidavit two reports of the Export Inspection Agency, Delhi established by the Government of India under the Export (Quality Control

and Inspection) Act, 1963 were annexed. With each certificate of inspection a packing list is attached. These packing lists dated 5.4.1980 and 3.4.1980 have the disputed artistic work as the letterhead of Basant Industries. It was stated that the letter given as Annexure 'B' of the application was never sent to the respondent and was not received by him. Shri R.P. Mittal filed an affidavit in evidence on 12th April 2003 in which it was stated in Para 5 that he was the true owner of the said artistic work and the respondent firm used this artistic work from 1970 onwards under the terms or licence of deponent Shri R.P. Mittal. He maintained that as retiring partner he continues to be entitled to the "trade mark". He further averred that paras 2, 3 and 4 of the retirement deed dated 31st October 1995 do not relate to trade mark or copyright of the said artistic work and that there is no assignment of the copyright in the retirement deed. In Para 16 of the affidavit Shri R.P. Mittal states that the artistic work was developed in the year 1970 and that the year 1980 was wrongly mentioned and reiterated that it was with the professional commercial artist Shri Safdar Hashmi that the work was prepared. He also filed an affidavit by Shri Safdar Hashmi in which Shri Hashmi wants that "his previous affidavit given by him to Messrs Basant Industries may be treated as void because it was obtained by fraud and misrepresentation and undue influence."

14. Shri R.P. Mittal in his affidavit further averred that in 1967 Shri Rajeev Mittal was not more than ten years and had no interest in the firm.

15. At the time of hearing the advocate for the applicant argued that the registration was obtained by false declaration. Shri Rajeev Mittal shown as author was a minor in 1967 and so could not have been the author of the work. He admitted that dissolution of the partnership was effected on 31.10.1995. The main burden of his argument was that the dissolution deed in Paras 5 and 6 talks about use of the brand name Atul Shakti. He further argued that the brand name and style of Atul Shakti was partitioned and divided between the continuing and the retiring partners but all others remained the property of the owners thereof. The applicant was at pains to argue that the use of the word "style" in para 6 indicated that all other trade marks etc. continued to vest in the retiring partners. It was also submitted that Rule 16 of the Copyright Rules was violated. The applicant being an interested party under Rule 16 and because no notice was given there is violation of Rule 16 which must result in cancellation of the registration. Referring to Para 19 of the application it was argued that Shri Rajeev Mittal was one of the partners of the firm and could not have been the author of the artistic work. It was also argued that Shri Rajeev Mittal should have filed an affidavit and because he has not filed an affidavit, adverse inference should be drawn.

16. It was also argued that from 1980 to 1995 the applicant was a partner of Basant Industries, so the respondent the Basant Industries must have given notice to the applicant under Rule 16. An earlier partner should be taken to be the interested party.

17. On behalf of the Respondent it was submitted that the applicant has in Para 2 mentioned that the artistic work was created by Shri Safdar Hashmi on being commissioned by the applicant. In para 2 of the application it is clearly stated that the work was created in the month of May of the year 1980. He also emphasizes that a number of cases as given in the written statement have been initiated by the applicant and are pending in different Courts including the High Court. Referring to the conditions of retirement in the retirement deed it was pointed out that Para 2 clearly states that the retiring partners have been paid in full and final settlement of their share in the firm and that the surviving partners are owners of the assets and are liable to pay and clear all the liabilities. Para 3 of the retirement deed further clarifies that all the interest of the retiring partners shall stand assigned to surviving partners. Para 4 declares that the

partnership is being transferred as a going concern as a whole with all its assets and liabilities. Paras 5 and 6 are specific to the use of the brand name Atul Shakti and it is agreed that the continuing partners will manufacture and market diesel engines and pump sets under the trade mark Atul Shakti only in the State of U.P. and will not market generating sets bearing the brand name Atul Shakti. Para 6 declares that the retiring partners will manufacture and market generating sets bearing the brand name Atul Shakti in the whole of India but will market diesel engines only in U.P. The retiring partners are prohibited from marketing diesel engines in other parts of India except U.P. The respondent sought to show by reference to the Annexures that the disputed artistic work was in use much earlier than 1980 which according to the applicant is the year when it was created.

18. The Board has heard both the parties patiently and have examined the application, the reply and the affidavits along with the annexures. The issues that were framed in this matter are:

- 1.** Whether the disputed artistic work was got prepared by the petitioners in 1980?
- 2.** Whether the artistic work was created by Shri Safdar Hashmi?
- 3.** Whether the artistic work was used from 1980 to 1995 by a partnership firm of which the petitioner was a partner?
- 4.** Whether the petitioner on retiring from the partnership asked the other partners not to use the artistic work?
- 5.** Whether the petitioner had the legal authority to do so?
- 6.** Whether the registration of the artistic work was obtained by concealment, fraud or any other wrongful act? If so, what is its effect?
- 7.** What orders?

19. Issues Nos. 1, 2 and 3: After the issues had been framed and two important documents had been attached by the respondent along with the reply and some more documents as evidence along with the affidavit, the applicant suddenly changed track. In Para 16 of his affidavit filed in April 2003 he changed his stand that he took the year 1999 when he filed the application. In the application he clearly stated that he commissioned Shri Hashmi in May 1980 to prepare the artistic work. After perusing the documents filed by the respondent which showed that the artistic work was in use in 1972 (a document noted by the Labour Inspector, Agra) and in 1979 (a document noted by the Embassy of India at Cairo), he stated that the year of creation of the work is 1970 and was wrongly mentioned as 1980. These documents were filed by the Respondent along with his reply on 12th January 2001. When the respondent filed his affidavit in evidence on 12th November 2002, he submitted two inspecting reports by an Export Inspection Agency established by the Government of India under Section 7 of the Export (Quality Control and Inspection) Act, 1963. The inspection note had as Annexures packing slips of the good dispatched at Kabul, Afghanistan. They are dated 3rd April 1980 and the said artistic work formed part of the letterhead. On coming across such undisputable evidence the applicant in his affidavit dated 12th April 2003 thought that he should now declare that instead of 1980 the year of the creation of the artistic work was 1970. Such a belated attempt creating a new plea is certainly not permissible. There is no reason given why in the application the year 1980 was

mentioned. Hence the case of the applicant falls to the ground. After the issues have been framed and evidence has been submitted he tries to change his plea. He states in the application that the artistic work was prepared in 1980 and when confronted with evidence after the lapse of four years states it was created in 1970. It may be noted that the Annexure 'A' furnished with the application is in a way of deed of assignment by the commercial artist of his copyright in favour of the applicant Shri R.P. Mittal. This document is dated 15th May 1980. Generally such a document is written at the time of handing over of the work and so this also proves that the artistic work was created in 1980 by Shri Safdar Hashmi and not in 1970 is later claimed by the applicant.

20. An interesting part of this matter is that Shri Hashmi claims to be the creator and assigns the work in favour of Shri R.P. Mittal. Same Hashmi swears an affidavit in January 2001 and says that the certificate dated 15.5.1980 was fraudulently obtained by Shri R.P. Mittal. He disclaims any concern in regard to the preparation of the artistic work. This Safdar Hashmi submits another affidavit on 7th April 2003 and this time states that the previous affidavit was obtained by fraud, misrepresentation and undue influence. No Court or Tribunal can believe such a witness or deponent who contradicts himself not once but twice. Thus, the applicant has not been able to establish that the said work was created by Shri Safdar Hashmi. The only thing that comes out of the affidavit of Shri Hashmi is that he lands himself to manipulation and at the drop of a head makes the allegation that he was the subject of fraud or misrepresentation. In a second affidavit he advisedly does not mention the year in which he prepared the disputed art work. The respondents have been able to show that the artistic work was in use at least from 1972 onwards. This is clearly proved by the four documents discussed above. Thus, the answer to issues No. 1 and 2 is in the negative and the answer to issues No. 3 is in the affirmative.

21. Issue No. 4: The applicant has filed only a letter purported to have been written by him and addressed to the respondent but he has not been able to produce any evidence to show that the letter was posted or sent by courier or received by the respondent. Hence, he has failed to prove issue number 4.

22. Issue No. 5: The retirement deed is very clear on one point. The only brand name that is being shared by the continuing partners and the retiring partners is the brand name Atul Shakli and areas have been carved out in which two parties will make use of the brand name. Paras 2, 3 and 4 of the retirement deed which have been extensively quoted above clearly indicate that the retiring partners have been paid in full and final settlement of their share and all the assets and liabilities will after that date be the assets and liabilities of the continuing partners. It need not be emphasized that the assets also include all intellectual properties. If there was any copyright belonging to the partnership firm Basant Industries it continued to vest in the remaining partners. The retiring partners had denuded themselves from all the assets and liabilities in Basant Industries. Thus, the artistic work which was being used by the respondent Basant Industries from 1972 onwards continued to be the property of Basant Industries even though some partners had retired. The argument put forward by the applicant was ridiculous. What was attempted was to isolate the word "style" used in Para 6 of the retirement deed. It is a rule of interpretation that a sentence has to be read as a whole. One cannot pick out a single word out of context and try to base the argument on the supposed meaning of the word. The relevant part of Para 6 of the retirement deed is as under:

"that the retiring partners will manufacture/market generating sets in the brand name and style of Atul Shakti in the whole of India and diesel engines in U.P.

only."

In this sentence the brand names and style are followed by the proposition "of" and they have a connection with Atul Shakli. The connection is that Atul Shakli, is described as a brand name and style. In this context the argument that all other brand names and styles continued to remain with the retiring partners is not acceptable. Paras 2, 3, 4, 5 and 6 have to be read together and by so being, it is clear that all the assets including trademarks, brand names and copyrights continue to vest in the respondent Basant Industries and became the property of the continuing partners. The rights of retiring partners were completely and finally extinguished. The petitioner has no legal authority to ask the continuing partners from refraining from using the artistic work.

23. Issue No. 6: The applicant has only averred that the registration was brought by concealment and fraud but no evidence was submitted to support the claim. Even though in the application violation of Rule 16 was not pleaded, the point was vehemently argued. But the applicant has not been able to show why he was to be treated as an interested party when all his rights had been extinguished. There is no law requiring a continuing partner to give notice of all his doings to a partner who has retired and has transferred all his assets and liabilities. By so doing the retiring partners became a stranger and is as much interested as any other man in the street.

24. Issue No. 7: In the circumstances, there is no merit in the application and it is dismissed with costs which is assessed as Rs. 2,000/-.

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