

08.03.2022
SL No.8
Court No.8
(gc)

**FMAT 62 of 2022
With
CAN 1 of 2022**

**Sankar Mondal
Vs.
Swapan Debnath & Ors.**

(Via Video Conference)

Mr. Debnath Ghosh,
Mr. Sandip Ghose,
Mr. Sarosij Dasgupta,
Mr. Subrata Das,
Mr. Debayan Ghosh,
.....for the Appellants.

Mr. Aniruddha Chatterjee,
Mr. Arif Ali,
Mr. Rajiv Kumar,
...for the Respondent No.1 /Plaintiff.

Mr. Siddhartha Banerjee,
Ms. Soni Ojha,
Ms. Sambrita B. Chatterjee,
...for the Respondent No.5.

Mr. Ramesh Ch. Paul,
Ms. Riya Dutta,
...for the Respondent No.6.

The appeal is at the instance of the defendant/respondent No.3 in a suit filed by the elder son of Late Narayan Debnath claiming infringement of copyright of several works of his late father.

Mr. Debnath Ghosh, learned Counsel appearing on behalf of the appellant has submitted that the suit was filed with oblique motive just before the commencement of the International Kolkata Book Fair, 2022 in the City Civil

Court at Calcutta and with a view to prevent the appellant from selling the books authored by Late Narayan Debnath. It is submitted that in the said proceeding an injunction application was moved ex parte on 24th February, 2022. The learned Trial Court, disregarding the fact that the appellant has the exclusive copyright in respect of several works of Late Narayan Debnath and all royalties payable to the Author were, in fact, paid by the publisher passed an ex parte order of injunction restraining the appellant from publishing and selling the works of Narayan Debnath, since deceased. It is further submitted that the said order was obtained by suppression of material facts. Mr. Ghosh has referred to the proceedings initiated by the present appellant before the learned Commercial Court at Alipore and submits that several orders passed in the said proceeding would show that the learned Court has recognized the right of the appellant to publish the works of Late Narayan Debnath. The learned Counsel has also raised the issue of maintainability of the suit before the learned Trial Court.

Mr. Aniruddha Chatterjee, learned Counsel appearing on behalf of the plaintiff/respondent No.1 submits that since royalties were not paid to the son or other family members of Sri Narayan Debnath, since deceased, the suit was filed before the learned City Civil Court in which the said impugned order was passed.

Sri Narayan Debnath, the creator of Bantul the Great, Handa Bhonda, Nonte Fonte and several other Bengali comic strips, passed away on 18th January, 2022, was a legendary illustrator, cartoonist and writer. He never underestimated children and managed to make most of his creations timeless. In an interview to the Indian Express in 2013, Debnath said:-

“I did not know what that entailed. I decided to fall back on my ability to observe things around me. The peculiarities of people around me. Their habits. Things that made them different, things that made them prototypes.....The trick is to never underestimate children”.

He was immensely popular and for generations of Bengalis, a Narayan Debnath comic strip exudes nostalgia. It is thus only natural that after his death there will be disputes regarding his copyright and royalty. There is huge demand for his books during the Book Fair as admitted on behalf of the publisher appellant. Even otherwise the entire pavilion of the Book Fair is decorated with his book comics. The appellant claims to have a copyright over and in respect of the original works of Late Narayan Debnath. The appellant cannot escape payment of royalties to the legal heirs of the said deceased before commercially exploiting such rights. The appellant although had disclosed a Will claimed to have been made and published by Sri Narayan Debnath during his lifetime, so long as the probate has not been granted by a competent Court, the money needs to be secured. There is

a great possibility of huge sale of his works during the Book Fair and in the event the interest of the legal heirs of Sri Narayan Debnath is not protected, it may cause irreparable loss and prejudice.

We are not convinced that the plaintiff was not aware of the proceedings before the Commercial Bench at Alipore and also do not appreciate the timing of filing of the said suit before the Trial Court in which an application was moved ex parte just before the commencement of the Book Fair in which the impugned order was passed. The conduct of the plaintiff cannot be said to be above board. The learned Trial Judge, in our view, ought not to have passed an ex parte ad-interim order without giving an opportunity of hearing to the persons likely to be affected by such order of injunction, keeping in mind, that the Book Fair was to commence shortly and any such order may cause irreparable injury to the publisher.

However, keeping in mind that the appellant is obliged to pay the royalties to the legal heirs of the said deceased unless their inter se disputes are settled, we direct the appellant to deposit a sum of Rs.7 lacs to the credit of the suit, namely, T.S. 448 of 2022 on or before 14th March, 2022.

The learned Trial Judge is directed to deposit the said amount in a suitable interest bearing fixed deposit account yielding highest return until further orders.

The appellant shall file an affidavit disclosing faithfully and truly the sale proceeds of books of Late Narayan Debnath since his death till 14th March, 2022.

We make it clear that if we find that such statements are untrue, the appellant shall be dealt with appropriately for filing a false affidavit on oath.

The said affidavit shall be filed on before 17th March, 2022 upon prior service to the respondents.

A proper account shall be maintained separately in respect of the sell of books of Late Narayan Debnath until further orders.

The matter stands adjourned till 21st March, 2022.

The order of stay of operation of the impugned order shall remain stayed unconditionally till 14th March, 2022 and in the event the said amount is deposited within the aforesaid period, the stay of operation of impugned order shall continue till the disposal of the appeal.

This order is passed without prejudice to the rights and contentions of the parties.

Leave is given to the appellant to cure the defect by tomorrow, i.e. 9th March, 2022.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)