

\$~9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 572/2020**

ELSEVIER LTD. AND ORS.

..... Plaintiffs

Through: Mr. Amit Sibal, Senior Advocate with
Ms. Sneha Jain, Ms. Snehima Jauhari,
Ms. R. Ramya, Ms. Surabhi Pande
and Mr. Reshabh, Advocates.

versus

ALEXANDRA ELBAKYAN AND ORS.

..... Defendants

Through: Mr. Gopal Sankaranarayan, Senior
Advocate with Mr. Rohan George,
Mr. Shrutanjaya Bhardwaj, Ms.
Shivani Vij, Mr. Akshat Agrawal, Ms.
Sriya Sridhar and Mr. Nilesh Jain,
Advocates for Defendant No. 1.
Ms. Vrinda Bhandari, Mr. Tanmay
Singh, Mr. Abhinav Sekhri, Mr.
Gautam Bhatia and Ms. Gayatri
Malhotra, Advocates for Intervenors
in I.A. 14908/2021.
Mr. Rohit Sharma, Mr. Nikhil Purohit
and Mr. Ashok Kumar, Advocate for
Intervenors in I.A. 197/2021.
Mr. Jawahar Raja, Mr. Moksha
Sharma, Ms. Arushi Gupta and Ms.
Vaisha Sharma, Advocates for
Intervenors in I.A. 590/2021.
Mr. M. Dutta and Mr. Aditya Guha,
Advocates in I.A. 8366/2021.
Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Srish Kumar Mishra,
Mr. Sagar Mehlawat and Mr.
Alexander Mathai Paikaday,
Advocates for UOI.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

O R D E R

%

09.02.2023

I.A. 10297/2022 *(on behalf of Defendant No. 1 under Order VII R. 11 of the Code of Civil Procedure, 1908 [“CPC”] seeking rejection of Plaintiff)*

1. Defendant No. 1 – Ms. Alexandra Elbakyan [hereinafter “*Ms. Elbakyan*”] invokes Order VII Rule 11 of CPC for rejection of the Plaintiff contending that it does not disclose cause of action and is barred by law. The above grounds are premised on the assertion that assignment agreements relied upon by Plaintiffs do not confer ownership of copyrights on the impugned works as they are void under the Indian Contract Act, 1872 [hereinafter “*Contract Act*”]. Reliance is placed upon Section 16 and 19 of the Copyright Act, 1957 [hereinafter “*Copyright Act*”], to argue that agreements relating to copyrights must specify royalty or some other form of consideration, failing which, they cannot affect the assignment of copyright. Section 25 of the Contract Act is relied upon to contend an agreement without consideration is void. Even Section 23 of the Contract Act is referred to argue that the agreements being opposed to public policy are unconscionable and void.

2. Mr. Gopal Sankaranarayan, Senior Counsel representing Ms. Elbakyan, submits that under law, Plaintiffs were required to pay royalty and other consideration to the authors in exchange for “*exclusive right to publish and distribute the articles*”. In absence thereof, he argues that agreements

are invalid. A cursory examination of the agreements demonstrates that Plaintiffs have not compensated the authors with any royalty or any form of consideration and yet, they assert to have acquired exclusive rights of publication and distribution. The economic component, which is mandatory requirement as per the provisions mentioned above, is absent from the agreements. He further argues that assignment agreements relied upon by Plaintiffs are irrelevant as they pertain to publication of books and not articles, for which the suit is filed against Ms. Elbakyan.

3. Before dealing with the aforementioned contentions, it must be noted that Ms. Elbakyan, in her written statement, has categorically admitted that Plaintiffs are owners of copyright in subject works. This admission was attempted to be withdrawn by way of an application [*being* – I.A. 8355/2022] under Order XVI Rule 17 of CPC, which was dismissed by this Court by way of a detailed order dated 03rd November, 2022. The effect of rejection necessarily means that admissions on record continue to bind Ms. Elbakyan.

4. Order VII Rule 11 of CPC helps in streamlining the judicial process by reducing burden on the courts, as it permits weeding out of cases that are not worthy of its attention. It is an important tool for the court to maintain efficiency and prevent abuse of its process, as it enables rejection of plaints which are frivolous, vexatious, improper, and are bound to prove abortive. It is well-settled legal proposition that while deciding the application under Order VII Rule 11 of CPC, only averments made in the plaint are germane and contrary pleas taken by Defendant(s) on merits are immaterial. [See:

*Srihari Hanumandas Totala v. Hemant Vithal Kamat and Ors.*¹]. The case as set out in the plaint is, *inter alia*, as follows: Plaintiffs comprise of global publishing houses in the field of scientific and academic publication. They have exclusive right to communicate to the public their literary work and no other entity can, without authorisation from the Plaintiffs, proceed to host, store, reproduce, distribute, issue copies, make available to, or communicate to the public, Plaintiffs' original literary works. Ms. Elbakyan is owner of 'SciHub' website which indulges in online piracy by communicating and providing access to Plaintiffs' literary works to the public for use and download. Defendant No. 2, operator of 'Lib-Gen' or 'Library Genesis' website, provides access to works in scientific and medical fields as well as non-scientific works by unauthorized means, circumventing technological measures put in place by Plaintiffs to protect copyright in their literary works. Plaintiffs have asserted copyright ownership on the basis of assignment agreements and narrate facts to prove copyright infringement by Defendants. The plaint has to be read in a meaningful manner and only if the same *ex-facie* does not disclose a cause of action, can it be rejected. From the above, it is clear that the cause of action is disclosed and to that extent the ground for seeking rejection of the plaint has no merit.

5. Now, coming to legal ground. There is, as discussed above, a categorical admission of Ms. Elbakyan *qua* copyright in favour of Plaintiffs. Therefore, the legal question urged in application, founded on the construction of the agreements, is no longer a pure question of law. Further, the dispute relating to validity of such agreements regarding adequacy or

¹ (2021) 9 SCC 99.

sufficiency of economic/ monetary consideration itself is a question of fact and plea advanced in the instant application, founded on provisions of Copyright Act, which would require adjudication on facts. Plaintiffs, by way of illustration, have relied upon assignment agreements mentioned at page Nos. 177-340 (particularly page Nos. 299 and 301 to demonstrate the aspect of consideration envisaged in the said agreements). This Court takes note that fifteen (15) assignment agreements have been submitted, sealed, and filed, which serve as an exemplar of the substantial number of agreements executed between Plaintiffs and authors, vesting Plaintiffs with exclusive rights over the literary works. The legality, veracity and relevancy of such agreements cannot be undertaken at this stage. The Plaintiffs have thus discharged the initial burden under Section 55(2) of the Copyright Act to claim ownership towards the work, which are the subject matter of the present suit. The relevant facts to claim ownership have been clearly disclosed. As regards the contention that the assignment agreements are not relevant to Plaintiffs' case against Ms. Elbakyan, it must be noted that the Plaintiffs' case against her, is for making available infringing copies of Plaintiffs' literary works including journals, journal articles, books, and books' chapters. Plaintiffs have clearly alleged that Defendant No. 1 is also responsible for uploading infringing works on Defendant No. 2's website. As per Plaintiffs, there is a close link between Ms. Elbakyan and Defendant No. 2 and Ms. Elbakyan has uploaded infringing content/ work on Defendant No. 2's website.

6. Therefore, in view of the above discussion, in the opinion of the Court, the application is not maintainable and the same is accordingly,

dismissed.

CS(COMM) 572/2020

7. Defendant No. 2 has not filed written statement or appeared before this Court despite issuance of summons. Accordingly, Defendant No. 2 is proceeded *ex-parte*.

I.A. 12668/2020 (u/ Order XXXIX Rule 1 & 2 of r/w Sec. 151 of CPC seeking restraining infringement of copyright),

I.A. 11755/2021 (u/ Order XXXIX Rule 2A r/w Sec. 151 of CPC seeking directions),

I.A. 197/2021 (u/ Order I Rule 10(2) and Rule 8A r/w Sec. 151 of CPC on behalf of Society of Delhi Science Forum and Society for Knowledge Commons seeking impleadment),

I.A. 590/2021 (u/ Order I Rule 10 r/w Sec. 151 of CPC on behalf of Ram Ramaswamy, Medico Friends Circle and Ors. Seeking impleadment),

I.A. 8366/2021 (u/ Order I Rule 10 r/w Sec. 151 of CPC on behalf of Forum for Medical ethics Society seeking impleadment), and

I.A. 14908/2021 (u/ Order I Rule 10 r/w Sec. 151 of CPC on behalf of group of scholars studying/ working in the Universities across NCT of Delhi seeking impleadment)

8. List for consideration on 12th July, 2023.

SANJEEV NARULA, J

FEBRUARY 9, 2023

nk