

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Suit No.788 of 2012

Plaintiff : Mrs. Riffat Siraj Munir through
Muhammad Akbar, Advocate.

Defendant : M/s. Moomal Production (Pvt.)
Limited through Waqar Ahmed
and Sameera Iqbal, Advocates.

Date of hearing : 21.03.2024.

ORDER

YOUSUF ALI SAYEED, J. - The Plaintiff claims to be the author and copyright holder of the Urdu novels titled (1) “Diyar-e-Dil”, (2) “Dil-e-Abad”, (3) “Dil Darya, Tun Sehra”, (4) “Shahkar”, (5) “Gulabi Kagaz Aur Zard Phool” and (6) “Haram, Mehram Aur Bharam” (the “**Novels**”), in respect of which separate contracts were apparently executed in the month of April 2007 between her and the Defendant, a production house, for making drama serials based on each of those novels, with the Plaintiff being tasked with writing and delivering the script of each weekly episode (the “**Contracts**”).

2. The Plaintiff has alleged that her signatures were obtained on the Contracts when the relevant clauses pertaining to the subject of her remuneration remained blank, and that the same were filled in later on by the Defendant to her detriment by showing a lesser amount payable per episode than what was due in each case. Through this Suit, she has sought a declaration that the Defendant has ceased to have any right to use of the Novels upon cessation of the Contracts along with consequential relief flowing therefrom, as well as damages.

3. The relevant paragraphs of the plaint setting up the case of the Plaintiff read as follows:

“21. That actually the defendant had already planned to deceit the plaintiff after getting her signature on agreements wherein space for writing consideration amount/s were intentionally left blank in order to deprive her from her life earned intellectual property in a clandestine manner. After signing these agreements the defendant flatly refused to fix consideration amount of these agreement according to the agreed mechanism or even on the basis of prevailing media market practices and forced the plaintiff to accept price of his choice/pleasure which left the plaintiff with no alternate but to approach the court for cancellation of these agreements and recovery of damages for violating the plaintiff’s intellectual property rights vested in these novels.

22. That the defendant filed written statement in response to plaintiff’s earlier suit wherein it was revealed that the defendant had unilaterally filled these blank spaces with the values of his choice and as per his stance in paragraph 34 of his written statement the plaintiff is only entitled to Rs. 4 Million. Application filed by the defendant under Order 7 rule 11 and its reply is annexed as (Annexure-N).”

“26. That the contract dated 16.04.2007 has concluded on 15.04.2012 leaving the Plaintiff an agony, pain and long suffering. The defendant ceases to have any right, title or interest in/to the novels/stories namely “Haram Mehram Aur Bharam”, “Gulabi Kaghaz Zard Phool”, “Dil Darya Tan Sehra”, “Shahkar”, “Diyare Dil” and “Dil-e-Abad” after 15.04.2012 even if the agreement is correctly concluded.”

“40. That the cause of action initially firstly arose in favour of the Plaintiff and against the defendant in April 2007 when it got her signatures on blank agreements with a promise to settle the consideration amount within few weeks and then on each successive occasion when it committed breach of agreements. The cause of action also arose in March 2012 when plaintiff’s suit for cancellation of impugned agreements has been returned and lastly a few weeks before when by means of reply to a legal notice the defendants refused to accept the plaintiff’s request to settle the matter in an amicable manner. The cause of action is of continuous nature and is still continued.”

4. As is apparent from the foregoing excerpts from the plaint, the Plaintiff had filed an earlier suit against the Defendant, being Suit No.27/2010 before the Court of Senior Civil Judge, District South, Karachi (the “**Prior Suit**”), which was simply one for Cancellation of the Contracts, with the case and cause of action being cast in terms of paragraphs 8 and 24 of the plaint filed in that matter, reading as follows:

“8. That the defendant on 16.04.2007 entered into 5 other settlement of agreements with Plaintiff to write drama serials/soaps based on the story of 4 other best seller novels titled as “Dil Darya”, Tun Sehra”, “Shahkar”, Gulabi Kagaz” Aur Zard Phool”, and “Haram, Mehran Aur Bharam” of the Plaintiff (hereinafter referred to as the said settlement of agreements), whereas the terms and conditions of the agreement was not settled between the parties. It is pertinent to mention here that neither the consideration amount of per episode and the number of episodes were mentioned in the said settlement of the agreements nor the full consideration of the agreements was paid to the plaintiff furthermore no time limit for the fulfillment/performance of the agreements had been given in the said settlement of the agreements, it is settled principle of law that an agreement without consideration is void in the eyes of law and not binding at the plaintiff.

24. That the cause of action in favour of the Plaintiff and against the defendant firstly accrued on 16.04.2007 when the defendant entered into all the above said agreements with plaintiff to write drama serials/soaps based on the story of the best seller novels titled as “Diyar-e-Dil”, “Dil-e-Abad”, “Dil Darya, Tun Sehra”, “Shahkar”, “Gulabi Kagaz Aur Zard Phool” and “Haram, Mehram Aur Bharam” of plaintiff, secondly accrued on April 5, 2008 when the defendant through his reply refused to terminate the above said contracts, thirdly in October 2008 when the defendant violated the moral rights of the plaintiff, fourthly on 16.04.2010 when the said agreements have cease to exist, lastly accrued a few days ago when the plaintiff again contacted the defendant and requested him to terminate/cancel the above said agreements amicably and not to produce drama serials/soaps based on the stories of the above said novels written by the plaintiff. The cause of action is still continuing.”

5. The Plaintiff of the Prior Suit was returned vide Order dated 03.03.2012 on point of pecuniary jurisdiction, whereafter the plaintiff of this fresh Suit was presented before this Court on 12.07.2012, wherein it has been prayed that:

“a) A **declaratory decree** may kindly be passed against the defendant to the effect that he has no right, title or interest in/to the intellectual property of the plaintiff present in the form of novels/stories detailed in the plaint and regarding which the impugned agreements have been executed in April 2007 being not capable of specific performance and void for having improper/ inadequate/missing consideration and on the ground detailed in the plaint.

b) A decree for **perpetual and mandatory injunction** may kindly be passed against the defendant for restraining him to use/pirate any of the stories of the novels detailed in this suit for making/producing of any dram serial or to use in any manner whatsoever for airing/televising and further perpetually restraining them from interfering or causing interference in to the lawful possession and ownership of the plaintiff over the suit property/novels registered in her name with the IPO Pakistan, as per law.

c) Ad-interim relief by means of granting temporary injunction by maintaining “status-quo” regarding the novels/stories detailed in the plaint may kindly be granted till the final determination of this suit.

d) A **decree for the recovery of damages** amounting to rupees 54.45 Million detailed in the plaint in paragraph 34 may kindly be passed in favour of the plaintiff and against the defendant along with applicable mark-up till realization of this amount.

e) **Costs of this suit**, counsel’s fee and all other expenditures incidental thereto of the suit may also be granted to the plaintiff.

f) **Any other relief** deemed appropriate by this Hon’ble Court may also be granted to the plaintiff.

6. Apart from the Written Statement, an Application under Order VII Rule 11 CPC, bearing CMA No. 5968/13, has also been filed on behalf of the Defendant, with it being averred that in view of the Order made for return of the plaint of the Prior Suit by the Senior Civil Judge, it was the very same plaint that had to be presented before this Court, and that the presentation of a fresh plaint was barred and that the Suit was also hit by Order II Rule 2 CPC. It is that Application which presently arises for consideration, hence the scope of the enquiry stands circumscribed for the time being in accordance with the parameters of the relevant provision, without a need for any dissection or discussion of the case on merit.

7. Proceeding on that Application, learned counsel for the Defendant principally placed reliance on the judgment rendered by a learned Single Judge of the erstwhile High Court of West Pakistan, Karachi Bench, in the case reported as Mst. Hawabai and 6 others v. Abdus Shakoor and 8 others PLD 1970 Karachi 367, whereas learned counsel for the Plaintiff pointed out that such decision same had been set aside on appeal before a Division Bench in the case reported as Mst. Hawabai and 6 others v. Abdus Shakoor and 8 others PLD 1981 Karachi 277 and the appellate Judgment had then been sustained by the Supreme Court in the matter reported as Abdus Shakoor and others v. Mst. Hawabai and others 1982 SCMR 867.

8. When those precedents are examined, it comes to the fore that the learned Single Judge had given a finding that upon return of the plaint, a fresh suit was not maintainable as the same plaint that had been returned was to be filed before the Court of competent jurisdiction. That finding was assailed through a Letters Patent Appeal, and after examining the provisions of the Code of Civil Procedure as well as the corpus of caselaw on the subject, the learned Division Bench was pleased to set aside the finding of the learned Single Judge and remand the case for further proceedings according to law from the stage it had been dismissed, with it being held as follows:

“In view of the above discussion we have reached the conclusion that after a plaint is returned to a plaintiff by a Court under Order VII, rule 10, C. P. C., he may adopt any of the following courses :-

(i) he may challenge the order, returning the plaint for presentation to the proper Court by filing an appeal against such order, or

(ii) he may present the same plaint after its return to him to a Court having jurisdiction in the matter, or

(iii) he may amend the plaint by giving up a part of the relief or reduce the valuation so as to make it cognizable by the Court which returned the plaint and then represent the same to the same Court or amend the plaint and present it before a Court having jurisdiction in the matter, or

(iv) he may file a fresh suit in the Court having jurisdiction in the matter.

We also hold that there is no bar either under Order VII, rule 10, C. P. C or in any other provision of the Code which precludes the plaintiff from filing a fresh suit in case the plaint filed earlier in a Court is returned on the ground that the Court had no jurisdiction in the matter. We further hold that a plaint filed in a Court of proper jurisdiction after having been returned by another Court on the ground that the former Court had no jurisdiction in the matter is a fresh suit to all intents and purposes and is not merely a continuation of the old proceedings in the former Court.”

9. That Order of the Division Bench was in turn sustained by the Supreme Court, with it being observed that:

“The contention of the learned counsel for the petitioners is that under Order XXIII, rule 1, the plaint was returned and it should have been submitted on the same cause of action, but the respondents submitted a fresh suit on different causes of action. It will be appreciated that no withdrawal was involved and the plaintiffs were not allowed to withdraw their suit under Order XXIII, rule 1. There was no formal defect in the plaint nor any request has been made by the plaintiffs before the Court. Here the plaint was returned by the Court concerned because it had no jurisdiction to decide it. The plaintiffs were, therefore, under no legal obligation to file the same plaint before the other forum. They could submit a fresh plaint and as indicated above they were under no obligation to file a suit at all. Of course, in the later case they could not overlook the period of limitation fixed for such a suit. Before the Single Judge of the High Court when the respondents submitted their plaint including therein some other grounds and that suit was not time-barred, they could do so. Therefore, the Single Judge in the High Court could not return the plaint or dismiss it on that ground alone. In that view of the matter, the decision of the Division Bench was correct.”

10. As for the question as to whether this Suit encapsulating a fresh claim has been brought within the applicable period of limitation, it merits consideration that the claim is essentially one for infringement of copyright and damages flowing therefrom, for which the period of limitation is three years from the date of such infringement. In that regard, paragraph 15 of the Plaint alludes to acts of alleged infringement of at least one novel, namely Dil-e-Abad, to up to 22.07.2010.

11. Even otherwise, it falls to be considered that acts of infringement constitute a recurring cause of action, providing a fresh period of limitation for filing an action, as held in the case reported as M/S Bengal Waterproof Ltd v M/S Bombay Waterproof Manufacturing Company & Another AIR 1997 Supreme Court 1398, where it was held that:

In cases of continuous causes of action or recurring causes of action bar of Order 2 Rule 2 sub-rule (3) cannot be invoked. In this connection it is profitable to have a look at Section 22 of the Limitation Act, 1963. It lays down that 'in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues'. As act of passing off is an act of deceit and tort every time when such tortious act or deceit is committed by the defendant the plaintiff gets a fresh cause of action to come to the court by appropriate proceedings. Similarly infringement of a registered trade mark would also be a continuing wrong so long as infringement continues. Therefore, whether the earlier infringement has continued or a new infringement has taken place cause of action for filing a fresh suit would obviously arise in favour of the plaintiff who is aggrieved by such fresh infringements of trade mark or fresh passing off actions alleged against the defendant. Consequently, in our view even on merits the learned Trial Judge as well as the learned Single Judge were obviously in error in taking the view that the second suit of the plaintiff in the present case was barred by Order 2 Rule 2 sub-rule (3), CPC.

12. Section 23 of the Limitation Act 1908 is an analogous provision in as much as it similarly stipulates that:

23. Continuing breaches and wrongs.--- In the case of continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

13. As such, for present purposes, whether or not the Suit as a whole or certain claims advanced thereunder are barred by limitation remains a mixed question of law and fact, for determination of which a specific issue may be framed. Needless to say, whilst the Suit may eventually come to be dismissed on that score, it cannot be said that the same ought to be terminated at this stage via rejection of the plaint.

14. In view of the foregoing, CMA No. 5968/13 stands dismissed accordingly.

JUDGE

MUBASHIR