

MANU/DE/1853/2013

Equivalent/Neutral Citation: 2013(3)ARBLR52(Delhi), 2013:DHC:3033, 2013(56)PTC40(Del)

IN THE HIGH COURT OF DELHI

O.M.P. 856/2012 & I.A. No. No. 4567/2013

Decided On: 01.07.2013

Dorling Kindersley (India) Pvt. Ltd. **Vs.** Sanguine Technical Publishers and Ors.

Hon'ble Judges/Coram:

Manmohan Singh, J.

Counsel:

For Appellant/Petitioner/Plaintiff: Mr. Akhil Sibal, Adv., Mr. Sanjay S. Chhabra, Adv., Mr. Saurabh Kirpal and Mr. Gurmehar S. Sistani, Advs.

For Respondents/Defendant: Ms. Nidhi Jain, Adv. for R-1 to 3 and Mr. Nikhil Rohtagi, Adv. for R-4

JUDGMENT

Manmohan Singh, J.

1. By this order, I shall dispose of OMP No. 856/2012 filed by the petitioner against the respondents seeking in the interim measures under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') pending the arbitration. The brief factual matrix of the matter leading up to the filing of the present petition can be enunciated as under:

a) The petitioner namely Dorling Kindersley (India) Pvt. Ltd. claims to be engaged in the business of publishing wide varieties of the books and other educational contents under the name and style of the "Pearson Education" (under license from Dorling Kindersley Ltd., UK). It is stated that the respondent No. 1 is a partnership firm having its partners who are arrayed as respondent No. 2 to 4. It is however stated that the respondent No. 4 has resigned from the partnership illegally which has affected the claims of the petitioner against the respondent No. 1 firm

b) It is stated in the petition that the petitioner and the respondents entered into an agreement dated 14th December, 2009 where under the petitioner was given the exclusive rights to publish and market the engineering books or titles (including the present and future titles) of which all rights and authorizations for publishing the said books vested with the respondent No. 1. The petitioner has reproduced the terms of the agreement in the petition which reads as under:

Objective

1.1 Person and Sanguine hereby undertake to co-brand the engineering titles, as mentioned under the Schedules of this Agreement, with the limited objective of building and developing the title for providing quality material to the students.

1.2 The envisaged co-branding shall feature the titles of the following kinds:

(a) The titles that are already published by Sanguine ('the present titles'). A list of such titles is attached to this Agreement as Schedule-A.

(b) The titles that are being developed or will be developed in the future ('the future titles'). A list of such titles which are being developed is being attached herewith to this Agreement as Schedule-B.

Pearson shall have the exclusive right to publish, market and sell the present and future titles as educational editions for the territory, which shall be published in terms of the provisions contained herein (the present titles and the future titles are hereinafter collectively referred to as "the titles")

1.3 Sanguine shall submit to Pearson, only those titles, for which it has all rights and authorizations to do so and shall refrain from submitting any titles that infringe on any copyright or any other rights or other applicable laws or regulations. The Titles so selected by Pearson shall have to comply with the description and with the agreed form, content and style as a result of which this Agreement was entered into.

1.4 Sanguine shall ensure that the titles under this co-branding program shall not conflict with any trade distribution or publication arrangements that Sanguine already has in place in India and the exclusivity of the titles shall remain with Pearson.

1.5 Pearson shall purchase the existing inventory of the present titles from Sanguine at a consolidated amount of Rs. 14,00,000/- (Fourteen lakhs) only, the details of such existing inventory has been covered under Schedule C of the Agreement.

Period

2.1 The term of this Agreement shall be for a period of 48 months from the date of execution of this Agreement, which can be extended to 60 months.

Grant of Rights

6.1 Subject to the terms of this Agreement, the copyrights in the Titles are and shall remain the property of Sanguine. However, Pearson shall have the exclusive publishing rights and the derivative rights in the titles, for the terms of this Agreement.

6.2 All copies of the Titles shall have copyright notices conspicuously placed thereon as may be decided by Pearson. The copyright page shall feature Sanguine's name.

6.3 Pearson shall have the rights to digitalize the titles.

6.4 Pearson shall have the right to export, market and sell the titles

globally.

6.5 Sanguine undertakes that Pearson shall have the exclusive rights to the titles pertaining to Engineering topics, to be brought in by Sanguine, during the term of this agreement, and such titles shall be covered by Schedules of this Agreement.

6.6. The rights mentioned in clause 6.1 hereof further include the right for Pearson to publish or license the publication of short extracts from the titles solely for the purposes of publicity, promotion and review, without any payment to Sanguine.

Exclusivity

7.1 Sanguine undertakes that the titles covered under this Agreement shall be treated as exclusive and it shall not get into any similar arrangement for the titles with any other publisher or shall not publish such titles on its own, during the term of this Agreement.

Payment

8.1 Pearson shall pay to Sanguine the following royalty based on the sum received on the copies sold in a calendar year:

Upto 7000 copies of each title: Twenty Eight percent (28%)

7001 and above copies of each title: Thirty Three Percent (33%)

8.5 Pearson shall pay a sum of Rs. 14,00,000/- (Fourteen Lakhs) only towards taking over the existing inventory of Sanguine titles, as mentioned under Schedule C.

Arbitration

15.1 Any dispute or difference of any kind whatsoever which arises or occurs between the parties in relation to anything or matter arising under, out of, or in connection with this Agreement shall be referred to arbitration under the Arbitration and Conciliation Act, 1996. The seat of arbitration shall be New Delhi and the parties shall bear this own costs.

By placing the reliance upon the terms of the agreement, the petitioner implied that the representations were made to the petitioner that all the titles and authorizations of the works which were the subject matter of the publishing arrangement vest with the respondent. The petitioner also stated that it was the respondent no. 1's responsibility under the agreement to ensure that the exclusivity of the rights shall be maintained with the petitioner.

c) It is stated by the petitioner that the term of the agreement was for the period of 48 months from 14th December, 2009 and the same was extendable up till 60 months. It is further stated in the petition that the respondents full cooperated with the petitioner up till January, 2012 and in between provided further titles for the publishing, the details of which are mentioned in the petition.

d) The petitioner has stated in the petition that on 13th February, 2012, the

petitioner received a communication from Respondent No. 3 informing that the Respondent No. 4 has resigned from the partnership firm/Respondent No. 1 w.e.f. 11th February, 2012. It was further informed in the said communication that the copyright of the books authored/co-authored by the respondent No. 4 would no longer be available with the respondent No. 1. Therefore, the petitioner was called upon to exhaust the existing stocks of the books and not to publish the titles in any manner related to Respondent No. 4 as the said respondent No. 4 was no longer the partner of the respondent No. 1 firm.

e) The petitioner has stated that the said communication was responded by it on 22nd February, 2012 by pointing out the terms and conditions of the agreement and it was informed that the respondents are under obligation to full their part of the commitments during the subsistence of the agreement. The respondents were also called upon to provide the agreements which had been entered on the basis of which the representations were made to the petitioner that the titles are the exclusive property of the respondent No. 1 and it was obligatory on the respondent No. 1 to maintain exclusivity. It is contended by the petitioner that there is an express stipulation and representation under the agreement that the copyrights in titles are and shall remain the property of the respondent No. 1 as per Clause 6.1. It was also the stipulation under the agreement that the respondent No. 1 would not enter into any such similar arrangement with any other publisher and shall not publish such titles in order to maintain exclusivity. Therefore, the petitioner called upon the respondents to provide the agreements.

f) The petitioner has stated that the respondent No. 1 replied to the communication dated 22nd February, 2012 by way of letter dated 1st March, 2012, when the respondent No. 1 informed the petitioner that as the respondent No. 4 has resigned from the respondent No. 1 firm, therefore, the copyright in the works authored or co-authored by the respondent cannot vest in the respondent No. 1 firm.

g) Thereafter, as per the petitioner, there were talks of resolving the matter amicably by negotiating for settlement but the matter could not be resolved. It is further mentioned that the despite the repeated requests made by the petitioner, the respondents refused to divulge the understanding arrived at between the respondent No. 1 to 3 and respondent No. 4 in the form of the agreement at the time when the respondent No. 4 exited from the respondent No. 1 firm.

h) The petitioner has stated in the petition that the petitioner has incurred huge sums of Rs. 14 lacs at the time of entering into the contract to acquire the existing inventory of the titles before publishing the same. The petitioner has also spent a sum of Rs. 1 crore towards promotional expenses in order to popularize the titles under the agreement.

i) It is submitted that the respondents are trying to wriggle out of the subsisting and legal agreement dated 14th December, 2009 by committing the intentional breach of the terms and conditions. The respondents are causing the impediments in the working out of the agreement by issuing communication not to publish titles when under the agreement, the respondents are required to facilitate the petitioner to maintain the exclusivity of the titles.

j) The petitioner has contended that it has learnt that there are titles like Field theory of which the respondent No. 4 is the co-author which is forming subject matter of the agreement dated 14th December, 2009 has been sold by the another publisher namely Elsevier and likewise there is another book namely "The 8051 Microcontrollers" has also been published by the same publisher in the market which forms subject matter of the exclusive arrangement with the petitioner. These are the titles which as per the petitioner are authored/co-authored by the respondent No. 4, for which the allegation in the petition is that the respondents are facilitating the said breach of the agreement.

k) Likewise, the petitioner has also stated in the petition that the respondents wrote another email dated 5th September, 2012 whereby it has been informed that two of the authors namely Dr. Uma Rao and Dr. Andhe Pallavi of three of the titles which are forming the subject matter of the publishing agreement have also expressed their unwillingness to associate themselves with the respondent No. 1 for publishing any new books/editions in future. This instance has been relied upon by the petitioners to state that the conduct of the respondents is improper as the said respondents are doing the breach of the agreement through this indirect route of withdrawal of the permission by the authors which has not been contemplated under the agreement.

l) Feeling aggrieved by the actions of the respondent, the petitioner has filed the application under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim prayers as contained in the prayer clause of the petition pending the arbitration. The matter came up before this court on 12th September, 2012, when this court passed an ex-parte ad interim injunction to the following effect:

1 . The background to the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act'), is that the Petitioner under the name and style 'Pearson Education' ('Pearson') entered into an agreement dated 14th December 2009 with Respondent No. 1 partnership firm (hereinafter 'Sanguine') having its registered office at Bangalore, Karnataka of which Respondent Nos. 2 to 4 are partners. In terms of the said agreement, Pearson and Sanguine undertook to co-brand the engineering (book) titles, as mentioned under the Schedules to the agreement for providing quality material to the students. A list of titles of books published by Sanguine were set out in Schedule-A to the agreement. The titles that were being developed or were to be developed in future were set out in Schedule-B. An additional list of titles was also appended, a copy of which is at page 15 of the documents.

2. According to the Petitioner, the agreement subsists. It is for a period of 48 months and can be extended up to 60 months. Clause 15.1 of the agreement provides for arbitration to be held in Delhi under the Act and Clause 16.1 states that the parties will submit to the jurisdiction of the Courts in Delhi.

3 . The Petitioner states that on 13th February 2012, it received a communication from the Respondent No. 3 stating that Respondent No. 4 had resigned from the partnership firm two days earlier and that he would no longer be interested in getting the books/titles for which he

was an Author/co-Author published under the agreement. The Petitioner protested pointing out that this was in breach of the agreement. It sought copies of the author agreements signed with Respondent No. 1. However, the Respondent No. 1 claimed that this could not be divulged. It is stated that despite several rounds of meetings, the issues that arose could not be resolved.

4. Meanwhile, the Petitioner discovered that titles which were listed in Schedule-A to the agreement, are now being published by another publication house viz., Reed Elsevier India Private Limited ('Elsevier'). The Court has been shown three publications, one under the title 'Field Theory' by Respondent No. 4 Dr. D. Ganesh Rao published by Pearson in 2011 and another publication under the same name published subsequently in 2012 by Elsevier by the same author. It is pointed out that the book subsequently published by Elsevier is virtually the same except a few additional chapters. Likewise, another title 'The 8051 Microcontrollers; Architecture, Programming & Applications' by Dr. K. Uma Rao and Dr. Andhe Pallavi published by Pearson in 2011, appears to have been published in 2012 under more or less the same title by Elsevier with the same authors. There is another book 'Network Analysis' published by Elsevier, as a near verbatim copy of the book 'Network Theory' published by Pearson.

5. In the circumstances, it is prayed by the Petitioner that the Respondents should be restrained from committing further breach of the agreement.

6. Issue notice to the Respondents, returnable on 3rd December 2012. Dasti in addition.

7. Till the next date the Respondents, their agents, servants, nominees, assignees, attorneys or their representatives are restrained from publishing/printing, marketing, selling any of the titles/books of the authors vested under the agreement dated 14th December 2009 with or without modification in the nomenclature of the title with same contents in addition to the titles mentioned at page 15 of the paper book, till further orders. The Petitioner will also send the Respondents within ten days, a notice invoking the arbitration clause and within four weeks thereafter take the next logical step for the appointment of an arbitral Tribunal in terms of the agreement.

8. The Petitioner prays for the appointment of Local Commissioners ('LCs') to visit the locations mentioned in the petition and make an inventory of the books/publications of the titles/books of the authors listed in Schedules A and B to the agreement which are apprehended to have been printed through some other publication house and are stored or being sold by the Respondents and to seize the same.

9. Accordingly, this Court appoints three LCs to visit the following addresses:

(i) Mr. Anil Verma, Advocate (Mob. 9958014454) will visit:

(a) Reed Elsevier India Pvt. Ltd.
C/o Agility Logistics Pvt. Ltd.
Khasra No. 7/17/1
18/1, Village Safiabad
Narela, Sonapat Road
Sonapat, Haryana-131001.

(d) Empire House,
Phase-II,
Sector-19, Gurgaon, Haryana.

(ii) Ms. Swati Gupta, Advocate (Mob. 9711566266) will visit:

(b) A-14, Industrial Area,
Moti Nagar, New Delhi

(c) 2/14, Near Happy School,
Ansari Road, Daryaganj, New Delhi.

(iii) Mr. Parameshwar, Advocate (Mob. 09818113824) will visit:

(e) UBS Publishers Distributors Ltd.
148, Cresscent 2nd Floor

Mysore Road, Bengaluru-560026
(f) TBH Publishers and Distributors
Vikram Trinetra House,
81/10, Vatal Lnagaraj Road,
Okalipuram, Rajaji Nagar, Bangalore-
560021.

10. The aforementioned LCs will visit the respective locations as indicated during working hours on any week day, within next ten days. Each LC will draw up an inventory of the books/publications of the titles/books of the authors in terms of Schedules A and B of the agreement dated 14th December 2009, as well as the list appended at page 15 of the documents, and seize the books that are found to be printed through a publication house other than Pearson and are stored or being sold by the Respondents. The seized books will be preserved separately and kept under a seal to be affixed and signed by the LC and produced by the Respondents as and when ordered by the Court. The records kept at each premises will be inspected and the details of the vendors and the quantity sold and marketed by the agents of the Respondents will be noted and copies of the relevant pages of such records taken. The LCs will sign the relevant pages of the said records in original after inspection. Photographs and/or video where necessary shall be taken. Each LC will be accompanied by one representative of the Petitioner during the visit. Each LC is permitted to take the assistance of the local police in the event that any resistance is offered by anyone to the execution of the above directions. A report be submitted by each of the LCs to the Court within a further period of ten days after the respective visits. The fees of each of the LCs is fixed at Rs. 75,000 which shall be paid by the Petitioner to each of them within ten days. This will be independent of the travel, transport and other incidental expenses which shall be borne by the Petitioner.

11. Copy of this order be given dasti.

Sd/-

Dr. S. Muralidhar

Judge

In terms of the above said order, the Local Commissioners visited the premises at the different sites of the parties as directed by the Court and they recovered the books in question and filed their respective reports.

2. Thereafter, the applicant, Reed Elsevier India Pvt. Ltd. filed a review petition bearing No. 676/2012 under Sections 114, 151 & 152 CPC, seeking review/clarification of the order dated 12th September, 2012. The said application along with an application for condonation of delay being I.A. No.20730/2012 was listed before the Court on 19th November, 2012 when notice was issued to the non-applicants for 3rd December, 2012. On 3rd December, 2012 an adjournment was sought by the petitioner for filing the reply. On the said date, respondent No. 4 appeared before the Court and sought time to file the reply to the main petition and notice was also issued to the remaining unserved respondent Nos. 1 to 3.

3. On 9th January, 2013, after hearing Mr. Saurabh Kirpal, learned counsel for the applicant, the prayer of review of order was rejected with the observations that no grounds are made out for review of the order dated 12th September, 2012. However, for the purpose of remaining prayer made in the petition, the matter was sent to the roster Bench for 16th January, 2013 after renumbering the same as an IA. The application for condonation of delay in filing the review petition was also disposed of.

4. When the matter was taken up on 16th January, 2013, it appears from the record that no reply in the main petition was filed by the respondents nor in the application being I.A. No. 646/2013. Oral statement made by counsel appearing that they have no objection if prayer made in I.A. No. 646/2013 is allowed. The petitioner filed its reply to the said application. Mr. Saurabh Kirpal, learned counsel for the applicant pressed for hearing and disposal of his application due to hardship addressed by him on behalf of his client despite of objection of petitioner's counsel that reply to the main petition by the respondents is necessary for the purpose of deciding the I.A. No. 646/2013. In view of above, this Court has heard the I.A. No. 646/2013 on merit.

5. In para 16 of the order dated 21st January, 2013, this Court observed as under:-

16. This Court has yet to counter the issues raised by the applicant as to whether the present case is covered in that category. The respondents are apparently waiting the decision of this application before filing any reply to the main petition. No doubt, the issues raised by the applicant have to be determined and same would be considered when all the relevant and full disclosure and details would be provided. Due to such peculiar facts and circumstances in the present case, I am of the view that without full disclosure made either in the reply to the main petition by the respondents to deal with the allegations made by the petitioner or by the applicant, as per statement made in para 7 of its application or by the present application or by filing of proper application, the prayer made in the application at this stage cannot be granted as this Court feels that the said details are necessary to consider the issues raised by the applicant. The application is hereby dismissed.

6. Against the said order, the applicant M/s. Reed Elsevier India Pvt. Ltd. filed an appeal being FAO(OS) No. 122/2013 before the Division Bench of this Court. The same was disposed of by order dated 27th February, 2013 which reads as under:-

Caveat No. 181/2013

Since learned counsel for the respondents has entered appearance, the caveat stands discharged.

CM No. 3487/2013

Allowed subject to just exceptions.

CM No. 3486/2013 (For Condonation of Delay of 134 days in filing the appeal)

Notice, which is accepted by learned counsel for the respondents.

In view of the facts set out in the application, the delay in filing the appeal qua the orders in question is condoned and the application is allowed.

FAO (OS) No. 122/2013

We have heard learned counsel for the parties.

The fact of the matter is that the appellant before us was not a party to the proceedings initiated by R-1 under Section 9 of the Arbitration and Conciliation Act, 1996. However, the interim orders passed in favour of R-1 seek to directly affect the appellant. It is in these circumstances that the appellant moved an application for clarification/review of the interim order which, in our view, effectively is seeking vacation of the order. It appears that the stand of the appellant before the learned single Judge was that they were independent entities against whom no interim orders could have been passed. In the alternative, it was pleaded that even if the allegation of R-1 is correct that the appellant is a front for R-4, still no interim orders could have been passed. The order also seeks to suggest that the arrangement which the appellant had with third parties from where it derived its rights was not placed before the Court despite being called upon to do so. It is in these circumstances that the learned single Judge has opined vide the impugned order that the application filed by the appellant cannot be entertained "at this stage".

Learned counsel for the appellant states that they have no difficulty in placing the relevant documents before the Court to show their independent existence and rights. It is, however, prayed that the disclosure of these documents would result in commercial and other terms being disclosed. On the other hand, learned counsel for the respondents contends that solution could be to place the documents on record after redaction/blacking out of the relevant material, which may disclose commercial terms.

In view of the aforesaid controversy, the following agreed order is passed:

- i) The appellant will at the initial stage place the relevant records in a sealed cover before the learned single Judge and it will be for the learned single Judge to take a call as to whether copies of these documents should be handed over to the respondents or not.
- ii) The question of whether the injunction should continue to operate and the goods remain sealed qua the appellant, would be examined thereafter as no opinion has been formed by the learned single Judge one way or the other vide the impugned order.
- iii) Documents, as aforesaid, will be placed before the learned single Judge as prayed for by learned counsel for the appellant within a period of three days.
- iv) The aforesaid aspect will be heard and examined by the learned single Judge on the date fixed of 18.03.2013.

The appeal accordingly stands disposed of.

7. After passing of the order dated 27th February, 2013 by the Division Bench, the respondent No. 4 filed his response to the petition resisting the prayers of interim relief by taking the following line of defences:

a) The respondent No. 4 has stated that the said respondent is no longer the partner in the partnership firm which is the respondent No. 1, therefore, the dispute qua the respondent No. 4 is not arbitrable. It has been stated that the main relief is in the form of the mandatory injunction in a determinable contract which is impermissible in law.

b) It is submitted that the agreement has been terminated by way of the efflux of the time, therefore the present petition is not maintainable. The present petition seeks to enforce a restriction after the termination of the agreement which is legally impermissible in law.

c) The answering respondent contended that the said respondent is the first owner of the works. The respondent No. 4 entered into an agreement with the co-authors of the books shown to be authored by him in the schedule A of the agreement dated 14th December, 2009 by which the rights in the said title was given to the respondent No. 4 by the author. The respondent No. 4 thereafter entered into an agreement dated 15th January, 2007 for the assignment of the copyright in favour of the respondent No. 1. The said agreement dated 15th January, 2007 does not provide for any term or period for which the assignment would subsist. Therefore as a matter of law, the assignment would subsist only for 5 years as per the applicability of the **Section 19(5)** of the Act. Accordingly, on the date of the retirement which was 13th February, 2012, the respondent No. 4 was the sole owner of the titles as the rights of the works under the agreement have reverted back to the respondent No. 4.

d) The respondent No. 4 has stated in the reply that as per the applicability of Section 14 of the Act, the property of the partnership remains the individual property of the partner unless there is an agreement express or implied that the property is to be treated as the property of the firm. As per the respondent No. 4, there is no contract which exists in the instant case, therefore, the titles by operation of the law belongs to the respondent No. 4 in his individual capacity and the present petition is not maintainable.

e) The respondent No. 4 has averred in the reply that the right to publish the title was the limited permission given to the respondent No. 1 which was in turn given to the petitioner so long as the respondent No. 4 were collaborating with the respondent No. 1. There is no misstatement made by the respondent No. 4 as the statements which were made on the date of entering of the agreement were correct and it is only later on, the respondent No. 4 resigned from the respondent No. 1. As per the respondent No. 4, the petitioner cannot plead ignorance of the fact that the respondent No. 1 was only to provide the titles for which it has all rights and authorizations to do so. There was no representation made to the petitioner that the respondent No. 1 was the owner of the titles itself. Once, there is a change in circumstances, the respondent No. 4 cannot be held liable for the said acts.

f) The respondent No. 4 has stated that the liability of the retired partner arises by estoppels only. The petitioner cannot sue both the respondent Nos. 2 to 3 as

the partners of the firm and respondent No. 4 as erstwhile partner of the firm together. The respondent No. 4 has averred that even the retiring partner liability can be discharged by the reconstituted firm as per Section 32(2) of the Act. In the present case, there is no intention which has been evinced from the re-constituted deed dated 13th February, 2012 which seeks to bind the respondent No. 4 to the liability of the respondent No. 1. Therefore, this court should not pass any interim order against the respondent No. 4

g) The respondent No. 4 has further mentioned that he is the proprietor of the Fillip learning and has entered into a co-publishing agreement dated 16th February, 2012 with the Reed Elsevier India Pvt. Ltd., the applicant, wherein the applicant has been given right to publish the titles independent to the right of the partnership firm over the said titles which has already been lapsed after 5 years. Thus, no injunction order can be passed against the respondent No. 4 or against Elsevier.

8. By raising the aforementioned pleas to resist the interim measures, the respondent No. 4 prayed that the application under Section 9 of the Act may be ordered to be dismissed. Likewise, the respondents No. 1 to 3 have filed their separate response to the application under Section 9 by taking the pleas which can be summarized in the following manner:

a) It is stated by the respondents that the agreement between the parties relied upon by the petitioner dated 14th December, 2009 is an unsigned document. The petitioner has not filed the signed copy of the agreement as the same was never signed by the respondents.

b) It is averred in the reply that the petitioner has been himself in breach of the terms of the agreement between the parties. The petitioners failure to perform the obligations under the agreement between the parties has caused immense financial loss to the answering respondent besides loss of reputation and goodwill.

c) The respondents have stated that it is the petitioner who intends to wriggle out of the agreement between the parties. The present petition is attempt by the petitioner to excuse himself from performing his part of the obligations under the agreement.

d) It is stated that the answering respondents are a small partnership firm based in Bangalore, the present petition has been filed by the petitioner to harass the respondents at the place which is forum non convenience. This court should reject the petition on that ground.

e) The present petition has become infructuous in view of the ongoing arbitration proceedings and the petitioner is entitled for any further interim protection and conveniently approach the arbitral tribunal for any such protection.

f) It is the petitioner whose poor performance has actually lead to the respondent No. 4 resigning from the respondent No. 1 firm. The respondent No. 1 firm has suffered immense loss on account of the poor revenue generation and foul commitments of the petitioner.

g) It is stated that it is the petitioner who has concocted the story by involving

the third party Reed Elsevier India Pvt. Ltd. in order to bring the petition within the jurisdiction of this court. The respondent Nos. 1 to 3 have no relation with Reed Elsevier Ltd. and the allegations made in the petition are totally baseless.

9. The respondents No. 1 to 3 in their reply filed on 14th March, 2012 raised the defence that the alleged agreement dated 14th December, 2009 is an unsigned document. The petitioner is not performing its obligations under the agreement. The respondents are unhappy with the respondent No. 4 also. The respondent had the rights and power to enter into the agreement with the petitioner. Respondent No. 4 withdrew the publication rights from respondents No. 1 to 3. The respondents No. 1 to 3 are ready and willing to perform their obligations under the agreement.

10. By raising the aforesaid pleas, it has been prayed by the respondents that the petition under Section 9 may be directed to be dismissed. The matter came up for hearing when Mr. Akhil Sibal, learned counsel appearing on behalf of the petitioner has made his submissions which can be outlined in the following manner:

a) Firstly, Mr. Sibal, learned counsel for the petitioner has argued that the present petition is necessitated as the respondent No. 2 to 4 collectively agreed as partners of the respondent No. 1 firm to the petitioners that they will continue to provide the titles available with the firm to the petitioner. Mr. Sibal argued that the alteration of the status of the titles in the work by way of resignation of the partner which is respondent No. 3 subsequently is calculated move by the respondents which have been done knowingly as the respondents were aware that the respondent No. 1 could not conduct the business with the third party publisher. It is argued that the respondents therefore chose this route wherein the co-author or author of the work which is respondent No. 3 revoked his consent towards the respondent No. 1 and thereafter prejudicially affected the working of contract which was to maintain the exclusivity of the petitioner when under the contract the partners who were the joint tenants of the partnership were bound to maintain the exclusivity in the form of firm business.

b) Mr. Sibal argued that the respondent No. 1 to 3 are also acting in collusion with the respondent No. 4 which is evident from their farfetched stand which the respondent Nos. 1 to 3 are taking while resisting the present petition that this contract was never signed and never existed between the parties. Mr. Sibal argued that the conduct of the respondent No. 1 to 4 was unfair towards the petitioner as they never informed any such event of the retirement of the respondent No. 4 prior to the resignation. It has been informed suddenly after the respondent No. 4 has already left the respondent No. 1 firm that the titles of the works are no longer available with the respondent No. 1. All this as per Mr. Sibal reflects upon the malafide conduct of the respondent which is aimed at the frustrating the functioning of the contract and to create impediments in the fulfillment of the obligation of the respondent No. 1 under the contract. As per Mr. Sibal, all this has been done by the respondents in order to gain easy profits or to earn a lucrative price for the book titles and on the said pretext a subsisting contract has been breached by the respondent by adopting this indirect route of the resignation by the partner.

c) Secondly, Mr. Sibal argued that even as a matter of the law the claim of the petitioner against the retiring partner is maintainable and the retiring partner cannot absolve himself for the acts done prior to the retirement towards the

third party by merely saying that he is no longer the part of the partnership firm as per the provisions of the Section 32 of the Act. For the purposes of the adjustment of the claims, the retiring partner must have to have an express contract with the existing partners and the said third party for discharge of the liability or in the alternative, the said contract must be implied from the course of the dealings of the firm. As per Mr. Sibal, in the present case neither the respondent No. 4 has taken the petitioner into confidence either by entering an agreement nor the petitioner acquiesced to the course of dealings as suggested by the respondent Nos. 1 to 3 after the resignation of the respondent No. 4. Rather, the petitioner protested that there is a misrepresentation made by the respondents and they have acted in breach of the contract. Under these circumstances, the respondent No. 4's plea that after the resignation there exists no responsibility or the liability of the respondent No. 4 cannot be acceded to as the law does not absolve him as it is. In order to substantiate his submission, Mr. Sibal relied upon the judgment passed by the apex court in the case of *Ashutosh v. State of Rajasthan*, MANU/SC/0520/2005 : (2005) 7 SCC 308 wherein the Supreme Court laid down the very same proposition of law approving the excerpts from Lindlay on Partnership.

Therefore, as per Mr. Sibal, this court should not accept the plea of the respondent No. 4 that the present petition is not maintainable as the said respondent has left the respondent No. 1 and therefore the dispute qua him is not arbitrable when on the date of the signing of the contract he was the consenting party to the agreement.

d) Thirdly, Mr. Sibal argued that the respondents have made misrepresentation of the facts before this court by contending that the respondent No. 4 has no direct connection with the entity called Philip Learning who has in turn has authorized Elsevier to publish the book titles which are forming the subject matter of the agreement. It has been argued that actually Respondent No. 4 is the proprietor of the Philip learning who has given authorization or rights to publish to Elsevier for such publication. Mr. Sibal argued that this will make it evident that the respondents have concealed the facts while making an application for review of the order dated 12th September, 2012 and thereafter the documents which have filed by the respondent speak to the contrary. In effect, Mr. Sibal argued that the conduct of the respondent No. 4 is questionable and the same is aimed at frustrating the working of the present agreement. This fact that the respondent No. 4 has authorized the Elsevier to publish the titles also defeats the argument of the Elsevier that it is a third party and not the agent of the respondents.

e) Fourthly, Mr. Sibal has argued that the argument of the respondents that no injunction could be passed against the respondent No. 4 being non party to the arbitration agreement or any order affecting Elsevier cannot be passed as the same is independent entity is not correct in as much as the respondent No. 4 was the partner in the respondent No. 1 firm and thus was consenting party to the agreement and Elsevier is not third party or independent entity but is an entity claiming title from the respondent No. 4 who was party to the agreement at the time of entering of the agreement being a partner of the respondent No. 1 firm. Therefore, as per Mr. Sibal, it can be said that the Elsevier is the claiming under the party to the agreement and can be retained by way of interim measures as provided under Section 9 of the Arbitration and Conciliation Act, 1996.

Mr. Sibal in order to buttress his submission relied upon the judgment passed by the learned Single Judge of this court in the case of Value Advisory Services vs. ZTE Corporation and Ors., reported in MANU/DE/1032/2009 : 2009 (3) Arb. L.R. 315 (Del), Paras 14 to 21, wherein the learned Single Judge opined that the question whether the interim measures order can affect the third party must depend upon case to case basis and there cannot be any straight jacket formula which can be devised to say that whether order of interim measures may or may not be passed in every case.

The judgment passed by the Division Bench of Bombay High Court in the case of Girish Mulchand Mehta & Anr. v. Mahesh S. Mehta and Anr., MANU/MH/1458/2009 : 2010 (2) Mhlj 657 wherein the Division Bench has held that the interim order affecting the third party which is claiming the right under the party to an agreement can be passed and in order to resist the said interim measures successfully, the said third party has to show a right independent to that of the party to an agreement.

In view of the settled proposition of law that interim order can be passed affecting the third party claiming a right under the party to an agreement, Mr. Sibal has argued that this court should confirm the interim order passed by this court on 12th September, 2012 without any variance and should reject the objections of the respondents.

f) Lastly, Mr. Sibal argued that the plea which the respondent has taken that the right has come back to the owner as per the Section 19(5) of the Copyright is an afterthought and the same was never the intention of the parties at the time of entering of the agreement between the parties. It has been argued that the respondents never informed the petitioner about the five years existence of title from 2007 and rather entered into an agreement of 48 months in the year 2009 by assuring that the title is with the respondent No. 1. All this would mean that either the respondent has done fraud on the petitioner at the time of the entering of the agreement or in the alternative this 5 years term of assignment is an afterthought when the intentions of the respondent No. 4 went wrong. In any case, as per Mr. Sibal, the respondents should be directed to adhere to the contractual commitments during the currency of the agreement.

11. By making the aforementioned submissions, Mr. Sibal prayed that this court should confirm the interim order dated 12th September, 2012 passed by the court and should reject the application filed by the respondents.

12. Per contra, Mr. Nikhil Rohtagi, learned counsel appearing on behalf of the Respondent No. 4 and Mr. Saurabh Kirpal, learned counsel appearing on behalf of the applicant and Ms. Nidhi Jain learned counsel for the Respondent Nos. 1 to 3 have made their submissions, which can be outlined in the following manner:

a) Firstly, Mr. Rohtagi and Mr. Kirpal argued that the respondent No. 4 is the co-author of the titles which are forming subject matter of agreement. It has been argued that the respondent No. 4 has assigned the copyright in the titles to the respondent No. 1 by way of agreement dated 15th January, 2007 without any mentioning of the term of the copyright. It has been argued that in such circumstances, the provisions of Section 19(5) of the Copyright Act shall be applicable and by virtue of the said provisions, the copyright shall vest with the respondent No. 4 with effect from 15th January, 2012 as per the law. The said

right flow from the agreement dated 15th January, 2007 which was done independent from that of the agreement dated 14th September, 2012 between the parties and the said right has now reverted back to the respondent No. 4. The respondent No. 4 after having resigned from respondent No. 1 firm has independent right and the same is not flowing from the agreement dated 14th September, 2012 between the petitioner and the respondents. Therefore, no injunction order can be passed against the respondent No. 4's right in the said titles.

b) Secondly, Mr. Kirpal argued that the entity Fillip learning has entered into an agreement with Elsevier in its own right and the said right to publish is flowing from the said agreement dated 16th February, 2012 between the two entities, therefore, this court cannot pass the interim order against the third party having independent right over the book title.

In support of his submission, Mr. Kirpal relied upon the judgment passed by the Kerala High Court in the case of Shoney Sanil vs. Coastal Foundations (P) Ltd., reported in MANU/KE/0036/2006 : AIR 2006 Ker 206, wherein the Court has held that no order can be passed against the non-party under the provisions of Section 9 of the Act.

c) Thirdly, learned counsel for the respondents argued the respondent No. 4 has resigned from the respondent No. 1 firm and as such the dispute qua him is not arbitrable in nature. Therefore, this court cannot entertain the petition under Section 9 of the Act.

d) Fourthly, learned counsel for the respondents argued that the Clause 1.3 of the agreement dated 14th December, 2009 is clear when it says that the respondent No. 1 has got all the rights and authorizations for the titles for which the contract was entered into. It has been argued that the said statement was true on the date of the execution of the agreement but the circumstances may change in the future date due to the resignation of the respondent No. 4. Thus, this court should not pass the interim order as the retiring partner can be discharged from the acts of the firm and the rights owned by the respondent No. 4 are independent to that of the contract dated 14th December, 2009.

e) Learned counsel has argued that the respondent No. 4 is the sole owner of the M/s. Fillip Learning which had entered into the co-publishing agreement with the Reed Elsevier India Pvt. Ltd. on 16th February, 2012. The said agreement has no nexus with the agreement dated 14th December, 2012 and has been entered into by the respondent No. 4 after resigning from the respondent No. 1 firm. Therefore, the petitioner cannot seek an interim order when neither the respondent No. 4 nor the Reed Elsevier is party to the agreement. The petition under Section 9 is thus not maintainable.

f) Learned counsel for the respondent Nos. 1 to 3 reiterated the submissions which have been made in her reply in order to resist the petition.

13. By raising the aforementioned pleas, learned counsel for the respondents argue that the petition under Section 9 of the Act should be dismissed.

14. I have gone through the petition along with documents filed by the petitioner and also perused the replies filed by the respondents with documents and rejoinder thereof filed by the petitioner. I have also given my careful consideration to the submissions

advanced by the learned counsel for the parties at the bar. Now, I shall proceed to discuss several aspects arising in the instant case point wise.

15. The first aspect which is required to be considered is as to whether the rights which were assigned by the respondent No. 4 to the respondent No. 1 by way of agreement dated 15th January, 2007 could be reverted back to the respondent No. 4 after the passage of 5 years as the said agreement did not contain any term as mentioned in the agreement as a deeming fiction of law as per Section 19 and 30A of the Copyright Act? Depending upon the answer to the said question, it is to be looked into as to what shall be the impact of the same to the rights of the parties. I think that the prima facie view on the said question is necessary without which, the question of grant or non grant of injunction cannot be decided. Thus, I am proceeding to form merely a prima facie view of the matter basing on the analysis of the clauses to the agreement.

16. For the purposes of the evaluating the prima facie tenability of the plea of the respondents that the copyrights rights granted by the respondent No. 4 were intended to be for limited period as the agreement dated 15th January, 2007 did not contain any term under the agreement and thus the same should preclude the respondent No. 1 from fulfilling its contractual obligations as a firm, I deem it appropriate to analyze the clauses of the agreement dated 15th January, 2007 entered into between the respondent No. 4 and respondent No. 1 and the agreement dated 14th December, 2009 entered between the petitioner and the respondent No. 1 firm collectively and simultaneously in order to gauge the intention of the parties including the intention of the respondent No. 4 as a partner of the firm.

17. Before proceeding further towards reading of the clauses of both the agreements as stated above, it is noteworthy to recall that the respondent No. 4 when entered into an agreement with the respondent No. 1 firm dated 15th January, 2007 was already a partner of the respondent No. 1 firm as the said firm was constituted between the respondent No. 4 and respondent No. 3 by way of deed of partnership dated 12th December, 2002. The respondent No. 4 also remained the partner of the firm while entering of the agreement dated 14th December, 2009 while granting the rights to the petitioner as per the agreement entered between the petitioner and the respondent No. 1 firm. Thus, one has necessarily to keep in mind the basic principles underlying the partnership firm in order to find out the true intent of the parties. The said basic principles on the basis of which the partnership business governs are enumerated as under:

a) The partnership is business which is carried on all the persons or any of them acting for all. (Section 4 of the Partnership Act, 1932)

b) The property of the firm includes's all the property and rights and interest in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm for the purposes and in the course of the business of the firm. This is evident from Section 14 of the Act. Thus, not merely the property originally brought into stock of the firm is the property of the firm but also the rights and interested acquired by purchase or otherwise is also included in the property of the firm.

c) The Act of the partner of the firm binds the firm which means that the act of the one of the partner is treated as act of all the partners unless there is a special agreement to the contrary or in the alternative there are restrictions imposed on the implied authority of the partner to act on behalf of the firm. All

this is clear from the reading of Section 18, 19 and 20 of the Partnership Act, 1932.

18. All the above noted principles are essential characteristics of the partnership business without which no kind of carrying on of business can be termed as partnership business as the partner is an agent of firm and the act of the partner binds the firm. These principles are required to be kept in mind while considering the stand of the respondent which is that the respondent No. 4 as a partner of the firm entered into an agreement dated 15th January, 2007 to grant rights to the respondent No. 1 which in turn granted the rights to the petitioner by way of agreement dated 14th December, 2009 but as per respondent No. 4, it was for limited period for 5 years from 2007 agreement.

19. Once the said basic characteristics of the partnership are kept in mind more specifically that the partner is the agent of the firm and can bind the firm, then immediately it follows as a matter of necessary consequence that for examining the intent of the respondent No. 4 whether it was to grant the limited rights for 5 years or more, not merely the agreement between the respondent No. 4 and the respondent No. 1 is relevant but also the agreement between the respondent No. 1 firm and the petitioner is also relevant which was entered later on as it reflects the intention of firm or collective intention of the partners. This is due to the reason that the intention of the respondent No. 4 as a partner of the firm has to be gathered both from the agreement which the respondent No. 4 had entered with the respondent No. 1 firm and thereafter the agreement which the respondent No. 4 has entered further with the petitioner. The intention of the partner of the firm shall be the intention of the firm which includes all the partners unless there are impediments on the authority of the partner to Act in the form of contract to the contrary. Till, the time, said impediments are absent, it is not safe to assume that the intention of the single partner was distinct from that of the other for the purpose of carrying on of the business of the firm. Thus, if the firm has entered into a contract with the third party to carry on its business through its partner, the intention of the said partner entering into contract on behalf of the firm shall bind the firm and the necessary conduct thereafter is sufficient to infer as to whether there was any contrary intention of any other partner or not.

20. Let me now proceed to discuss the clauses of the agreement dated 15th January, 2007 and 14th December, 2009 side by side in the light of what has been discussed above.

- The agreement dated 15th January, 2007 begins with the heading "Agreement", it does not provide for whether it is an assignment or a licence, the respondents themselves in their reply use the expression assignment and licence at different places.
- Mr. Ganesh Rao/respondent No. 4 in the agreement is termed as author of the work. In the Clause 2 of the agreement, it is provided that the author is the copyright owner of the works. It is further provided in the said clause that the author is giving full right to publish, market and sell the work to the publisher and the publisher has exclusive right to publish market and distribute title for sale throughout the world.

21. If one reads the Clause 2 carefully, the said clause uses the expression "giving of right" and does not use the clear expression assignment or licence. Further, the reading of the clause 2 would show that the said clause use the expression "full right to publish,

market and sell" and thereafter in the continuation of the sentence use the expression "throughout the world" which means that the rights granted are of worldwide basis.

22. Then, what does the expression "full right to publish" denote? I find on prima facie basis that the full right to publish, market and sell has to have some nexus with the term of the copyright otherwise there is no occasion for using the term "full right to publish" in the agreement. I form this prima facie opinion due to the following reasons:

a) The clause 2 of the agreement defines the rights which said agreement is "giving" which are right to publish, market and sell. Thus, there was no occasion to use "full" before the expression "right" in order to define the rights as the said bundle of rights which are right to publish, market and sell are themselves a complete package of the rights which are given under the agreement and the same are specifically and explicitly defined. Therefore, the expression "full right" is not really used in the context to confer any completeness of the rights given in the agreement as the said rights are complete in themselves what are given in the agreement.

b) The said expression "full right" also does not seemingly have any nexus with the territorial extent of rights given under the agreement. The same is evident from the continuation of the sentence which is that the publisher has the exclusive right to publish, market and distribute the titles "throughout the world". Therefore, the fullness of the rights given under the agreement can also not to be said to be connected with territorial extent of the grant of the rights under the grant.

c) If the expression "full rights" used in the clause 2 does not seem to have connection with the completeness or specificity of the rights and also equally it can be seen that the said expression full rights does not relate to the territorial extent, then the only thing which is left to be considered is that the said expression has some relation to that of the term of the rights which is the full term of the rights given. Any other interpretation would lead to reducing the expression used in the agreement as dead letter which is impermissible in law.

d) Thirdly, if the full right is given to publish, market and sell to the publisher on the world wide basis, It seems illogical that from the said statement any ambiguity comes out as to the term of the rights which is off course has to be full term when the expression used is full right for worldwide basis. Therefore, it is difficult to draw an inference from the said statement of grant of rights as contained in clause 2 to state that there was any intention which was emerging of the parties to have any reverting back of the rights when the rights given are full and that too on worldwide basis. Sometimes, the parties do not choose the correct words to form the accurate language in the agreement, but that does not preclude the court from reading the said agreement carefully in order to deduce the intention for the purpose of interpretation of clauses.

e) Fourthly, the reason of mine to come to this interpretation is that just like the expression "giving" is loosely used for the purposes of grant which may be assignment or license depending upon the spirit of the agreement when it is read holistically clause by clause and till that time the said expression is ambiguous, similarly, I find the placement of expression "full rights" by defining the rights thereafter and also giving the rights on worldwide basis is indicator of the intent of the respondent No. 4 as an author to grant the full

right in the sense of full term of right. Any other interpretation would not give any meaning to the expression "full rights" which would lead to ambiguities.

f) Lastly, it is well settled principle of law that the agreements are required to be read clause by clause and each and every word used in the clause is accorded meaning in order to find out the true intent of the parties. The term of the agreement is also a question of fact which has to be first seen by fair reading of the agreement whether there is any slight indication in the agreement towards the term of the agreement and if not only then the conclusion as to absence of the term is arrived at. This fact finding enquiry has to be done by fair and the contextual reading of the clauses in order to find out as to whether there is any indication towards the term and the nature of the arrangement which will also imply towards the term of the agreement. It is only thereafter the legal consequences which are applied in the case where there exists no indication towards the term of the agreement. Therefore, this question of finding out of term in the agreement is a mixed question of fact and law and not merely a question of law.

23. Upon the fair reading of clause 2 which talks about full rights which are given in the agreement on the world wide basis along with the other clauses of the agreement like clause 4 which talks about annual royalty on per year basis, clause 5 which talks about annual report of sale on December of every year, publisher's right to print the sign of copyright, it is evident, the agreement is leaning towards a permanent arrangement which fortifies the view that the said grant is seemingly a grant of rights for full term as it uses the expression full rights than the limited term. Consequently, once there is a indication of the term in the agreement by using of expression full rights under the agreement dated 15th January, 2007, the only conclusion which follows is that the Section 19 and Section 30 of the Act would not be applicable which is clear from their express wordings.

24. I am also of the view that the finding out the true indication of the term of the agreement after reading the agreement clause by clause is not an unusual exercise when it comes to the agreement relating to grant of the copyright rights. This is due to the reason that the copyright grants are often misused by the owners of the copyright by selling the copyright time and again in the market by creating the multiple rights affecting the commercial transaction. This is more than often seen in the cases of copyright agreements involving films and rights relating to films where this exercise is done in order to reap maximum profits not realizing that one agreement after another sometimes affects the commercial transactions which were done earlier under the belief that the same were done for limited period. Thus, I am of the view that the enquiry as to presence or absence of the term under the agreement relating to the copyright grant cannot be merely an exercise which can be done by not finding the clause relating to term under the agreement and straightaway arriving at the conclusion that there is no term and thus the agreement was aimed for 5 years. The fair and meaningful reading of the agreement is essential in order to find out what the parties actually intended and whether they intended to assign the rights in perpetuity or for limited period and what is the indication of the term under the agreement. Thus, the judicious approach should be adopted while interpreting the agreement. Ultimately, the grant of the copyright is also an agreement so much shall be dependent upon on the intention of the parties. If the straightforward conclusion as to absence of term is arrived at such cases without judiciously analyzing the agreement by giving meaningful reading and finding out the indication as to term of the rights, then the said reversion of rights will disturb several important commercial arrangements without the parties really intending to do so.

25. In a similar case where the question was whether rights granted in the film were reverted back to producer due to lack of express mention of the term in the copyright assignment was dealt with by Division Bench of this court in the case of Shemaroo Entertainment Ltd. vs. Amrit Sharma And Ors. on 20 July, 2012 in FAO(OS) No. 292/2012 wherein the Division Bench of this court also did the similar enquiry as to the interpreting the terms of the agreement in order to find out any indication of the term under the agreement. In the said case also the expressions used were all the rights", "worldwide", "absolutely" and these terms were interpreted to mean that the rights were given for the full term of the copyright and not reverted back to that of the owner. In the words of the Division Bench, it was observed thus:

Thus, the right assigned in the "producer's film" which is defined to include all cinematograph films made during the period of the agreement include three rights which are literary, dramatic and musical works. The said clause 3A further uses the expression "All other right, title and interest", likewise it also uses the expression "All rights of publication, sound, television, public performance". Furthermore, the said clause 3A while assigning the rights uses the **expression "absolutely" and "worldwide". All these wordings used in clause 3A are prima facie indicators of the intent of the parties to the agreement which is to assign the rights absolutely and worldwide and all the rights available with the producers.**

(Emphasis Supplied)

10. The said clause 3A when read with clause 1 which relates to term of the agreement alongside with the definition of the producer's film under the definition clause which means all cinematograph films made during the said period of the agreement, the same may construed to mean that though the term of the agreement dated 29th September, 1983 was intended to operate for 3 years, the said agreement assigned all the rights in the cinematograph films made during the said periods which is called Producer's films absolutely and on worldwide basis. **Thus, the said agreement may be construed to mean that term of the operation of the agreement may be distinct from the term of the assignment of the copyright which uses the distinct wordings in assignment clause in clause 3A which reads " all the rights", "worldwide", "absolutely".**

(Emphasis Supplied)

11. The parties do not dispute that the said cinematograph film NAMA HALAL was released during the said period of 3 years as defined under the agreement. **It is only the term of copyright which has been disputed by the appellant. The said term according to us upon reading of the clauses of the agreement would be governed by clause 3 A which reflects the intention to assign the copyright absolutely and worldwide. Thus, the said agreement prima facie appears to assign the copyright absolutely for the cinematograph film or producer's film made during the term of 3 years in the agreement.**

(Emphasis Supplied)

26. I find that the factual situation in the present case is no different from that of what existed in the case of Shemaroo (supra) as in the instant case too, the clause 2 is aiming to give the full rights on worldwide basis by defining what rights the said agreement is aiming to give with the year by year royalty, annual reports and all other

arrangement. Thus, in that case of Shemaroo (supra) it was the wordings absolute rights were interpreted alongside worldwide basis in order to form an opinion as to term, likewise, in the instant full rights can be interpreted in similar manner while considering the accompanying terms of the agreement and also the kind of the arrangement entered between the parties. The case of the Shemaroo (supra) is clearly applicable to the instant case.

27. In view of my above discussion, it can be easily said that the intention of the respondent No. 4 in the agreement dated 15th January, 2007 was to grant the full rights on worldwide basis to the respondent No. 1 and not for the limited term. Thus, on prima facie basis, it can be said that the rights granted under the agreement do not seem to have reverted back to the respondent No. 4.

28. I also find the view which I have taken in relation to the grant of the copyright under the agreement dated 15th January, 2007 is in consonance with the events that had happened subsequent to the said agreement in the backdrop facts of the instant case. Pursuant to the agreement dated 15th January, 2007, the rights were granted to the respondent No. 1 as a partnership firm. Thereafter, the respondent No. 1 on 14th December, 2009 entered an agreement of co-branding with that of petitioner for the period of 48 months which means 4 years extendible up till 60 months. Thus, the expiry of the agreement dated 14th December, 2009 is going to be either in 2013 or 2014. In the said agreement dated 14th December, 2009, the schedule A and Schedule B appended to the agreement clearly provides for present titles and future titles which contain the titles which are authored by the respondent No. 4 which form the subject matter of the grant by the earlier agreement dated 15th January, 2007 between the respondent No. 4 and 1.

29. The agreement dated 14th December, 2009 was entered into by one of the partner namely Mr. Lal M. Prasad on behalf of the firm wherein the respondent No. 1 as a firm gave assurances of many kinds to the petitioner including that the respondent has got all the rights and authorization of the present and future titles and also that the respondent No. 1 shall ensure that it will maintain the exclusivity of the petitioner to market and publish such titles during the term of the agreement. The said assurances by the respondent No. 1 firm through one partner in the agreement dated 14th December, 2009 could not have been possible unless the respondent No. 4 intended to give the rights to the full term of copyright to the respondent No. 1.

30. The respondent No. 1 as firm could not have entered into an agreement for the period 4 to 5 years with the petitioner to maintain the exclusive rights of the petitioner to publish and market the titles of the book till the time the respondent No. 1 firm itself had the rights to enter into such arrangement by way of agreement. All these happenings and execution of the agreement dated 14th December, 2009 itself is evident of the fact that the respondent No. 1 firm was granted the said rights of which either the firm was a assignee or the licensee for the ample term which enabled the firm to enter into such agreement dated 14th December, 2009 for 4 years and 5 years.

31. Let me now examine the submissions on the learned counsel for the respondent on this aspect. I do not agree to the submission made by learned counsel Mr. Kirpal and Mr. Rohtagi that the respondent No. 1 could have made the representation to the petitioner that the respondent No. 1 had got the rights on the date of entering of the agreement which was 14th December, 2009 which was true at the relevant time but later on it might be discovered the rights were withdrawn and reverted back to the real owner. I find that such representation is prima facie unacceptable due to the simple

reason if the respondent No. 1 firm would enter into 4 years contract to provide the clean titles and continue to provide the same in future as well, then the said respondent No. 1 firm is bound to provide the said titles under the contract for the term of the contract. Otherwise, the representations which were made on the date of entering the contract if allowed to be different from the time of fulfilling the same during the term of the contract, the agreement would be vitiated by either fraud or misrepresentation. Therefore, the respondent No. 1 firm could not have agreed to provide the titles which it has and authorizations to do so and shall refrain from submitting any titles which would infringe the copyright of the third party in the form of schedule A and schedule B as the present titles and future titles by entering into the agreement for 4 years unless the respondent itself has got such rights to do so. This is the only logical way one can accord legality to the agreement dated 14th December, 2009 and also supports the view which I have taken, that the agreement dated 15th January, 2007 was not for the limited period of 5 years but were intended to be given for the full term.

32. I also to some extent agree to the submission of the Mr. Kirpal and Mr. Rohtagi that the clause 1.3 of the agreement dated 14th December, 2009 uses the expression "rights and authorizations" which somehow means that the respondent No. 1 on the date of the entering of the agreement could be either the owner or the licensee. But that itself does not contemplate a situation that the respondent No. 1 can be a owner for a limited period or licensee for a limited period lesser than 4 years which may lead to the respondent No. 1 giving false representations to the petitioner. It only means that the respondent No. 1 may have all the rights and authorization to fulfil the obligation to submit to the petitioner all the necessary titles which form the subject matter of the agreement. Thus, the said submission also does not convince me to take a different view to what I am proceeding to take.

33. Another reason for disbelieving the submission of Mr. Kirpal and Mr. Rohtagi is that the respondent No. 4 was part and parcel of the respondent No. 1 partnership firm. On the date of 14th December, 2009, when the respondent No. 1 entered into a contract with the petitioner for supplying the present titles and future titles which it had and would continue to possess or own for publication for 4 years, the respondent No. 4 was the participant in the said partnership firm/respondent No. 1 as a partner. There is no material on the record to suggest that the respondent No. 4 informed the respondent No. 1 during the relevant period in the year 2009 about the fact that it should desist from entering such an agreement as it is limited licensee and the rights of the respondent No. 1 to further authorize the titles would expire in the year 2012 during the existence of the contract. Nor, there is any document which has been surfaced into light from which it can be said that the respondent No. 4 (either independently or as a partner of the firm) informed the petitioner about the limited period of licence given to respondent No. 1 and thus the same may come in the way of the contractual obligations of the respondent No. 1 as a firm. In the absence of any such documents on record, it cannot be said that there was any intention on the part of the respondent No. 4 to confer limited period rights on the respondent No. 1 firm which in turn granted the rights to the petitioner for four years from 2009 longer than the said period and further, the respondent No. 4 never intended to treat this grant of rights to the respondent No. 1 as a limited period right else could have in ordinary course of business ought to have informed the petitioner at the time of entering of the contract dated 14th December, 2009. Having not done so, the respondent No. 4 clearly acquiesced to the grant of the rights by the respondent No. 1 firm being a partner by not objecting at the relevant time nor giving the representation to the petitioner about the said fact. In short, the respondent at the relevant time never intended to treat this grant of titles for limited even when the conduct of the respondent No. 4 is seen at the relevant time period.

34. On the contrary, the submissions of the respondent No. 4 in the counter affidavit and the oral submission made at the bar is that the petitioner ought to have discovered the said fact on its own as the ignorance of law is no excuse and the petitioner being a commercial entity ought to have been aware of such limited conferring of title as per the terms of agreement dated 14th December, 2009. I am of the view that the said submission of the respondent is equally misplaced and cannot be acceded to. This is due to the following reasons:

- Firstly, the respondents saying that the petitioner ought to have discovered the said fact in the ordinary course of the business at the time of entering of the contract or ought to have been aware about the said fact is not correct and is self contradictory to the respondent no. 4's argument that the agreement dated 15th January, 2007 was confidential in nature and could not be divulged. It is a matter of record of this court that by way of order dated 21st January, 2013, this court directed the respondents to place all the material on record to which the respondent's objected that the said agreements are confidential in nature and could not be divulged. Thereafter, the Division Bench vide its order dated 27th February, 2013 directed these documents to be placed on record with certain limited conditions. Thereafter on 13th March, 2013, the documents were filed by the respondent no. 4, from which one of the document is the agreement dated 15th January, 2007 which contained the confidentiality clause. There is no material on record to suggest that either respondent No. 4 or respondent No. 1 had shown or informed the petitioner about the existence of the agreement dated 15th January, 2007. Once, the respondent never informed the petitioner about the existence of the agreement 15th January, 2007, it is beyond comprehension as to how the petitioner could have known about the existence of the agreement dated 15th January, 2007.
- Secondly, it was also not feasible for the respondents to divulge the agreement dated 15th January, 2007 at the time of entering of the agreement dated 14th December, 2009 even upon the petitioner's insistence. This is due to the respondents own saying that the agreement dated 15th January, 2007 was a confidential document and contained the confidentiality clause. Rather, the petitioner immediately upon receipt of the letter on 13th February, 2012 at the time when the respondent No. 1 informed the fact of resignation of respondent No. 4 did ask for the relevant agreement entered into between the respondent no. 1 and respondent no. 4. However, the respondent No. 1 denied divulging the said document by its reply dated 1st March, 2012 stating that the document is confidential in nature. Under these circumstances, the petitioner could not have in ordinary course of business learnt about the existence of the agreement dated 15th January, 2007 unless the respondents inform the petitioner at the time of entering of the contract. Therefore, the submission that the petitioner is guilty of not asking for the document in the instant case cannot be accepted.
- Thirdly, once the petitioner could not have learnt about the existence of the agreement dated 15th January, 2007 but for the respondents informing about the same to the petitioner, the petitioner could not be held responsible for ignorance of the law. If the petitioner has not seen the agreement containing the alleged limited period rights, there was no occasion for the petitioner assuming about of the legal consequences if any arising out of the unseen agreement. Thus, the petitioner is not informed the material fact which is the agreement dated 15th January, 2007 at the time of entering of the agreement dated 14th December, 2009. It is altogether different matter that there is no

such legal consequences which flow from the agreement dated 15th January, 2007 as discussed above in view of the fair reading of the agreement and intention of the parties derived from the agreement which was to confer the rights not for limited period which is a prima facie view, I have formed. But to say that the petitioner ought to have been aware of the alleged arrangement between the respondent No. 4 and the respondent No. 1 when during ordinary course of business, it was not feasible for the petitioner to discover this fact is the submission which cannot be accepted and the petitioner on that count cannot be held guilty of ignorance of law when no such consequences follow from the agreement.

- Fourthly, the terms of the agreement dated 14th December, 2009 also nowhere inform that the respondent No. 1 is possessing the rights for a limited period or there may be any eventuality wherein the respondent No. 1's authorization may lapse for after certain period. On the other hand, the clause 1.3 speaks to the contrary that the respondent No. 1/Sanguine has all the rights and authorization and shall continue to provide the titles which shall not infringe any copyright of the third party. Therefore, it cannot be said that from the reading of the clauses 1.3 of the agreement dated 14th December, 2009, it is self-evident that the said agreement provides for authorization which would have persuaded the petitioner's to assume that the said rights were for limited period. The respondents by contending so intend the petitioner to go too much presumptuous about the existence and the fate of titles depending the kind of the rights and duration without showing the actual arrangement. I find neither does the clause 1.3 imply this meaning as contended by the respondent nor such presumptions can be drawn by the party to the agreement when it is entering into a commercial contract like this for the specific rights granted for specific period without any ambiguity in the terms of the agreement dated 14th December, 2009. Therefore, on the said ground also, the submission of the learned counsel for the respondents cannot be accepted.

35. For all these reasons stated above, I do not find merit in the contention of the learned counsel for the respondent that the petitioner is guilty of any ignorance of law or ought to have been aware of existence of the agreement dated 15th January, 2007 or the arrangement between the respondent No. 1 and respondent No. 4 for a limited period when neither the respondent No. 1 nor the respondent No. 4 ever informed the petitioner about the said arrangement at the time of entering of the co-branding agreement dated 14th December, 2009 and rather chose the route of confidential nature of document which made the petitioner incapable of discovering these facts in ordinary course of the business. All these stands which the respondents had taken at the time of entering of the contract dated 14th December, 2009 are clearly pointers towards the intention of the respondent No. 4 which is that the respondent No. 4 at the entering of the contract never intended to treat his grant of rights to the partnership firm/respondent No. 1 for the limited period.

36. Let me now examine the conduct of the respondent No. 4 and the respondent No. 1 post the entering of the agreement dated 14th December, 2009 which is again leaning towards the view I have taken which is that the respondents acquiesced to the grant of the rights under the agreement dated 14th December, 2009 and not intended to treat the said grant of titles for a limited period of time lesser than the terms of the agreement 14th December, 2009. This can be seen from following discernible position emerging from the facts of the instant case:

a) Firstly, that the respondent No. 4 being a partner of the respondent No. 1 firm never protested against the entering of the contract dated 14th December, 2009 by the another partner namely Lal M Prasad on behalf of the respondent No. 1 which binds the firm for the period of 4 years when as per the respondent No. 4 the rights were to be expire on 5 years from the date of 15th January, 2007. The said non protest by the respondent No. 4 and continuing to proceed to enter into the agreement clearly binds the firm including the respondent No. 4 to continue with the agreement.

The said act of no protest by the respondent No. 4 also indicates the intention which was not to treat the rights for a limited period. This fact is also crucial even if is assumed that the agreement dated 15th January, 2007 granted rights for limited period. This is due to reason that even if the respondents stand that the agreement dated 15th January, 2007 is to be believed that it granted the limited period rights for 5 years, still the respondent No. 4 by proceeding to enter into the contract for the grant of the rights for a larger period of time as a partner of the respondent No. 1 firm by neither protesting against the said grant of rights to the petitioner nor informing the petitioner about the limited rights consented to enter into a new agreement for a larger period and gave his permission to the petitioner to publish the said titles for a larger period on behalf of the firm by agreeing not to prevent the respondent no. 1 firm from entering into such agreement dated 14th December, 2009.

This is the only way the conduct of the respondent No. 4 can be reconciled which is either the respondent No. 4 never intended to grant the limited period rights to the respondent No. 1 as seen above from the fair and meaningful reading of the terms of agreement dated 15th January, 2007 or in the alternative if so granted by the respondent No. 4 for such limited period, later on, the respondent No. 4 consented to the grant for further period by not protesting against or preventing the respondent No. 1 entering into agreement dated 14th December, 2009 for a larger period containing the assurances to provide the titles in the form clause 1.3 and the schedules A and B containing the titles of the respondent No. 4 and participating in the said agreement by becoming beneficiary to the agreement. That is why, the act of another partner namely Mr. Prasad binds the firm as he carries on business for the firm which include all the partners and the contrary intention should appear either by the express covenant in the form of partnership deed or by an act and conduct which is missing in the instant case. Consequently, the conduct of the respondent No. 1 and respondent No. 4 at the time of entering of the contract dated 14th December, 2009 and later on indicates that there was no such intention of the parties more specifically the respondents to treat the rights granted under 14th December, 2009 so far as relates to the respondent No. 4 for a limited period lesser than the term of the agreement dated 14th December, 2009.

b) The respondent No. 1 and the respondent No. 4 did not even inform the petitioner later on, after entering the agreement dated 14th December, 2009 and continued to proceed the dealings with the petitioner till the year 2012. It is only on 13th February, 2012, the respondent No. 1 informed the petitioner that the respondent No. 4 resigned from the respondent No. 1 firm and is no longer a partner and therefore the titles owned by him shall no longer be available to the petitioner. In the said communication dated 13th February, 2012 addressed by the respondent No. 1 to the petitioner, there is no

information about the limited period of rights arrangement between the respondent No. 4 and the respondent No. 1. The said letter merely informs the factum of resignation of the respondent No. 4 and the non availability of the titles. The most important part is that the respondent No. 4 even after the resignation never informed the petitioner about the lapse of the rights during the relevant period of resignation and the reversion of the said rights to the respondent No.

4. This again indicates towards the intention and conduct of the parties which was not to treat the grant of rights as for limited period.

c) The conduct of the respondent no. 1 was also indifferent towards the petitioner even after the resignation of the respondent No. 4 from the respondent no. 1 when the petitioner called upon the respondent No. 1 to disclose the arrangement between the respondent No. 1 and the Respondent No. 4 and also asked for the documents towards the same. The respondent No. 1 response to the said communication in its reply dated 1st March, 2012 was evasive which was that the said document could not be disclosed to the petitioner being confidential in nature and also in the said reply, the fact that the rights were available to the respondent No. 1 for a limited period was not informed.

37. All the above said factual position clearly reveal that it is only when the respondent approached the court after analyzing the documents, the theory of availability of the limited rights with the respondent no. 1 was developed by the respondent in order to wriggle out of the contractual obligation. This is apparent on prima facie basis on perusing through the material and documents which are available on the record. All throughout the business dealings, the respondents were neither themselves intended to give such rights to the petitioner for a limited period lesser than the term of the agreement dated 14th December, 2009 nor did they informed the petitioner about the same explicitly about such arrangement between the respondent No. 1 and the respondent No. 4. Resultantly, the argument of the respondents that the rights were reverted back to the respondent No. 4 in the year 2012 as a matter of law is prima-facie untenable in view of what has been discussed above which include the terms of the agreement dated 15th January, 2007 which are giving indication towards full rights on worldwide basis and the conduct of the respondent at the time of entering the contract and the later on which reveal about the contrary intentions by way of act and conduct and acquiescing towards the grant of the rights under the agreement dated 14th December, 2009 or in the alternative the respondent No. 4 giving its consent to extend the permission to the petitioner to use the titles as being a part of the partnership entering into a contract with the petitioner.

38. It appears from the understanding the facts and circumstances of the case that the respondent No. 1 could not do the business of publishing the titles of the respondent No. 4 in direct conflict with the petitioner due to the contractual obligation as contained in the agreement dated 14th December, 2009 which provides that the respondent No. 1 will not do competing business to the detriment of the petitioner and will maintain the exclusivity of the petitioner. Realizing this fact, the respondent No. 4 and 1 in an attempt to circumvent the contractual obligations as mentioned in the agreement dated 14th December, 2009 and to earn more profits have made a conscious decision where by the a person which is respondent No. 4 is allowed to resign from the firm and thereafter he can do business under the guise that there was a limited arrangement between the respondent Nos. 1 and 4 which was never disclosed to public at large. By

doing this, the respondents were of the belief that respondent No. 4 could do the business as he was the ex-partner and being an independent person in his own right and this will also not breach the contractual obligation of the respondent no. 1 with that of the petitioner. But this is actually no so, by doing this act, the respondent No. 4 are attempting to indirectly breach the contractual obligation which the respondent No. 4 could not have done so being a partner of the respondent No. 1 firm. This is evident from the fact that on 11th February, 2012, the respondent No. 4 retired from the firm and the respondent No. 1 informed the petitioner on 13th February, 2012 and thereafter on 16th February, 2012, the respondent No. 4 enters into a fresh contract with Reed Elsevier, clearly the said actions seem to be indicating towards intentions of the respondents which prima facie appears to be to wriggle out of the contractual obligations indirectly in order to make more profitable business. The petitioner informed that the respondents were persuaded to do all due to the common employees of the petitioner and Reed Elsevier who had left the company of the petitioner and thereafter asked the respondents to indulge into such mischief. All these facts clearly speak of inequitable conduct of the respondent No. 4. I therefore agree with the submission of the Mr. Sibal that prima facie, it appears that this is calculated move by the respondents in order to come out of the contractual obligations.

39. However, I have already observed that the rights in the titles did not revert back to the respondent No. 4 after his resignation and thus the respondent No. 4's rights are to be treated as per the provisions of the partnership Act, 1932.

40. It is well settled principle of law that the retired partner shall not be discharged from the liability any third party for the acts of firm done before his retirement unless there is an agreement which has been made by him with the third party and the partners of the reconstituted firm and such agreement may be implied in the course of dealings of the firm after the third party has the knowledge about the retirement. This is evident from the provisions of Section 32 of the Partnership Act, 1932.

41. The Supreme Court of India has approved this principle of liability of the retired partner towards the third party for the acts of the firm done before the retirement of the partner by way of the applicability of Section 32 in the case of *Syndicate Bank Vs. R.S. R Engineering Works and Others*, MANU/SC/0404/2003 : (2003) 6 SCC 265 wherein the Supreme Court observed thus:

Respondent Nos. 2 and 3 have contended that the appellant was aware of the dissolution of the partnership but that by itself will not absolve the liability of the retiring partners. Section 32 of the Indian Partnership Act, 1932, reads as follow:-

32 Retirement of a partner. (1) A partner may retire:-

- (a) with the consent off all the other partners.
- (b) in accordance with the express agreement by the partners,
or
- (c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted

firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement;

Provided that a retired partner is not liable to any third party who deal with the firm without knowing that he was a partner.

(4) Notices under Sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm

6. Under Sub-Section (2) of Section 32, the liability of he retiring partner as against third party would be discharged only if there is an agreement made by the retiring partner, with the third party, and the partners of the reconstituted firm. Of course, an agreement could be implied by the course of dealing between such third party and the reconstituted firm, after retirement of a partner. In the instant case, there was no agreement between the appellant bank and respondent Nos. 2 and 3 as regards their liability in respect of the dissolved firm. There is also no evidence to show that there was an implied contract **between the appellant and respondent No. 4 who allegedly agreed to discharged the liabilities of respondent Nos. 2 and 3. It is also pertinent to note that there was no public notice under Sub-section (3) of Section 32 of the Indian Partnership Act by respondent Nos. 2 and 3. Even if there was a public notice, it may not alter the position as the alleged liabilities of respondent Nos. 2 and 3 were incurred by them prior to the so called dissolution of the firm.**

(Emphasis Supplied)

42. Applying the said proposition to law to the instant case, it can be said that in the instant case, neither there is any express agreement of petitioner with that of the respondent No. 4 and nor such an agreement can be implied as the petitioner always protested against the acts of the respondent no. 4 after learning about his retirement from the business. The provisions of Section 32(3) would not be applicable as no public notice of retirement is given and even if the public notice is given, the liability of the retired partner will continue up till the date of the giving of the public notice. In the instant case, the obligation to maintain exclusivity and to supply the titles to the petitioner arises of the agreement dated 14th December, 2009 which was entered by the respondent No. 1 firm prior to the retirement of the respondent No. 4. Therefore, the respondent No. 4 would continue to supply the title and facilitate the respondent No. 1 in order to enable it to fulfill its contractual obligations with the petitioner during the currency of the agreement dated 14th December, 2009.

43. The matter can be looked from another angle also which is that even if the stand of the respondent is believed that there existed some internal agreement between the respondent No. 1 and respondent No. 4 for the rights relating to title which could not have been disclosed to the petitioner at the time of entering the contract dated 14th December, 2009. I have already observed that the petitioner could not have discovered the existence of the agreement as the respondents maintain the said agreement was

confidential. Even if this factual backdrop is taken into consideration, then the agreement dated 14th December, 2009 is vitiated by the misrepresentation or fraud on prima facie basis due to misrepresentations made by the respondent No. 1 on the date of the entering of the contract. The legal implication of such agreements vitiated misrepresentation are provided under the provisions of Section 19 of the Contract Act, 1872 wherein it is the party on whose the representation is made has choice either to avoid the contract or insist the performance and seek restitution. So, still, the conclusion is same which is that the petitioner can seek insistence of the performance of the contract from the respondent's end by operation of the provisions of the contract. This is independent to the finding that the conduct of the respondents was throughout such which clearly indicative of the intention of the parties or respondents to permit the petitioner to be exclusive licensee or assignee of the rights of publication for the term of the agreement dated 14th December, 2009.

44. Now, the question which is required to be answered is that whether the injunction order which has been passed in the matter can affect the third party M/s. Elsevier, when the said is passed under the provisions of Section 9 of the Act.

45. The learned counsel for the intervenors has argued that the M/s. Elsevier is a third party and the right provided to the said entity is flowing from distinct agreement which the said entity had with the respondent No. 4 and thus the injunction order under the provisions of Section 9 of the Act cannot be passed as the said entity is the non party to the agreement.

46. On the other hand, Mr. Sibal argued that the said entity Elsevier is deriving title from the rights of the respondent No. 1 of which the respondent No. 4 was a partner, thus the said entity cannot be said to be a third party in a strict sense of term. Rather, the said entity is deriving a title from the respondent No. 4 in order frustrate the contractual obligations of respondent No. 1 which was to maintain the exclusivity of the petitioner in the market.

Mr. Sibal submits that the respondents initially chose not to file any reply to the present petition. However, the respondents got a review petition filed by the applicant. The sole purpose of this exercise was to frustrate the injunction/restrain order dated 12th September, 2012 by seeking relief for a purported innocent third party - i.e. the applicant. The respondents and the applicant did not inform the Court about the arrangement entered into between the applicant and Phillip Learning dated 16th February, 2012 which has now been filed. The constitution of Phillip Learning was also not disclosed. It was not disclosed to this Court that Phillip Learning is owned by respondent No. 4 who is its proprietor. It has also been pointed out by Mr. Sibal that Mr. J. Sarvanan, a former employee of the petitioner, was responsible for the negotiations on behalf of the petitioner with the respondents when the agreement dated 14th December, 2009 was entered into. He is a witness to the said agreement on behalf of the petitioner.

However, Mr. J. Sarvanan subsequently joined the applicant and thereafter evidently played an instrumental role in negotiating the co-publishing agreement dated 16th February 2012 between the applicant and the respondents. He is a signatory to the co-publishing agreement representing the applicant. Mr. J. Sarvanan has misused the confidential information secured by him while in employment of the petitioner and that the co-publishing agreement is the product of the connivance between the respondents and the applicant through the efforts of Mr. J. Sarvanan. Mr. Sibal also pointed out that the co-publishing agreement dated 16th February, 2012 filed before this Court is a false

document. The Exhibits to the co-publishing agreement appear to have been made in haste to defeat the order dated 12th September, 2012 and as there are many discrepancies and conflicting facts have crept into the agreement, the details of which are mentioned in the rejoinder, has also been referred by him.

He argues that in a way, the entire exercise done by the respondents and the applicant is in order to defeat the interim order passed and the applicant has played a major role with his full knowledge about all activities of the parties at least on the date of execution of agreement dated 16th February, 2012. Therefore, in such cases interim order can be passed under the provisions of Section 9 of the Act as per the well settled law.

47. I have examined the submissions advanced by the learned counsel for the parties on the question of passing of the interim order under section 9 of the Act against the third party. I have also gone through the judgments passed by the learned single judges of this court in the case of Value Advisory Services v. ZTE Corporation, (2009) 3 Arb L R 315 (Del), Vikram Bakshi v. Mrs. Sonia Khosla decided in OMP 613/2010 on 16th November, 2010 and the judgments passed by the Full Bench of Bombay High Court in the case of Girish Mulchand Mehta v. Manish S. Mehta MANU/MH/1458/2009 : 2010 (1) Bom C.R. 31 and the ones following Girish Mulchand (supra), I find that the law is pretty well settled which is that there cannot be any absolute proposition that the court is powerless to pass the interim order affecting the third party under the provisions of the Section 9 of the Act. There may arise various situations wherein the court may have to pass the order which may affect the third parties. One of such situation is where the order is passed against the party who is claiming or deriving title through the party to an agreement. In such cases, if the endeavor is made by the party to the agreement to frustrate the contract or to come out of the contractual obligations, the court may pass an interim order framed in such a manner which may prevent the abuse and effect the third party right.

48. In this context, the judgment passed by the learned Full Bench of Bombay High Court in the case of Girish Mulchand Mehta & Anr. v. Mahesh S. Mehta and Anr., MANU/MH/1458/2009 : 2010 (2) MhJ 657 is noteworthy wherein it was observed thus:

The next question is whether order of formulating the interim measures can be passed by the Court in exercise of powers under Section 9 of the Act only against a party to an Arbitration Agreement or Arbitration Proceedings. As is noticed earlier, the jurisdiction under Section 9 can be invoked only by a party to the Arbitration Agreement. **Section 9, however, does not limit the jurisdiction of the Court to pass order of interim measures only against party to an Arbitration Agreement or Arbitration Proceedings; whereas the Court is free to exercise same power for making appropriate order against the party to the Petition under Section 9 of the Act as any proceedings before it. The fact that the order would affect the person who is not party to the Arbitration Agreement or Arbitration Proceedings does not affect the jurisdiction of the Court under Section 9 of the Act which is intended to pass interim measures of protection or preservation of the subject matter of the Arbitration Agreement.**

(Emphasis Supplied)

13. The Appellants, however, place reliance on the decision of the Kerala High Court in the case of Shoney Sanil v/s. M/s. Coastal Foundations (P) Ltd. & Ors. reported in MANU/KE/0036/2006 : AIR 2006 Ker (206). In that case the

question considered was whether the writ-petitioner, admittedly, a third party to an alleged Arbitral Agreement between the Respondents inter se, and who had in his favour a confirmed Court sale and certificate of such sale and delivery of possession, following and arising under an independent decree, could be dispossessed, injuncted or subjected to other Court proceedings under Section 9 of the Act? The Kerala High Court held that orders under Section 9(ii) (c) can be passed only in relation to subject matter of dispute in arbitration which may be in possession of any party since it is not the intention of the Act or any arbitration proceedings as conceived by the law of Arbitration to interfere with or interpolate third party rights. It concluded that on a plain reading of Section 9 of the Act and going by the Scheme of the said Act, there is no room to hold that by an interim measure under Section 9, the rights of third party holding possession on the basis of Court sale could be interfered with, injuncted or subjected to proceedings under Section 9 of the Act. Instead, it held that Section 9 of the Act contemplates issuance of interim measures by the Court only at the instance of party to Arbitration Agreement with regard to the subject matter of the Arbitration Agreement. **The Court has, however, noted that such order can be only against the party to an Arbitration Agreement or at best against any person claiming under him. The Principle expounded in this decision is that if a third party has independent right in the subject matter of the Arbitration Agreement, Section 9 cannot be invoked to affect his rights. At the same time, the Kerala High Court has plainly opined that it is possible to pass orders under Section 9 against a third party if such person is claiming under the party to the Arbitration Agreement. Thus understood, Section 9 can be invoked even against a third party who is not party to an arbitration agreement or arbitration proceedings, if he were to be person claiming under the party to the arbitration agreement and likely to be affected by the interim measures.** The Appellants herein will have to substantiate that they were claiming independent right in respect of any portion of the subject matter of the Arbitration Agreement on their own and not claiming under the Respondent No. 2 Society who is party to the Arbitration Agreement. **In absence thereof, the Court would certainly have jurisdiction to pass appropriate order by way of interim measures even against the Appellants herein, irrespective of the fact that they are not party to the Arbitration Agreement or the Arbitration Proceedings.**

(Emphasis Supplied)

49. From the reading of the afore quoted observations of the full Bench of Bombay High Court in the case of Girish Mulchand (Supra), it is can be safely said that the powers under Section 9 of the Act has to be invoked by the party to the arbitration agreement but the Section 9 no where limits on the court's power or jurisdiction to pass the order. Rather, the section 9 provides that the court shall have same powers to pass the interim order as it has for any other proceedings. Thus, it cannot be said that Section 9 puts any impediments on the jurisdiction of the court passing the interim measures or orders affecting third parties. Secondly, the court can conveniently proceed to pass the interim orders which may affect the third party who is deriving title from the party to the agreement unlike the third party having the independent right.

50. Applying the ratio of the Girish Mulchand's case (supra) to the instant case, it can be seen that the rights which Elsevier is claiming to be independently flowing the from the contract entered with the Respondent No. 4 having a proprietorship Fillip learning

are in actuality not the independent rights but are the rights which are being derived from the respondent No. 4 who was the partner of the respondent No. 1. I have already observed as per my above discussion that the rights in copyright titles did not revert back to respondent No. 4 as it has been understood by him after his resignation from the partnership on 11th February, 2012. The said respondent No. 4 is not discharged for his liabilities towards the previous acts of the firm done before his resignation and the said respondent No. 4 is thus bound by the contractual obligations. Reed Elsevier as an entity is deriving a title for publishing the works from the respondent No. 4 under the impression that the said rights were as an operation of law reverted to the said respondent, which in fact they have not so reverted by operation of law. Thus, the legal effect of the contract if any entered by the Reed Elsevier with the respondent no. 4 is inconsequential to the extent it grants the rights to the titles: "The 8051 & MSP 430 Microcontrollers", "Digital Logic Design - With HDL Practice", "Field Theory, 2ed", "Network Analysis - A Simplified Approach, 2ed" and "Electronic Circuits - Principles & Application Data Communications and Computer Networks" which are forming the subject matter of the agreement dated 14th December, 2009. The respondent No. 4 as a matter of law did not have the rights when the said respondent No. 4 was bound by the previous contractual obligation for giving the permission for publishing the same titles to petitioner for the same subject matter. Therefore, the rights which Reed Elsevier is claiming are the rights of the respondent No. 1 firm of which the respondent No. 4 was the partner who gave the rights under the mistaken impression of the operation of law. Thus, the alleged Rights are actually the rights claimed through the respondent No. 1 or respondent No. 4 who are parties to the agreement with the petitioner. Therefore the interim order of the nature affecting the rights of Reed Elsevier can be passed as prima facie the said rights are not independent rights but are claiming under the rights of the respondent No. 1 firm.

51. In the end, it has been suggested by Mr. Sibal, learned counsel for the petitioner that the petitioner is agreeable to purchase the books/titles which are left with M/s. Reed Elsevier India Pvt. Ltd. In case, the said suggestion is agreeable to the applicant, he is granted liberty to move proper application for passing such directions.

52. Arbitration proceedings between the petitioner and respondents are pending.

53. Accordingly, this Court is of the view that the prayer made in I.A. No. No. 646/2013 filed by Reed Elsevier India Pvt. Ltd. is required to be rejected. Interim order passed on 12th September, 2012 shall operate up till 14th December, 2013 on which date the period of 48 months from the date of execution of the agreement i.e. 14th December, 2009 shall expire. The main petition as well as pending applications are also disposed of.

© Manupatra Information Solutions Pvt. Ltd.