

DLJ 1988(15)

DELHI HIGH COURT

B.N. Kirpal, J.

I.A. Nos. 1153 of 1988 & I.A. No. 1750 of 1988 in

Suit No. 477 of 1988

Decided on : 19-8-1988

Dr. (Smt.) Najma Heptulla

...Plaintiff

Versus

M/s. Orient Longman Ltd. and others

...Defendants

Order 39, Rules 1 and 2 C.P.C.—In a dispute regarding book 'India Wins Freedom' of which 30 pages were kept in the National Archives—between the heirs of Maulana Azad and Prof. Kabir, the Court found that the desire intention and direction of the author was for the publication of the book and the only interest of the legal representative was to receive royalty. In this situation so long as the right of the copy right holder who is not the author is secured it will not be advisable or proper for the Court to injunct or restrain the publication of the work.

Copy Right Act, 1957—Sections 17, 55(2), 13(2) and 2(d)—It is difficult to apprehend or to accept that when two people agree to produce a book where one provides material on his own and other express the same in a language which is presentable to the public then the entire credit for such an undertaking or literary work should go to the person who has transcribed the thoughts of another. It appears that if there is intellectual contribution by two or more persons pursuant to a pre-concerted joint design, to the composition of a literary work then those persons have to be regarded as joint authors.

For the Plaintiff : Mr. R.K. Anand, Sr. Advocate with Mr. Ashok Bhasin, S.P. Sharma and Amit Khemka, Advocates.

For the Defendants : Mr. Pravin Anand, Advocate.

JUDGMENT

B.N. Kirpal, J.—This order will dispose of the plaintiff's application under Order 39 Rules 1 and 2 for an injunction restraining the defendants from breaking the seals of the covers in which the complete book INDIA WINS FREEDOM is lying and will also dispose of an application under Order 39 Rule 4 being I.A. 1750 of 1988 for vacation of the ad interim ex-parte injunction by which defendants 1, 3 and 4 had been restrained from breaking the said seals of the covers of the aforesaid book.

2. The plaintiff, claiming herself to be one of the legal heirs of late Maulana Abul Kalam Azad, has filed the present suit for rendition of accounts and injunction. The main relief is sought against defendant No. 1 M/s. Orient Longman Limited which is a publisher of repute and with whom an agreement had been entered into by Professor Humayun Kabir, who had been Maulana Azad's admirer, close associate and who is claimed, by his daughter defendant No. 6, to be the real author of the book INDIA WINS FREEDOM.

3. In order to appreciate the points in issue, it is necessary to set out the background in which the present controversy occurs.

4. According to the plaintiff, Maulana Azad, during his life time, wrote the aforesaid book INDIA WINS FREEDOM. It is clear that Prof. Humayun Kabir, father of defendant No. 6, was associated with the writing of the said book. According to defendant No. 6 the said book was composed and written by her father and he is the author thereof.

5. It appears that the manuscript of the aforesaid book was ready for publication sometimes in November, 1957. Before the book could be published, Maulana Azad died on 22nd February, 1958. After that on 25th March, 1958 Prof. Kabir wrote to National Archives asking them whether they would be willing to act as trustees for the complete manuscript, including 30 pages which have not been published till today but were required to be published after 30 years of Maulana Azad's death i.e. after 22nd February, 1988. A similar letter was written by Prof. Kabir on 3rd April, 1958 to the National Library, Calcutta. On the National Archives, New Delhi and the National Library, Calcutta agreeing to keep the complete manuscript in their safe custody and to open the same only on or after 22nd February, 1988, one copy each of the complete manuscript in a sealed cover was sent by Prof. Kabir to the National Archives and the National Library.

6. At the time when Maulana Azad died, two of his nearest relatives who were living were Fatima Begum and Nooruddin Ahmed. Fatima Begum was Maulana Azad's sister and the grand mother of the plaintiff and defendant No. 5 Nahid Siddiqui. Nooruddin Ahmed was Maulana Azad's nephew, his father, who was Maulana Azad's brother, having died much earlier. On 20th May, 1958 Nooruddin Ahmed and on 29th May, 1958 Fatima Begum signed two documents, which were identical, which purported to give their consent to the arrangements which had been arrived at for the publication of the aforesaid book, excluding the 30 pages which were lying in sealed cover with Orient Longman Limited.

7. On 2nd September, 1958 an agreement was entered into between Prof. Humayun Kabir and Orient Longman for the publication of the aforesaid book, excluding the 30 pages, which were lying sealed with the National Archives and National Library. In the said agreement Prof. Kabir was stated to be the composer of the aforesaid book and it was mentioned that Maulana Azad had, during his life time, dictated and given certain notes to Prof. Kabir and out of that material Prof. Kabir had composed the book which had been approved by the late Maulana Azad. It was also mentioned that the complete book had been deposited with National Archives and National Library with instructions that the seals would be broken on 22nd February, 1988 and the complete book would be made available at that time. The said agreement provided for Orient Longmans to publish the work at their own expense and risk and to pay half of the royalty which was alleged to be payable to the composer, to be paid to Indian Council of Cultural Relations and the other half to be paid to Fatima Begum and Nooruddin Ahmed in equal shares. What is of importance to note is that the said agreement also referred to the sealed book and, with respect thereto, it was stipulated in the said agreement as under :

"It is further agreed and understood that the Publishers shall have the first option to publish the complete book as originally composed and now lying under sealed cover with the National Archives, New Delhi and the National Library, Calcutta when the seals are broken on 22nd February, 1988 as mentioned in the preamble of this agreement."

8. It is an admitted case of the parties that Fatima Begum continued to receive her share of the royalties till she died in April, 1966. It appears that, on Fatima Begum's death, succession certificate was obtained by her son Hamid Ali and thereupon he received the royalties under the agreement dated 2nd September, 1958. These royalties were paid to Hamid Ali till his death in December, 1981.

9. At this stage, another important fact may be taken note of. After the death of Maulana Azad, the two legal heirs, namely, Fatima Begum and Nooruddin Ahmed, arrived at a settlement with regard to the division of Maulana Azad's entire estate except the rights in the books written by Maulana Azad. On 19th February, 1959 Mohd. Tahir, on behalf of Fatima Begum, and Nooruddin Ahmed wrote to Pt. Jawahar Lal Nehru confirming that they shall abide by any decision given by Hafiz Mohd. Ibrahim in respect of the rights of the books of late Maulana Azad. Pursuant thereto Hafiz Mohd. Ibrahim gave his decision on 18th March, 1959. The case set-up by Nooruddin was that, during his life time, Maulana Azad had made the oral gift of all the copyrights of his published and unpublished works and writings in his favour exclusively. This claim was disputed by Mohd. Tahir on behalf of Fatima Begum. Hafiz Mohd. Ibrahim upheld the claim of Nooruddin Ahmed and held that he was solely entitled to the copyrights of all the works and writings, both published and unpublished, of the late Maulana Abul Kalam Azad and that Fatima Begum Sahiba had no right or interest in the same. M/s. Orient Longman, on 27th January, 1988 wrote to Nooruddin Ahmed, as one of the legal heirs of Maulana Azad who was receiving the royalty in respect of the sale of the aforesaid book. In this letter it was stated that as per the agreement of 2nd September, 1958 the seals of the complete book would be broken and M/s. Orient Longman will have the first option of publishing the complete manuscript. The Publishers further stated that they intended to obtain and publish the complete manuscript as soon after 22nd February, 1988 as possible and that Nooruddin Ahmed will continue to receive royalty as before of the new book. Copy of this letter was signed by Nooruddin Ahmed as a token of his confirmation of its contents. It appears that a similar letter was also written to Ms. Nahid Siddiqui and according to the plaintiff she was surprised to learn about the contents of the said letter from where she discovered that Orient Longman were claiming rights in relation to the complete book.

10. The contention of the plaintiff is that it is only the legal heirs of Maulana Azad who are entitled to decide upon the publication of the complete book and a notice dated 13th February, 1988 had been issued by the plaintiff's Advocate to the National Library and National Archives to the effect that the plaintiff was not desirous to publish the complete book or part thereof and that the seals should not be broken and the contents of the book should not be made known to public.

11. It appears that the plaintiff, along with another legal representative of Maulana Azad, filed a suit before the District Judge, Delhi for declaration, rendition of accounts and permanent injunction against Orient Longman and other defendants. By order dated 19th February, 1988 the plaintiff was allowed to withdraw from the suit and to file a fresh suit in an appropriate Court. It is thereafter that the present suit for rendition of accounts and injunction was filed.

12. The plaintiff also filed an application under Order 39 Rules 1 and 2 praying that the defendants be restrained from breaking the seals of the

covers of the complete book INDIA WINS FREEDOM and from making its contents known to public. The ad interim ex parte injunction sought for was granted and it is thereafter that defendant No. 1 moved an application under Order 39 Rule 4 and the said defendant No. 1 and defendant No. 6, Ms. Laila Kabir, who was impleaded subsequent to the filing of the suit, filed their replies.

13. Briefly stated, the submission of the plaintiff is that the plaintiff is a legal representative of Maulana Azad and the copyright in the complete book vests in the legal representatives. This copyright, it is contended, has not and could not have been assigned in favour of Orient Longmans. In this connection, it is submitted that Prof. Humayun Kabir had no authority to enter into the agreement dated 2nd September, 1958 with Orient Longmans and unless and until all the legal representatives of Maulana Azad decide to publish the entire book, the same cannot be made known to the public.

14. On behalf of Orient Longmans, it has been vehemently contended that the agreement dated 2nd September, 1958 was valid. It was submitted that Prof. Humayun Kabir was a joint author with Maulana Azad in the writing of the aforesaid book and that he had been duly authorised by the owners of the copyright to execute the agreement dated 2nd September, 1958.

15. The contentions urged on behalf of defendant No. 6 were that Prof. Humayun Kabir was the sole author of the said book and, in the alternative, he was a joint author thereof. It was further contended that even if it be assumed that the L. Rs. of Maulana Azad had some right in the copyright of the said book then they had consented to Prof. Kabir to the arrangement which he had entered into with Orient Longmans for the publication of the book and that the copyright had been validly assigned in favour of Orient Longmans. It was also submitted that as a result of the aforesaid decision of Hafiz Mohd. Ibrahim dated 18th March, 1959 the copyright in the said book vested exclusively with Nooruddin Ahmed and that Fatima Begum had no right therein. Nooruddin Ahmed having agreed to the publication of the entire book by Orient Longmans, the plaintiff had no locus standi to file the present suit.

16. The first and the important question which arises for consideration in this case is as to who is the author of the book INDIA WINS FREEDOM.

17. The term 'Author' has been defined, not that the definition is of any assistance, in Section 2(d) as meaning "in relation to a literary or dramatic work, the author of the work". Section 55(2), however, provides that where in a literary work a name purporting to be that of an author appears on the work as published then the person whose name so appears shall be presumed, unless the contrary is proved, to be the author of the work.

18. In the present case, the book as published no doubt purports to show Maulana Azad as the author thereof. It is, however, contended by the defendants, that from the preface to the book, written by Prof. Humayun Kabir, as well as from the facts gathered from the preamble of the agreement dated 2nd September, 1958, it can be proved that Maulana Azad is not the sole author. While according to defendant No. 6 Prof. Humayun Kabir is the sole author, the case of Orient Longmans, however, is that Maulana Azad and Prof. Humayun Kabir have, in law, to be regarded as joint authors.

The book having been published after Maulana Azad's death, it has to be shown as to whether Prof. Humayun Kabir had the authority to enter into the agreement dated 2nd September, 1958 with Orient Longmans. This authority had to be derived by Prof. Humayun Kabir from the legal representatives of Maulana Azad, irrespective of the fact whether Maulana Azad was the sole or the joint author of the book. What has, however, to be seriously considered is the contention of Ms. Pinky Anand to the effect that Prof. Humayun Kabir was the sole author.

19. My attention was drawn to the preface to the said book written by Prof. Humayun Kabir on 15th March, 1958 in which he has referred to the background and the manner in which the said book was written. According to Prof. Kabir, on his persuasion, Maulana Azad agreed to write his autobiography on Prof. Kabir assuring that he would do his best to relieve Maulana Azad of the actual burden of writing. About two years were spent on the writing of the book and Maulana Azad used to describe his experiences and Prof. Kabir used to make copious notes. When sufficient material would be collected for a chapter, a draft in English would be prepared by Prof. Kabir and handed over to Maulana Azad. Maulana Azad then read each chapter and then both Prof. Kabir and Maulana Azad went over the said chapter together. It is at this stage that Maulana Azad is stated to have made many amendments, additions, alterations and omissions. The first draft of the completed book was ready in September, 1957 and, according to Prof. Kabir, Maulana Azad then decided that some 30 pages of the book dealing with the incidents and reflections mainly of a personal character should not be published for the present. It was Maulana Azad's direction that a copy each of the complete text should be deposited under sealed cover in the National Library and the National Archives. After the text of 30 pages was excluded, a revised draft was prepared and was presented to Maulana Azad towards the end of November, 1957. It is further mentioned by Prof. Kabir, in the preface, that when the final draft was ready Maulana Azad went through the manuscript chapter by chapter and sentence by sentence and made some minor alterations. It has also been stated that there are opinions and judgments in the book with which Prof. Kabir did not agree "but since my (Prof. Kabir's) function was only to record Maulana Azad's findings, it would have been highly improper to let my views colour the narrative." It has further been mentioned that it is difficult for a man to reflect with complete accuracy the views and opinions of another when expressed in a different language. Maulana Azad used to convey his thoughts in Urdu and the same were expressed in English by Prof. Humayun Kabir.

20. The reading of the agreement dated 2nd September, 1958, however, shows that Prof. Kabir assumed to himself the role of a composer of the book. This is an improvement, if not at variance, with what Prof. Kabir himself wrote in the preface to book on 15th March, 1958. In the agreement, it has been made out that Maulana Azad dictated certain notes to the composer and it is the composer who, out of the materials obtained, composed the book which was approved by Maulana Azad. Another improvement in this agreement is that it has been made out as if one half of the royalty was payable to Prof. Kabir in accordance with the wishes of Maulana Azad.

21. At this interlocutory stage, in the absence of any other evidence on record, I will proceed on the assumption that the facts, as narrated by Prof. Kabir himself in the preface dated 15th March, 1958 with regard to the manner in which the manuscript of the book was prepared, are correct.

22. While relying upon what has been stated by Prof. Kabir in the preface, the submission on behalf of defendant No. 6 is that the only conclusion which can be arrived at is that it was Prof. Kabir and not Maulana Azad who was the author of the said book. It was submitted that Maulana Azad merely gave the ideas and the thoughts and conversed with Prof. Kabir in Urdu and it is in fact Prof. Kabir who wrote the manuscript in English. Strong reliance is placed by Ms. Anand on the decision in the case of *Donoghue v. Allied Newspapers Ltd.*, (1937) 3 All. E.R. 503. That was a case where series of articles entitled "Steve Donoghue's Racing Secrets" were published in a newspaper. Donoghue, who was a well-known jockey, communicated to Mr. Felstead, a freelance journalist, his various adventures. Felstead made notes as the conversations went on and he then wrote the articles. The manuscript was then taken to Donoghue who read it over and when he thought that some alterations were necessary or desirable, they would be noted in the margin by Mr. Felstead and were subsequently, at times, recorded. Articles based on the original series of articles were later published in another publication and entitled "my Racing Secrets. By Steve Donoghue". This publication took place at the instance of Mr. Felstead. The plaintiff then sought an injunction restraining the publication of the aforesaid work alleging that there had been an infringement of his copyright. Justice Farwell held that the plaintiff did not have any copyright. It was observed as follows :

"In the present case, apart altogether from what one may call merely the embellishments, which were undoubtedly supplied wholly by Mr. Felstead, the ideas of all these stories, and, in fact, the stories themselves, were supplied by the plaintiff; but, in my judgment, upon the evidence, it is plain that the particular form of language by which those stories were conveyed was the language of Mr. Felstead and not that of the plaintiff. Although many of the stories were told in the form of dialogue, and to some extent Mr. Felstead no doubt tried to reproduce the story as it was told to him by the plaintiff, nevertheless the particular form of language in which those adventures of stories were conveyed to the public was the language of Mr. Felstead, and not the language of Mr. Donoghue."

Reliance was also placed by Ms. Anand on *Walter v. Lane*, (1900) Appeal Cases 539. In that case the question arose with regard to newspaper report of public speeches of Lord Rosebery. The said speeches were first published in *The Times* and the reporter took down the speeches in shorthand, wrote down notes, corrected, revised and punctuated reports for publication, and the reports were published in *The Times*, the speeches being given verbatim as delivered by Lord Rosebery. With the speeches were published articles describing the meetings, and reports of the utterances of some other speakers. The question which arose was as to who was the owner of the copyright with regard to these reports. The House of Lords held that the owner of the copyright was the reporter.

23. Walter's case is clearly distinguishable. There the question as to who is the author was in issue not between Lord Rosebery, whose speeches were reported, and the reporter but the question arose when the report which had been published in *The Times* was sought to be published in a book form by the respondent. The reason of the House of Lords holding that the reporter was the author is clearly brought out by the following passage from the speech of Lord Davey :

"In my opinion the reporter is the author of his own report. It was who brought into existence in the form of a writing the piece of letterpress which the respondent has copied. I think also that he and he alone composed his report. The materials for his composition were his notes, which were his own property, aided to some extent by his memory and trained judgment. Owing to the perfection which the art of shorthand writing has attained in recent years, memory and judgment bear a less important part in the composition of a report of a speech than was formerly the case. But the question whether the composer has copyright in his report does not seem to me to vary inversely with or to depend on his skill in stenography. Nor, as it appears to me, does the fact that the subject-matter of the report had been made public property, or that no originality or literary skill was demanded for the composition of the report, have anything to do with the matter. Again, it is said that the lucidity of diction and perfection of expression which characterise the eminent person named render an exact reproduction of his words a comparatively easy and almost mechanical task. But is it argued that the reporter of the hesitating or half-completed utterances of an inferior speaker might have copyright, though the reporter of Lord Rosebery may not? or does the question of copyright in the report depend on the clearness of thought and speech of the orator? In my opinion the question must be decided on general consideration, and not on any grounds which are personal either to the orator or to the reporter. Copyright has nothing to do with the originality or literary merits of the author or composer It was of course open to any other reporter to compose his own report of Lord Rosebery's speech, and to any other newspaper or book to publish that report: but it is a sound principle that a man shall not avail himself of another's skill, labour, and expense by copying the written product thereof. To quote the language of North J. in another case "For the purpose of their own profit they desire to reap where they have not sown, and to take advantage of the labour and expenditure of the plaintiffs in procuring news for the purpose of saving labour and expense to themselves".

24. It would appear, therefore, that the reporter was regarded as the author inasmuch as the report was composed by him. The preparation of the report required more than mechanical skill. The reporter not only sets down what has been stated by the speaker but it is he who decides as to how the speech or an event is to be portrayed or presented. The person whose speech was reported has absolutely no connection with the preparation of the report. There was no collaboration between the two of them. Before concluding it may also be noticed that under Section 17, proviso (cc) of the Copyright Act, 1957 the person who has delivered the speech in public is regarded as the first owner of the copyright thereof. In view of this provision it is doubtful whether a verbatim copy of a person's speech, delivered in public, in a report can vest in a reporter the sole copyright thereof. This aspect, however, does not squarely arise for consideration in this case and I need not delve on this any further.

25. The case of *Donoghue* (supra) does appear to support the contention of the learned counsel but the concept of joint authorship was not agitated before the Court. This concept is recognised under the Indian Law

(Section 13(2) of the Copyright Act) as well as in England. More than 100 years ago, in the case of *Levy v. Rutley*, 1871 Vol. VI, Law Reports, C.P. VI, 523, the Court had to consider the concept of joint authorship. In that case a person was employed by another to write a play and the employer suggested the subject. When the play was completed the plaintiff and some members of his company introduced various alterations in the incidents and in the dialogues, to make the play more attractive, and one of them wrote an additional scene. The question which arose was whether under these circumstances the plaintiff could be regarded as a joint author of the play along with the writer. While rejecting the contention of the plaintiff, the Court held that the plaintiff was a contributory of a very small part of the entire piece at a subsequent time. It was observed by Byles, J. that "If the piece had been originally written by the plaintiff and Wilks jointly, in prosecution of a perconcerted joint design, the two might have been said to be co-authors of the whole play, notwithstanding that different portions were respectively the sole productions of either." Keating, J. agreed with the aforesaid conclusion and observed as under :

"The question for us to consider is, therefore, whether the plaintiff has proved that he was joint author of his play with Wilks. I am of opinion that he has failed to do so. I entirely agree with my Brother Byles that, though it may not be necessary that each should contribute the same amount of labour, there must be a joint labouring in furtherance of a common design... But I fail to discover any evidence that there was any co-operation of the two in the design of this piece, or in its execution, or in any improvements either in the plot or the general structure... If the plaintiff and the author had agreed together to rearrange the plot, and so to produce a more attractive piece out of the original materials, possibly that might have made them joint authors of the whole. So, if two persons undertake jointly to write a play, agreeing in the general outline and design, and sharing the labour of working it out, each would be contributing to the whole production, and they might be said to be joint authors of it. But, to constitute joint authorship, there must be a common design."

It would follow from the aforesaid that if two persons collaborate with each other and, with a common design, produce a literary work then they have to be regarded as joint authors.

26. If the reasoning in *Donoghue's* case (supra) is taken to its logical extent, it would mean that what is of paramount importance, in order to declare as to who is the author of a work, is to determine in whose language is the work written. In *Donoghue's* case the entire material which was incorporated in the book was known to and supplied by Donoghue. It is his experiences which were written by Felstead. The Court did not even refer to the case of *Levy* (supra) and, therefore, had no occasion to consider as to whether Donoghue could be regarded as a joint author. If the reasoning in *Donoghue's* case is correct, it would mean that the material on the basis of which a literary book is written would be of no importance, while deciding as to who is the author of a book. To agree with such a proposition would lead to results which are difficult to accept. For example, it is not unknown that great Scientists may not have the literary capabilities of transcribing their discoveries, theories and thoughts so as to be easily understood. If a

Scientist, therefore, takes the services of another person with a view to transcribe his thoughts, findings and material in the form of a book or articles, can it mean that the author of the Scientific material is not the Scientist himself but the author is the person in whose language the material is expressed? In such a case the person who transcribed the thoughts may not even be able to understand the material which is being written, but he may still have to be regarded as a sole author, if *Donoghue's* case is accepted as correct. Surely the intention of the Copyright Act cannot be to give the status of an author only to the person in whose language the literary piece is written while completely ignoring the person who contributed the entire material which enabled the person to show his mastery over the language.

27. A literary work consists of matter or material or subject which is expressed in a language and is written down. Both the subject matter and the language are important. It is difficult to comprehend, or to accept, that when two people agree to produce a work where one provides the material, on his own, and the other expresses the same in a language which is presentable to the public then the entire credit for such an undertaking or literary work should go to the person who has transcribed the thoughts of another. To me it appears that if there is intellectual contribution by two or more persons pursuant to a preconcerted joint design, to the composition of a literary work then those persons have to be regarded as joint authors.

28. In the present case, from what has been stated by Prof Kabir in the preface, it is clear that there was active and close intellectual collaboration and cooperation, between Maulana Azad and Prof. Humayun Kabir which resulted in the book *INDIA WINS FREEDOM*. There was a preconcerted joint design between the two in the writing of the book. The material for the book was supplied by Maulana Azad with a clear understanding that Prof. Kabir will describe those thoughts and conversation and write the same in English language. It is not as if Maulana Azad did not know English. The preface itself shows that Maulana Azad, along with Prof. Kabir, read every word of the manuscript and made alterations, additions, omissions and corrections. It is Maulana Azad who decided as to which 30 pages of the book were not to be published and it is he who decided as to which of his views should be contained in the book. In fact Prof. Kabir has categorically stated that his function was only to record Maulana Azad's findings and it would have been highly improper to let his (Prof. Kabir's) views colour the narrative.

29. Even the conduct of Prof. Kabir belies the contention that it is he who was the sole author. As already noted hereinabove, 50% of the royalty of the book has been paid to the legal representatives of Maulana Azad. This is an arrangement which was entered into by Prof. Kabir with Orient Longman. If Prof. Kabir had regarded himself as the sole author then there would have been no occasion or necessity for securing payment of royalty to the legal representatives of Maulana Azad.

33. For the aforesaid reasons, it is not possible for me to come to the conclusion that Prof. Kabir was the sole author of the aforesaid work. As at present advised, it appears to me that Maulana Azad and Prof. Kabir have to be regarded as the joint-authors of the said work. Prof. Kabir was more than a mere scribe of the thoughts of Maulana Azad. Both of them actively and intellectually collaborated in the compositions of the literary work.

31. The next question which arises for consideration is whether Prof. Kabir had any authority to execute the agreement dated 2nd September, 1958 with Orient Longman.

32. The owner of a copyright can, under Section 18 of the Copyright Act, assign his copyright in favour of another person. Section 19 provides for the mode of assignment. It requires that the assignment should be in writing signed by the assigner or by his duly authorised agent. In the present case the rights were assigned, according to the defendants, by Prof. Kabir by the agreement dated 2nd September, 1958. The question which, however, arises is whether Prof. Kabir had any authority to do so.

33. It would be immaterial whether Maulana Azad was the sole or the joint author of the said book. With his death the agency, if any, in favour of Prof. Kabir, stood terminated. Whatever rights were with Maulana Azad thereafter vested in his legal representatives. As Prof. Kabir was not the sole author of the said book, it was necessary for him to have been authorised by the legal representatives of Maulana Azad to enter into an agreement with Orient Longmans. The agency in favour of Prof. Kabir need not have been created by the legal representatives in writing. Authority to act as an agent could have been given to him orally. In the present case, however, Fatima Begum signed document dated 29th May, 1958 which reads as follows :

"I Fatima Begum, sister of the late Maulana Abul Kalam Azad, hereby agree to the arrangement made by Shri Humayun Kabir with Orient Longmans Private Limited for the publication of the said Maulana Azad's autobiographical narrative in terms of which 50% of the royalties derived from the sale of the book will be paid to the Indian Council for Cultural Relations for the purpose of awarding annual prizes entitled 'Maulana Azad's Prizes' by the said Council and the remaining 50% of such royalties will be paid to the legal heirs of Maulana Azad.

I declare that myself and Nooruddin Ahmed, nephew (brother's son) of the late Maulana Abul Kalam Azad, are his sole legal heirs."

34. A careful analysis of the aforesaid document dated 29th May, 1958 would show that the plaintiff's grand-mother agreed to the arrangement which had been made by Prof. Kabir with Orient Longmans. This meant that the action of Prof. Kabir was ratified by Fatima Begum. It is true that as on that day an agreement in writing had not been executed between Prof. Humayun Kabir and Orient Longmans, but it appears that some arrangement had been entered into between them and this was ratified by Fatima Begum. The document further shows that, by virtue of the said arrangement, 50% of the royalties were payable to the legal representatives of Maulana Azad and 50% were to be paid to the Indian Council of Cultural Relations. Both these terms have been incorporated in the agreement dated 2nd September, 1958. But from this document alone it is not possible to conclude that all the terms contained in the agreement dated 2nd September, 1958 were expressly ratified. There is nothing to show that any draft of the agreement dated 2nd September, 1958 existed which was ratified on 29th May, 1958 by Fatima Begum. Nevertheless, as the document mentions that arrangement between Prof. Kabir and Orient Longmans had been agreed to by Fatima Begum it would be safe to infer that the state of facts existing at least as on 29th May, 1958,

regarding the publication of the book, was agreed to by Fatima Begum. By that date the full text of the book, containing 30 pages which have not so far been published, had been deposited with the National Archives and National Library. The arrangement which would have been arrived at between Prof. Kabir and Orient Longmans as on 29th May, 1958, could only be with regard to the publication of the abridged book excluding the 30 pages which were lying sealed. It has to be inferred that Fatima Begum was aware of and had agreed to the publication of the abridged version of the book by Orient Longmans.

35. The submission of defendant No. 6 is that even though there may not have been any express ratification in writing of the agreement dated 2nd September, 1958 by Fatima Begum, but on the facts and in the circumstances of this case the principles of promissory and equitable estoppel are clearly applicable and the inescapable conclusion is that she had acquiesced to the terms of the said agreement. Pursuant to the aforesaid declaration dated 29th May, 1958 the book was published, after written agreement dated 2nd September, 1958 had been executed. For a period of nearly 30 years the legal representatives of Maulana Azad, including the grand-mother of the plaintiff, as long as she was alive, continued to receive royalty from Orient Longmans. This royalty was payable and paid by Orient Longmans only by virtue of the agreement dated 2nd September, 1958, as they were not a party to the declaration of 29th May, 1958. It is difficult to accept that the predecessor-in-interest of the plaintiff, namely, her grand-mother Fatima Begum, was not aware of the contents of the document dated 2nd September, 1957 for the reason that she was the legal representative of Maulana Azad and she had to pay the royalty to Fatima Begum.

36. It is her conduct of accepting the royalty, payable by Orient Longmans under the agreement dated 2nd September, 1957, which must have led Orient Longmans to rightly believe that the said agreement had the consent of the legal representatives of Maulana Azad. Having enjoyed the fruits of the said agreement for all these years the legal representatives of Maulana Azad are estopped from challenging the validity of the said agreement.

37. It is in the agreement of 2nd September, 1958 that it has been mentioned that the first option to publish the complete book will be with Orient Longmans. In the book which was published, preface dated 15th March, 1958 written by Prof. Kabir is also printed. In the preface it has been stated that 30 pages of the book were lying with National Library and National Archives and were to be published after an expiry of 30 years. Even if it be assumed, for the sake of argument, that on 29th May, 1958 Fatima Begum may not have been aware of the complete book having been deposited with National Archives and National Library, it is, however, not possible to accept that she did not know about the arrangement of the release of the said 30 pages after 30 years. Since 1958, when the arrangement with Orient Longmans was made, till since 1958, when the book was first published, neither Fatima Begum nor any of her legal representatives, till recently, have sought to challenge the said arrangement, regarding the publication of the complete book after the said date. It was only on 22nd February, 1988. For all these years Fatima Begum, as well as her legal representatives, including the plaintiff, have acquiesced to the aforesaid arrangement. It was broadcast to the whole world that 30 pages of Maulana Azad's book were lying sealed and were to be printed after 22nd February, 1988. During this time Fatima Begum and her legal representatives continued to receive royalty from the book, without any

demur. Having acquiesced to this arrangement, it is now too late for the legal representatives of Fatima Begum to undo the wishes of the author, Maulana Azad, and to stall the breaking of the seals of the covers of the complete book or to prevent its content being made public. The 30 pages were admittedly written and it was the intention of Maulana Azad that the same should be published immediately or, if Prof. Kabir is to be believed, published after 30 years. This intention of the author, who died over 30 years ago, ought not to be lightly interfered with, at the instance of one of the legal representatives, at this point of time. The plaintiff is, therefore, not entitled to interim injunction and the plaintiff's rights can be adequately secured by putting defendant No. 1 to terms so that if the plaintiff's suit for rendition of accounts is decreed, she will be entitled to recover the decretal amount.

38. There is also considerable force in the contention of Ms. Anand that the book INDIA WINS FREEDOM having been published for the last 30 years in terms of the agreement dated 2nd September, 1958, without any objection by Fatima Begum or any of her descendants or descendants of late Maulana Azad, the balance of convenience is against the plaintiff and no injunction should be granted especially when no irreparable loss or injury would be caused to the plaintiff as defendant No. 1 can always be directed to keep true and correct accounts in respect of the sale of the aforesaid book. As already observed, it was the desire and wish of Maulana Azad that the complete book should be published. It is not without reason that the 30 pages, which have not yet been made known to the world, were written. When the desire, intention and direction of the author was for the publication of the book then the only interest which a legal representative of the deceased author, as a holder of the copyright can have is to adequate royalty from the publication of the work. As long as this right of the holder of the copyright, who is not the author, is secured, it would not be advisable or proper for the courts to injunct or restrain the publication of the work. Had Maulana Azad not intended that the said 30 pages should be published then, possibly, the plaintiff might have legitimately prayed for an injunction restraining the publication of the complete book or from making the said 30 pages public. But this is not the case here. The direction of Maulana Azad was that ultimately the entire book should be published.

39. For the aforesaid view that I am taking, it is not necessary for me to deal with the other contentions which have been raised by the defendants.

40. I accordingly vacate the aforesaid ad interim injunction whereby the defendants had been restrained from breaking the seals of the covers of the complete book INDIA WINS FREEDOM and from making its contents known to the public. In order to secure the interest of the plaintiff, defendant No. 1 shall, however, give security in the sum of rupees one lac to the satisfaction of the Registrar of this Court. This security shall be furnished prior to defendant No. 1 publishing the complete book. I.As. stand disposed of. No costs.