

MANU/DE/0621/2001

Equivalent Citation: 94(2001)DLT177, 2001(60)DRJ11

IN THE HIGH COURT OF DELHI

RFA (OS) 14/2001

Decided On: 30.03.2001

Appellants: **Columbia Pictures Industries, Inc. and Others**
Vs.

Respondent: **Siti Cable Network Ltd.**

Hon'ble Judges/Coram:

Mr. Arun Kumar and Mr. B.N. Chaturvedi, JJ.

Counsels:

For Appellant/Petitioner/plaintiff: Mr. C.M. Lall, Adv., Mr. V.P. Singh and Mr. Ravinder Sethi, Sr. Adv.

For Respondents/Defendant: Mr. Rajiv Nayar, Sr. Adv. and Ms. Pratibha M. Singh, Adv.

Subject: Intellectual Property Rights

Acts/Rules/Orders:

Code of Civil Procedure, 1908 (CPC) - Order 7 Rule 11

Case Referred:

Oil and Natural Gas Commission v. Offshore Enterprises Inc., 1993 Bombay 217

Case Note:

Civil Procedure Code, 1908 - Order 7 Rule 11--Appeal against order of Learned Single Judge-- Partnership firm--If one of the partners in a firm of lawyers is also appointed attorney, it does not follow that he and other advocates are working in a dual capacity i.e. as a client as well as a lawyer.

Held:

The Single Judge held that the plaintiffs are represented by a firm of lawyers known as Lall and Sethi. All the partners of the firm will, Therefore, be deemed to be advocates in the case. Ms. Oberoi working in the said firm would be deemed to be an advocate of the plaintiffs. She having been also appointed as a constituted attorney by each of the plaintiffs, it follows that she as well as other advocates of Lall and Sethi including Mr. Chander M. Lall are working in a dual capacity, i.e. as a client as well as a lawyer. The Single Judge observed that if a firm of advocates is appointed as advocate by a suitor, none of the partners--of the advocates firm can act as recognised agent in pursuance of the power of attorney granted by the client. The practice followed by the firm of advocates in combining the two roles is opposed to law. Accordingly, the plaint was rejected.

The above facts in our view clearly show that two independent persons are performing two different roles so far as the present case is concerned. While Ms. Dahlia Sen Oberoi is the constituted attorney of the plaintiffs, Mr. Chander M. Lall is the advocate to conduct the case on behalf of plaintiffs in his professional capacity. The roles of the two persons are clearly different and do not merge at all. There is no scope for saying that in the present case the advocates are acting in a dual capacity. The identity of the two persons is clearly distinct and separate. It is a different matter that both of them happen to be advocates. There is no legal bar to an advocate being appointed as a constituted attorney by a party for purposes of a case. If the constituted attorney was herself to act and plead as an advocate, her conduct could be said to be questionable but so far as facts of this case which have been brought to our notice are concerned, the two personalities have maintained the distance, they have not allowed their roles to merge at any point of time.

There is sufficient material on record to dispel the belief that it is a partnership firm. It is a sole proprietorship of Mr. Chander M. Lall. Ms. Dahlia Sen Oberoi has nothing to do with it except that she may be using the firm's address as an address for herself or she may be associating with Mr. Chander M.Lall in some legal work on a case to case basis.

It follows that there is no warrant for holding that Mr. Chander M. Lall or Ms. Dahlia Sen Oberoi or for that matter either of them is acting in a dual capacity in the facts of the present case. Both have independent roles so far as the present case is concerned. The impugned order which has no factual basis to sustain it, is hereby set aside. The plaint is restored to its position as it prevailed at the time of passing of the impugned

manupatra order. It further follows that the interim orders which were in force at the time of passing of the impugned order will stand revived and continue to operate.

ORDER

Arun Kumar, J.

1. Since a short point is involved, with the consent of counsel for parties, we have taken up this appeal for final disposal at the is stage itself. This appeal is directed against an order dated 14th February, 2001 passed by the learned Single Judge rejecting the plaint in the suit. Briefly the facts are the plaintiffs are parties based in the United States of America. They filed a suit for permanent and mandatory injunction and rendition of accounts on account of infringement of copy right in this court. According to the plaintiffs they are engaged in the business of film production and have copy right in the films produced by them. Besides they claim to have copy right or licensee rights in films produced by others as such rights have been assigned to them. The defendant is a cable TV operator working in India. The allegation in the plaint is that the defendant without seeking permission of the plaintiffs is exhibiting or showing the films in which the copy right or the right to commercial exploitation belongs to the plaintiffs. Along with the suit the plaintiffs filed application for ad interim injunction and we are given to understand that an injunction granted in favor of the plaintiffs was continuing to operate when the impugned order was passed.

2. During the pendency of the suit the defendant moved an application raising objection to the institution and conduct of the suit and prayed for rejection of the plaint. The ground on which rejection of the plaint was sought was that an advocate is not entitled to act in dual capacity. i.e., as a constituted attorney of the plaintiffs as well as an advocate to plead the case of the plaintiffs in court. According to the defendant in the present case, the counsel for the plaintiffs was functioning as a constituted attorney of the plaintiffs as well as their advocate. As per facts on record, all the plaintiffs being based in the USA appointed Ms. Dahlia Sen Oberoi, advocate as a constituted attorney for purposes of this case through independent documents by way of power of attorney executed by each plaintiff in favor of the said Ms. Oberoi. Ms. Oberoi in turn appointed Mr. Chander M. Lall, advocate as an advocate to conduct the case on behalf of plaintiffs. Mr. Chander M.Lall is an advocate and is the sole proprietor of M/s. Lall and Sethi. The allegation of the defendant is that Ms. Oberoi is an advocate working with M/s. Lall and Sethi and is thus a part of that firm. The said firm having been appointed as constituted attorney by the plaintiffs, it cannot represent the plaintiffs as advocate. In other words, the case is that since an advocate cannot act in a dual capacity, i.e., constituted attorney of a client as well as his advocate, the present suit was liable to be dismissed.

3. The learned Single Judge held by the impugned order that the plaintiffs are represented by a firm of lawyers known as Lall and Sethi. All the partners of the firm will, Therefore, be deemed to be advocates in the case. Ms. oberoi working in the said firm would be deemed to be an advocate of the plaintiffs. she having been also appointed as an constituted attorney by each of the plaintiffs, it follows that she as well as other advocates of Lall and Sethi including Mr. Chander M.Lall are working in a dual capacity, i.e., as a client as well as a lawyer. The learned Single Judge observed that if a firm of advocates is appointed as advocate by a suitor, none of the partners of the advocates' firm can act as recognised agent in pursuance of the power of attorney granted by the client. The practice followed by the firm of advocates in combing the two roles is opposed to law. Accordingly, the plaint was rejected.

4. The learned counsel for the appellants first raised the argument that such an order could not be passed under Order 7 Rule 11 CPC Rule 11 of order 7 enumerates the grounds on which a plaint in a suit can be rejected. The ground on which the plaint has been rejected in the present case does not fall in any of those grounds and, Therefore, the order is bad. In reply to the said argument, the learned counsel for the respondent tried to bring the case under clause (d) and urged that the suit was barred under law and, Therefore, the plaint could rightly be rejected under clause (d). In our view, clause (d) envisages specifies bars under any law and not the kind of situation which has arisen in the present case. In the case in hand, assuming the objection of the defendant to the maintainability of the suit as correct, it is at best a case of irregularity. It is not as case of the suit being barred under any law. The plaint as such is maintainable. The objection which has been raised by the defendant is only regarding the manner in which the suit has been instituted. In our view, such a case could not fall in clause (d) of Order 7 and, Therefore, the plaint could not have been rejected under the said clause.

5. Next the learned counsel appearing for the appellant argued that the factual basis on which the impugned order was passed is not correct. He did not dispute the legal proposition that a person cannot act in dual capacity, i.e., a constituted attorney as well as an advocate. According to the learned counsel, this is not the position in the present case. IN the first instance it was submitted that Mr. chander M.Lall is functioning as an advocate under the name and style of M/s. Lall and Sethi as well. mr. Lall is the sole proprietor of the said firm M/s. Lall the Sethi. In this connection the appellants placed on record a certificate from the Standard Chartered Grindlays Bank to the effect that an account in the name of Lall and Sethi was being maintained by Mr. Chander M. Lall as proprietor of Lall and Sethi since April 22, 1996. Another certificate issued by a firm of Chartered Accountant M/s. Rohit and Amit Tandon Associates, Chartered Accountants in on record according to which the Income Tax returns are being filed by Mr. Chander M.Lall, advocate in his personal name wherein he includes the income from profession being carried out in the name of M/s. Lall and Sethi as

manupatra proprietor since 1996-97. These documents show that M/s. Lall and Sethi is a proprietorship of Mr. Chander M.Lall and it has no partners. Our attention was also drawn to an affidavit of Ms. Oberoi. She has stated that she is a Consultant with M/s. Lall and Sethi, advocates. She has also stated that she is not a partner in M/s. Lall and Sethi nor she is an employee there. She has further stated that in the present case she has accepted power of attorney from the plaintiffs for purposes of acting in the suit and signing the pleadings and vakalatnama. She is categorical that she is not pleading or acting in her professional capacity in the present action as an advocate nor she intends to do so at any point of time. From these facts it follows that M/s. Lall and Sethi is not a partnership firm and the question of Ms. Dahlia Sen Oberoi being a partner therein does not arise. Ms. Oberoi has been appointed as an attorney by the plaintiffs for purposes of this suit through duly executed documents in this behalf. She signed and verified the plaint of behalf of the plaintiffs as a constituted attorney. She appointed Mr. Chander M.Lall as an advocate for the plaintiff in the suit. Mr. Chander M.Lall is handling the suit in his professional capacity as an advocate.

6. The learned counsel for the respondent/defendant drew our attention in this behalf to one of the documents by way of power of attorney executed by plaintiff No.1 in favor of Ms. Dahlia Sen oberio. In the said document it is stated "...HEREBY nominate and appoint Ms.Dahlia Sen Oberoi, advocate working for gain at Lall & Sethi address A-66, NDSE-II, New Delhi - 110049..." From this statement in the recitals it was argued that Ms. Oberoi is part of Lall & Sethi and, Therefore, the argument of dual capacity of a lawyer is made out. We are unable to accept this argument advanced on behalf of respondent. In the recital, the relevant words are "wording for gain at Lall & Sethi". This would only show that Lall and Sethi is only an address used by Ms. Dahlia Sen Oberoi, advocate. The above recital does not lead to an inference that Ms. Oberoi is working for Lall and Sethi or is a partner there.

7. Unfortunately the learned Single Judge has not gone into these factual aspects. We are sure that if these facts were considered by the learned Single Judge, the result would have been different. The above facts in our view clearly show that two independent persons are performing two different roles so far as the present case is concerned. While Ms.Dahlia Sen Oberoi is the constituted attorney of the plaintiffs, Mr. Chander M. Lall is the advocate to conduct the case on behalf of plaintiffs in his professional capacity. The roles of the two persons are clearly different and do no merge at all. There is no scope for saying that in the present case the advocates are acting in a dual capacity. The identity of the two persons is clearly distinct and separate. It is a different matter that both of them happen to be advocates. There is no legal bar to an advocate being appointed as a constituted attorney by party was herself to act and plead as an advocate, her conduct could be said to be questionable but so far as facts of this case which have been brought to our notice are concerned, the two personalities have maintained the distance, they have not allowed their roles to merge at any point of time.

8. The learned counsel for the respondent relied on Oil and Natural Gas Commission V. Offshore Enterprises Inc., 1993 Bombay 217. On law there is no quarrel with the legal proposition enumerated in the said judgment. This was a case in which a lawyers' firm which was a partnership had accepted both the roles, i.e., of a constituted attorney as well as an advocate. In a partnership, apart from the relevant rules of the Bar Council of India or the Bombay High Court, to the effect that each partner of a law firm will be treated as an advocate in the case, the Partnership Act itself creates such a hurdle. In a partnership each partner is an agent of the other and, Therefore, even in the absence of relevant rules of the Bar Council or a High Court, the legal consequence would be that all partners of a law firm would be deemed to be counsel in the case. The judgment of the Bombay High Court, however, has no application in the facts of the present case because the present is not a case of partnership. M/s. Lall and Sethi is not a partnership firm though the name may suggest it to be so. There is sufficient material on record or dispel the belief that it is a partnership firm. It is a sole proprietorship of Mr. Chander M.Lall. Ms.Dahlia Sen Oberoi has nothing to do with it except that she may be using the firm's address as an address for herself or she may be associating with Mr. Chander M.Lall in some legal work on a case to case basis.

9. It follows from the above discussion that there is no warrant for holding that Mr. Chander M.Lall or Ms. Dahlia Sen Oberoi or for that matter either of them is acting in a dual capacity in the facts of the present case. Both have independent roles so far as the present case is concerned. The impugned order which has no factual basis to sustain it, is hereby set aside. The plaint is restored to its position as it prevailed at the time of passing of the impugned order. It further follows that the interim orders which were in force at the time of passing of the impugned order will stand revived and continue of operate. This appeal is disposed of in these terms. No order as to costs.

10. Parties to appear before the learned Single Judge on 25th April, 2001.