

IN THE HIGH COURT AT CALCUTTA
(Original Side)
COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

G.A. No. 1 of 2023

In

I.P. (COM) No. 11 of 2024

(Old No. CS 216 of 2023)

Pares Chandra Das & Anr.

Versus

New Central Book Agency Private Limited & Ors.

Mr. Debnath Ghosh, Sr. Adv.

Mr. Gautam Kumar Ray

Mr. T.K. Jana

Mr. Gopal Das

Mr. Sourav Jana

Mr. Biswaroop Mukherjee

... For the plaintiffs.

Mr. Krishna Raj Thaker, Sr. Adv.

Mr. Sankarsan Sarkar

Mr. Lal Ratan Mondal

Mr. Rajdeep Adhikary

Mr. Munshi Mijanur Rahman

... For the defendants.

Hearing Concluded On : 23.07.2026

Judgment Delivered On : 27.08.2026

Judgment Uploaded On : 27.08.2026

Krishna Rao, J.:

1. The plaintiffs have filed the present application being G.A. (Com) No. 1 of 2023, praying for the following reliefs:

“a) The Respondents and/or their men, servants, agents, assigns, representatives and/or anyone claiming through them be restrained from translating, adapting, rearranging, altering and/or making copies of the said works named “APPLIED ENGLISH GRAMMAR AND COMPOSITION ANGLO BENGALI (FOR HIGH SCHOOLS)” and “BEGINNER’S APPLIED ENGLISH GRAMMAR, COMPOSITION & TRANSLATION [ANGLO-BENGALI-FOR BEGINNERS]”, and/or alteration, adaptation and/or anyway dealing with the Petitioners’ books and/or communicating copies of the works, including such infringing works to the public, and/or reproducing the copies of the said books, without the express consent and permission of the Petitioners, in any manner whatsoever;

b) Special Officer may be appointed to immediately take possession of the goods manufactured and marketed by the respondents under the said works named “APPLIED ENGLISH GRAMMAR AND COMPOSITION ANGLO BENGALI (FOR HIGH SCHOOLS)” and “BEGINNER’S APPLIED ENGLISH GRAMMAR, COMPOSITION & TRANSLATION [ANGLO-BENGALI-FOR BEGINNERS]”, and/or alteration, adaptation and/or anyway dealing with the Petitioners’ books and/or communicating copies of the works and all the cash memos, invoices, challans, publicity materials and all other documents bearing the said books with a direction to cause destruction thereof;

c) Ad interim orders in terms of the prayer as made herein above;

d) Costs;

e) Such further or other order or orders be passed and/or direction or directions be given as to this Hon'ble Court may deem fit and proper;"

2. The plaintiff no.1 is the author and the first owner of copyright of the books, namely, "Applied English Grammar and Composition Anglo Bengali (For High Schools)" and "Beginner's Applied English Grammar, Composition and Translation (Anglo-Bengali-For Beginners)" (hereinafter referred to as "said books").
3. By agreements dated 15th June, 2001 and 22nd April, 2002, the plaintiff no.1 granted a license in favour of the defendant no.1 to print and publish the said books. It was clarified that the copyright in the books would remain solely with the author/ copyright holder and the publication right of the books would remain solely with the defendant no.1.
4. Mr. Debnath Ghosh, Learned Senior Advocate, representing the plaintiffs submits that no time period is mentioned in the agreements dated 15th June, 2001 and 22nd April, 2002. He submits that the Copyright Act does not recognize an agreement in perpetuity or for more than 5 years. The agreements have come to an end by efflux of time on 14th June, 2006 and 21st April, 2007, respectively. The plaintiffs have terminated the license agreements with effect from 24th August, 2023.

5. Mr. Ghosh submits that a Co-Publishing Agreement dated 25th August, 2020, had been entered between the defendant no.1 and one Katha-o-Kahini Private Limited (hereinafter referred to as “Co-Publisher”). It was agreed that the co-publishing agreement would remain in force for three years and could be renewed if both the parties so desired. He submits that in the said agreement, it is admitted that the plaintiff no.1 is the author and copy right holder in relation to the said books and would be entitled to take decisions in the matter pertaining to the publication of the said books after the expiry of such co-publishing agreement. The co-publishing agreement expired by efflux of time. He submits that any publication of the said books after expiry of the tenure of the agreement dated 25th August, 2020 by the defendants or any other person, is an act of infringement, which is prohibited under the provisions of the Copyright Act, 1957.
6. Mr. Ghosh submits that after the demise of Sima Das, the copyright holder being the author duly informed the defendants regarding the change of name of the copyright holders as Amitava Das for “Applied English Grammar and Composition” and Abhijit Das for “Beginners Applied English Grammar and Composition”. He submits that the defendants had filed suit against the plaintiffs before the Learned City Civil Court at Calcutta, being T.S. No. 1614 of 2023, challenging the termination of the agreements and for other consequential reliefs. The plaintiffs filed an application for rejection of plaint and accordingly, the Learned Court has returned the plaint to the defendants. He submits

that in the said suit, the defendants have admitted that the plaintiffs are the author and owner of the copyright in the said works and the defendants' rights to print, publish, distribute and sell the said books. He submits that despite expiry of agreements between the plaintiffs and the defendants by efflux of time, the defendants are printing and publishing the revised edition of the said books on and from 26th August, 2023 and are also marketing, distributing and selling the said books. He submits that the defendants have failed to disclose or show any authorization from the Author or Abhijit Das, permitting the defendants to publish the impugned books. He submits that inspite of receipt of cease-and-desist notice that all agreements between the parties had stood expired or terminated but the defendants are continuing with publishing, printing, marketing and distributing work of the said books.

7. Mr. Krishna Raj Thaker, Learned Senior Advocate, representing the defendants submits that agreements dated 15th June, 2001 and 22nd April, 2002, consistently recognize the defendant no.1 as the publisher and granted exclusive rights of publication. He submits that there is no clause in the agreements for transfer of the copyright in favour of the defendant no.1. Pursuant to the publication agreements, the defendant no.1 for the last two decades continuously published, printed, marketed and distributed the said books, and acted strictly in accordance with the contractual arrangements between the parties.

- 8.** Mr. Thaker submits that with the consent of the author/ copyright holder, the defendant no. 1 entered into a Co-Publishing Agreement dated 25th August, 2020, with Katha-O-Kahini Prakashani Private Limited solely to facilitate printing, publication, marketing and distribution of the books during Covid-19 period. The plaintiffs are not the parties to the said agreement. The Co-Publishing Agreement was executed for a period of three years. As per Clause 16 of the Agreement, Royalty would continue to be paid to the author under the original publication agreements by recognizing the continued existence of the said two agreements.
- 9.** Mr. Thaker submits that upon expiry of the Co-Publishing Agreement, the plaintiffs issued notices dated 18th July, 2023, 27th July, 2023 and 25th August, 2023, for termination of the publication agreement. After issuance of the notices by the plaintiffs, the defendant no.1 filed a suit before the Learned City Civil Court at Calcutta praying for declaration of its rights under the publication agreements. He submits that the plaintiffs have entered appearance in the said suit but have not filed written statement and during the pendency of the suit, the plaintiffs have filed the present suit.
- 10.** Mr. Thaker submits that the suit filed by the plaintiffs does not disclose a right to sue and purported cause of action of infringement. He submits that as per Section 54 of the Copyright Act, 1957, only the owner of the Copyright can sue for infringement of copyright. He submits that as per the case of the plaintiffs that Sima Das, the wife of

the Author was the Copyright holder of the books and after her demise, the copyright of the books, namely, "*Applied English Grammar, Composition and Translation (Anglo-Bengali for Beginners)*" goes to the middle son of the author, namely, Abhijit Das and Author's eldest son Amitava Das was given the copyright of the books, namely, "*Applied English Grammar and Composition (For High Schools)*". He submits that there is no document has been produced to show the alleged devolution of ownership of copyright of the books from Sima Das to Abhijit Das and Amitava Das. He submits that the plaintiffs have not made either of them as party to the suit, thus no right in respect of the said books can be claimed by the plaintiffs in the present suit.

11. Mr. Thaker submits that there is no deed of assignment disclosed by the plaintiffs under Section 18 of the Copyright Act, 1957, wherein the copyright of the books was assigned to Abhijit Das and Amitava Das, thus there is a violation of Section 19 of the Copyright Act, 1957. He submits that publication of agreement does not contain any provision stipulating that the publication rights granted to the defendant no. 1 would automatically determine upon expiry of the co-publishing agreement. On contrary, the contractual agreement indicates that the publication agreements continued to remain operative even during the subsistence of co-publishing agreement.

12. Mr. Thaker submits that the plaintiffs have suppressed the fact that in the letter dated 23rd August, 2020, issued by the author records that at least one year prior notice would be required before the publication

arrangement could be discontinued but the plaintiffs have not disclosed the said letter in the present suit. He submits that the plaintiffs have not complied with the said requirement before issuing the termination notice. He submits that notices were issued immediately before the expiry of the co-publishing agreement and period of one year notice was not completed before the plaintiffs filed the instant suit.

- 13.** Admittedly, in none of the agreements dated 15th June, 2001 and 22nd April, 2002, provide any time period. The plaintiffs have relied upon Section 19 of the Copyright Act, 1957. Sub-Section (1) of Section 19 provides that no assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorized agent. Sub-Section (5) of Section 19 provides that if the period of assignment is not stated, it shall be deemed to be five years from the date of assignment. Period of five years completed on 21st April, 2007. After 21st April, 2007 till 22nd August, 2020, the plaintiffs have not taken any steps by restraining the defendants for publishing, printing and marketing the said books. The plaintiffs allowed the defendants to continue with the work. On 23rd August, 2020, the plaintiff no. 1 provided a consent letter to the defendant no. 1 to enter into a new agreement between the defendant no.1 and co-publisher Katha-O-Kahini Prakashani Pvt. Ltd. In terms of the said consent letter issued by the plaintiff no.1 on 25th August, 2020, the defendant no.1 entered into a Co-Publishing Agreement with one Katha-O-Kahini Prakashani Pvt. Ltd.

14. In the consent letter, the plaintiff no. 1 also informed that the author is the basic copyright holder and confers his copyright to his wife Sima Das and as both are aged persons, the author or copyright holder, or the authors' legal heirs will have the right to take the decision in the matter of publication of the said books after expiry of the period of this agreement, or it may be continued if the three parties are satisfied. On 5th July, 2021, Sima Das passed away. After her death, the plaintiff no.1 by a letter dated 20th July, 2021, informed the defendant no.2 that he has changed the name of the copyright holders of the said books as follows:

a. Abhijit Das (Author's middle son) as copyright holder of "Beginners Applied English Grammar and Composition" and

b. Amitava Das (Author's elder son) as copyright holder of "Applied English Grammar and Composition".

In the said letter, it was also informed that the Author, namely, Dr. P.C. Das or the copyright holders will have the sole right to take decision in the matter of publication of the said books with the written notice for the same.

15. The plaintiffs have not issued any notice before 18th July, 2023. On the other hand, given consent to the defendants to enter into Co-Publishing Agreement. The plaintiffs have issued notices on 18th July, 2023, 27th July, 2023 and 25th August, 2023, to the defendant no.2 by terminating the Co-Publishing Agreement with effect from 25th August, 2023. The plaintiff nos. 1 and 2, and Abhijit Das have jointly issued notice to the

defendant no.2 on 25th August, 2023, informing that despite of receipt of notices dated 18th July, 2023 and 27th July, 2023 but the defendants have not responded to the said notices and now the agreement has expired on 24th August, 2023, the author and the copyright holders are at liberty to take decision of publication and make fresh agreement with any publisher.

- 16.** Mr. Ghosh has relied upon the judgment in the case of ***Malhotra International Pvt. Ltd. and Another Vs. Vidyut Metallica Ltd.*** reported in **1997 SCC OnLine Bom 338** wherein the Hon'ble Bombay High Court held that:

“Prima facie there is no user agreement in favour of the defendants in existence at present. The user agreement has been terminated w.e.f. 9th Sept. 1993. Even otherwise the agreement was to come to an end by efflux of time on 13th Sept. 1993. The defendants are continuing to infringe the trade mark of the plaintiff against the provisions of the Act. In such circumstances the equity, if any, would have to yield to the statutory provisions. No unusual circumstances have been pointed out which would persuade this Court to go into the balance of convenience. It has already been noticed that the defendants have failed to get any relief in Suit No. 5 of 1993. The application for interim relief made therein was rejected. The appeal against the said order has been admitted but no interim relief has been granted. This apart, there is no provision under the law by which the plaintiffs could be compelled to enter into any further agreements with the defendants. The defendants cannot be given any such relief in this suit. The defendants can only claim any rights on the basis of Memorandum of Understanding by taking out appropriate proceedings for specific performance of the Memorandum of Understanding. No such suit has been filed. The suit filed at Thane Dist. Court was merely for a declaration to the effect that the termination of the notice dated 9th June, 1993 is

illegal. Consequently I am of the view that the plaintiffs have succeeded in making out a prima facie case. Therefore, the Notice of Motion is made absolute in terms of prayer Clause (a)(i). Prayer clause (a)(i) reads as under.

“(a) That pending the hearing and final disposal of the suit the defendants by itself, its servants and agents be restrained by an order and injunction of this Hon’ble Court from:

- (i) infringing the plaintiffs trademarks more particularly described in paragraph 1 of the plaint herein.”*

17. Mr. Ghosh has relied upon the judgment in the case of **Rajasthan Breweries Limited Vs. The Stroh Brewery Company** reported in **2000 (55) DRJ (DB)**, the Hon’ble Delhi High Court has relied upon the judgment in the case of **M/s. Classis Motors Ltd. Vs. M/s. Maruti Udyog Ltd.** reported in **(1997) 65 DLT 166**, wherein the Hon’ble Delhi High Court held that:

“In view of long catena of decisions and consistent view of the Supreme Court, I hold that in private commercial transaction the parties could terminate a contract even without assigning any reason with a reasonable period of notice in terms of such a clause in the agreement. The submission that there could be no termination of an agreement even in the realm of private law without there being a cause or the said cause has to be valid strong cause going to the root of the matter, therefore, is apparently fallacious and is accordingly, rejected.

Even in the absence of specific clause authorising and enabling either party to terminate the agreement, which is private commercial transaction, the same could be terminated even without assigning any reason by serving a reasonable notice.”

18. In the case of **RDB & Company (Hindu Undivided Family) and Others Vs. Zee Entertainment Enterprises Limited and Others** reported in **2023 SCC OnLine Cal 2335**, the Coordinate Bench of this Court held that:

“16. Prima facie, the respondent no. 2 has been unable to demonstrate that they were authorised to assign the entirety of the rights in any of the films alongwith the underlying works embodied therein under the agreement dated 21 December, 2017. The contention of the respondent no. 1 being a bona fide assignee is also unsubstantiated. A transfer by a person without title cannot give title to the transferee. The respondent no. 2 could not have conveyed better title or rights which they possessed under the agreement dated 21 December, 2017. For the aforesaid reasons, there has been a breach of the agreement dated 21 December 2017 and the same stands lawfully terminated in terms of clause 9 thereof.”

19. In the case of **New Central Book Agency Pvt. Ltd. & Anr. Vs. Smt. Madhusri Konar & Ors.** reported in **2014 SCC OnLine Cal 18353**, the Hon’ble Division Bench of this Court held that:

“Assignment or partial assignment has to be implied, according to us, in order to give business efficacy to the agreement between the author and the publisher. But the assignment or partial assignment, if any, is co-terminus with the agreement unless the subject matter of assignment is the copyright itself and such assignment is absolute in nature. Any other interpretation shall render the ownership of the copyright meaningless. Publication is an incident of the copyright and cannot exist in isolation. When the copyright is admittedly vested in the author, the right to publish is also vested in him except for such period which may have been granted by him. The grant in this case is evidenced by the agreement which is terminable at will and has been terminated.”

20. In the case in hand, the plaintiff no.1 has entered into two agreements with the defendant no.1 on 15th June, 2001 and 22nd April, 2002 respectively. Period of five years expired on 21st April, 2007. After 21st April, 2007, the plaintiffs have not taken any steps and the defendants continued their work as publisher and the plaintiffs have not raised any objection. On the other hand on 23rd August, 2020, the plaintiff no.1 has provided consent letter to the defendant no.1 for executing Co-Publishing Agreement with Katha-O-Kahini Prakashani Pvt. Ltd. The plaintiffs have allowed the defendant no.1 to continue as publisher even after the completion of 5 years and have not taken any action in terms of Section 19(1) and 19(5) of the Copyright Act, 1957 by restraining the defendant no.1 to continue as publisher.

21. The Co-Publishing Agreement is for a period of three years with effect from 25th August, 2020. In the consent letter, it is mentioned that the author is the basic copyright holder and he confers his copyright to his wife Sima Das but to this effect, there is no document disclosed by the plaintiffs. The consent letter of the plaintiff no.1 also discloses the author or the copy right holder or the author's heir will have the right to take decision in the matter of publication of the said books after expiry of the period of the agreement or it may continue if the three parties are satisfied. By a letter dated 20th July, 2021, the plaintiff no.1 changed the name of the copyright holder of the said books in the name of Abhijit Das with respect to book, namely, '*Beginners Applied English Grammar, Composition & Translation (Anglo-Bengali-For Beginners)*' and

to Amitava Das with respect of the book “*Applied English Grammar and Composition Anglo Bengali (For High Schools)*”.

22. Initially by a letter dated on 18th July, 2023, the plaintiff no.1 terminated the publication, printing and sell of the said books with effect from 25th August, 2023 and thereafter on 27th July, 2023, the plaintiff no.1 and Abhijit Das informed the defendant no.1 that the agreement dated 25th August, 2021, will become null and void with effect from 25th August, 2023 and on 25th August, 2023, all three persons informed the defendant no.1 that they are at liberty to take decision for publication and to make fresh agreement with any third party.

23. Section 62 of the Contract Act, 1872, reads as follows:

“62. Effect of novation, rescission, and alteration of contract.— *If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.”*

The plaintiffs are not the parties to the Co-Publishing Agreement. Clause 16 of the Co-Publishing Agreement expressly provides that Royalty shall continue to be paid to the author in terms of the original agreements. If the parties intended to substitute or extinguish the publication agreements, there would have been no reason to preserve the Royalty obligations arising in the said agreements. The continued recognition of the royalty arrangement indicates that the original publication agreements continued to govern the relationship between

the parties. Co-Publishing Agreement is between the defendant no.1 and Katha-O-Kahini Prakashani Pvt. Ltd. Katha-O-Kahini is not a party to the original agreements, thus, it cannot be said that the original agreements come to an end. In the case of **Chrisomar Corporation Vs. MJR Steels Private Limited and Another** reported in **(2018) 16 SCC 117**, the Hon'ble Supreme Court held that:

“37. It is clear that where parties to a contract agree to substitute a completely different contract for the first, or to rescind a contract, the performance under the original contract and/or rescinded contract comes to an end. When parties to a contract “alter” a contract, the question that has to be answered is as to whether the original contract is altered in such a manner that performance under it is at an end.”

24. In the case of **Lata Construction and Others Vs. Dr. Ramachandra Ramniklal Shah and Another** reported in **(2000) 1 SCC 586**, the Hon'ble Supreme Court held that:

“9. We may, at this stage, refer to the provisions of Section 62 of the Indian Contract Act which provides as under:

“62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.”

This provision contains the principle of “novation” of contract.

10. One of the essential requirements of “novation”, as contemplated by Section 62, is that there should be complete substitution of a new contract in place of the old. It is in that situation that the original contract need not be performed.

Substitution of a new contract in place of the old contract which would have the effect of rescinding or completely altering the terms of the original contract, has to be by agreement between the parties. A substituted contract should rescind or alter or extinguish the previous contract. But if the terms of the two contracts are inconsistent and they cannot stand together, the subsequent contract cannot be said to be in substitution of the earlier contract.”

In the present case, there is no document to say that the original agreements executed between the plaintiff no.1 and the defendant no.1 are substituted and thus the essential requirement of Section 62 of the Contract Act is not satisfied.

- 25.** Another issue raised by the defendants that the plaintiffs have suppressed the letter dated 23rd August, 2020, wherein the plaintiff no.1 has stated that the original agreements dated 15th June, 2001 and 22nd April, 2002, can only be terminated by one year' advance notice but the plaintiffs have issued notices on 18th July, 2023, 27th July, 2023 and 25th August, 2023, and without waiting for the period of one year, the plaintiffs have filed the present suit.
- 26.** As per letter dated 20th July, 2021, the plaintiff no.1 has changed the name of copyright holders but only one copyright holder, namely, Amitava Das along with the author has filed the suit and Abhijit Das is neither made as plaintiff or defendant, thus there is also an issue whether the suit suffers from non-joinder of party.

- 27.** The facts of judgments relied by the plaintiffs are distinguishable from the facts of the present case.
- 28.** Considering the facts and circumstances mentioned herein above, this Court finds that the plaintiffs failed to make out a prima facie case and balance of convenience in favour of the plaintiffs. This Court also did not find that the plaintiffs will suffer any irreparable loss and injury as since April, 2007 till 25th August, 2020, the plaintiffs had allowed the defendant no.1 to continue with the original agreements dated 15th June, 2001 and 22nd April, 2002, though there is no time period mentioned in the said agreements. Thereafter, the plaintiff no. 1 on 23rd August, 2020, given consent to the defendant no. 1 to enter into a Co-Publishing Agreement with *Katha-O-Kahini* for three years. In the notices dated 18th July, 2023, 27th July, 2023 and 25th August, 2023, the plaintiffs have not mentioned that agreements dated 15th June, 2001 and 22nd April, 2002, are terminated.
- 29.** In view of the above, interim orders as prayed for by the plaintiffs is refused. **G.A. (Com) No. 1 of 2023 is dismissed.**

(Krishna Rao, J.)