

In the High Court of Delhi at New Delhi

I.A. No. ____ of 2013

In

Civil Suit Number 2439/2012

In the Matter of:

The Chancellor, Master And Scholars Of The University
Of Oxford And Ors Plaintiffs
Versus
Rameshwari Photocopy Services and Anr. Defendants

AND

Association of Students for
Equitable Access to Knowledge Applicant

**Application For Impleadment Under Order I, Rule 10 (2), Read
With Order I Rule 8A And Section 151 Of The Code Of Civil
Procedure, 1908 on behalf of 'Association of Students for
Equitable Access to Knowledge'**

Most Respectfully Submits:

- 1) That the proceedings referred to above are pending before this Hon'ble court and have been listed for 26 February 2013.
- 2) That this application for impleadment is preferred by 'Association Of Students For Equitable Access To Knowledge' an association of students of Delhi University concerned at ensuring access and availability of educational and learning materials to all students that is today 122 strong. The applicant association was constituted on the 21st of November 2012 and is in the process of applying for registration with the Registrar of Societies under the Societies registration Act, 1860. **Annexure A 1** to the present application is a true copy of the constitution of the applicant association adopted at the General Body meeting of the 21 of November 2012 and **Annexure A 2** is a copy of the resolution of the association authorizing its President to agitate the present application
- 3) That the second defendant is the University of Delhi and the first defendant is the only licensed photocopy service provider on the campus of the Delhi School of Economics.

- 4) That the suit is instituted primarily in respect of reading materials, (referred to in the plaint as course packs), that are prepared in the course of instruction of the students of Delhi University and seeks, *inter alia*, injunction restraining the defendants, their agents and assigns and all other persons, in association with the defendants, from photocopying material that the plaintiffs claim copyright over, and delivery up of all material in which the plaintiffs claim copyright.
- 5) That it is also the case of the plaintiffs that the material that constitutes what they refer to as course packs are prescribed as part of the syllabus of various programmes and courses offered by Delhi University generally, and the Delhi School of Economics, more particularly.
- 6) That it is most respectfully submitted that the suit is instituted on a misreading of the law of copyright and is clearly not maintainable. The copying sought to be enjoined in the present proceedings is specifically declared as not amounting to copyright infringement by -
 - a) section 52 (1) (i) (i) of the Copyright Act, since it is reproduction in the course of instruction
 - b) and also Section 52 (1) (a), i.e., fair dealing for private or personal use, including research
- 7) That the applicants, as students of the Delhi School of Economics are entirely dependent upon the defendants in order to ensure access to reading materials that are part of their syllabus. If the prayers in the plaint are granted it would effectively exclude access to the applicants as well as a substantial portion of the student body of Delhi University to materials that are a part of their syllabus. Significantly it has come to the knowledge of the applicants that several publications that form the subject matter of the present suit are available only through external e-commerce sites and not through the Indian websites of the plaintiffs and four of the publications that the plaintiffs claim copyright in are

available neither on their Indian websites nor on external websites.

a) Hindu Nationalism and Indian Politics: An Omnibus, Zavos, J., Hansen, T.B., and Jaffrelot, C.

b) Domestic Roots of Foreign Policy, Appadorai, A

c) The Politics and Economics of India's Foreign Policy, R. Thakur

d) Comparative Politics, Andersen, J.G.

8) That the present applicants have a real and subsisting interest in the subject matter of the present suit proceedings.

9) That the present applicants are necessary and proper parties to the present proceedings for the following, among other, reasons:

a) Because clauses 52 (1) (i) (i) and 52 (1) (a) of the Copyright Act are a statutory declaration of an exclusion of copying in the course of instruction from the ambit of what constitutes infringement under the act. These clauses recognise an important right in the applicants and other students of access to knowledge, and more specifically, access to all materials required in the course of instruction. By the present suit, the plaintiffs seek to eclipse substantial portions of these statutory rights that are conferred upon the applicants and other students (as well as defendant number 2), by rendering impossible, acts permitted by the Copyright Act. The applicants have a real and subsisting interest in ensuring that their rights under Clauses 52 (1) (i) (i) and 52 (1) (a) of the Copyright Act are not unfairly infringed by process of court.

b) Because copying of the nature sought to be enjoined in the suit is explicitly excluded from the scope of what constitutes infringement under the Copyright act and any determination of the issues in the suit proceedings are likely to have the greatest impact upon the applicants and other students of Delhi University.

- c) Because determination of whether the defendants' actions amount to infringement of the plaintiffs copyright will adversely affect the applicants rights to copy material in the course of instruction, especially since defendant number 1 is the only licensed photocopier on the campus of the Delhi School of economics.
- d) Because if the prayers in the suit are granted, there is a very real possibility that the decree in these proceedings will also bind the applicants and other students of Delhi University in other proceedings.
- e) Because the statutory exclusion in clause 52 (1) (i) (i) is an explicit recognition of the importance for developing countries of the teaching exception recognized by the Berne Convention as well as the Trade-Related Aspects Of Intellectual Property Rights Convention (hereinafter, 'TRIPS convention). Granting the prayers in the suit will unfairly narrow the scope of the exception to the serious prejudice of the right of the applicants to access knowledge and course material that is part of their syllabus.
- f) Because the suit invokes an interpretation of infringement that is even broader than that existing in most developed countries, such as the United States of America, that do not have provisions *pari materia* with clause 52 (1) (i) (i). The suit does not so much as aver that the defendant number 1, by providing copies of material over which the plaintiffs' claim copyright, enjoys any competitive advantage over other photocopying services available to the applicants or other students. Clearly, the copies are being made available to the applicants and other students of Delhi University and not to the general public; they are not being made available at a profit; and the benefit of making material accessible to all students far outweighs any possible harm caused by the copying. Clearly as well, it is not even the case of the plaintiffs that the defendants are re-duplicating for sale or general distribution.

- g) Because the prayers in the suit are not confined to remedies against defendant numbers 1 and 2 but also seek reliefs against

***"all persons** ... in active concert or participation with the defendants from photocopying/reproducing Plaintiffs' publications or substantial portions thereof".* (emphasis supplied)

The applicants and other students have a statutorily recognised right to access copies in the course of instruction and therefore have a real and subsisting interest in the subject matter of the suit.

- h) Because although the prayers in the suit are cast in terms of injunctive reliefs, by invoking an over-expansive understanding of infringement and completely ignoring the provisions of section 52 of the Copyright act the suit also, in effect, seeks declaration of the law applicable to the students of Delhi University. This is especially so since the prayers are not confined to the parties arrayed as defendants in the suit. The applicants therefore, as an association of students, most of who are students of Delhi University, are necessary and proper parties to these proceedings.
- i) Because contrary to the claims in the plaint, there is no commercial exploitation in the copying of material for the applicants by the defendants. The provisioning of these materials for the applicants by defendant number 2, through defendant number 1, meets the obligations of defendant number 2 to the right to education and the right of access to knowledge of the applicants and other students.
- j) Because if the prayers in the suit are granted, the parties whose rights and interests will be most seriously prejudiced will be the applicants and other students of Delhi University. The defendants have merely a commercial interest in resisting the suit, whereas the applicants rights of access to knowledge and education will be severely compromised. The applicants

are therefore necessary and proper parties to these proceedings.

- k) Because the invocation of an over expansive definition of infringement sought in the plaint will seriously upset the careful balance between the rights of owners of copyright and the importance of ensuring access to knowledge legislated in the Copyright act. In this context it is relevant that most of the authors, whose works the plaintiffs claim copyright in, are salaried university academics (many of whom are employees of Delhi University). The plaintiffs claim copyright over the material that has been made part of the syllabus of Delhi University, on the basis of assignment or license to them by these academics in terms of the Copyright act. The profit that is had by the plaintiffs by the fact that works in which they have secured copyright are prescribed as part of the University syllabus is incalculable. The University's prescribing the works as part of the syllabus not only confers a premium on these works but also introduces the entire student population to these works, thereby expanding the market for the plaintiffs' works among the non-student populace, whose numbers the students will join on completing their course of instruction with the University. The Copyright act while instituting a limited monopoly and facilitating commercial exploitation, explicitly excludes copying in the course of instruction from the scope of that monopoly. To allow the plaintiffs to commercially exploit the labour of salaried academics, and to reap the benefits of having their works prescribed as part of the syllabus, while simultaneously restricting the right of the University to make available copies in the course of instruction will do serious injustice to the balance in the Copyright act between the rights of owners of copyright and the right of the applicants and other students to access material that is a part of syllabus prescribed by Delhi University.
- l) Because neither the defendant number 1, nor defendant number 2 can be relied upon to defend the interests of the

applicants and other students of Delhi University. While there is some co-incidence of the interests of defendant nos.1 and 2 and the applicants, the interest of the applicants in the subject matter of the suit, it is most respectfully submitted, far exceeds that of defendant nos.1 and 2.

- m) Because the right of students to educational material cannot be left to the vagaries of private treaty between commercial publishers and universities – either in the form of reprography licence or other commercial arrangements - especially in the light of the explicit legislative mandate of clauses 52 (1) (i) (i) and 52 (1) (a) of the Copyright Act. Through the present proceedings, the plaintiffs attempt is to subvert the mandate of the law and read the limited monopoly conferred by the Copyright act over-broadly and the specific exceptions too narrowly.
- n) Because the present suit proceedings require an adjudication of the nature and extent of the monopoly conferred by the Copyright act and the applicants have a real and subsisting interest in ensuring that the limited monopoly instituted by the Copyright act does not encroach upon the area expressly excluded from its operation by clauses 52 (1) (i) (i) and 52 (1) (a) of the Copyright Act.
- o) Because an adjudication of the issues involved in the present proceedings will have far reaching consequences for the right to educational materials of students of Delhi University and other universities. Although the plaintiffs have sought to portray the present suit proceedings as having been occasioned by the failure of the defendants to purchase a licensing arrangement with the plaintiffs – seeking to portray the impact upon the cost of publications as minimal – international experience has shown that making access to educational materials contingent upon such licensing arrangements is the first step towards placing the materials out of the financial reach of most students. It is therefore imperative that the class of persons most affected by such a

reconfiguration of the law – i.e., students –is heard in the present proceedings.

- p) Because the entire suit is based on a presumption of loss on the part of the plaintiffs without even an averment as to the basis for the determination of such loss. Even if one were to assume some loss to the plaintiffs in the short term, such loss is clearly offset by the expansion of the market for such material caused by the University prescribing the material as syllabus.
- q) Because if the prayers in the suit are granted, there will be a serious infringement of article 14 of the Constitution: while some students will be able to afford and therefore access all the material required for study, some other students will be completely denied access to material that is part of their syllabus.
- 10) That the applicant is a necessary and proper party to the present proceedings and have a direct and subsisting interest in the subject matter of the present proceedings. Further, legal rights and interests of the members of the applicant will be seriously prejudiced if the suit were decreed in favor of the plaintiff.
- 11) That the presence of the applicant is necessary in order to enable this Hon'ble Court to effectually and completely adjudicate upon and settle all questions involved in the suit.
- 12) That by adding the applicant to the array of parties, no prejudice will be caused the parties already on record; neither will fair trial of the questions in controversy be prejudiced. On the other hand, not making the applicants party to the present proceedings will cause serious prejudice to the rights of the applicants and other students of Delhi School of Economics and Delhi University.
- 13) That this application is bona fide and in the interests of justice.

PRAYER

In the facts and circumstances set out above, it is most respectfully prayed that this honourable Court be pleased to:

- a. implead the applicants as defendants in Civil Suit Number 2439/2012
- b. pass such further orders as this honourable court may deem fit

Applicant

Through

Counsels for the Applicant

Jawahar Raja (D/3218/1999) &
Rajat Kumar (D/4394/2010)
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Verification

Verified at New Delhi on this the ___ day of ___ February 2013 that the contents of paragraph 1 to ___ the above application are true and correct to the best of my knowledge, information and belief, no part of it is false and nothing material has been concealed.

Applicant

In the High Court of Delhi at New Delhi

I.A. No. ____ of 2012

In

Civil Suit Number 2439/2012

In the Matter of:

The Chancellor, Master And Scholars Of The University
Of Oxford And Ors Plaintiffs

Versus

Rameshwari Photocopy Services And Anr. Defendants

**Affidavit in Support of an Application For Impleadment Under
Order I, Rule 10 (2), Read With Order I Rule 8A And Section 151
Of The Code Of Civil Procedure, 1908 on behalf of 'Association
of Students for Equitable Access to Knowledge'**

I, Apoorva Gautam, daughter of Prabhakar Singh Gautam, Aged 21
Years, resident of village Nakaury, Thana Sikriganj, Tehsil Khajni,
Gorakhpur, UP, presently at D-47, University Hostel for Women,
Delhi University North Campus, Delhi- 110007, do solemnly swear
on oath:

1. That I am the President of the applicant in the
abovementioned proceedings, fully aware of the facts and
circumstances of this case and duly authorised and competent
to swear this affidavit on behalf of the applicant.
2. That the accompanying 'Application For Impleadment Under
Order I, Rule 10 (2), Read With Order I Rule 8A And Section
151 Of The Code Of Civil Procedure, 1908 on behalf of
'Association of Students for Equitable Access to Knowledge'
has been drafted by counsel under my instructions. The
contents of the application are true to the best of my
knowledge, information and belief, no part of it is false and
nothing material has been concealed.

Deponent

Verification

Verified on this the _____ th day of February, 2013 at New Delhi
that the contents of this affidavit are true to the best of my
knowledge, information and belief.

Deponent