

Annexure-I 2225

NEXT DATE OF HEARING 17.10.2012

THE HIGH COURT OF DELHI AT NEW DELHI
CS (OS) No.2439 of 2012

In the matter of:-

The Chancellor, Masters and Scholars
Of the University of Oxford & Ors.

...Plaintiffs

Versus

Rameshwari Photocopy Service & Anr.

... Defendants

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DEFENDANT NO.2/UNIVERSITY OF DELHI

THROUGH

(Ms. MANINDER ACHARYA)
ADVOCATE,
439, LAWYER'S CHAMBER,
DELHI HIGH COURT
NEW DELHI
MOB: 9810163078/
9810236189

NEW DELHI
DATED: 03.10.2012

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THE HIGH COURT OF DELHI AT NEW DELHI
(*Ordinary Original Civil Jurisdiction*)

CS (OS) No.2439 of 2012

In the matter of:-

**The Chancellor, Masters and Scholars
Of the University of Oxford & Ors.**

...Plaintiffs

Versus

Rameshwari Photocopy Service & Anr. ... Defendants

**WRITTEN STATEMENT ON BEHALF
OF DEFENDANT NO.2**

MOST RESPECTFULLY SHOWETH:

PRELIMINARY OBJECTIONS:

1. That the present suit as filed by the plaintiffs is the abuse of the process of law and as such liable to be dismissed with exemplary cost.
2. That the present suit as filed by the plaintiffs is barred under the provisions of Order 1 Rule 1 read with Order 2 Rule 3 CPC for non joinder and mis joinder of plaintiffs and causes of actions as no common questions of fact and law are arising out in the instant case. Therefore, the suit is bad for non joinder and mis joinder of parties inasmuch as the plaintiffs are avoiding court fee in the matter by not instituting separate suits against the defendants and have deliberately filed single suit with the ulterior motives when the grievance of Plaintiff No.1 on one hand and that of Plaintiff No.2, 3, and 4 and 5 on the other

hand does not arise out of the same transaction. It is one thing to say that the grievance is common; however, it is another thing to say that they arise out of the same transaction and there is no nexus of the plaintiffs in the same transaction which enables them to sue together the defendants in a single suit. There is no nexus between Plaintiff No.1, Plaintiff No.3 and Plaintiff No.5. Such tests are not qualified in the present case and therefore the instant suit cannot be instituted as such in the present form by the plaintiffs together against the defendants and therefore the suit is liable to be dismissed for want of court fee and for want of mis joinder and non joinder of parties and the plaintiffs may be called upon to institute present suit in accordance with law.

3. That the present suit for infringement of copyright is not maintainable as the plaintiffs have completely failed to disclose the essential ingredients of the copyright. It is submitted that the plaintiffs are asserting infringement on the basis of unregistered copyright. It is submitted that the necessary ingredients of the said unregistered copyrights include the name and title of the respective books, the name of the authors, name of the owners and the chain of title as to the ownership as to how the plaintiffs claim to be the owners of the said copyright. Plaintiffs neither have set up such a case in the plaint nor have they narrated separately in the plaint as to how they attained the status of owners of the copyright and in respect of which books authored by whom. In the absence of any such events, plaintiffs are disentitled to urge ownership of

the copyright as the plaint lacks material particulars and averments, and as such the instant suit is liable to be dismissed disclosing no cause of action under the provisions of Order 7 Rule 11-(a) CPC.

4. That the instant suit has not been instituted; signed and verified by duly authorized and competent persons. Therefore, the instant suit is liable to be dismissed.
5. That instant suit has not been valued properly as to the court fees for the purposes of present proceedings and therefore the same is liable to be dismissed.
6. That the Defendant no.2 is Delhi University which is prescribing syllabus for several curriculums offered by it in relation to graduation and post graduation courses carried out in the said University. World over Universities permit students to copy limited pages from any work for use in research and for use in the classroom by a student or teacher. This is recognized by the Copyright Act, 1957 in Section 52 (a) and (i). Individual students and teachers may either read the prescribed books and journal and other related works in the library or else borrow the books and make a photo copy of the relevant chapter and pages in a manner which is within the purview of the provisions of the Copyright Act, 1957 indicated above. This facility of copying certain pages for educational purposes is necessary because purchasing individual books is expensive, and further, in many instances, these book are out of print or not available in India. Photocopying the relevant chapter or

selected pages may be resorted to in such cases where the books are not available on-line in the library. Members of the University may also collect all the readings from different books together before handing it over for copying.

7. The facility of photocopying limited portions of works for educational and research purposes could have been provided within the library had the University adequate space, resources and manpower at its disposal. Instead it granted the facility of photocopying to Defendant No 1 keeping the interest of the students in mind. and keeping in view the law of the land and permitted the Defendant No. 1 to photocopy pages of chapters of single copy books, out of print books, not to be issued books and rare books on getting requests from faculty members, researchers and students. It is submitted that the Copyright Act, 1957 as amended by The Copyright (Amended) Act, 2012, specifically engrafts such exception to the infringement principle by stating that any reproduction and the copies made as part of questions to be answered for examination or answers to such questions or anything which any work in the course of instruction by the teacher from within the purview of infringement. This is recognized in the form of Section 52 (1) (i) of Copyright Act, 1957 which reads as under:-

"Section 52(1)(i) the reproduction of any work -

- i. by a teacher or pupil in the course of instruction; or***
- ii. as part of the questions to be answered in an examination; or***
- iii. in answers to such questions;"***

From bare reading of the aforesaid provision, it is clear that reproduction for the purposes defined in point (i) to (iii) above the same are exempted from the purview of infringement. Conjoint reading of the said averment in the plaint read with Section 52(1)(i) of Copyright Act, 1957 as amended in 2012, would clearly reveal that any such reproduction whatsoever (though the defendants dispute that they have permitted such reproduction) is justifiable as non infringing work. .

8. That the answering defendant submits that the copyright is a piece of welfare legislation. The said legislation is aimed at protecting and safeguarding the interest of authors and owners. It cannot be lost sight of that the same very legislation balances the competing interest of the society and those who are members of the society so that the protection given to the authors should not unnecessarily impinge upon the legitimate acts done by *bona fide* persons. Such balancing of the acts is done in the form of segregating clearly the acts that amount to infringement from the Acts which do not amount to infringement. Once the Copyright Act clearly provides exceptions so far as it relates to reproduction of any work done in furtherance of answering the questions or part of questions to be answered in examination, the said provision has to be interpreted in the light of corresponding benefit which is to be given to the society so as to fulfill the social benefit which is to be given to the children and youth by encouraging the talent in order to enable them to study the books and making them available at reasonable costs by providing photocopies of

selected pages of chapters from prescribed books for educational purposes.

9. That Defendant No.2 is an instrumentality of the State and an agency of the State whose paramount duty and motive is to impart education and to work within the constitutional framework by implementing the State Directives envisaged in Para 4 of the Indian Constitution. One of the State Directives which is the mandate under the Indian Constitution to the State and in turn to Defendant No.2 herein which is in the form of **Article 39 (f)** which says that State shall in particular direct its policy towards securing that ***"children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children and youth are protected against exploitation and against moral and material abandonment"***. Similar provision is also envisaged in relation to Right to Education by making effective provision for the same by the State in the form of **Article 41** which reads -***"The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."*** Collective reading of Article 41 and Article 39(f) of the Indian Constitution, would reveal that the State is within the mandate by the Constitution to make policy in furtherance of nurturing the children by giving them the opportunities to develop in a

healthy manner and would also not hesitate within its economic capacity to make effective provision in order to exercise their right to education. Such provisions in the Constitution are indicative of the welfare of the citizenry in the form of youth and the State duty to encourage talent by making the effective provisions to exercise their right to education thereby nurturing them to develop in a healthy manner. This will certainly include the measures like the present one where Defendant No.2 within its economic capacity, whatever is available to Defendant No.2, is prescribing the courses to the students of Delhi University which includes both rich and poor by facilitating them in the form of Defendant No.1 providing the facility of photocopying limited pages from prescribed books (which each individual student could have done had such photocopiers been installed within the premises of the library) to those who are otherwise incapable of purchasing costly books due to their higher prices. If the said aims and objectives are seen under the State Directives in the Constitution read with Copyright Act, it is clear that Defendant No.2 is fulfilling the command of the Constitution by making such effective measures and rather working within the constitutional framework and not infringing anybody's work much less the plaintiffs herein. It is well settled principle that the constitutional commands in the form of State Directives as well as fundamental rights operate on a higher pedestal than that of any legislation. If the purposes and actions are to fulfill the larger aim prescribed under the Constitution, then the interpretation should be given to the legislation so that both the constitutional framework and the

statutory rights should work hand in hand and the said socio-economic measure should not be allowed to be disturbed by employing the rigid interpretation and overstretching the statutory rights beyond the constitutional framework. The answering defendant submits that this is even taken care of by the legislature by enacting Section 52(1)(i) thereby prescribing such exceptions which are to be seen from the perspective of what is the intended purpose and avowed objectives from the constitutional framework rather than in a narrow compass.

10. That the Defendant No.2 submits that Plaintiffs themselves are not the proprietors of the copyright herein as the Plaintiffs have miserably failed to disclose the ownership as to title flowing in favour of the Plaintiffs and straightway filed the present suit by claiming the copyright infringement. Therefore, the Plaintiffs have not complied with the provisions of Section 17 and Section 19 of the Copyright Act, 1957.
11. That the plaintiffs have also not shown assignments carried out between authors and owners which enable the plaintiffs to claim ownership over the copyright and therefore the plaintiffs have not filed the written assignment which is the requirement of the law in order to claim ownership and have thus violated the provisions of Section 19 of the Copyright Act.
12. Defendant No.2 submits that it is stated in the plaint that Plaintiff No.3 and Plaintiff No.2 are in the relation of licensee and licensor. Similarly, the other plaintiffs are also in relation of licensee and licensor. But there are no written licensing

agreements which are filed in the present proceedings. It is submitted that in the absence of written licensing agreement, plaintiffs' suit is defective as not complying with the provisions of Section 30 and Section 30 A of the Copyright Act, 1957.

13.

14. That the Defendant No.2 states that the Plaintiffs are not the authors and owners of the work in question. It is submitted that the plaintiffs have not disclosed their relationship with the authors and have attempted to rely upon the blanket licensing agreement. It is submitted that such kind of practice is impermissible as the plaintiffs are to be concerned with particular nature of work and corresponding infringement. Plaintiffs have deliberately and maliciously attempted to secure the blanket order from the court without disclosing proper cause of action. The instant suit is therefore liable to be dismissed under the provisions of Order 7 Rule 11 (a) as the same does not disclose any cause of action with respect to title and ownership of the plaintiffs in the said works and in how many works. Therefore, the suit in the present form is as such liable to be dismissed. Plaintiffs have also not filed the record of the Commissioner appointed by the court and indicated the nature of materials found within the premises of Defendant No. 1.

15. That the present suit is not valued correctly for the purposes of court fee and damages. It is submitted that the plaintiffs have not suffered any damages of such a huge amount as contended in the plaint. It is submitted that the

plaintiffs have wrongfully claimed damages of Rs.60.00 lacs and the said figure is sham, fictitious, bogus and imaginary. By doing legally justifiable act, the plaintiffs cannot be said to be suffering anything as against the sharp contradistinction to any infringement which may be for commercial purposes.

16. That the instant suit is also barred under the principle of *de minimis non curat lex*. The said principle enunciates that the law does not take care of trivial things. The said Latin maxim states that the law does not take into account the trivial things. It is submitted that the present case is such a case where the defendants have just implemented the syllabus for the purposes of imparting education and to fulfill the larger constitutional goal. The plaintiffs with the ulterior motive to gain money from anywhere have indulged into suing the defendants herein, rather than pursuing some genuine litigation, by chasing trivialities. This Court should analyze from the perspective of a reasonable man and the question to be asked is "whether such trivialities are to be looked into in such a serious nature by calling them an infringement when they are specifically provided as a part of exception in the Copyright Act?" Therefore, clearly the plaintiffs are guilty of approaching this Hon'ble Court on the basis of trivial things.

17. That the instant suit is also barred under the provisions of Section 52(1)(j) of the Copyright Act, 1957 which reads " *the performance, in the course of activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a*

cinematograph film or a sound recording if the audience is limited to such staff and students, the parents and guardians of the students and persons connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording." Therefore, the same is also covered within the purview of Section 52(1)(j) also.

18. That the present suit is also barred under the provisions of Section 52(zb) of the Copyright Act (Amended) Act, 1957 which reads - "*the adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format, by - (i) any person to facilitate persons with disability to access to works including sharing with any person with disability of such accessible format for private or personal use, educational purpose or research; or (ii) any organization working for the benefit of the persons with disabilities in case the normal format prevents the enjoyment of such works by such persons: - Provided that the copies of the works in such accessible format are made available to the persons with disabilities on a non-profit basis but to recover only the cost of production; - Provided further that the organization shall ensure that the copies of works in such accessible format are used only by persons with disabilities and takes reasonable steps to prevent its entry into ordinary channels of business."*

From the bare reading of the foregoing, it is clear that the said

provision excludes within the purview of infringement any reproduction, adaptation, issuance of copies to facilitate the persons with disabilities to access such work for educational purposes. It is submitted that the buyers of the Defendant No.1 and students of Defendant No.2 would include the persons with disability also and the said social aim enunciated above which is constitutional mandate in the form of Article 41 and Article 39(f) extends to the persons with disability also. The existence of the said provision in the Copyright Act clearly shows the correctness of the stand of the defendants which is that the Copyright Act is partly social welfare legislation which balances two competing interests. Even the Delhi University offers concession in percentage during admission to the persons with disability and all other benefits are given to such persons. Likewise, for educational purposes which are clearly covered within Section 52(zb) if the books are provided to such persons who are included in the buyers of such books at reasonable prices then the Defendant No.1 is rather fulfilling the social cause and again comes under the exceptions of Copyright Act, 1957.

19. That the acts of Defendant No.2 as complained of in the present proceedings are all justifiable and permissible acts as per the copyright regime in view of the judgments passed by this Court. Defendant No.2 craves leave to rely upon the said judgments in the present proceedings.

20. That Defendant No.2 submits that Defendant No.2 has never participated or has any connection or nexus with

Defendant No.1 except to the extent of permitting the operation of a photocopy shop in the premises. It is submitted that in any case photocopy is such a vast activity which may include photocopying of anything that the cause of action has been purported to be made up by the Plaintiffs by suggesting that Defendant No.2 is issuing some books for getting them photocopied. It is submitted Defendant No.2 is nowhere involved in getting any books photocopied for their own purposes nor any person who comes to the Library of Defendant No.2 for issuance of books discloses the purpose for which the books are being taken for issuance. The books are issued as per the rules and regulation of the Library of the Defendant No.2. Defendant No.2 has no participation either active or passive towards the said acts complained of by the Plaintiffs against the Defendant No.1. It is factually incorrect that Defendant No.2 has issued books to Defendant no.1 for such reproduction. It is wrongful on the part of the Plaintiff to state that Defendant No.2 is gaining something out of such reproduction. All cause of actions is wrongful and cooked up by the Plaintiffs. Defendant No.2 has no relation or co-relation with Defendant No.1 except that Defendant No.1 is operating a photocopy shop at the premises of the college. It is submitted that Defendant No.2 is law abiding authority and an instrumentality of the State which is concerned with large aim of imparting education to the students which include rich and poor and access to all books and materials to the students.

21. That the Defendant No.2 University is a prestigious University world over and has no aim or objective of infringing any law in force much less the Copyright Law in the form of Copyright Act, 1957. It is submitted that whatsoever has been done if at all it so were all done by the Defendant No.2 only under the impression that they are permissible acts and are done bonafidely in order to serve the goal for which Defendant No.2 University was formed in order to impart education and give access to the books which are costlier and not available to the students. Defendant No.2 besides the same has no role to play and categorically states that Defendant No.2 has no intention to breach any such law by making such reproduction and will not make any such reproduction in relation to the acts complained of in the suit. In any case, the University has no business with that of Defendant No.1 and therefore the Defendant No.2 cannot be held guilty of any copyright infringement.

22. That the Defendant No.2 is in the process of forming a Committee of the Heads of Economics, Sociology, Commerce and Geography (all constituent departments of the Delhi School of Economics) with the mandate to explore ways and means to ensure access to educational materials keeping in mind the interests of the students. Defendant No.2 will explore all the possibilities and options including the options like providing e-books online digital holdings, supporting open service editions and such other measures as may be available to ensure wider access of educational materials for providing knowledge and

information from various open sources and simultaneously taking care of the rights of the publishers. Defendant No.2 is therefore making all its due diligence and best efforts to avoid any such infringement actions as the Defendant No.2 has no intention of infringing anybody's work much less the Plaintiffs.

PRELIMINARY SUBMISSIONS

The University of Delhi is established and created under the University of Delhi Act , 1922 hereinafter called the DU Act. Under Section 4 of the DU Act, the University inter alia, can provide for instruction in such braches of learning as the University may think fit, and make provision for research and for the advancement and dissemination of knowledge.

REPLY ON MERITS

1. That the contents of para 1 of the suit are not denied to the extent of existence of the Plaintiff No.1. However, it is denied for want of knowledge that the Plaintiff No.1 has presence in more than fifty countries and innumerable publications worldwide in the areas stated in the para under reply. It is denied and disputed that Mr. Vishal Ahuja is the Constituted Attorney of the Plaintiff No.1 and is duly authorized to sign, verify and institute the present proceedings on behalf of the Plaintiff No.1.
2. That the contents of para 2 of the suit are denied for want of knowledge. It is denied that Plaintiff No.3 is the exclusive licensee of the Plaintiff No.2 in India and Plaintiff No.3 is an interested and affected party whenever the rights of Plaintiff

No.2 are infringed and violated in India. It is submitted that the Plaintiffs have not filed licensing agreement amongst the Plaintiffs in this respect. It is submitted that in the absence of written licensing agreement, plaintiffs' suit is defective as not complying with the provisions of Section 30 and Section 30 A of the Copyright Act, 1957. It is denied that Mr. Vishal Ahuja is the Constituted Attorney of the Plaintiff No.2 and the Plaintiff No.3 and duly authorized to sign, verify and institute the present proceedings.

3. That the contents of para 4 of the suit are denied as wrong and incorrect for want of knowledge. It is denied that Mr. Vishal Ahuja is the Constituted Attorney of the Plaintiff No.4 and the Plaintiff No.5 and duly authorized to sign, verify and institute the present proceedings.
4. That the contents of para 4 of the suit are denied as wrong and incorrect. It is denied that the defendants have done any unauthorized reproduction and issuance of the copies of the plaintiffs. Rest/ remaining contents of the para under reply including the annexure-I to the same are denied in toto. There is no reproduction of the plaintiffs work for manifold reasons including the reasons which are exceptions for the purposes of Section 52(i)(i) of the Copyright Act, 1957 where such acts are permissible.
5. That the contents of para 5 of the suit are denied as wrong and incorrect. It is denied that Plaintiffs are the owners of the copyright in their respective publications first published

in India which constitute literary work as defined in the Copyright Act, 1957. It is submitted that plaintiffs have completely failed to disclose the essential ingredients of the copyright. It is submitted that the plaintiffs are asserting infringement on the basis of unregistered copyright. It is submitted that the necessary ingredients of the said unregistered copyrights include the name and title of the respective books, the name of the authors, name of the owners and the chain of title as to the ownership as to how the plaintiffs claim to be the owners of the said copyright. Plaintiffs neither have set up such a case in the plaint nor have they narrated separately in the plaint as to how they attained the status of owners of the copyright and in respect of which books authored by whom. In the absence of any such events, plaintiffs are disentitled to urge ownership of the copyright as the plaint lacks material particulars and averments, and as such the instant suit is liable to be dismissed disclosing no cause of action under the provisions of Order 7 Rule 11-A CPC.

6. That the contents of para 6 of the suit are denied as wrong and incorrect. It is denied that copyright with respect to the publications in question vests with the plaintiffs and plaintiffs have any exclusive right under Section 14(a) (i) & (ii) of the Copyright Act. It is denied that there is any reproduction and issuance of copies of the plaintiffs' works which infringes the copyright of the plaintiffs. It is submitted that the plaintiffs have not disclosed about the ownership title in their

favour and in the absence of the same, plaintiffs are disentitled to urge ownership of the copyright as the plaint lacks material particulars and averments, and as such the instant suit is liable to be dismissed.

7. In reply to para 7 of the suit, it is submitted that the notifications present, as stated in the para under reply, on the publications of the plaintiffs are denied for want of knowledge.
8. That the contents of para 8 of the suit are denied as wrong and incorrect. It is denied for want of knowledge that the Defendant No.1 is engaged in unauthorized photocopying, reproduction and distribution of copies of the plaintiffs' publications. It is denied for want of knowledge that Mr. Rajesh Mishra of the plaintiffs visited the premises of Defendant No.1 and he has reported to the plaintiffs that the Defendant No.1 is photocopying/ reproducing/ issuing copies of the plaintiffs' publications. It is further denied for want of knowledge that the Defendant No.1 is selling unauthorized compilations of substantial extracts from the plaintiffs' publications and course packs and stocked large quantities of the said course packs for immediate sale to the customers. Tabular representation given in the para of the compilation and stated reproduction is denied in toto. It is submitted that Mr. Rajesh Mishra is deposing falsely and giving wrong information to the plaintiffs. Rest/ remaining contents of the para are also denied. It is further submitted that there is no reproduction of the plaintiffs work for

manifold reasons including the reasons which are exceptions for the purposes of Section 52(i)(i) of the Copyright Act, 1957 where such acts are permissible.

9-10 That the contents of para 9 to 10 of the suit are denied as wrong and incorrect. It is wrong and incorrect to say that the Faculty teaching at the University of Delhi is encouraging the students to purchase the same from the Defendant No.1 instead of plaintiffs' publications. Plaintiffs are making wrong averments without any basis. It is denied that the plaintiffs have any copyrighted work which is reproduced by Defendant No.1. The information given in response to the RTI filed by the plaintiffs is matter of record. It is submitted that no such commitment was made by Defendant No.1 for Defendant No.2 in relation to infringement of copyright. Whatsoever the general terms may be there between Defendant No.1 and Defendant No.2 cannot culminate into an assumption that it is for infringing purposes. It is submitted that in any case that was done as a part of working arrangement between Defendant No.2 and Defendant No.1 and Defendant No.2 has no correlation with infringing activities as alleged. Therefore, the said fact by itself does not aid the case of the plaintiff for this court to believe that Defendant No.2 has any participation. It is submitted that Defendant No.1 is operating a photocopy shop at the premises in question under the Defendant No.2. It is not unusual or abnormal that the colleges and universities have photocopy shop nearby so as to facilitate the students and that does not attract any such influence as to infringement.

Therefore the said allegation is bogus, sham and baseless. It is submitted that the Defendant No.2 has no intentions whatsoever to gain any illicit profits or in any manner infringing anybody's copyright much less the plaintiffs herein but only to educate the researchers as well as students in order to provide them the best possible education at reasonable prices and providing the facility to make copies of selected pages of books so that they may equally be well placed to take such examinations with those students who can afford the books involving higher costs. It is submitted that the Copyright Act, 1957 as amended by The Copyright (Amended) Act, 2012, specifically engrafts such exception to the infringement principle by stating that any reproduction and the copies made as part of questions to be answered for examination or answers to such questions or anything which any work in the course of instruction by the teacher from within the purview of infringement.

11-13 That the contents of para 11-13 of the suit are denied as wrong and incorrect. It is denied that the Defendant No.2 is gaining any illegal products from any such un-authorized reproduction of the plaintiffs' publications. Rest/ remaining contents of para 12 are also denied. It is denied for want of knowledge that the Defendant No.1 is copying the plaintiffs' publications which includes copyright declarations of the respective plaintiffs. It is further denied that there is any prima facie proof of plaintiffs copyright in the stated work and plaintiffs have any exclusive right or vested rights in the same.

It is denied that the defendants have been infringing the plaintiffs' rights without any justification for reproduction and illegal distribution of the plaintiffs' publications. Defendant No.2 is an instrumentality of the State and an agency of the State whose paramount duty and motive is to impart education and to work within the constitutional framework by implementing the State Directives envisaged in Para 4 of the Indian Constitution. One of the State Directives which is the mandate under the Indian Constitution to the State and in turn to Defendant No.2 herein which is in the form of **Article 39 (f)** which says that State shall in particular direct its policy towards securing that *"children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children and youth are protected against exploitation and against moral and material abandonment"*. Similar provision is also envisaged in relation to Right to Education by making effective provision for the same by the State in the form of **Article 41** which reads -*"The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."* Collective reading of Article 41 and Article 39(f) of the Indian Constitution, would reveal that the State is within the mandate by the Constitution to make policy in furtherance of nurturing the children by giving them the opportunities to develop in a healthy manner and would also

not hesitate within its economic capacity to make effective provision in order to exercise their right to education. Such provisions in the Constitution are indicative of the welfare of the citizenry in the form of youth and the State duty to encourage talent by making the effective provisions to exercise their right to education thereby nurturing them to develop in a healthy manner. This will certainly include the measures like the present one where Defendant No.2 within its economic capacity, whatever is available to Defendant No.2, is prescribing the courses to the students of Delhi University which includes both rich and poor by facilitating them in the form of Defendant No.1 providing photocopies of pages from selected chapters in books which are somehow giving them good hold of education who are otherwise incapable of purchasing costly books due to their higher prices. If the said aims and objectives are seen under the State Directives in the Constitution read with Copyright Act, it is clear that Defendant No.2 is fulfilling the command of the Constitution by making such effective measures and rather working within the constitutional framework and not infringing anybody's work much less the plaintiffs herein. It is well settled principle that the constitutional commands in the form of State Directives as well as fundamental rights operate on a higher pedestal than that of any legislation. If the purposes and actions are to fulfill the larger aim prescribed under the Constitution, then the interpretation should be given to the legislation so that both the constitutional framework and the statutory rights should work hand in hand and the said socio-economic measure should not

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be allowed to be disturbed by employing the rigid interpretation and overstretching the statutory rights beyond the constitutional framework. The answering defendant submits that this is even taken care of by the legislature by enacting Section 52(1)(i) thereby prescribing such exceptions which are to be seen from the glasses of what is the intended purpose and avowed objectives from the constitutional framework rather than in a narrow compass. Consequently, the actions of Defendant No.2 is nothing but aimed at fulfilling the constitutional mandate and not intended to infringing anybody's work including that of the plaintiffs herein.

14-17 That the contents of para 14 to 17 of the suit are denied as wrong and incorrect. It is denied that Defendant No. 2 has permitted reproducing and issuing any unauthorized copies of the plaintiffs' publications for commercial purpose of the copyrighted work of the plaintiffs. It is denied that defendants have made any illegal reproduction in sale of infringing copies which cannot be permitted under the Copyright Act. It is denied that the actions of Defendant No. 2 are unfair. It is denied that the Defendant No. 2 is destroying the market for the plaintiffs' legitimate publications. It is specifically denied that Defendant No.2 is engaged in the business of unauthorized photocopying for profit with the aid of Defendant No.1. It is submitted that plaintiffs have completely failed to disclose the essential ingredients of the copyright. It is submitted that the plaintiffs are asserting infringement on the basis of unregistered copyright. It is submitted that the necessary

Ingredients of the said unregistered copyrights include the name and title of the respective books, the name of the authors, name of the owners and the chain of title as to the ownership as to how the plaintiffs claim to be the owners of the said copyright. Plaintiffs neither have set up such a case in the plaint nor have they narrated separately in the plaint as to how they attained the status of owners of the copyright and in respect of which books authored by whom. It is further submitted that the copyright is a piece of legislation. The said legislation is aimed at protecting and safeguarding the interest of authors and owners. It cannot be lost sight of that the same very legislation balances the competing interest of the society and those who are members of the society so that the protection given to the authors should not unnecessarily impinge upon the legitimate acts done by *bona fide* persons. Such balancing of the acts is done in the form of prescribing what infringement is and what is not? Once the Copyright Act clearly provides exceptions so far as it relates to reproduction of any work done by a teacher or a pupil in course of instruction or in furtherance of answering the questions or part of questions to be answered in examination, the said provision has to be interpreted in the light of corresponding benefit which is to be given to the society so as to fulfill the social benefit which is to be given to the children and youth by encouraging the talent in order to enable them to study the books and making them available at reasonable costs by providing photocopy of selected pages of chapters for educational purposes. . Therefore, the acts of Defendant No. 2 is fair and

bona fide and in the interest of the society. It is denied that defendants would not constitute fair dealing in the plaintiffs' publications. It is denied that with the actions of Defendant No.1 and Defendant No.2 there would be no need for the students to purchase plaintiffs' publications. It is denied that unless the activities of the defendants are restrained by an order of injunction passed by this Hon'ble Court plaintiffs would be deprived of a legitimate revenue stream which they would have otherwise been entitled to. It is submitted that the present suit is also barred under the principle of ***de minimis non curat lex***. The said principle enunciates that the law does not take care of trivial things. The said Latin maxim states that the law does not take into account the trivial things. It is submitted that the present case is such a case where the defendants have just implemented the syllabus for the purposes of imparting education and to fulfill the larger constitutional goal. The plaintiffs with the ulterior motive to gain money from anywhere have indulged into suing the defendants herein, rather than pursuing some genuine litigation, by chasing trivialities. This Court should analyze from the perspective of a reasonable man and the question to be asked is "*whether such trivialities are to be looked into in such a serious nature by calling them an infringement when they are specifically provided as a part of exception in the Copyright Act?*" Therefore, clearly the plaintiffs are guilty of approaching this Hon'ble Court on the basis of trivial things. It is further denied that the defendants are indulged into any mala fide

activities by causing financial loss to the plaintiffs and the interests of the plaintiffs and the students are hindered.

18-21. That the contents of para 18 to 21 of the suit are denied as wrong and incorrect. It is denied that the plaintiffs have been joined in the present suit as co plaintiffs since their respective rights to relief arise out of the same act and transaction or the series of acts of the defendants arrayed in the present suit. It is by doing this, common questions of law or fact would arise. It is submitted that the present suit as filed by the plaintiffs is barred under the provisions of Order 1 Rule 1 read with Order 2 Rule 3 CPC for non joinder and mis joinder of plaintiffs and causes of actions as no common questions of fact and law are arising out in the instant case. Therefore, the suit is bad for non joinder and mis joinder of parties inasmuch as the plaintiffs are avoiding court fee in the matter by not instituting separate suits against the defendants and have deliberately filed single suit with the ulterior motives when the grievance of Plaintiff No.1 on one hand and that of Plaintiff No.2, 3, 4 and 5 collectively on the other hand does not arise out of the said transaction. It is one thing to say that the grievance is common; however, it is another thing to say that they arise out of the same transaction and there is any nexus of the said very plaintiffs in the same transaction which enables them to sue together the defendants in a single suit. There is no nexus between Plaintiff No.1, Plaintiff No.3 and Plaintiff No.5. Such tests are not qualified in the present case and therefore the instant suit cannot be instituted as such in the present form by

the plaintiffs together against the defendants and therefore the suit is liable to be dismissed for want of court fee and for want of mis joinder and non joinder of parties and the plaintiffs may be called upon to institute present suit in accordance with law. It is further denied that there is any cause of action which arose in the month of April 2012 when the plaintiffs were informed that the defendant No.1 is engaged in unauthorized reproduction and distribution of plaintiffs' publications and it further arose when the plaintiffs purchased through investigator any such material. It is further denied that the cause of action is continuing till the time the defendants are restrained by the order of this Hon'ble Court. Rest/ remaining contents of the paras under reply are also denied in toto. Defendant No.2 is committed to advance the cause of higher education and make it accessible to all its students. It is reiterated that there is no reproduction of the plaintiffs work for manifold reasons including the reasons which are exceptions for the purposes of Section 52(i)(i) of the Copyright Act, 1957 where such acts are permissible. It is submitted that the Delhi University imparts education to the students of all categories. There are students who are not very well to do and unable to purchase books though the same are available in the Library of the University. Therefore, the Defendant No.2 cannot be accused of any infringement of the plaintiffs' rights, if any, in the said copyright. In view of the preliminary objections, preliminary submissions and averments made by the Defendant, the prayers claimed by the plaintiffs cannot be granted in favor of the plaintiffs and against the defendants herein.

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PRAYER

In the aforesaid facts and circumstances, it is humbly prayed that the suit of the plaintiffs be dismissed with exemplary costs.

Alta Sharma

DEFENDANT NO.2

कुलसचिव / Registrar
दिल्ली विश्वविद्यालय
University of Delhi
दिल्ली-110007/Delhi-110007

THROUGH

(MS. MANINDER ACHARYA)
COUNSEL FOR THE DEFENDANT NO.2,
439 LAWHERS CHAMBERS
DELHI HIGH COURT,
NEW DELHI

VERIFICATION:

It is verified on this ____ day of October 2012 that the contents of paras 1 to 21 of the WRITTEN STATEMENT on merits are true and correct from my knowledge as well as on the basis of information derived from the record of the defendant university and the contents of paras 1 to 22 of the preliminary objection are based upon information received and believed to be true and the last para is a prayer to this Hon'ble Court.

Alta Sharma

DEFENDANT NO.2

कुलसचिव / Registrar
दिल्ली विश्वविद्यालय
University of Delhi
दिल्ली-110007/Delhi-110007

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THE HIGH COURT OF DELHI AT NEW DELHI
CS (OS) No.2439 of 2012

In the matter of:-

**The Chancellor, Masters and Scholars
Of the University of Oxford & Ors.**

...Plaintiffs

Versus

Rameshwari Photocopy Service & Anr. ... Defendants

AFFIDAVIT

I, Alka Sharma, aged about 48 years, Registrar, University of Delhi, Delhi do hereby solemnly affirm and declare as under:

1. That I being Registrar, University of Delhi, Delhi and am conversant with the facts and circumstances of the case and am competent to swear this affidavit on behalf of the defendant No.2.
2. That I have read and understood the contents of the accompanying written Statement to the plaint filed by the plaintiff, which has been drafted by my Counsel under my instructions. No part of it is false and nothing material has been concealed therefrom.

Alka Sharma

DEPONENT

कुलसचिव / Registrar
दिल्ली विश्वविद्यालय
University of Delhi
दिल्ली-110007/Delhi-110007

VERIFICATION:

Verified at New Delhi on this ____ day of October 2012 that the contents of this affidavit are true and correct to the best of my knowledge. No part of it is false and nothing material has been concealed therefrom.

Alka Sharma

DEPONENT

कुलसचिव / Registrar
दिल्ली विश्वविद्यालय
University of Delhi