

Annexure-'H' 2200

~~26/9/12~~

IN THE HIGH COURT OF DELHI AT NEW DELHI
(ORDINARY ORIGINAL CIVIL JURISDICTION)

CS (OS) NO. 2439 OF 2012

IN THE MATTER OF:

THE CHANCELLOR, MASTER & SCHOLARS
OF THE UNIVERSITY OF OXFORD,
TRADING AS OXFORD UNIVERSITY
PRESS & ORS.

... PLAINTIFFS

VERSUS

RAMESHWARI PHOTOCOPY SERVICE & ANR.

... DEFENDANTS

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Rameshwari Photocopy Services
(Defendant No. 1)

Through

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VERSUS

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WRITTEN STATEMENT ON BEHALF OF THE DEFENDANT NO. 1

Preliminary Submissions / Objections

1. That the present suit is a gross abuse of the process of law, and is liable to be dismissed at the outset. Furthermore, the Plaintiff fails to disclose any cause of action, so as to entitle the Plaintiff's to the relief(s), as claimed. Thus the present suit deserves to be dismissed at the outset with exemplary costs.
2. That the Plaintiffs have no *locus standi* to maintain the present suit as they have miserably failed to establish their ownership of the alleged copyright subsisting in the articles / works. The Plaintiff is conspicuously silent on the aspect of ownership of the alleged copyright in the books and alleged literary works or as to any assignment by the authors of the works in favour of the Plaintiffs. It is submitted that the Plaintiff has not filed a single document to show how they have acquired rights in the alleged literary work or as to who the owner of the said works is. It is incomprehensible as to how the Plaintiffs are claiming ownership of the copyright for the aforesaid articles / works. In

the absence of any pleading or document to this effect, it is denied that the Plaintiffs are the owners of the copyright allegedly subsisting in the works, thus rendering the present suit liable to be dismissed.

3. That primarily in an infringement action relating to copyright, the Plaintiff must plead and prove that firstly, it is the owner (or its assignee) of the work in question, and secondly, it must show that the Defendant has violated the copyright by virtue of its unauthorized reproduction and / or distribution. As far as the ownership of a copyright is concerned, it is settled law that an author of a original and artistic work is the owner of the copyright and can exercise powers conferred under the Copyright Act, 1957 (hereinafter referred to as the **Copyright Act**) to prevent any person from illegally copying and thereafter distributing the copyrighted material / work without the express permission of the author. It is submitted that Section 2 (d) of the Copyright Act defines an author as under:

(d) "author" means,- (i) in relation to a literary or dramatic work, the author of the work; (ii) in relation to a musical work, the composer; (iii) in relation to an artistic work other than a photograph, the artist; (iv) in relation to a photograph, the person taking the photograph; (v) in relation to a cinematograph or sound recording the producer; and (vi) in relation to [any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;

Further, only an author, or his assignee as the case maybe, would be entitled to enjoy exclusive rights over the copyrighted work. This position is enunciated in law under Section 14 of the Copyright Act, which grants the owner the copyright an exclusive right to reproduce, publish and disseminate the

copyrighted work to the exclusion of others. In that sense rights conferred under the Copyright Act operate in rem. Section 14 of the Copyright Act defines a Copyright as under:

14. Meaning of copyright.- For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:-

(a) in the case of a literary, dramatic or musical work, not being a computer programme, -

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

That further Section 17 of the Copyright Act enunciates who the first owner of the Copyright is. The relevant provision of Section 17 is reproduced hereinbelow for ready reference;

17. First owner of copyright - Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein

Provided that-

(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor

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shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

That the Copyright Act further envisages the assignment of a copyright and mode / manner thereof, to a person other than the original author. This position is captured in Section(s) 18 and 19 of the Copyright Act. The aforesaid Sections are reproduced hereinbelow for ready reference;

18. Assignment of copyright. -(1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof.

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.

19. Mode of assignment.- [(1)] No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent.

(2) The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment.

(3) The assignment of copyright in any work shall also specify the amount of royalty payable, if any, to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

(4) Where the assignee does not exercise the rights assigned to him under any of the other sub-sections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

(5) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

(6) If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

(7) Nothing in sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) or sub-section (6) shall be applicable to assignments made before the coming into force of the Copyright (Amendment) Act, 1994.

4. That in the background of the above stated legal position, the answering Defendant submits that the Plaintiffs have miserably failed to produce even a single document evidencing their ownership of the alleged copyright in the works in question. The Plaint contains bald averments, which are completely unsubstantiated by any documentary proof, which would establish a cause of action in favour of the Plaintiffs and against the Defendants. Therefore, on a bare reading of the Plaint and the documents filed therewith, it is prima facie established that the Plaintiffs have no rights in the alleged copyright subsisting in the works. Since, the Plaintiffs have miserably failed to plead and prove their ownership of the copyright, there is no question of any violation thereof. The present suit thus is liable to be dismissed with costs.

5. That further it is not the case of the Plaintiffs that the authors of the publications / works are working under a contract of service,

apprenticeship or that the said works / publications were made by the authors during the course of their employment with the Plaintiffs. It may be pointed out that neither have the Plaintiffs produced any document to this effect nor have they pleaded the same. Therefore, under no circumstance can the Plaintiffs claim ownership of the alleged copyright vesting in the works / publications. Even if the Plaintiffs are held to be the exclusive licensees of the copyrighted work, the present suit is hit by Section 61 of the Copyright Act.

6. That without prejudice to the above contention, the answering Defendant humbly submits that even on merits, the Plaintiffs have failed to establish a case against the answering Defendant. The answering Defendant is / has not engaged in any act of infringement of copyright as has been alleged in the Plaint. Assuming arguendo that the Plaintiffs do have copyright in the works / publications, it is submitted that the activities carried on by the answering Defendant amount to 'fair use' of the copyright allegedly vesting in the works. Such fair use of the copyright does not amount to violation of law, as provided in Section 52 (a) and (h) of the Copyright Act. In this background, it may be pertinent to note the following facts;

a. That the answering Defendant is a proprietorship concern run by Mr. Dharampal Singh and is engaged in providing photocopy services operating out of a small shop from the college complex of Delhi School of Economics (hereinafter referred to as DSE).

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- b. The answering Defendant has obtained a license from the DSE, which falls under the aegis of Defendant No. 2, for providing photocopy services to students and faculty at nominal rates. As per the terms of the License issued by the Defendant No. 2 / DSE, the answering Defendant is required to provide 3000 photocopies to the DSE / Defendant No. 2 free of cost each month. As per the terms, the answering Defendant is further obliged to charge a nominal sum of .40 paise per page photocopied by it.
- c. As part of the endeavor to provide instruction to students, the faculty of Defendant No. 2 recommends the syllabi for each academic year along with the suggested reading material. The reading material ranges from a wide variety of authors and generally includes articles, publications, journals etc. These articles / journals are generally published by various publishers and are sold in the open market at very high prices which are often beyond the reach of the students.
- d. That it would be pertinent to mention here that syllabi recommended by the Defendant No. 2 does not recommend the entire publication / work but only certain extracts from the same. By way of an example, a publication may contain 10 chapters of which the Defendant No. 2 might recommend a particular chapter to be read for a particular subject. Therefore, a student would normally be constrained to buy the entire publication just for reading a particular chapter therein.

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e. That further, in the syllabi prescribed for an academic year, as many as 35-40 articles / chapters are recommended for reading purposes, thus compelling a student to purchase 35-40 of such costly books from the publishers. To ease the financial burden on students, majority of the titles prescribed in the syllabi are housed in the Ratan Tata Library (hereinafter referred to as the Library), which provides such expensive books for reference of students. However, it is submitted that only limited copies of such books are available with the Library and the same are not sufficient in number to cater to the needs of each and every student. As a result, the Library allows students to obtain copies of the books for their own reference and study. The services of the answering defendant are engaged by student and faculty to photocopy the relevant extracts from books, articles and journals at the nominal / prescribed rate for use in educational purposes and reference only. In fact, in view of the limited number of original books stored by the Library, the DSE faculty has compiled various master copies of books, articles and journals, which are / were then used for photocopying by the answering Defendant, in order to save the original work from being damaged. Such master copies are kept / stored by the DSE as well as the Library, and thereafter provided to the answering Defendant for the purposes of copying extracts therefrom, for the teachers and students in the course of their academic instruction and research purposes. This term, in fact, finds mention in the contract of the answering Defendant with the DSE /

Defendant No. 2, in Clause 13 (iv), wherein it has been specifically agreed:

(iv) Master copy of each articles or chapter of a book of the reading list is to be provided by the Department concerned, so that master copy could be given for Xeroxing. Thus saving our original document.

- f. That thus it is clear that the answering Defendant was Xeroxing the master copies at the instruction of the Defendant No. 2, as per the terms put forth by them. Such master copies were compiled by the Defendant No. 2 and were often handed over to the answering Defendant to make copies of the extracts thereof. This is done for administrative convenience. This act further saves the original books from being damaged and repeated photocopying lead to accelerated wear and tear.

It would be extremely important to highlight that the said actions of the answering Defendant amount to fair dealing as prescribed under Section 52 of the Copyright Act, as they are not commercially exploiting the authors copyrights, if any, but are giving copies to students to aid their education, at nominal rates prescribed by the Defendant No. 1. It would be pertinent to mention here that there is no commercial sale of the said 'course packs' as the answering Defendant is charging its normal photocopying charges at the rate of .40 paise per page. Therefore, even if students were to bring the original works and get the entire set photocopied, the answering Defendant would charge the same rate. It cannot be the case of the Plaintiff that the original works / publications cannot be photocopied by students and

teachers for educational purposes. Thus, it is immaterial whether the answering Defendant is photocopying from the original work or a master set created by the Defendant No.

2. The law provides the answering Defendant the liberty to do so and thus the Plaintiffs in the guise of the present suit cannot attempt to obtain a blanket order on photocopying from the original works / publications.

- 7. That without prejudice to the aforesaid contentions it is submitted that the answering defendant has acted in good faith under the instruction of the Defendant no. 2 and hence is protected in terms of §.76 of the Act as under:

76. Protection of action taken in good faith.

No suit or other legal proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act

This position is fructified by a perusal of the License granted to the answering Defendant by the Defendant No. 1, where it was permitted to run its photocopying shop within the premises of DSE. Therefore, the present suit does not lie against the answering Defendant.

- 8. That the present suit deserves to be dismissed as there is no joinder of causes of action as contended by the Plaintiffs. The Plaintiffs are trying to confuse the entire matter by joining causes of action where none exist.
- 9. That even otherwise, the answering defendant is not commercially selling the course packs/ readings as has been imputed by the plaintiffs. Infact, the present suit is nothing but a

ploy on the part of the Plaintiffs to circumvent the beneficial provisions provided in the Copyright Act for the faculty and student. The present suit has been filed by the Plaintiffs to completely negate the intention of the Legislature while enacting S. 52(h).

10. That the present suit is not maintainable as the Plaintiffs have admittedly sued a proprietorship concern, which does not have any legal existence. Thus the present suit is improperly instituted against a proprietorship concern without impleading / arraying the Proprietor in his individual capacity. The present suit is thus violative of Order XXIX and XXX of the Code of Civil Procedure and thus liable to be rejected.

PARA WISE REPLY ON MERITS

1. That the contents of Para 1 of the Plaint are wrong and denied. It is denied that the Plaintiff No. 1 was established in the 16th century by the University of Oxford as alleged or otherwise. It is further denied that Plaintiff No. 1 is the world's largest university press or that the said Plaintiff is publishing more than 4,500 new books a year as alleged. It is further denied that the Plaintiff No. 1 has become a household name through a diverse publishing programme that includes scholarly work in all academic disciplines as alleged. It is further denied that the Plaintiff No.1 has presence in more than fifty countries and has innumerable publications with worldwide circulation as alleged. The Plaintiff No.1's Indian operations are denied or their presence in the areas of academic, general and reference, and higher education / school education are denied. The Plaintiff may kindly be put to strict proof of the averments made in

the Para under reply. It is further denied that Mr. Vishal Ahuja is the constituted attorney of the Plaintiff No. 1 or that he is duly authorized to sign, verify and institute the present proceedings.

2. That the contents of Para 2 of the Plaint are wrong and denied. It is denied that the Plaintiff No. 2 is printing and publishing house integrated with the University of Cambridge as alleged. It is further denied that the Plaintiff No. 2 is the oldest printing and publishing houses of the world or that the said Plaintiff is the second largest university press in the world with 35000 books in print as alleged. The averments made with regard to the business and scale of operations are denied in their entirety and the Plaintiff may kindly be put to strict proof of the averments made in this regard. It is further denied that the Plaintiff No. 3 is the exclusive licensee of the Plaintiff No. 2 in India or that the said Plaintiff is an interested and affected party as alleged or otherwise. It is vehemently denied that any violation of the Plaintiff's copyright has occurred as has been imputed in the Plaint. Moreover, no documents evidencing the inter se relationship of the Plaintiff No. 2 and 3 have been placed on record to establish the averment made in the Plaint. It is further denied that Mr. Vishal Ahuja is the constituted attorney of the Plaintiff No. 2 and 3 or that he is duly authorized to sign, verify and institute the present proceedings.

3. That the contents of Para 3 of the Plaint are wrong and denied. It is denied that the Plaintiff No. 4 is a leading international academic publisher with over two centuries of experience. All averments regarding the identity, business and scale of its alleged operations are denied. It is denied that the publications of the Plaintiff No. 4 cater to a wide ranging audience including researchers, students,

academics and professionals as alleged or otherwise. It is further denied that the Plaintiff No. 4 includes the publishing imprints of Routledge, CRC Press, Taylor & Francis, Garland Science and Psychology Press as alleged or otherwise. It is also denied that the said organizations have strong reputations for providing high quality, authoritative and insightful knowledge. It is denied that the said Plaintiff is operating from 20 global offices as alleged or that the said Plaintiff publishes more than 1,500 journals and around 3500 new books each year as alleged or otherwise. It is further denied that the said Plaintiff has a books backlist in excess of 55,000 specialist titles as alleged or otherwise. It is further denied that the Plaintiff No. 5 is a wholly owned subsidiary of the Plaintiff No. 4 in India as alleged or that the said Plaintiff is an interested and affected party as alleged or otherwise. It is further denied that Mr. Vishal Ahuja is the constituted attorney of the Plaintiff No. 4 and 5 or that he is duly authorized to sign, verify and institute the present proceedings.

4. That the contents of Para 4 of the Plaint are wrong and denied. It is denied that the present suit is primarily to address unauthorized reproduction and issuance of copies of academic publications of the Plaintiffs as alleged. The present suit is completely baseless and frivolous, in so far as the question of violations of the copyright of the Plaintiffs is concerned. It is submitted at the cost of repetition that there has been no violation of copyright by the answering Defendant and as such the present suit is liable to be dismissed, being an abuse of the process of law. It is denied that the publications of the Plaintiffs cover a wide range of disciplines such as History, Politics, Economics and Business, Sociology and Anthropology, Law, Philosophy and Religion, Literature and

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Language as alleged. The Plaintiffs may kindly be put to strict proof of the contents of the Para under reply. The List annexed with the Plaint as Annexure I, alleging the same to be publications of the Plaintiffs is denied and the Plaintiff may kindly be put to strict proof thereof. Assuming arguendo that the Plaintiffs are the publishers of the works mentioned in the said Annexure, it cannot be assumed that they are the authors of the works and hence the owners of the copyrights allegedly vesting in them. The rest of the Para under reply is wrong and denied.

5. That the contents of Para 5 of the Plaint are wrong and denied. It is denied that the publications mentioned in Annexure I constitute "literary works" as defined in Section 2 (o) of the Copyright Act as alleged or otherwise. The falsity of the claim of the Plaintiff is prima facie evident from a bare perusal of the list annexed with the Plaint, which clearly shows the names of the respective authors of the publications. The Plaintiff can, at best, claim to be publishers / printers of the works, which does not qualify them as being owners of the Copyright per se. The Plaintiffs, thus, by way of documentary proof must show this Hon'ble Court the mode and manner in which they acquired the copyrights from the original authors of the works in question. It is denied that the copyright subsists in India with respect to the Plaintiffs publications by virtue of Section 13 read with 40 and 41 of the Copyright Act as alleged or otherwise. It is further denied that the Plaintiff No. 1, Plaintiff No. 2 and the Plaintiff No. 4 are the owners of the copyright in the publications, or that they have protectable interests in the copyright subsisting in the same as alleged or otherwise.

6. That the contents of Para 6 of the Plaint are wrong and denied. It is vehemently denied that the copyright in the publications vests with the Plaintiffs as alleged or otherwise. It is further denied that the Plaintiffs are vested with certain exclusive rights as envisaged in the Copyright Act as alleged or otherwise. It is humbly submitted that the provisions of Section 14 of the Copyright Act have no relevance in the facts of the present case, as the Plaintiffs have prima facie failed to establish their claim to the alleged copyright in the publications. Even if the case of the Plaintiffs is taken at its highest, it is submitted that they can merely claim to be publishers of the publications in question and cannot, in the absence of any documentary proof, step in to the shoes of the original author. Therefore the claim of the Plaintiffs is completely misconceived and thus the Plaint is liable to be rejected. In the aforesaid background, it is denied that there has been any violation / infringement of the copyright of the Plaintiffs as alleged or otherwise. The rest of the Para under reply is wrong and denied. The answering defendant craves leave of this Hon'ble Court to refer and rely upon submission made in Preliminary Objections as reply to the present para as well.

7. That the contents of Para 7 of the Plaint are wrong and denied. It is denied that any copyright declarations with respect to the work appear at the beginning of the works in question as alleged. The Plaintiff cannot allege that the answering Defendant was put to notice, whether constructively or otherwise, of the Plaintiffs copyright in the publication. Even otherwise, the Copyright Act provides that assignment of a copyright must be made by a written document, and in the absence of any such documentary proof the Plaintiffs cannot claim copyright in the works by virtue of a copyright

declaration on the works. It is thus denied that the Plaintiffs have any exclusive rights in the works as alleged. Without prejudice to the averments made in the reply to the present Para, it is submitted that the case of the answering Defendant is that its actions are squarely covered under the exceptions contained in Section 52 of the Copyright Act and amount to fair dealing. Even otherwise, the present suit does not lie against the answering Defendant as it has always acted in good faith and is thus protected under Section 76 of the Copyright Act.

IN RE: THE DEFENDANTS AND THEIR INFRINGING ACTIONS

8. That the contents of Para 8 of the Plaint are wrong and denied. It is denied that the answering Defendant is / was engaged in the unauthorized photocopying, reproduction and distribution of copies of the Plaintiffs publications as alleged or otherwise. It is further denied that the Plaintiff became aware of the same in April, 2012 as alleged. It is denied that Mr. Rajesh Mishra purchased samples of any infringing copy as alleged. It is further denied Mr. Rajesh Mishra had any occasion to report that the answering Defendant was photocopying / reproducing / issuing copies of the Plaintiffs publications as alleged or that the same were being circulated in large scale by the answering Defendant. It is further denied that the answering Defendant was engaged in 'cover to cover' reproduction of the Plaintiffs publications as alleged or that the said Defendant was selling unauthorized compilations of substantial extracts from the Plaintiffs publications by compiling them into 'course packs' as alleged or otherwise. It is further denied that Mr. Mishra had any occasion to report that the answering Defendant was stocking large quantities of 'course packs' for immediate sale to customers as

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alleged or otherwise. The said 'course packs' are not stocked by the answering Defendant and are only prepared at the request of students visiting the shop. The rest of the Para under reply is wrong and denied. The affidavit filed by Mr. Rajesh Mishra is obviously motivated and false, in order to portray a semblance of a case, where none exists. The so called 'investigator' was hired by the Plaintiffs and was acting on their instructions and is obviously obliged to give a favourable affidavit in favour of the Plaintiff. The rest of the para under reply is wrong and denied.

9. That the contents of Para 9 of the Plaint are wrong and denied. It is correct that the 'course packs' / readings issued by the answering Defendant are based on the syllabi issued / prescribed by the Defendant No. 2 for its students. The core idea behind prescribing a syllabus is to enable the students to read relevant material for the purposes and use in examinations. The anthologies / compilation enables students to access the relevant extracts from the works to ultimately answer questions in examinations.
10. That the contents of Para 10 of the Plaint are wrong and denied. The averments with regard to the filing of the RTI application by the Plaintiffs is denied for want of knowledge. The relationship of the answering Defendant with the Defendant No. 2, along with their contractual terms have already been adverted to by the answering Defendant in the Para(s) above.
11. That the contents of Para 11 of the Plaint are wrong and denied. It is denied that the faculty of Defendant No. 2 is recommending 'course packs' for reproduction as alleged. It is further denied that the Ratan Tata Library is issuing books to the answering Defendant

as alleged or otherwise. It is further denied that the answering Defendant is providing any free copies to the Defendant No. 2 as alleged. The answering Defendant is only providing the agreed number of copies to the Defendant No. 2, which is mandated by the terms of the Licence between the parties. The allegations of monetary gain to Defendant No. 2 are denied.

12. That the contents of Para 12 of the Plaint are wrong and denied. It is denied that the answering Defendant is substantially copying the Plaintiffs publications both quantitatively and qualitatively as alleged or otherwise. The averments made in the Preliminary Submissions / Objections may kindly be read as part and parcel of the reply to the present Para.

13. That the contents of Para 13 of the Plaint are wrong and denied. It is denied that the answering Defendant is copying the Plaintiffs publications along with their covers as alleged. It is further denied that there are any copyright declarations in favour of the Plaintiffs as alleged or that the said declarations are prima facie proof of the Plaintiffs exclusive rights in the publications as alleged. It is denied that there is any large scale commercial copying as alleged or that the answering Defendant is knowingly infringing the rights of the Plaintiffs as alleged or otherwise. It is further denied that the conduct of the answering Defendant is not bonafide as alleged or otherwise. It is further denied that the answering Defendant has no legal justification for reproduction as alleged or otherwise. On the contrary, there is complete justification in photocopying the copies for the purposes of education. The attempt in the present suit is clearly to disrupt the supply of such educational material to students and thus constrain them to buy expensive books, by

attempting to obtain a blanket ban on photocopying. The photocopying services are used by faculty, students other bonafide users of the Ratan Tata Library.

14. That the contents of Para 14 of the Plaint are wrong and denied. It is denied that the answering Defendant is reproducing and issuing unauthorized copies of the Plaintiffs publications for a commercial purpose as alleged or otherwise. It is further denied that the Plaintiffs are the owners of the copyright allegedly subsisting in the works in question. It is further denied that the said works are being illegally reproduced and distributed by the answering Defendant as alleged or that the same is being done for monetary gain as alleged. It is further denied that the protected creative expressions of the Plaintiffs publications are copied by the answering Defendant and being compiled into anthologies as alleged. It is denied that any financial loss is being caused to the Plaintiffs as alleged or otherwise. It is further denied that the Plaintiffs have existing licence agreements with entities in India, which provide legally published copies to students as alleged. It is further denied that any commercial loss is being caused to the Plaintiffs as alleged. It is further denied that the acts of the Defendants are unfair and cannot be permitted under the Copyright Act as alleged or otherwise. It is reiterated that no financial loss can be pleaded by the Plaintiffs as the cost of photocopying from a master copy and the original copy would be the same.

15. That the contents of Para 15 of the Plaint are wrong and denied. It is denied that the actions of the Defendant would not amount to fair dealing as alleged. It is submitted that the Defendant no. 1 is merely providing services at a nominal charge and is not running a

commercial enterprise as is being sought to be set up by the Plaintiffs herein. It is denied that the Defendant No. 2 is actively encouraging the students to purchase the 'course packs' from the answering Defendant as alleged. It is denied that on account of the actions of the Defendant there would be no need for the students to purchase the legitimate copies of the Plaintiffs publications as alleged or otherwise. It is further denied that the Defendants are in any manner destroying the market for the legitimate publications of the Plaintiffs as alleged. It is denied that the present case is not one where a teacher or a student makes photocopies of a work in the course of instruction or a fair dealing in the course of private study as alleged. It is denied that this is a clear case of profiteering by the Defendant No. 2 and that the said Defendant is being aided by the answering Defendant as alleged or otherwise. The facts of the present case clearly attract the concept of fair dealing and fair use as provided in the Copyright Act. The contents of the Preliminary Objections & Submissions may kindly be read in reply to the Para under reply.

16. That the contents of Para 16 of the Plaint are wrong and denied. The contents of the Para under reply do not pertain to the answering Defendant and hence require no reply. The terms of the Licence clearly mandate that the Defendant No. 2 had made master copies of books for the better preservation of the originals stored by them. Furthermore, the entire purpose of a library would be defeated if the students are not allowed to take copies of books, which cannot otherwise be issued or are limited in number, for the purposes of education and learning. In case the version of the Plaintiffs is accepted then every copy made by the answering Defendant for students would be a violation of copyright of some

author or the other. Thus, it is denied that an order of injunction is required to be passed against the Defendants as alleged or otherwise.

17. That the contents of Para 17 of the Plaint are wrong and denied. It is denied that any financial loss or royalty revenue loss is being caused to the Plaintiffs as alleged. It is denied that the interests of authors and students is affected by the acts of the Defendant as alleged. It is further denied that the Defendants are liable to be enjoined by this Hon'ble Court as alleged. In fact, the answering Defendant is aiding the students by providing copies of the syllabi prescribed by the Defendant No. 2. The rest of the Para under reply is wrong and denied.

18. That the contents of Para 18 of the Plaint are wrong and denied. It is denied that the reliefs arise out of the same act or transaction as alleged. It is submitted that there is no joinder of causes of action so as to entitle the Plaintiffs to jointly sue the Defendants. Even otherwise, the Plaintiffs have no right, title or interest in the copyright and thus not entitled to maintain the present suit. It is denied that there is any commonality between the alleged cause of action pleaded by the Plaintiffs or that the acts of the Defendants are illegal as alleged or otherwise.

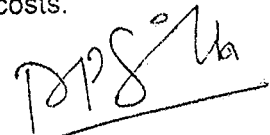
19. That the contents of Para 19 of the Plaint are wrong and denied. It is denied that any cause of action accrued in favour of the Plaintiffs and against the Defendant as pleaded in the Para under reply. It is reiterated that no cause of action has accrued in favour of the Plaintiffs to maintain the present suit.

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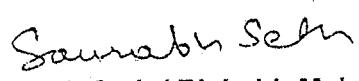
20. That the contents of Para 20 of the Plaint so far as they relate to the territorial jurisdiction of this Hon'ble Court are not denied. However, it is denied that Section 62(2) of the Copyright Act has any application in the facts of the present case.
21. That the contents of Para 21 of the Plaint are wrong and denied.
22. That the Para 22 of the plaint is the prayer which in view of the foregoing submissions cannot be granted.

PRAYER

In the background of the facts and circumstances narrated hereinabove, it is most humbly prayed to this Hon'ble Court to kindly dismiss the present suit with exemplary costs.


(Defendant No. 1)

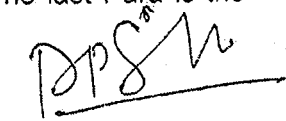
Through


Saurabh Seth / Rishabh Maheshwari
Advocates for the Defendant No. 1
D 17, Kalindi Colony
New Delhi 110065
Mobile: +91 9811393402
Email: seth.saurabh@hotmail.com

New Delhi
Dated: 24th Sep 2012

Verification

Verified on this 22nd day of September, 2012 that the contents of Para 6 of the Preliminary Submissions / Objections and those of Para(s) 1 to 17 of the Para Wise Reply on Merits are true and correct to my knowledge and those of Para(s) 1 to 5 and 7 to 10 of the Preliminary Submissions / Objections and those of Para(s) 18 to 22 of the Para Wise Reply on Merits are believed to be true based upon the legal advise received by me. The last Para is the prayer to this Hon'ble Court.

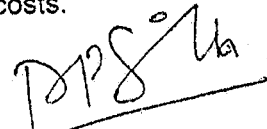

(Defendant No. 1)

2223

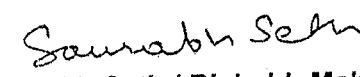
20. That the contents of Para 20 of the Plaintiff so far as they relate to the territorial jurisdiction of this Hon'ble Court are not denied. However, it is denied that Section 62(2) of the Copyright Act has any application in the facts of the present case.
21. That the contents of Para 21 of the Plaintiff are wrong and denied.
22. That the Para 22 of the plaintiff is the prayer which in view of the foregoing submissions cannot be granted.

PRAYER

In the background of the facts and circumstances narrated hereinabove, it is most humbly prayed to this Hon'ble Court to kindly dismiss the present suit with exemplary costs.


(Defendant No. 1)

Through

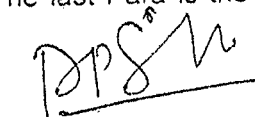

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(Defendant No. 1)

2224

IN THE HIGH COURT OF DELHI AT NEW DELHI
(ORDINARY ORIGINAL CIVIL JURISDICTION)
CS (OS) NO. 2439 OF 2012

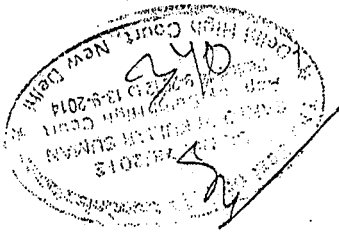
IN THE MATTER OF:
THE CHANCELLOR, MASTER & SCHOLARS
OF THE UNIVERSITY OF OXFORD, TRADING AS OXFORD
UNIVERSITY PRESS & ORS. ... PLAINTIFFS

VERSUS

RAMESHWARI PHOTOCOPY SERVICE & ANR. ... DEFENDANTS

AFFIDAVIT

I, Dharampal Singh, S/o Shyam Singh, R/o B-649 Bunkar Colony, Ashok Vihar Phase - 4 New Delhi, Aged about 42 years do hereby solemnly affirm and declare as under:



That I am the proprietor of Defendant No. 1 in the above captioned suit and am aware of the facts and circumstances of the present case, and thus competent to swear the present affidavit.

2. That the accompanying Written Statement has been drafted by my counsel, on my instructions, and the contents thereof are true and correct to my knowledge and further upon the legal advise received by me. I say that nothing material has been concealed therefrom.

Sauabh Sen
I, *Sauabh Sen*, the deponent who has signed in my presence.

DPS
DEPONENT

VERIFICATION

24 SEP 2012

Verified at New Delhi on this 24 day of September, 2012 that the contents of the above affidavit are true and correct and that nothing material has been concealed therefrom.

Dharampal Singh
S/o Shyam Singh
B-649 Bunkar Colony
Ashok Vihar Phase - 4
New Delhi
24 Sep 2012

DPS
DEPONENT

24 Sep 2012
[Signature]
24/9/12