

IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA (OS) No.81 of 2016

CM NO. 41449/2016

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

...Appellants

Versus

Rameshwari Photocopy Services & Ors.

...Respondents

AND

In the matter of:

Association of Publishers in India

... Intervenor/
Applicant

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Anand Anand

PLACE: New Delhi
DATE: 08 November, 2016,

ANAND AND ANAND
ADVOCATES FOR THE
INTERVENOR/APPLICANT
B-41, NIZAMUDDIN EAST
NEW DELHI-110 013.

NOTICE OF MOTION

IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA (OS) No.81 of 2016

To,
Mr. Sai Krishna,
Saikrishna & Associates for Appellants,
A2E, 2nd Floor, CMA Tower,
Sector – 24, Noida – U.P.
Mobile No.9810621272

Mr. Neeraj Yadav,
Counsel for Respondent No.1
C-253, First Floor,
Defence Colony,
New Delhi – 110 024.
Tel:011 2433 4760

Mr. Saurabh Banerjee,
Counsel for Respondent No.2
B1/18, Mannu Apartments,
6, Mayur Vihar,
Delhi – 110 091

Mr. Jawahar Raja,
Counsel for Respondent No.3

Ms. Swathi Sukumar,
Advocate for Respondent No.4
E-168, East of Kailash,
New Delhi.

IN THE MATTER OF:

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

Versus

Rameshwari Photocopy Services & ors. ... Respondents

AND

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In the matter of:

Association of Publishers in India

... Intervenor/
Applicant

Sir,

The enclosed application in the aforesaid matter is being filed on behalf of the Intervenor/Applicant and is likely to be listed on 7th November 2016 or any date thereafter. Please take notice accordingly.

THROUGH

Dr. Anand

New Delhi

Dated: 25 November 2016

ANAND ANDANAND
Advocates for the Intervenor/
Applicant
B-41, NIZAMUDDIN EAST
NEW DELHI-110 013. INDIA

IN THE HIGH COURT OF DELHI AT NEW DELHI

To,
The Deputy Registrar
High Court of Delhi
New Delhi

RFA (OS) No. 81 of 2016

IN THE MATTER OF:

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

Versus

Rameshwari Photocopy Services & ors. ... Respondents

AND

In the matter of:
Association of Publishers in India ... Intervenor/
Applicant

Sir,

Will you kindly treat the accompanying application as an urgent one
in accordance with the High Court Rules and Orders.

The grounds of urgency are:
The intervention application has been filed.

Yours faithfully,



New Delhi Anand and Anand
Dated: 27 November, 2016 Advocates for the Intervenor/
Applicant

IN THE HIGH COURT OF DELHI AT NEW DELHI

(Civil Commercial Appellate Jurisdiction)

C.M. No. 4144⁹ OF 2016

IN

RFA (OS) No. 81 OF 2016

IN THE MATTER OF:

THE CHANCELLOR, MASTERS & SCHOLARS OF THE
UNIVERSITY OF OXFORD & ORS.

... APPELLANTS

VERSUS

RAMESHWARI PHOTOCOPY SERVICE & ORS.

... RESPONDENTS

AND IN THE MATTER OF:

ASSOCIATION OF PUBLISHERS IN INDIA

C/o Wiley India Pvt Ltd.

4435-36 /7, Ansari Road

Daryaganj, New Delhi-110002

... APPLICANT

**APPLICATION UNDER SECTION 151 OF THE CODE OF
CIVIL PROCEDURE, 1908, SEEKING PERMISSION FOR
INTERVENTION**

To,
The Hon'ble Chief Justice
And His Companion Justices
Of the Delhi High Court

The Applicant most respectfully submits:

1. That the Petitioners, above named, have filed the above Appeal against the Impugned Order and Judgment dated September 16, 2016 in CS (OS) No. 2439/2012 passed by the Hon'ble High Court of Delhi. Vide order dated October 6, 2016, the Hon'ble Division Bench of the High Court admitted the appeal filed by the Appellants/Plaintiffs herein and listed the matter for final hearing on November 29, 2016. A Copy of the order as passed by the Hon'ble Division Bench on October 6, 2016 is enclosed and marked as **Annexure -A.**
2. The Appellants have preferred the aforesaid appeal being RFA (OS) NO. 81 of 2016 against the impugned judgment dated September 16, 2016 as

passed by the learned Single Judge in I.A. No. 14632 of 2012 in CS(OS) No. 2439 of 2012.

3. By the impugned judgment dated September 16, 2016, the learned Single Judge dismissed the suit filed by the Appellants holding that the actions of the Respondents do not infringe the copyright of the works belonging to the Appellant Publishers. Further that, as the question of whether the making of course packs by Respondent No. 2/Defendant No. 2 amounts to infringement of copyright, is a question of law, no trial is required. The learned Single Judge has made various observations and given findings in his judgment dated September 16, 2016 which directly impact the legal interests of the Applicant herein.
4. The suit giving rise to the instant appeal had originally been filed by the Appellant Publishers against the Respondent No. 1 (a photocopy shop) and Respondent No. 2 (the Delhi University). The grievance of the Appellants in the suit was that the Respondent No. 1 shop was involved in mass photocopying of substantial portions of the Appellants' copyrighted publications and distributing/issuing/selling unauthorized copies of the same including in the form of course

packs/anthologies, which infringed the Appellants' copyright in their publications.

5. It was also found that in certain cases, the photocopying by the Respondents of excerpts of Appellants' publications go up to 33.25% of a single work. There were also instances of publications being photocopied cover to cover. The Appellants' grievance was against this commercial, systematic and large scale photocopying, without the authorization of the publishers.

6. The unauthorized course packs commercially sold by Respondent No. 1 are based on the syllabus issued by the Respondent No. 2 for its students. Further, the Respondent No. 2 is directly encouraging and recommending students to purchase the infringing course-packs instead of legitimate copies of the Appellant's publications. Also, the library of Respondent No. 2 is also issuing books/master copies of such books published by the Appellants, stocked in the said library to the Respondent No. 1 for photocopying for preparation of the said course packs. Therefore, both the Respondents are liable for copyright infringement.

7. The Applicant herein, i.e. Association of Publishers in India is a trade organization, created for the promotion and advancement of Publishers having a presence in India as well as to protect the common interest of members and professionals engaged in Global Publishing. Association of Publishers in India deals with the specific issues with the objective of expanding the market for Publishers. The applicant aims to provide a forum for publishers where they can exchange ideas, network and address concerns pertaining to the industry, enabling Indian publishing to achieve world-class standards.

8. It would be pertinent to note that the Indian operations of the international publishing houses have made books available to consumers in India at possibly the lowest prices anywhere in the world. This is true for both general books and educational textbooks. The availability of books at highly affordable prices for consumers is a reality as product pricing is a factor of market dynamics such as the consumer's buying capacity and behaviour.

9. There are over 9037 Number of Publishers in the Country and over 40,000 people directly employed

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by publishers, who are directly impacted by the impugned judgment. Also, the main market of the publishers is the educational sector which is evident from the following figures:

- School Education (K-12) accounts for INR 221.7 billion of the overall Indian books market in 2014-2015;
- Higher education accounts for INR 66.1 billion.

From the above it is apparent that the impugned judgment has huge adverse ramifications on the business of publishers in India.

10. The Applicant is seeking leave to intervene in the aforementioned appeal filed against the impugned judgment dated September 16, 2016, as the said judgment substantially and directly affects the substantive legal rights of the Applicant organization. The effect of the judgment adversely affects the rights of the Applicant's members to prevent unauthorized reproduction/commercial exploitation of their literary works, in contravention of the exclusive rights conferred upon the author/owners of a literary work, including the Right to Reproduce. The impugned judgment has legitimized the act of photocopying entire books without the permission of the

author/publisher by erroneously broadening the scope of Section 52(1)(i) of the Copyright Act, 1952. The judgment therefore directly and adversely impacts the revenue of the publishers and authors which they are entitled to as license fees for commercial reproduction of their literary works. The judgment therefore will lead to the undesirable consequence of publishers not investing money in creating new literary works, which will adversely affect the student community and deprive them of new creative literary works.

- II. The members of the Applicant Organization offer their books at prices which are highly subsidized keeping in mind the student community in India. Also, the publisher members of the Applicant Organization provide digital read-only access to copyrighted material (publications - reference books) to universities on the university obtaining a blanket license which costs the university the price of one such publication. Moreover, being a member of the Indian Reprographic Rights Organization, the applicant's members allow their works to be licensed at nominal rates further ensuring wider access to the members' works. In the presence of such initiatives being undertaken by the applicant's members, the present

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judgment's reliance on socio-economic conditions of the student community in India to nullify the rights of the Publisher community in India is totally uncalled for.

12. Depriving the Applicant's members of their legitimate license fees is tantamount to interference with its fundamental right to carry on business guaranteed under the Constitution.

13. By the impugned judgment, the Learned Single Judge has held that the Respondents have not infringed the copyright of the Appellants by photocopying chapters from their publications, which are commercially sold as course packs, in the Respondent No. 2's university. The Learned Single Judge has held that as the action of the Respondents fall within the purview of Section 52(1)(i) of the Copyright Act, 1957, their actions do not amount to infringement of Copyright. This erroneous finding of the Learned Single Judge gravely prejudices the Applicant as it amounts to denying the Applicant's members payment of license fees due from educational institutions which will adversely affect their ability to create new works which will in turn result in hampering

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the dissemination of knowledge, which is the objective of copyright law.

14. The Hon'ble Judge in order to come to this erroneous finding has interpreted Section 52(1)(f) of the Copyright Act as a standalone section rather than an exception to Section 14 of the Copyright Act, which interpretation is directly in conflict with the ratio of the Division Bench Judgment of **Syndicate of the Press of the University of Cambridge on behalf of the Chancellor, Masters and School v. B.D. Bhandari & Anr., 2011 (47) PTC 244 (Del) (DB).**

15. The Learned Single Judge has also wrongly given an unduly broad interpretation to the words '*in the course of instruction*' appearing in Section 52(1)(f), by holding that these words "*include a reproduction of any work during the process of imparting instruction by the teacher and receiving instruction by the pupil continues i.e. during the entire academic session for which the pupil is under the tutelage of the teacher and that imparting and receiving of instruction is not limited to personal interface between teacher and pupil ...*".

16. This interpretation is flawed as the legislature clearly intended Section 52(1)(f) to be restricted to

natural persons i.e. 'a' teacher and 'a' pupil in the course of instruction. This is also further evident by a reading of Section 52(1)(f) which specifically uses the terms '*educational institutions*', '*staff*' and '*students*'. Thus, the conscious omission of these broad terms by the legislature from Section 52(1)(f), clearly indicates the legislature's intent to restrict the ambit of Section 52(1)(f) to only certain specific cases.

17. Moreover, *in the course of instruction*' evidently cannot encompass any and all activity connected with the process of instruction as there would otherwise have been no need for providing further sub-sections in Section 52(1)(f) to deal with reproduction relating to answers and questions in an examination.

18. The Learned Single Judge has also erroneously held that the activities of the Respondents are not 'commercial' in nature. This finding is contradictory to the facts of the case as quite evidently Respondent No.1 is making profits by the sale of course packs as the same are being sold by him at a price over and above the cost of production. The consequence of the activities being commercial is that the Respondents'

activities cannot fall within the exception of Section 52 (1)(i).

19. Moreover, the Learned Single Judge has failed to appreciate that Section 52(1)(h) has imposed stringent conditions upon publication of copyrighted matter in a collection and an evasive interpretation to Section 52(1)(i), as given in the impugned judgment, would render Section 52(1)(h) otiose. Consequently, only if the stringent conditions imposed in Section 52(1)(h) are satisfied, will the activity of the Respondents be non-infringing. Therefore, the act of reproducing for publication course packs would have to satisfy the ingredients of the said provision in order to avoid infringement of copyright.

20. The Learned Single Judge has also erroneously concluded that the requirement of being 'Fair' is absent from Sections 52(1)(h) to (j) and that it is only restricted to Section 52(1)(a). This finding is against the very fabric of Section 52 and its purpose *i.e.* to provide a fair and reasonable limitation upon the rights of a copyright owner and to help achieve a balance between the rights of a copyright owner on the one hand and fair access to knowledge and information by the public

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on the other hand. It is obvious that the concept of fairness has either been built into each of the defenses available under Section 52 of the Copyright Act, 1957, through objective and restricting concepts or wherever this was not possible, the legislature simply used the word 'fair'. Thus, some of these restricting and objective criteria which ensure fairness and create a balance are:

- a) The two passage condition in Section 52(1)(h) along with the requirement of the collection being mainly non-copyrighted matter;
- b) The restriction imposed by the terms "teacher", "pupil" and "in the course of instruction" in Section 52(1)(j); and
- c) The restrictions to the staff and students and the limited audience in the case of performances in an educational institution in Section 52(1)(i).

Similarly, in each one of the defenses in Section 52, there are clear objective terms limiting the defense to a specialized class or circumstances in a way that the reproducing activity does not interfere with the normal exploitation of the work nor causes prejudice to the author. Thus, each of

the defenses satisfies the 'three-step test' laid down by the Berne Convention and the TRIPS Agreement which are recognized globally.

The word 'fair' was inserted in Section 52(1)(a) in the wisdom of the legislature, for the reason that the words 'dealing', 'private use', or 'personal use' were too broad left to themselves.

21. The broad interpretation given by the Learned Single Judge to Section 52(1)(i) is also in conflict with India's obligations under international conventions and treaties such as TRIPS and the Berne Convention.

22. The Applicant submits that the impugned judgment has the direct effect of giving a blanket permission to all educational institutions, private or public, coaching institutions, tutorials, etc. to mass photocopy/reproduce copyrighted works with impunity without paying even a nominal license fee to the publishers/authors. This deprivation of royalty would disincentivise not only the publishing industry but also authors from creating and publishing new literary works including text books, reference books, academic publications etc. which will in the long term

adversely affect the student community and the public at large.

23. In view of the above submissions, it is submitted that the outcome of the pending Appeal has a direct bearing on the rights of the Applicant to function effectively. Any order passed in the appeal would indisputably impact the applicant and therefore it is imperative that the applicant be allowed to intervene as an intervenor in the present appeal against the impugned judgment dated September 16, 2016, so as to assist this Hon'ble Court in determination of the questions of law involved in the case and to ensure that the applicant is given an opportunity to be heard.

24. It is respectfully submitted that the Applicant is vitally interested in the outcome of the said appeal pending adjudication before this Hon'ble Court, as any judgment /order of this Hon'ble Court will also affect the rights/liabilities of the applicant. If the applicant is not permitted to intervene in the present appeal, irreparable loss would be caused to the applicant. No harm or prejudice would be caused to the parties if the present application of the applicant is allowed.

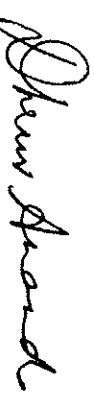
PRAYER

In light of the above, the Applicant most respectfully prays that this Hon'ble Court may be pleased to:

- (a) Allow the Applicant to intervene in the present appeal proceedings against the impugned judgment dated September 16, 2016; and
- (b) Pass such other or further orders as this Hon'ble Court deems fit and proper in the interest of justice.

Date: 14th October, 2016

Place: New Delhi



Anand and Anand
Advocates for the Applicant

IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. No. of 2016

IN

RFA (OS) No. 81 of 2016

In the matter of:

The Chancellor, Masters & Scholars of University of Oxford & Ors.

...Appellants

Versus

Rameshwari Photocopy Services & Ors.

...Respondents

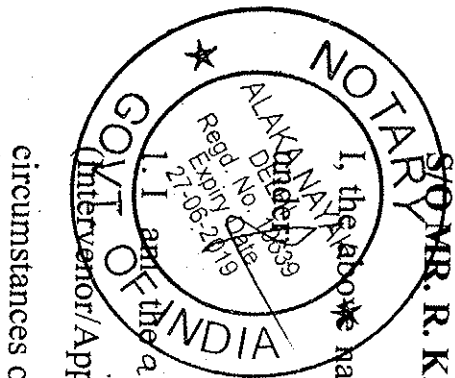
AND

In the matter of:

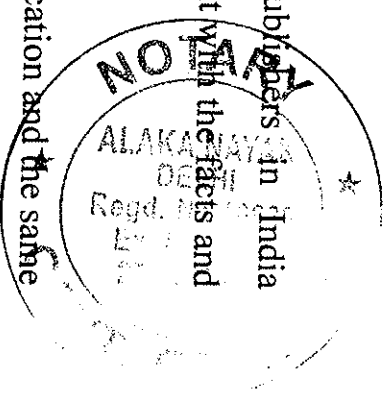
Association of Publishers in India

...Intervenor/Applicant

AFFIDAVIT OF MR. VIKAS GUPTA, AGED ABOUT 48 YEARS,
S/O MR. R. K. GUPTA, R/O 5/1, ROOP NAGAR, DELHI - 110007.

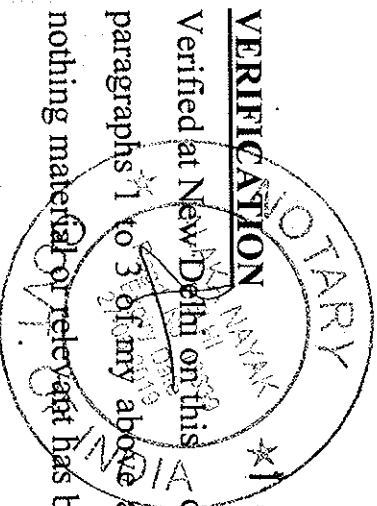


I, the above named deponent do hereby solemnly affirm and declare as ^{Signature} the author of the Association of Publishers in India (Intervenor/Applicant) and as such am well conversant with the facts and circumstances of the present case.



- I have read the contents of the accompanying application and the same are true to the best of my knowledge.
- I say that I adopt the contents of the accompanying application as part and parcel of my affidavit, the same not being reproduced herein for the sake of brevity.

DEPONENT



14 OCT 2016

Verified at New Delhi on this day of October, 2016 that the contents of paragraphs 1 to 3 of my above affidavit are true to my knowledge and nothing material or relevant has been concealed therefrom.

[Signature]
DEPONENT

[Signature]
I identified the deponent who has signed in my presence

Identified by Shri/Smt. *[Signature]*
as SI. No. *[Signature]*
Delhi on *[Signature]*
That the contents of the affidavit which have been read & explained to me are true & correct to his knowledge

NOTARY

14 OCT 2016

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Answers 4

\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA(OS) 81/2016

**THE CHANCELLOR, MASTERS & SCHOLARS OF
UNIVERSITY OF OXFORD & ORS**

..... Appellants

Represented by:

Mr. Sudhir Chandra &
Mrs. Prathiba M. Singh, Senior
Advocates instructed by
Mr. Saikrishna Rajagopal,
Mr. Sahil Sethi & Mr. Devanshu
Khanna, Advocates

versus

RAMESHWARI PHOTOCOPY SERVICES & ORS Respondents

Represented by:

Mr. Neeraj Yadav, Adv. for R-1
Mr. Saurabh Banerjee,
Advocate for R-2
Mr. Anup Bhamhani, Sr. Adv.
instructed by Mr. Jawahar Raja,
Mr. Gautam Bhatia &
Mr. Chinmay Kanojia, Advs.
Mr. Dayan Krishnan, Senior
Advocate instructed by
Ms. Swathi Sukumar, Ms. Anu
Paarcha & Ms. Aakashi Lodha,
Advocates for R-4

CORAM:

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI**

ORDER

06.10.2016

CAV Nos. 882-884/2016

1. Caveats have been filed by Respondent Nos.2, 3 and 4. Counsel as

RFA(OS) 81/2016

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above appear for the said respondents to whom copy of the appeal paper book has been supplied.

2. The caveats are discharged.

CM No.37508/2016

Application is disposed of extending time to pay the Court fee by two weeks from today.

CM No.37506/2016

Allowed subject to all just exceptions.

CM No.37507/2016

As per practice directions issued by this Court record of suit is always made available at the time of hearing of a regular first appeal and thus application is disposed of as infructuous since the prayer is made to issue a direction to the Registry to call the record of suit file along with the appeal.

RFA(OS) 81/2016 & CM No.37505/2016

1. Admit. Counsel as above accept admission of the appeal.
2. List the appeal for final hearing at the end of 'After Notice Miscellaneous Matters' on November 29, 2016.
3. The respondents are directed to maintain a record of photocopied course packs sold.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

OCTOBER 06, 2016
'pg'

RFA(OS) 81/2016

page 2 of 2

POWER OF ATTORNEY

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IN THE COURT OF HIGH COURT OF DELHI AT NEW DELHI

Association of Publishers in India

Intervenor

In the matter of:

The Chancellor, Masters & Scholars of University of Oxford & Ors. v. Rameshwari Photocopy Services & Ors.; RFA (OS) No. 81 of 2016

KNOW all to whom these presents shall come that I, Mr. Vikas Gupta, S/o Mr. R. K. Gupta, ^{पुलितोरी-१ स्थान} of the Intervenor, do hereby appoint N. K. ANAND (D/27/1956), PRAVIN ANAND (D/178/1979), BINNY KALRA (D/787/1990), BHAGWATI PRASAD (D/1015/1992), M.S.BHARATH (D/1808/2001), SAIF KHAN (D/764/2003), VAISHALI MITTAL (D/767/2003), MANISH BIALA (D/1495/2005), DHRUV ANAND (D/798/2006), SHRAWAN CHOPRA (D/2218/2006), PRACHI AGARWAL (D/894/2007), SHANTANU SAHAY (D/1935/2007), TUSHA MALHOTRA (D/1274/2008), ACHUTHAN SREEKUMAR (D/2545/2008), LAKSHMI KRUTTIKA VIJAY (D/1095/2009), NISHCHAL ANAND (D/1358/2009), GEETANJALI VISVANATHAN (D/2737/2009), SHOBHIT AGRAWAL (D/2078/2010), ADITYA GUPTA (D/2700/2010), RAUNAQ KAMATH (D/3424/2010), ABHILASHA NAUTIYAL (D/3749/2010), RAHUL VATS (D/1715/2011), UDITAM. PATRO (D/2779/2011), AASISH SOMASI (D/984/2013), D. NEHA REDDY (MAH/1548/2013), AMAN TANEJA (D/2186/P013), KARAN KUMAR KAMRA (D/2785/2011), RAVIN GALGOTIA (D/998/2014) and SIDDHANT CHAMOLA (D/2471/2014), ASAVARI JAIN (MAH/1769/2014), KANAK BOSE (D/2761/2015), KSHITIJ PARASHAR (D/2884/2015), SHAMIM SHAHIN NOOREYEZDAN (D/3471/2015), Advocates of ANAND ANAND, 102, Lawyers Chambers, Delhi High Court, New Delhi, hereinafter called the Advocates to be my/our Advocates, in the above-noted case and authorize them:-

To act, appear and plead in the above-noted case in this Court, or in any other Court in which the same may be tried or heard and also in the appellate Courts including High Court.

To sign, file, verify and present pleadings replications, appeals cross-objections, or petitions for executions, review, revision, restoration, withdrawal, compromise, or other petitions, replies, objections, or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages.

To file and take back documents.

To withdraw, or compromise said case or submit to arbitration any difference or disputes that may arise touching or in any manner relating to the said case.

To take out execution proceedings.


To deposit, draw and receive moneys, cheques and grant receipts therefore, and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other Legal Practitioner, authorising them to exercise the power and authority hereby conferred upon the Advocates whenever they may think fit to do so and to sign the Power of Attorney on my/our behalf.

And I/We, the undersigned do hereby agree to ratify and confirm acts, done by the Advocate or their substitute in the matter as my/our own acts as if done by me/us to all intents and purposes.

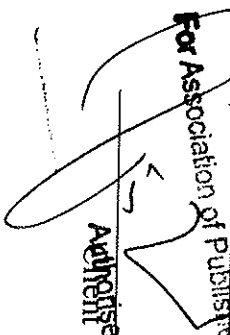
IN witness whereof I/We do herunto set my/our hands to these presents, the contents of which have been understood by me/us this 14 day of October 2016 at

Accepted


Advocate






For Association of Publishers
Authorized Signatory