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5/12/16

IN THE HIGH COURT OF DELHI AT NEW DELHI

(Civil Appellate Jurisdiction)

R.F.A. (O.S.) No. 81 of 2016

In the matter of:

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

...Appellants

Versus

Rameshwari Photocopy Services & Anr.

...Respondents

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Place: New Delhi

Date: 5<sup>th</sup> December, 2016

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(Ordinary Original Appellate Jurisdiction)

R.F.A.(OS) No. 81 of 2016

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

... Appellants

Versus

Rameshwari Photocopy Service &Anr.

... Respondents

Rejoinder Note of arguments

A. The submissions made by the appellants were based on the reasoning of the Ld. Single Judge in the impugned judgment.

A.1 In paragraph 21 & 22 – According to the Ld. Single Judge the only question to be adjudicated is

*“Whether the making of course-packs as the defendant No.2 University is making, amounts to infringement of copyright?”*

A.2 The findings of the Ld. Single Judge are as follows:-

- Paragraph 34- The right to make photocopies is the exclusive right of the owner and making copies without authorization is infringement, unless such act is listed under Section 52 as an act not constituting infringement.
- Paragraph 35- The mere act of reproduction constitutes infringement and Infringement is complete on reproduction. Issuance of copies of the work, even without any charge, to the public would also constitute infringement. However, once a book is purchased, issuance of the same to the public by a library is not infringement.
- Paragraph 36- The Ld. Single Judge holds that issuing copies cannot be read or interpreted as to make copies of the work.
- Paragraph 39- The Ld. Single Judge holds that “but for section 52” the acts of the defendant would have constituted infringement.
- Paragraph 41 – Section 52 is not to be interpreted as a Proviso or as an Exception. The exclusive rights to do the acts mentioned in Section 52 are not included in Section 14.
- Paragraph 41 – Rights of persons mentioned in Section 52 are to be interpreted as per the same rules as rights on a copyright owner and are not to be read narrowly or strictly.
- Paragraph 43- The Court holds that the principle of ‘fair dealing’ as contained in sub section (a) is not to be applied to sub sections (h) (i) & (j) of Section 52(1).
- Paragraph 48 - Photocopying of an already published work is not publication. Photocopying is reproduction, a restricted act quite separate from the act of publication.
- Paragraphs 49, 50 & 56 - The Ld. Single Judge holds that section 52 (1) (j) & (h) do not apply to this case.

- Paragraph 51- The Ld. Single Judge holds that only Section 52(1)(i) is to be seen.
- Paragraph 55- Section 52(1)(i) cannot be interpreted in a restrictive manner.
- Paragraph 57- Publication and reproduction are distinct but the Ld. Single Judge holds that publication means making available to the public for the first time. (This is contrary to section 3). Reproduction entails copying for a limited use.
- Paragraphs 63 & 65 - The Ld. Single Judge interprets that '*in the course of instruction*' is to be interpreted widely and includes commercial exploitation.
- Paragraphs 72 to 74- The Ld. Single Judge holds that photocopying and issuing copies is not infringement.
- Paragraph 84 - Equates photocopying of copyrighted works of Plaintiffs to photocopying of judgments in the high court library.
- Paragraphs 89 & 90- If making 10 to 20 copies is legal then 100, or 1000 copies being made does not convert into an infringement.

**SUBMISSIONS OF THE APPELLANTS:**

A.3 In the context of the findings of the Ld. Single Judge, the appellants had submitted in their opening submissions that there are seven identifiable acts under section 14, namely,

- (i) Reproduction
- (ii) issuing copies
- (iii) performing the work
- (iv) adaptation
- (v) translation
- (vi) to make films / sound recordings
- (vii) communication.

Each of the above acts is specifically identified in different sub sections of section 52 (1) which is clear from the chart annexed as **Annexure A1 and A2.**

A.4 In fact different sub-sections of section 52(1) not only identify the broad seven acts but some sub-sections identify even the subsets of these acts.

For example:- reading or recitation could come within the broad act of communication but they are specifically identified in sub-section (g). Thus the legislative wisdom restricts the permissible acts under section 52 with great specificity and precision.

A.5 Section 52(1) (i) only specifies the act of 'reproduction' - the absence of 'publication' which includes within it issuing copies and communication in section 52 (1) (i) is conspicuous. The Ld. Single Judge has reached an erroneous finding in paragraph 48 that photocopying of an already published work is not publication.

The entirety of section 52 recognizes this and codifies the concept of fair dealing. Since the acts mentioned in each of the sub-sections are identifiable with such precision, the permissible act is restricted to what is actually mentioned alone in the section.

A.6 Fair dealing as a terminology with respect to any work would include **all the acts** contemplated under section 14. Since section 52 (1) (a) identifies narrow purposes