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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) No.2439/2012, IA No.76/2017 & IA No.78/2017 (both under Order I Rule 10(2) for impleadment) and IA No.77/2017 (under Order I Rule-8A CPC for intervention).
THE CHANCELLOR, MASTER & SCHOLARS OF THE UNIVERSITY OF OXFORD & ORS Plaintiffs
Through: Ms. Sneha Jain, Adv. for plaintiffs.

versus

RAMESHWARI PHOTOCOPY SERVICES & ORS Defendants
Through: Mr. Saurabh Seth and Mr. Neeraj Yadav, Advs. for D-1.
Mr. Saurabh Banerjee and Mr. Prince Anthony, Advs. for D-2.
Mr. Chinmay Kanojia, Adv. for D-3.
Ms. Swathi Sukumar and Ms. Anu Paarcha, Advs. for D-4.
Mr. Praveen Anand, Mr. Dhruv Anand, Ms. Udit Patro and Mr. Shamim Nooreyzedam, Advs. for IIRO Association of Publishers in India, Federation of Indian Publishers & Indian Reprographic Rights Organisation & Association.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **20.01.2017**

1. The suit is listed pursuant to remand by the Division Bench vide judgment dated 9th December, 2016 in RFA(OS) No.81/2016.

2. The Division Bench has granted an opportunity to the plaintiffs to

amend the plaint. No such application or amended plaint has been filed. The counsel for the plaintiffs seeks further time to amend the plaint.

3. Last opportunity to take appropriate steps within four weeks is granted; else the opportunity given by the Division Bench shall stand closed.

4. IA No.76/2017, IA No.78/2017 and IA No.77/2017 have been filed by Federation of Indian Publishers, Association of Publishers in India and Indian Reprographic Rights Organisation (IRRO) respectively with the first two being for impleadment and the third being for intervention.

5. I have enquired from the counsel for the applicants the right to impleadment/intervention.

6. As per my reading and understanding of the judgment of the Division Bench, the legal question which was at issue has been determined and remand is for limited factual adjudication confined to the plaintiffs to the suit and in which the applicants who are strangers to the said factual adjudication, would have no role.

7. It has thus been enquired from the counsel for the applicants as to what purpose impleadment/intervention sought would serve.

8. The counsel for the applicants states that the legal question has also not been decided finally. It is contended that the decisions of this Bench and

of the Division Bench are on the application under Order XXXIX Rules 1&2 of the Code of Civil Procedure, 1908 (CPC) and the legal questions are also to be adjudicated afresh at the stage of final decision of the suit, post trial, without being influenced by observations/findings in the said decision.

9. I am unable to agree. At the outset, the decision of this Bench was not on the application under Order XXXIX Rules 1&2 of the CPC but on the suit itself and a decree for dismissal of the suit was passed. The plaintiffs, before the Division Bench, were in appeal there against. Similarly, from a reading of the judgment of the Division Bench it does not transpire that findings returned on the questions of law are *prima facie*, only for the purpose of Order XXXIX Rules 1 & 2 CPC.

10. The counsel for the defendant no.2 Delhi University also points out that the Division Bench in para 80 of its judgment has observed “The appeal is disposed of declaring the law as above...”

11. Once a question of law has been threshed out threadbare, the question of the same being still at large pursuant to remand does not arise. The remand, as aforesaid, is a limited remand within the meaning of Order XLI Rule 25 CPC. The Division Bench, though has not framed issues but has

spelled out the question of fact which according to the Division Bench is essential to the right decision of the suit. It is only that question which has been referred back to this bench for trial. The evidence before this bench has to be confined to the same only and in which the applicants as aforesaid have no role.

12. The counsel for the applicants contends that if the question of law is held to have been decided as per the judgment of the Division Bench, the applicant IRRO would be left with no role to play, for which it has been constituted.

13. On it being pointed out to the counsel that it was for the applicant IRRO which was admittedly before the Division Bench to contend so, the counsel for the applicant IRRO states that though it was contended but there is no finding in the judgment of the Division Bench on the said aspect.

14. A contention raised before the Court, even if not specifically dealt with, is deemed to have been considered and disposed of in accordance with the final order. Reliance if any required, can be placed on *Mohd. Akram Ansari Vs. Chief Election Officer* (2008) 2 SCC 95. This thus cannot be a ground to re-urge the matter before this Bench.

15. The counsel for the applicant IRRO states that he will seek clarification from the Division Bench to the said effect.

16. The counsel for the applicants has also contended that the applicants were permitted to intervene before the Division Bench and are thus entitled to intervene and seek impleadment before this Bench.

17. I am unable to agree with the said contention also. The intervention/participation before the Division Bench was necessary as a question of law of vital importance was for adjudication. However, now that the question of law has been adjudicated and the remand of this suit is for determination of the limited factual controversy in accordance with law declared by the Division Bench, the applicants cannot have any role in the remanded proceedings.

18. The counsel for the applicants has also drawn attention to paragraph 79 of the judgment of the Division Bench and particularly to the last sentence thereof “The issue would then arise whether photocopying of entire books would be a permissible activity” and has contended that the said issue is a issue of law and the Division Bench has expressly left the same open and the applicants are interested in such legal determination.

19. I am unable to agree with the aforesaid contention. As per my understanding of the judgment of the Division Bench, what the Division Bench has left for factual determination is whether the extent of photocopying is “in the course of instruction” within the meaning of Section 52(1)(i) of the Copyright Act. If the Division Bench had found the law under Section 52(1)(i) of the Copyright Act, 1957 to be in relation to the extent of photocopying, the Division Bench would have held so but which I am unable to decipher from the judgment.

20. The counsel for the applicants then states that as per para 56 of the judgment of the Division Bench also, the issue for which the suit has been remanded would be a issue of fact and law.

21. On enquiry, as to what law, the counsel states that once the issue is of whether the copyrighted work in the course pack was justified for the purposes of the course pack i.e. “in the course of instruction” is a question of law.

22. I am unable to agree. The same would be in the context of the material before the Court i.e. whether the photocopying in the course pack is

for instructional use by the teacher to the class or not. Any non-party to a suit who has not alleged infringement, in my view, cannot have a say on the said aspect.

23. I am similarly unable to agree that the reference in para 56 to an “expert” would be to experts as the applicants as is contended.

24. The counsel for the applicants states that the applicants i.e. Federation of Indian Publishers, Association of Publishers in India also will seek clarification from the Division Bench and requests the applications to be held over for four weeks.

25. List on 28th February, 2017.

RAJIV SAHAI ENDLAW, J

JANUARY 20, 2017

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