

IGNOU Vs Dominant Publishers And Distributors

Court: Delhi High Court

Date of Decision: May 14, 2019

Acts Referred: Copyright Act, 1957 " Section 2(o)

Hon'ble Judges: Prathiba M. Singh, J

Bench: Single Bench

Advocate: Aly Mirza, Rishabh Pant, Vikram Baweja

Final Decision: Allowed

Judgement

''''

Prathiba M. Singh, J",,,,

1. The Plaintiff " IGNOU has filed the present suit for permanent injunction restraining infringement of copyright, and for rendition of accounts. The",,,,

case of the Plaintiff is that it provides distance education to lakhs of students across the country in several courses. One of the courses conducted by,,,,

IGNOU is a Post Graduate diploma course in Journalism and Mass Communication ("PGJMC"). The course material for this course is prepared,,,,

under its aegis and directions. One of the course materials is titled as "New Communication Technologies" being Course-I, Unit No.4 of Block",,,,

No.3 of PGJMC. The author of the said course material is Shri V. Rama Rao. The said course material is a literary work,,,,

2. It came to the notice of the Plaintiff that Defendant No. 1- Dominant Publishers and Distributors had published a book titled "Modern,,,,

Communication Technologies" under the authorship of Defendant No. 2 " Mr. Y.K. D'Souza, and that several pages of the Plaintiff's course",,,,

material had been reproduced at pages 74 to 90 and pages 207 to 222 of the Defendants' book. For the sake of brevity, the course material of the",,,,

Plaintiff is referred to as "the original work" and the Defendants' work is referred to as "the impugned work",,,,,

3. The Plaintiff, thus, filed the present suit seeking an injunction restraining the Defendants, as also rendition of accounts. The reliefs sought in the suit",,,,

are as under:,,,,

“(1) A decree for permanent prohibitory injunction restraining the Defendants from in any manner selling/circulating/distributing the infringed book,,,

titled "Modern Communication Technologies" by Y. K. D'souza and from in any manner further reproducing the said copyright work. And",,,

appointment of a Commissioner for seizing the infringing copies of the work;,,,

(2) An order requiring the Defendants to render accounts for profits made by them from the sale of the infringing book,,,

(3) Grant Costs.â€œ,,,

4. The suit was listed on 28th October, 2003 when an interim injunction was granted by this Court restraining the Defendants from circulating and",,,,

distributing the infringing work. The operative portion of the said order is as under:,,,

â€œAccordingly, the defendants are restrained from further selling, circulating, distributing, in any manner, infringing copies of the book titled 'Modern",,,,

Communication Technologies' by Y. K. D'souza in any manner further reproducing the said instruction material in which plaintiff has copyright.â€œ,,,

5. The Defendant No.1 filed its written statement and one of the defences taken was that the impugned work was â€œbased on the fundamentals of,,,

electronics, which is a part of physics/science.â€œ It was further pleaded by Defendant No.1 that it was only a publisher and not the author of the book",,,,

in question. Defendant No.1 also claimed that the contents, which the Plaintiff complained of, are also contained in various other books.",,,

6. Defendant No.2 did not appear in the matter. On 14th May, 2004, the Court noticed that Defendant No.2 has refused to accept the summons.",,,

Accordingly, the suit was directed to proceed ex-parte qua Defendant No.2. The following issues were framed on 19th July, 2005.",,,

â€œI.. Whether the plaint discloses the cause of action against and is maintainable against defendant no.1? OPP,,,

2. Whether the Plaintiff is the owner of the copyright 'New Communications Technologies'? OPP",,,,

3. Whether the Defendants' work titled "Modern Communication Technologies" is not a substantial and material copy of the Plaintiffs work titled",,,,

New Communications Technologies"? OPD-1",,,,

4. Whether the defendants have infringed Plaintiffs copyright in "New Communication Technologies"? OPP",,,,

5. Reliefâ€œ,,,

7. On behalf of the Plaintiff, PW-1, Professor Shri V. Rama Rao, the author, and PW-2, Shri Ansar Husain, Deputy Registrar (Legal) have testified.",,,

On behalf of the Defendants, DW-1, Shri Amardeep Singh Saini tendered his evidence.",,,

8. PW-1 deposed that he was employed by IGNOU and that he had authored the original work. He further stated that the Defendantsâ€œ work,,,

contains various verbatim extracts of the Plaintiffâ€œs work and that IGNOU is entitled to an injunction. In cross examination, PW-1 stated that he was",,,,

not aware if any other authors had copied the Plaintiff's course material, as mentioned in the written statement. He specifically deposed as under: ",,,,

"Presently I am retired from IGNOU. I had personally seen the book published by defendant no. 1 and after going through the contents of book in,,,

question I came to know the contents therein have been copied from our material titled as ""New Communication Technologies"". I do not remember as",,,,

to when I came to know about the copying of our work. It is wrong to suggest that I have no personal knowledge of the case or that affidavit filed by,,,

me is false and incorrect or no work has been copied by defendants or that there was any infringement of copy right whatsoever or that I am deposing,,,

falsely. ",,,,

9. PW-2 stated that he did not have any knowledge as to whether the Plaintiff had taken action against any of the third party publishers, which were",,,,

mentioned in the written statement.,,,,

10. DW-1 in his cross examination stated as under:,,,

"The main clients of defendant no.1 since 1999 are D.K. Publishers and Distributors Pvt. Ltd. and U.B.S. Publishers and Distributors. The annual,,,

turnover of the company at present is around Rs. 80 lacs. The annual turnover of defendant no. 1 in the year 2003 might have been around Rs. 30,,,

lacs. I may be able to produce the balance sheet for the year 2003 if the same are available with me. I am also doing the business of publishing the,,,

works of individual authors. There are written agreements with the individual authors. I am not having the written agreement with Sh. Y. K. D'souza,,,

for publishing the infringing work title ""Modern Communication Technologies"". (Vol.) This work was obtained by us through Freelance Authors Group",,,,

Advertising Agency. Defendant no.1 had no written agreement with Freelance Authors Group Advertising Agency. (Vol.) Defendant no.1 had,,,

dispute with Freelance Authors Group Advertising Agency when it came to know that the agency was giving the same work to different publishers,,,

earlier also and later also. I might have given more than Rs.50,000/- as advance to Freelance Authors Group Advertising Agency. I do not remember",,,,

if this payment was given through cheque or cash. I might be having the records available with me showing the payment and the mode of payment to,,,

Freelance Authors Group Advertising Agency. I am not made any payment to Sh. Y.K. D'souza as the payment was made to the Freelance Authors,,,

S. No., Extract from the Plaintiff's book, Page no., Extract from the Defendants' book, Page no.

1., "As the name itself implies, new communication

technologies, are those which are of more recent

origin. Interactivity is their distinguishing feature. For

the purpose of this unit, new communication technologies can also be understood as those which are capable of a much higher degree of interactivity than that offered by traditional communication technologies. Writing, printing and electronic media like radio and television are examples of traditional technologies which are essentially oneway in nature. Therefore, their interactive capabilities are very limited.

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2. Already, Teleconferencing is an accepted form of technology in advanced countries, especially for business communications. It is only a matter of time before this technology becomes popular in countries such as ours, because the necessary infrastructure like telephone links and satellite are already available.

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3., "Ã¢â¬ÅFrom the above discussion, you may be inclined to think, that since these new technologies have certain undesirable effects, they might as well be avoided entirely. Such thinking, however, would be too short sighted and technophobic to be true. The history of technology is replete with instances of social instability and resistance upon introduction of major technological innovations.Ã¢â¬Å", "Ã¢â¬ÅFrom the above discussion, you may be inclined to think, that since these new technologies have certain undesirable effects on society, they might as well be avoided entirely. Such thinking, however would to short sighted and technophobic to be true. The history of technology is replete with instances of social instability and resistance upon introduction of major technological",²²²

fictitious person.,,,,

18. In the evidence of DW-1, who is the sole proprietor of Defendant No.1 publisher, he admits that one lot of books was printed of approximately",,,,

200-300 books. Even taking the maximum sales price of Rs.475/-, the total sales of the books would come to about Rs.1,42,500/-. If the profit margin",,,,

is considered to be 30%, the Plaintiff would be entitled to damages of Rs.50,000/-. Accordingly, the suit is decreed in terms of prayers (1) & (2),",,,,

which are in the following terms.,,,,

Ã¢â¬Å(1) A decree for permanent prohibitory injunction restraining the Defendants from in any manner selling/circulating/distributing the infringed book,,,

titled ""Modern Communication Technologies"" by Y.K. D'souza and from in any marmer further reproducing the said copyright work. And appointment",,,,

of a Commissioner for seizing the infringing copies of the work;,,,,

(2) An order requiring the Defendants to render accounts for profits made by them from the sale of the infringing book.Ã¢â¬Å,,,

19. Decree of permanent injunction is granted in favour of the Plaintiff and against the Defendants. Further, a decree of damages of Rs.50,000/- is",,,,

granted in favour of the Plaintiff and against the Defendants to, be paid on or before the next date. Since the Plaintiff is a University, which had to",,,,

litigate in the present suit for almost 16 years, actual costs are awarded in favour of the Plaintiff. Bill of Costs be submitted by Id. counsel for the",,,,

Plaintiff.,,,,

20. List for compliance on 10th July, 2019.".,,,,