

Long-drawn DU Photocopy Case Comes To An Abrupt End

By Annu A.

To the surprise and to the delight of many of those following the DU photocopy case, on March 9, 2017 the publishers filed for withdrawal of the copyright infringement suit filed against Rameshwari Photocopy shop and Delhi University and released a statement that they would not be appealing against the Delhi High Court Division Bench Order dated 9 December 2016. The Plaintiffs, in withdrawing the suit brought down the curtains on an avidly followed case, which piqued the interest of many including the legal fraternity, students and academics, authors of educational books and publishers of the same. In spite of the obvious relief of the students and educational institutions alike, one cannot help but wonder whether the legal fraternity in India missed an opportunity to gather clarity in the form of a discerning judgement elucidating on the finer aspects of Copyright law.

Visiting the facts of the case, in the year 2012, textbook publishers Oxford University Press, Cambridge University Press and the Taylor & Francis Group instituted a suit against Defendant No. 1, Rameshwari Photocopy Service, a photocopy shop situated on the campus of the Delhi School of Economics and running its shop under license from Defendant No. 2, the University of Delhi; said suit being instituted for infringement of the Plaintiffs' copyright by photocopying, reproducing and distributing copies of the Plaintiffs' publications and compiling them into course packs for sale. This case also saw student association, ASEAK and a group of academics, SPEAK being impleaded as Defendants.

On an application made by the Plaintiffs, the Court appointed a Local Commissioner who on visiting the premises of Defendant no.1 shop found that apart from the offending course packs, eight books of the publishers were photocopied completely. Based on the findings of the Local Commissioner, the Delhi High Court found in favour of the Plaintiff and by Order dated 17 October 2012, restrained Defendant no.1 from carrying out the infringing activities.

The Plaintiffs' suit was eventually dismissed by the Delhi High Court by Order dated 16 September 2016. The Court held that the Defendants' actions did not amount to infringement of copyright of the Plaintiffs and hence no trial was required in the suit. The Learned Judge reasoned that students borrowing the book from Defendant no. 2's library could legitimately photocopy the relevant pages and therefore Defendant no.2's action of making photocopies out of the books kept in its library, for distribution to the students did not constitute copyright infringement.

The Ld. Judge further found that Defendant no.1's actions of preparing and supplying course packs to the students for charge, under license from Defendant no.2, did not constitute

publication within the meaning of Section 52(1)(h) or tantamount to copyright infringement by the Defendant no.1 shop or the Defendant no.2 University. The Ld.Judge equated Defendant no.2's action of giving a license to Defendant no. 1 to make photocopies, to the action of the Bar Association library situated in the Court premises to allow a photocopier to install his machine within the library premises to aid advocates in obtaining copies of judgments within the Bar Association library, by paying the cost of photocopy fixed by the Bar Association.

In the context of section 52(1)(i) of Copyright Act, the Order stated that the legislature was not found to have imposed any limitation on the extent of reproduction which would unreasonably prejudice the legitimate interest of the author and therefore the Court could not impose the same.

One of the points urged by the Plaintiffs was that if the Defendant No.2 University were to take a license from Indian Reprographic Rights Organization(IRRO), a Society registered under the Copyright Act, the cost to the students would not be much more than was being already paid to the Defendant No.1 and the Plaintiffs would not be deprived of the IRRO license fee. The Ld. Judge was of the opinion that the question of issuing directions to the Defendant No.2 University to approach IRRO would arise only upon finding that Defendant No.2's actions did not fall under the exception to copyright infringement stated in Section 52 of the Copyright Act.

The Plaintiffs went in appeal and a Division bench of the Delhi High Court by Order dated 9 December 2016 restored the Plaintiffs suit but refrained from granting interim injunction to the Plaintiffs. Respondent No.2 was directed to maintain a record of course packs photocopied by it and supplied to the students, and file a statement thereof every six months.

The two triable issues were held to be (1) whether the inclusion of the copyrighted work in the course pack was justified by the purpose of the course pack i.e. for instructional use by the teacher to the class, and (2) whether photocopying of entire books as found by the Local Commissioner would be a permissible activity. The Plaintiffs were allowed to amend the plaint to include the factum of such photocopying.

Unexpectedly, on March 9, 2017, the publishers filed for withdrawal of the infringement suit. One of the factors for the publishers choosing this path may have been the letter requesting the publishers to withdraw the suit, signed by 309 noted academics and authors, of which 33 were authors mentioned in the suit. Also relevant is the letter of Nobel prize laureate Amartya Sen, urging the publishers to, "not draw on the full force of law to make these 'course packs' impossible to generate and use."

In April 2017, the IRRO filed a Special Leave Petition in the Supreme Court of India, challenging the order dated 9 December 2016 of the Division Bench of the Delhi High Court. The Supreme Court in May 2017 dismissed the petition on the grounds that the petitioners could not challenge the said order since the main suit itself has been withdrawn.

If the Suit had continued to trial, the Court would have in deciding on the triable issues, interpreted what reproduction of a literary work by a teacher in the course of instruction could include and whether the quantum of copying had relevance on deciding whether the exception under section 52(1)(i) had been breached. This was not to be!