

**CASE COMMENTARY OF THE CHANCELLOR, MASTERS
AND SCHOLARS OF THE UNIVERSITY OF OXFORD V.
RAMESHWARI PHOTOCOPY SERVICES, CS (OS)
NO.2439/2012 DECIDED ON 16TH SEPTEMBER, 2016.**

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Introduction:

The Indian Judiciary has played a significant role in dealing with the matters pertaining to the infringement of Copyright. It is left to the courts to decide whether the impugned act amounts to infringement or 'fair use'. The judicial endeavour can be very well observed through the judgments delivered by the apex court and various subordinate courts of India. While dealing with such matters, the court gives due regard to the Copyright legislation, International Conventions and the outcomes or decisions of Foreign Courts in the similar matters dealing with the related issues. The present case commentary highlights the influential areas and paramount issues which were raised before the court and proposition of the court while deciding the verdict. Also, attempts have been made to find out the existing loopholes and lacunas in the judgment because every decision has both the positive and negative effects on different segments of the society and criticisms are indispensable in the process of development.

Facts

On 14th August, 2012 a suit for Permanent Injunction was instituted (*The Chancellor, Masters and Scholars of the University of Oxford v. Rameshwari Photocopy Services*¹) by the Plaintiffs against Rameshwari Photocopy

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¹ CS (OS) No.2439/2012 decided on 16th September, 2016.

Services operating on the premises of University of Delhi restraining them from infringing their copyright by photocopying, distribution and reproduction of their work to the students, on large scale in the form of course packs. The said course packs sold by the photocopy shop were based on syllabus issued by the University for its students.

On 16th September, 2016 the Delhi High Court observed that the act of defendants did not amount to infringement of copyright of the Plaintiffs because the act of reproduction was meant solely for the purpose of education and there was an absence of commercial interest which justified the doctrine of 'fair use' contained in the Copyright legislation.

Issues

1. Whether the act of Defendant's amount to the reproduction of work of the Plaintiffs in the form of course packs?
2. Whether the Copyright of Plaintiff's is infringed by the act of Defendant's or the said act amounts to 'fair use' under Section 52 of the Copyright Act, 1957?

The provisions: right to reproduction and 'fair use'

The Copyright Act, as a piece of welfare legislation, aims at balancing the interest between the authors and society with a view to protecting the creations of the former on one hand and competing interests of the latter on the other hand. Section 14 of the Copyright Act, 1957 gives an exclusive right to the author to reproduce the work which has been created by him. Section 52 contains exceptions to section 14 wherein a person can perform the acts mentioned therein which amount to 'fair use', but if the right is exercised

beyond that, then it would amount to infringement under section 2(m) of the Act.

The court has given wide importance to the provisions contained in Section 52(1)(i) which deals with the reproduction of any work by teacher or pupil ‘in the course of instruction’ or for the purpose of answering the questions in an examination and thereby permitting the reproduction of work by way of photocopying the books and forming the same into course packs for academic purpose. It is evident from the past experience that Indian judiciary has allowed the reproduction of works by any means which is meant solely for educational purposes.

Article 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights is an enabling provision which provides flexibility in the form of limitations or exceptions whereby an exclusive right is given in certain special cases with a condition that they do not conflict with normal exploitation of the work and do not unreasonably prejudice the legitimate interest of the right holder. This is also known as ‘Three-Step Test’. This very provision has been dealt with in the present case with a view to excluding the reproduction of work in ‘special cases’ from the purview of infringement. This category of special cases is left to the member countries to decide as to what would fall under this regime. India has described the same under Section 52 of the Copyright Act, 1957.

Article 9(2) of the Berne Convention for the protection of Literary and Artistic works also permits the reproduction of ‘specific works’ by the member countries provided the same does not unreasonably prejudice the legitimate interests of the right holder. It can be very well said that the court has maintained a balance between article 13 of TRIPS and article 9(2) of the Berne Convention.

The role of education

It is imperative that the Constitution of India guarantees Education not only as a Fundamental Right but also as a Directive Principle of State Policy which finds mention under Articles 21, 21A, 39(f) and 41 respectively. Education is of vital importance as it enables a person to acquire knowledge and grasp information into various fields which ultimately entitles him to lead a life with honour, reputation and pride. He lives like a gentleman in the society and is able to fulfil each and every need of himself. Also, when a country is able to produce a maximum number of educated people, its development could be achieved in a short span of time than what it would achieve without education otherwise.

India is a developing country wherein only a small portion of the population is able to pay the cost of education and thus there is a tendency to Xerox the expensive books every time especially when the content is not available in one place or when it is scattered in variety of books, each one of them seems to be important from academics point of view.

It can be said that it is the responsibility of the state to ensure that the libraries of educational institutions especially the government institutions are well equipped with the basic infrastructure including various allied facilities to enable the candidates to have access to the resources which are relevant to their academic curriculum. It should not be taken as an excuse that due to the non-availability of funds, the institution is not able to meet the academic demands of students and thereby resorting to practices such as 'photocopying'.

With this judgment, a 'milestone' is achieved and from now onwards there shall be no bar in reproducing the work in any way for academic purposes. Moreover, there shall be liberty to photocopy as many copies as long as there is an absence of commercial interest while doing such activity.

The consequences

No doubt, this judgment has a far-reaching impact in a country like India where photocopying is being done on a large scale. The court has failed to take into account the future scenario because there would be no use of Copyright Law if photocopying is allowed on such a massive scale ignoring the interests of authors. And the most significant question is that does this justify the doctrine of fair use contained in Section 52(1)(i) of the Copyright Act, 1957?

Although, there is no question of substantiality in this case, but still it is pertinent to note that Indian legal system has not defined under the Copyright Law as to how much content of the work amounts to a substantial portion of it. The Indian judiciary is silent on this aspect and the same issue has also not been taken up in this case. The qualitative, as well as quantitative aspects are relevant to decide whether an act amounts to infringement or not.

The basic notion of Copyright Law is that everyone should be allowed to reap the benefits of his labour. This very notion is conveniently forgotten while delivering the judgment because it focuses majorly on the interest of the so-called 'academicians' without keeping in view the hard work or ingenuity which a person puts in while creating his work. A person spends his time, labour, skill, and judgment while writing even a single piece of paper and this case which is concerned with the 'books being photocopied' has allowed the photocopying without looking into the future impacts and the impression which the foreign authors would have had post this judgment.

Although article 13 of the TRIPS allows reproduction of works in special cases, the question is whether the photocopying of books from beginning till the end in the name of education without paying even a single penny to the authors is justified?

Conclusion

It can be concluded that the Court has taken care of the interest of academicians and has also taken due care of the fact that the availability of resources (in the form of study material) to the students is not compromised as the said act does not constitute the presence of commercial in any way. On the other hand, it can be very well said that the Court must have had pre-judged the judgment in advance, keeping in mind the positive response towards the academicians. Although the interest of academicians has been highlighted very deeply by the Court, yet there is no balancing of interest and thereby the Court has forgotten to take into consideration:

- Fair Use – This doctrine has not been elaborated from different perspectives.
- The interest of authors – No remedy has been provided and their work is open to being exploited by photocopying.
- The Three-Step Test – It has not been looked into carefully from different angles.

