

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO(OS) No.319/2007 and CM Nos.11360-61/2007 & 4314/2008

% **Date of decision : 3rd April, 2008**

Pearson Education Inc. Appellant
Through Mr.Rajiv Nayar, Sr. Advocate with
Mr.Akash Chittranshi and Mr.Rahul
Berwar, Advocates

versus

S.M. Saifullah and others Respondents
Through Md. Mobin Akhtar, Advocate for R-1.
Mr.Vishal Arun, Advocate for R-2-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

DR. MUKUNDAKAM SHARMA, CJ :

1. This appeal is directed against the judgment and order passed by the learned Single Judge disposing of a number of applications. The appellant herein is particularly aggrieved by the order passed whereby two applications, one under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure moved by the appellant / plaintiff and the other under order XXXIX Rule 4 of the Code of Civil Procedure moved by the respondents / defendants were disposed of. At the time of issuance of summons in the suit, an ad interim injunction in respect of alleged

violation of copyright by the defendants was granted. The respondents / defendants filed a reply to the aforesaid application and also filed an independent application under Order XXXIX Rule 4 of the Code of Civil Procedure praying for vacation of interim injunction which was granted.

2. After hearing arguments on both the aforesaid applications, the impugned order was passed, which is under challenge in this appeal. The learned Single Judge, while passing the aforesaid order held that the respondent / defendant has merely reproduced some definitions, arrangement of topics, arrangement of analysis and, therefore, it cannot be prima facie said that the books of the defendant / respondent were copies of the plaintiff's books.

3. Having held thus, the learned Single Judge proceeded to observe that it is an undisputed fact that the books of the respondents were on scientific and technical subjects written to meet the requirements of the students of universities pursuing studies in MCA etc. and that the said books were bound to have discussion only on the common engineering topics. After recording the aforesaid findings, the learned Single Judge held that on the basis of a few definitions, it cannot be said that the respondents have infringed the copyright of the appellant and that the appellant has miserably failed in showing prima facie that there was an infringement of copyright of the plaintiff's work. The aforesaid findings and the conclusions arrived at by the learned Single Judge are under challenge in this appeal on which we have

heard learned counsel appearing for the parties.

4. The learned counsel appearing for the appellant has submitted before us that the learned Single Judge has misread and misapplied the law relating to violation of copyright and thereby recorded a wrong finding. Counsel appearing for the respondents, however, submitted before us that the books of the respondents were highly scientific and technical books and the principles and theories being of a technical nature would always have to be identical and same to those of the theories and principles mentioned in the books of the appellant and, therefore, the same cannot in any manner amount to infringement or violation of the copyright.

5. Counsel appearing for the parties during the course of their arguments referred to and relied upon the decision of the Supreme Court in **R.G. Anand v. M/s Delux Films and others** reported as AIR 1978 SC 1613. The said decision relates to the question of violation of copyright and specifically deals with as to how such a fact could be determined. In paragraph 45 of the said judgment, the Supreme Court elucidated the law when it observed as follows:

“45. Thus, the position appears to be that an idea, principle, theme, or subject matter or historical or legendary facts being common property cannot be the subject matter of copyright of a particular person. It is always open to any person to choose an idea as a subject matter and develop it in his own manner and give expression to the idea by treating it differently from others. Where two writers write on the same subject similarities are bound to occur because the central idea of both is the same but the similarities or

coincidences by themselves cannot lead to an irresistible inference of plagiarism or piracy. Take for instance the great poet and dramatist Shakespeare most of whose plays are based on Greek-Roman and British mythology or legendary stories like Merchant of Venice, Hamlet, Romeo Juliet, Julius Caesar etc. But the treatment of the subject by Shakespeare in each of his dramas is so fresh, so different, so full of poetic exuberance, elegance and erudition and so novel in character as a result of which the end product becomes an original in itself. In fact, the power and passion of his expression, the uniqueness, eloquence and excellence of his style and pathos and bathos of the dramas become peculiar to Shakespeare and leaves precious little of the original theme adopted by him. It will thus be preposterous to level a charge of plagiarism against the great play-wright. In fact, throughout his original thinking, ability and incessant labour Shakespeare has converted an old idea into a new one, so that each of the dramas constitutes a master-piece of English literature. It has been rightly said that "every drama of Shakespeare is an extended metaphor". Thus, the fundamental fact which has to be determined where a charge of violation of the copyright is made by the plaintiff against the defendant is to determine whether or not the defendant not only adopted the idea of the copyrighted work but has also adopted the manner, arrangement, situation to situation, scene to scene with minor changes or super additions or embellishment here and there. Indeed, if on a perusal of the copyrighted work the defendant's work appears to be a transparent rephrasing or a copy of a substantial and material part of the original, the charge of plagiarism must stand proved. Care however must be taken to see whether the defendant has merely disguised piracy or has actually reproduced the original in a different form, different tone, different tenor so as to infuse a new life into the idea of the copyrighted work adapted by him. In the latter case there is no violation of the copyright."

6. In paragraph 46, after careful consideration and elucidation of the various authorities and the case law on the subject, the Supreme Court laid down the following propositions:

"46. Thus, on a careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge :

1. There can be no copyright in an idea, subject matter,

themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case law discussed above.

7. Where however the question is of the violation of the copyright of stage play by a film producer or a Director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader perspective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a

totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.”

7. Counsel for the parties also placed before us a number of foreign judgments other than the aforesaid judgment. However, we are of the considered opinion that the aforesaid decision of the Supreme Court is binding on all of us, which was rendered after noticing all laws on the subject. In the light of the aforesaid legal propositions laid down by the Supreme Court, we may now proceed to examine the facts of the present case.

8. We have carefully examined the decision rendered by the learned Single Judge. He has also made reference to the aforesaid decision in **R.G. Anand** (supra). Unfortunately, while referring to the aforesaid judgment, the learned Single Judge added certain words, which are in fact not stated in the decision of the Supreme Court. The learned Single Judge while referring to the aforesaid decision stated that the Supreme Court held that “there can be no copyright in a subject matter, themes, plots or historical or legendary **or scientific facts** and violation of copyright in such cases is confined to the form, manner, arrangement and expression of the topics by the author of copyright work.”

9. We have scanned through the aforesaid judgment of the Supreme Court very carefully and we are unable to find therein the expression “**or scientific facts**” referred to by the learned Single

Judge in the aforesaid judgment. The original version reads as “there can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of” Scientific facts are not expressly and specifically referred to in the aforesaid expression as found in paragraph 46 of the said judgment. What is to be examined, therefore, is whether there is any similarity in the form, manner and arrangement and expression of the idea and whether there is any dissimilarity or difference in the treatment of the subject.

10. There is no doubt that the books involved in the present case are scientific and technical books. The themes in those books could be the same, but the presentation, treatment and the expression of the same theme would be different and cannot be identical. We have examined the original books and compared them with the books against which allegation of infringement is made in order to find out whether there was any intention to copy the original, and particularly the portions thereof which are shown to be reproduction by the appellant from their books. Some of the passages from the books published by both the parties, where similarity in the passages is apparent, find mention below:

Appellant's publication titled – Computer Networks – by Tannenbaum	Defendant's publication titled- Computer Networks – by Subramanyam
Chapter 1 : Page 1	Unit 1:Page 1-2
Introduction : Each of the past three centuries has been dominated by a single technology. The 19th Century was the age of steam engine. The 18th century was the era of the great mechanical systems accompanying the Industrial Revolution. During the 20th century, the key technology was information gathering, processing, and distribution. As a result of the technological progress, these areas are rapidly converging and the differences between collecting, transporting, sorting, and processing information are quickly disappearing. During the first two decades of their existence, computer systems were highly centralized, usually within a single large room.	Introduction : Each of the past three centuries has been dominated by a single technology. The 19th Century was the age of steam engine. The 18th century was the era of the great mechanical systems accompanying the Industrial Revolution. During the 20th century, the key technology was information gathering, processing, and distribution. Because of rapid technological process, there is a rapid converging and differences between collecting, transporting, sorting, and processing information are quickly disappearing. Earlier computer systems were highly centralized ideally with in a single room.
Chapter 1:Page 5	Unit 1: Section 1.3.1:Page 5
When one worker makes a change to an online document, the others can see the change immediately, instead of waiting several days for a letter.	If one changes the on-line report, the other can see the change immediately, instead of waiting for several days for a letter.

Chapter 1:1.1.2:Page 6	Unit 1:1.3.2:Page 5 & 6
1.Access to remote information 2.Person-to-person communication 3.Interactive entertainment Access to remote information comes in many forms. It can be surfing the World Wide Web for information or just for fun. Information available includes the arts, business, cooking, government, health, history, hobbies, recreation, science, sports, travel, and many others. Fun comes in too many ways to mention, plus some ways that are better left unmentioned.	1.Access to remote information 2.Person-to-person communication 3.Interactive entertainment Access to remote information will come in a category of interaction between person and remote data base. Many people their bills managing bank accounts, home shopping, making reservations, booking cinema tickets, on-line news paper, on-line digital library. Another application which fall on this category to access information on WWW, which contains information about arts, business, government, health, society, sports, travel and too many other topics.
CHAPTER 4:Page 247	Unit-2:2-2
In any broadcast network, the key issue is how to determine who gets to use the channel when there is competition for it.	In any broadcast network, the key issue is how to determine who gets to use the channel when there is competition for it.
Chapter 4: Page 251	Unit 2:Page 2-5, Page 2-6
The basic idea of an ALOHA system is simple: let users transmit whenever they have data to be sent.	The basic idea of an ALOHA system is simple: let users transmit whenever they have data to be sent.
Chapter 5:Page 343	Unit 3.0:Page 3-2
These issues include the service provided to the transport layer and the internal design of the subnet.	It includes service provided to the transport layer and the internal design of the subnet.

Appellant's publication titled "Compilers Principles, Techniques, and Tools" by Alfred V. AHO, Ravi Sethi, Jeffrey D.Ullman	Defendant's publication titled "Language Processors" S.Ruparani
Chapter 1, Sec.1.1, page 1-2	Unit 1.5, page 1-5
<u>COMPILERS</u> Simply stated, a compiler is program that reads a program written in one language - the source language - and translates it into an equivalent program in another language - As an important part of this translation process, the compiler reports to its user the presence of errors in the source program. Compilers are sometimes classified as single pass, multi pass, load and go, debugging, or optimizing, depending on how they have been constructed or on what function they are supposed to perform.	<u>COMPILERS</u> Compiler is a program that reads a program written in one language (source language) and translates it into an equivalent program in another language (target language). In this translation process the compiler reports to its user the presence of errors in the source program. Compilers are classified as single pass, multi pass, load and go, debugging or optimizing, depending on how they are constructed and what function they perform.
Chapter 3, Sec.3.5	Unit 1.14
A language for Specifying Lexical Analyzers : Page 105 & 107 We describe a particular tool, called Lex, that has been widely used to specify lexical analyzers for a variety of languages. We refer to the tool as the Lex compiler, and to its input specification as the Lex language.	1.4 Lex Programs to perform Lexical Analysis of Pascal & C: Page 1-28 & 1-29 Lex is a tool which is used to specify lexical analyzers for a variety of languages. This tool is referred to as the Lex compiler, and its input specification is called as the Lex language.

First, a specification of a lexical analyzer is prepared by creating a program lex.1 in the Lex language. Then, lex.1 is run through the Lex compiler to produce a C Programme lex.yy.c. The program lex.yy.c consists of a tabular representation of a transition diagram constructed from the regular expressions of lex.1, together with a standard routine that uses the table to recognized lexmes. Finally, lex.yy.c is run through the C compiler to produce an object program a.out, which is th lexical analyzer that transforms an input stream into a sequence of tokens. Figure 3.17 Creating a Lexical Analyzer with Lex	First, a specification of a lexical analyzer is prepared by creating a program lex.1 in the Lex language. Then, lex.1 is run through the Lex compiler to produce a C program lex.yy.c. The programme lex.yy.c consists of a tabular representation of a transition diagram together with a table to recognize lexmes. Finally, lex.yy.c. is run through the C compiler to produce an object program a.out, which is the lexical analyzer that transforms an input stream into a sequence of tokens. Figure 1.16 Creating a Lexical Analyzer with Lex
--	---

Plaintiff's book titled "Introduction to Automata Theory" by John E.Hopcroft, Rajeev Motwani, Jeffery D. Ullman	Defendant's book titled "Theory of Computation" by P.Niranjan Reddy
Chapter 1, Unit 1.1, page 2	Unit I, Chapter 2, page2-2
For the moment, let us jut list some of the most important kinds: 1. Software for designing and checking the behaviour of digital circuits 2. The "lexical analyzer" of a typical compiler, that is, the compiler component that breaks the input into logic, units, such as identifiers, keywords and punctuation.	Applications: The following are some of the important applications of the finite automation. 1. Software for designing and checking the behaviour of digital circuits 2. In the lexical phase of a typical compiler, that is to break up given input text into logical units.

3. Software for scanning large bodies of text such as collection of web pages, to find occurrences of words, phrases, or other patterns	3. Software scanning large bodies of text, such as collections of web pages, to find occurrences of words, phrases, or other patterns
4. Software for verifying systems of all types that have a finite number of distinct states, such as communications protocols or protocols for secure exchange of information	4. Software for verifying systems of all types that have finite number of distinct states, such as communications protocols or protocols for secure exchange of information.

The afore-extracted comparisons are only specimens of the voluminous similar data placed on record by the appellant in the form of Annexures- C,D,E, and F. The said comparisons would clearly establish that there are similarities in the expressions used. There are also a number of similarities in the introduction chapter wherein almost identical expression of the idea is used from the books of the appellant. The authors, who have written the books on behalf of the respondent No.1, appears to have not only taken the facts and materials from the books of the appellant, but also the treatment and the expression appear to be the same at material places, both in the form and in the manner of expression of the idea. There are voluminous materials extracted from the various parts of the books and from different chapters thereof which are verbatim or near verbatim reproduction from the books of the appellant. Despite the fact that the aforesaid reproduced materials have been brought to our notice which are found

to be similar and identical with those of the books of the appellant, which are used by the respondent in their books, the learned Single Judge held that as the books are on scientific and technical subject, therefore, there would be definitely discussion only on the common aspects and common engineering aspects and, therefore, it cannot be said that the defendants / respondents have infringed the copyright of the plaintiff / appellant. The said deduction, in our considered opinion, cannot be held to be justified and we find the same to be erroneous.

11. We could have understood if the reproduction is only limited and restricted to the subject-matter or the themes, and in that event possibly the position would have been different, but here is a case where there is total reproduction and complete imitation of the copyrighted work in some places. Most of the materials placed before us would indicate that in many theories and expressions used in the various chapters of the book, one or two sentences from the original books are dropped whereas the rest are used and reproduced in the same manner and with similar expression as that of the original books. Once the said materials are compared, it would be established that what is used by the respondents in their books is substantial and material reproduction of the work of the appellant. Being a scientific and technical book, theme could be said to be the same but unfortunately in the present case, the same is not presented differently from the books of the appellant and it appears to be verbatim

reproduction in many passages, as is evident from the materials which are available on record. The same indicates the intention to copy the original. It, therefore, cannot be said that the work of the respondent is completely new or primary. The respondents have not been able to show any broad material dissimilarities in the passages and in the materials which are part of the records.

12. The appeal is, therefore, allowed and the order of the learned Single Judge is set aside. There shall be an injunction restraining the respondents from publishing, offering for sale or advertising their publications titled 'Computer Networks', 'Language Processors' and 'Theory of Computation'.

13. It is also made clear that the observations made herein are only for the purpose of deciding the present appeal arising from the order passed by the learned Single Judge in the applications under Order XXXIX Rules 1&2 and Order XXXIX Rule 4 of the Code of Civil Procedure and it shall have no bearing on the merits of the suit, which shall be decided independently on its own merits after allowing the parties to lead their evidence.

CHIEF JUSTICE

REVA KHETRAPAL, J

3rd April, 2008
nm