

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

DECIDED ON: 08.10.2010

+ **CS (OS) 6/2010, I.A. No.64/2010**

SHIV KHERA Plaintiff
Through: Mr. Sakal Bhushan, Advocate.
versus

RAHUL ANAND Defendant
Through: Mr. Peeyush Vaish, Advocate.

**CORAM:
MR. JUSTICE S. RAVINDRA BHAT**

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

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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1. The plaintiff seeks permanent prohibitory injunction against the defendant to restrain use, reproduction and publishing his works either directly or indirectly, copyright in which vests with the plaintiff. Consequential relief of a decree for damages for copyright infringement is also sought.

2. The plaintiff is an author, educator and business consultant. He is also a much sought-after speaker of international repute for having written several best sellers motivational books such as “You can win”, “Living with honour”, “Freedom is not free” etc. The plaintiff is also the founder of the Qualified Learning Systems INC, USA. The plaintiff claims to have invested a huge sum of money, time and effort in development his website www.shivkhera.com. The website contains a compendium on the plaintiff’s professional life and includes a detailed data of his professional achievements, and description of his international clientele. The details and description of the awards and commendation received by the plaintiff are also listed in the

website. It is submitted that having regard to the skill, labour, intellectual capital and money invested by and on behalf of the plaintiff in the development of his website, he is entitled to protection under the Copyrights Act, 1957.

3. The suit alleges that the plaintiff became aware about the defendant's claim to be an author, speaker and motivator and who has resorted to creation of the website www.rahulanand.org. This website, it is stated, has almost entirely copied the contents of the plaintiff's website even to the extent of the achievements and commendations received. It is submitted that the website layout besides reproducing in *toto* the description of the plaintiff's achievements also has mirrored it by other contents such as advice/sections as "Master selling skills", "Positive parenting", "Public speaking", "Communications", "Time management" and so on.

4. The plaintiff has produced copies of his website as well as that of the defendant in order to establish and substantiate his allegations; these are reproduced between pages 2 - 35 of the list of documents. In addition, the plaintiff has reproduced a comparison of the two websites and also salient features in the plaint.

5. On the first date of hearing of the present suit, i.e., 08.01.2010, the Court granted an *ad interim* injunction in the following terms: -

"The plaintiff sues the defendant for copyright infringement. The plaintiff claims to be well known Educator, Motivator and Author of several books. It is submitted that the plaintiff designed a website - www.shivkhera.com. Copies of the webshots of which are placed on the record. The plaintiff claims to be aggrieved by the defendant's unlawful appropriation of the contents of the said website. To establish this, the plaintiff has placed on the record copies of webshots of the defendant's website www.rahbullanand.org.

It is pointed out that the plaintiff's website and its contents in substantial part have been copied; learned counsel points to the instances where the plaintiff's laudatory references by the third parties who state having benefitted from his works, have been copied with the modification that the reference is changed to that of the defendant. It is also submitted that the infringing website has copied the format of the plaintiff's website and all its contents, which amounts to infringement.

The Court has considered the submissions and the pleadings. The documents on record prima facie establish that the contents of the plaintiff's website have been copied in material particulars. The defendant does not appear to have been satisfied by copying the general format but even appears to have copied the quotes and substituted his name instead that of the plaintiff.

Having regard to these materials, the defendant is hereby restrained from reproducing, using or publishing the plaintiff's work or continue in any manner and present the contents of the plaintiff's website till next date of hearing, in his website www.rahulanand.org till the next date of hearing."

6. The subsequent orders dated 12.03.2010 shows that the defendant was represented; but no written statement had been filed. Later still, on 27.7.2010, again it was noticed that the defendant did not chose to contest the proceedings by filing the written statement; he was also not represented. In these circumstances, when the matter was called out today, the defendant's counsel is present; however, no written statement has been filed. The time permitted by the Code of Civil Procedure to file the written statement has also long since elapsed. In the circumstances, the Court is of the opinion that appropriate orders can be made in terms of Order-VIII, Rule-10, CPC to proceed to judgment.

7. Copies of the rival websites of the plaintiff and the defendant have been produced along with the list of documents. The defendant has not cared to contest the proceeding. The comparison of the plaintiff's website with the defendant's website, may be made through the following extracts:

The Plaintiff's website:

"Mr. Shiv Khera is the founder of **Qualified Learning Systems Inc. USA**. An Author, Educator, Business Consultant and successful Entrepreneur, he is a much sought-after speaker.

He inspires and informs people, helping them to realize their true potential. He has taken his dynamic personal messages to opposite sides of the globe, from the U.S. to Singapore. His 30 years of research, understanding and experience has helped people on the path of personal growth and fulfillment.

He has been recognized as a **"Louis Marchesi Fellow"** by the **Round Table Foundation**, an award given to, among others **Mother Teresa**. Lions Club International has honoured Mr. Khera with **"Lifetime Achievement Award"** for the cause of **'Humanitarian Service to Society'**. Rotary Club has honoured him with the **"Centennial Vocational Award for Excellence."**

Mr. Shiv Khera's client list includes, among others, **Lufthansa, Johnson & Johnson, Motorola, Nestle, GSK, Tetrapak, Phillips, Gillette, HSBC, Carrier, IBM, Ericsson and GM**. He has appeared on numerous radio and television shows.

Mr. Khera is the author of 12 books including **International Best Seller** book “**YOU CAN WIN®**”, which has sold over **2 million copies** in 16 languages.

Tens of thousands have benefitted from his **dynamic workshops internationally** in 17 countries and over **one million** people have heard him as a **Keynote Speaker**.

His Trade Mark is “**Winners don’t do different things. They do things differently.**”® - SHIVKHERA

THE DEFENDANT’S WEBSITE:

“**Mr. Rahul Anand** is the founder of **Qualified Learning Systems Inc. USA**. An Author, Educator, Business Consultant and successful Entrepreneur, he is a much sought-after speaker.

He inspires and informs people, helping them to realize their true potential. He has taken his dynamic personal messages to opposite sides of the globe, from the U.S. to Singapore. His 10 years of research, understanding and experience has helped people on the path of personal growth and fulfillment.

He has been recognized as a “**Louis Marchesi Fellow**” by the **Round Table Foundation**, an award given to, among others **Mother Teresa**. Lions Club International has honoured Mr. Rahul Anand “**Young Achievers Award**” for the cause of '**Humanitarian Service to Society**'.

Mr. Rahul Anand's client list includes, among others, **Lufthansa, Johnson & Johnson, Motorola, Nestle, GSK, Tetrapak, Phillips, Gillette, HSBC, Carrier, IBM, Ericsson** and **GM**. He has appeared on numerous radio and television shows.”

8. In addition to the above content, the 17 printouts from the plaintiff’s website and the 17 printouts from the defendant’s website, in all the particulars, be it the web design layout, or choice of words and expression, and even the content, shows complete identity. This is not plagiarism, but downright copying of the plaintiff’s website concept, content, and even achievement, by the defendant. While no one can claim copyright of arrangement of words, that conveniently convey certain ideas, if they are common ideas, at the same time no one can copy another’s expression, to the extent of complete identity of the web site layout, and the content. Had the defendant stated that he is, like the plaintiff, an internationally known consultant, and motivational expert, and listed his unique achievements, in his website, perhaps there could have been a justification. His silence, on the one hand, and complete identity in the content, to the detail of the description of awards, commendations, etc, received by the plaintiff, leaves no room

for such an argument; it clinchingly points to blind copying of the plaintiff's website content, and concept.

9. The plaintiff's website shows application of mind, in the sequencing and thematic arrangement of various sections. The first page is about the author; the second "drop down" section contains webpages such as Profile, Accomplishments; Social Activities and downloads. The second drop down section contains the description of Training Programmes, and the other drop down sections include Client List, Testimonials, and Client List. These satisfy the minimum creativity test, required of an author as postulated by the Supreme Court, in *Eastern Book Company v Modak* 2008 (1) SCC where it was held that creative and intellectual effort, and not mere product of "sweat of the brow" which amount to original works, entitled to copyright protection, under the Copyright Act. The plaintiff's website and contents, in this court's opinion are not a mere compendium of his achievements, but selected and arranged with a thought in mind, about the kind of readership or viewership it is likely to attract. The plaintiff, being the creator of such website, and also its author, is entitled to copyright protection, since it falls within the definition "literary work". By virtue of Sections 13 and 14, the plaintiff has the right to control reproduction of such work. The defendant has not disclosed that he sought the plaintiff's permission to use such content, or the website layout. His action in reproducing such content, and also copying the general website layout amounts to website content theft, and is therefore, infringement, under Section 51.

10. In view of the above findings, the court is of opinion that the plaintiff is entitled to permanent and perpetual injunction. Although the plaintiff has not produced any material to prove damages, the court is of the opinion that ends of justice, in this case, should be met with if the court were to impose heavy costs. The plaintiff is accordingly entitled to a decree for injunction as claimed. The suit is decreed, to the above extent, with costs, quantified at ₹ 1,00,000/- (Rupees one lakh only) to be paid to the plaintiff, by the defendant.

**S. RAVINDRA BHAT
(JUDGE)**

OCTOBER 08, 2010

