

* **HIGH COURT OF DELHI : NEW DELHI**

+ **CS(OS) No.1785/2007**

Ms. J.K. Rowling & Ors. ...Plaintiffs

Through : Ms. Jyoti Taneja with Mr. Shine
Joy, Advocates

Versus

City Publication & Anr. ...Defendants

Through : Ex-parte

Reserved on: December 22, 2009

Decided on : January 13, 2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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

MANMOHAN SINGH, J.

1. The plaintiffs have filed the present suit for permanent injunction restraining infringement of copyright and trademark, rendition of accounts of profits, damages, delivery-up etc.

2. The brief facts of the case are that the plaintiff No.1, Ms. J.K. Rowling is the creator and author of several original literary works including the world famous 'Harry Potter' series of children's literature titled as:-

a) *Harry Potter and the Philosopher's Stone* first published in 1997

b) *Harry Potter and the Chamber of Secrets* first published in 1998

c) *Harry Potter and the Prisoners of Azkaban* first published in 1999

d) *Harry Potter and the Goblet of Fire* first published in 2000

e) *Harry Potter and the Order of the Phoenix* first published in 2003

f) *Harry Potter and the Half Blood Prince* first published in 2005

g) *Harry Potter and the Deathly Hallows* first published in 2007.

3. Ms. Rowling, the plaintiff No.1, is the owner of all copyright in the literary works under the Harry Potter series as mentioned hereinabove. The said works are original literary works as contemplated under Section 2(o) of the Copyright Act, 1957.

4. Plaintiff No.1's Harry Potter series of children's books are a modern day publishing phenomenon and one of the most glaring success stories in the history of global publishing business. In the last eight years, over 300 million (30 crore) copies of the works under the Harry Potter series have been sold worldwide in more than 200 countries and have been translated into 62 languages – an unprecedented publishing achievement in the shortest span of time. The Harry Potter books have been widely publicized and loved by millions of children and adults around the world. The central character "Harry Potter", a young master of wizardry lives in the vivid imagination of millions of children across continents.

5. In 1996, Ms. Rowling (plaintiff No.1) received an offer to publish her first book in the series from Bloomsbury Children's Book, a

division of Bloomsbury Publishing Plc. (plaintiff No.2). Subsequently, plaintiff No.1 entered into a Publishing Agreement dated 29th July, 1996 with plaintiff No.2.

6. Plaintiff No.2 is one of Europe's leading and reputed independent publishing house especially in literary fiction, non-fiction and children books with a highly valuable portfolio of intellectual properties. Additionally, Plaintiff No.2 has a worldwide reputation for Media and Electronic Reference Publishing and Children's Publishing.

7. Bloomsbury Children's Books and Fiction Divisions are the other two strength areas of the plaintiff no.2. Publishing works for children accounts for a highly reputed and successful list of titles from the Plaintiff no.2 which includes successful authors such as J.K. Rowling, Debi Gliori, Sharon Crech, Benjamin Zephaniah, Jeanette Winterson and Alexander McCall Smith.

8. In June, 1997, plaintiff No.2 published plaintiff No.1's first work in the series titled "*Harry Potter and the Philosopher's Stone*" and the world was introduced to Harry Potter. Within few months of the publication, the world was reeling under the spell and charisma of "Harry Potter". In September, 1998 the US edition of *Harry Potter and the Philosopher's Stone* titled *Harry Potter and the Sorcerer's Stone* was published by Scholastic Inc. In 1998 the world was introduced to the second title in the series, *Harry Potter and the Chamber of Secrets*, published by plaintiff No.1. The third book was published in July, 1999 to worldwide acclaim and massive media attention.

9. In June, 2000, the plaintiff No.2 appointed Penguin Books

India having its registered office at 11, Community Centre, Panchsheel Park, New Delhi-110017 as its exclusive distributor in India for all books published by them in the United Kingdom and the United States of America including the Harry Potter books.

10. *Harry Potter and the Goblet of Fire*, the fourth book in the series was published by Bloomsbury in July, 2000 with a record first print run in the United Kingdom.

11. As per plaintiff, all the above mentioned books under the Harry Potter series were published by Plaintiff No.2 under exclusive license from Plaintiff No.1.

12. In July, 2005 Ms. Rowling's sixth book in the Harry Potter series titled *Harry Potter and the Half Blood Prince* was published by Plaintiff No.2 under exclusive license dated 19th November, 2004 with Plaintiff No.1.

13. By virtue of agreement dated 12th November, 2006 Plaintiff No.2 acquired and owns all intellectual property rights including copyrights in the artistic work comprising the cover of the UK edition of Plaintiff No.1's work entitled *Harry Potter and the Deathly Hallows* published by Plaintiff No.2. It is alleged that the said work is an original artistic work as contemplated in Section 2(c) of the Copyright Act and the said work was first published in United Kingdom.

14. Plaintiff No.3 diversified and successful motion picture and television studio in the world began as Warner Bros. Studios when, decades ago, the brothers Warner (Albert, Sam, Harry and Jack) incorporated their fledgling movie business into a company. In 1927, CS(OS) No.1785/2007

Plaintiff No.3 released the world's 1st synchronized-sound feature film titled "*The Jazz Singer*".

15. Plaintiff No.1 has granted to Plaintiff No.3 Warner Bros. the rights to create motion pictures based on the Harry Potter series of books as well as the trademark rights and merchandising rights as regards the characters, titles and other properties relating to the books. Plaintiff No.3 has produced and released to date five cinematographic works titled "*Harry Potter and the Sorcerer's Stone*", "*Harry Potter and the Chamber of Secrets*", "*Harry Potter and the Prisoners of Azkaban*", "*Harry Potter and the Goblet of Fire*" and "*Harry Potter and the Order of the Phoenix*" based on the works by Plaintiff No.1.

16. By virtue of an agreement dated 29th October, 1999, Warner Bros., Plaintiff No.3, owns the copyrights and all other intellectual property rights in and to the visual reproduction of the theme Harry Potter including the logo of the Hogwarts School of Magic and including all copyrights in the artwork and illustrations of the cover of the US edition of the works comprising the Harry Potter series including the cover of the recently released title *Harry Potter and the Deathly Hallows*.

17. In India Plaintiff No.3 has applied for and obtained registration for the trademark Harry Potter, characters and titles of the books and the film under the provisions of the Trademark Act, 1999 in various classes including in classes 9, 16, 25 and 28.

18. On 28th July, 2007 Plaintiff No.2 was informed that the police in Bangalore had seized 1500 copies of a book titled *Harry*

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Potter and the Deathly Hallows (hereinafter referred to as the “infringing books”) the front cover of which was identical to Plaintiff No.2’s publication titled *Harry Potter and the Deathly Hallows* and the back cover was identical to Plaintiff No.3’s artwork for *Harry Potter and the Deathly Hallows*. The alleged infringing books were in paper back edition and had been printed on very poor quality paper with cheap ink and seemed to be a pirated version of the original book published by Plaintiff No.2. Further comparison of the infringing books with the original publication confirmed that the seized books were fakes. The infringing books were seized from City Publication – the defendant No.1 in these proceedings located at No.400, 5th Cross, Pete Channappa Estate, Kamakshipalya Bangalore-79. Accordingly, an FIR was lodged with Kamakshipalya Police Station in Bangalore.

19. The plaintiffs submit that the infringing book revealed the following:-

- a. The title of infringing book was identical to the title of the Plaintiff’s publication *Harry Potter and the Deathly Hallows*.
- b. The infringing book was falsely attributed to have been published by Plaintiff No.2 and the Plaintiff No.2’s imprint name and mark Bloomsbury appeared prominently on the front cover, spine and title pages of the book.
- c. The infringing book was falsely attributed to have been authored by Plaintiff No.1 and Plaintiff No.1’s name J.K. Rowling was appearing prominently on the front and back cover, spine and title pages of the book.

d. The copyright page in the infringing book had been ad-
verbatim reproduced without the permission from Plaintiff
No.2's preceding publication in the Harry Potter series namely
Harry Potter and the Half Blood Prince.

e. The front cover of the infringing book was an unauthorized
identical reproduction of the cover of the U.K. edition of
Plaintiff No.1's work titled *Harry Potter and the Deathly
Hallows* published by Plaintiff No.2, wherein the copyright in art
work comprising the cover vests with Plaintiff No.2.

f. The back cover of the infringing book is an unauthorized
identical reproduction of the cover of the US edition of Plaintiff
No.1's work titled *Harry Potter and the Deathly Hallows*
wherein the copyright in art work comprising the cover vests
with Plaintiff No.3.

g. The title page of the book contains an unauthorized
reproduction of the Plaintiff No.3 art work comprising the logo
of the Hogwarts School of Magic. The said logo of Hogwarts
School appears on the title page on all the publications in the
Harry Potter series published by the Plaintiff No.2.

h. A perusal of the contents of the book revealed that the same
was an unauthorized adaptation of the Plaintiff No.1 works
under the Harry Potter series as the defendants had without
permission copied the characters, their names, the
expression/description of the characters, their locations, actions,
accompaniments from the Plaintiffs' works in the Harry Potter

series. The defendants had copied the main character Harry Potter, the co-cast including Ron Weasley, Hermione Granger, Prof. Albus Dumbledore, The Dursleys including uncle Vernon Dursley, Aunt Petunia Dursley and cousin Dudley Dursley, Lord Voldemort, amongst many others. The defendants have copied the settings, locations for example the Dursley residence at Privet Drive, the Hogwarts Express-the train which took Harry Potter to the Hogwarts School of Magic, the Hogwarts School etc. apart from many other similarities.

20. The plaintiffs argued that the defendants have substantially reproduced the Plaintiffs' works under the Harry Potter series by reproducing the Plaintiffs' characters, names, various expressions, settings, locations from the Plaintiffs' works under the Harry Potter series into the infringing book. The defendants used the cover of the UK and US edition of the *Harry Potter and the Deathly Hallows* as a front and back cover respectively of the infringing book. The defendants have deliberately printed a fake book on the Harry Potter theme with the same characters, settings, location and the descriptions as in the Harry Potter series with a cover identical to the cover of the genuine Harry Potter and the Deathly Hallows bearing the title of the Plaintiffs' work as also bearing the name of Plaintiff No.1 as the author and Plaintiff No.2 as the publisher, all calculated to give the impression that it is the genuine publication of the Plaintiffs' original work titled *Harry Potter and the Deathly Hallows*. Further the defendants with mala fide intention, to ride over the immense popularity of Plaintiffs' works *Harry*

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Potter and the Deathly Hallows have deliberately printed and distributed their infringing book within a week of the release of Plaintiffs No.1 and 2's work titled *Harry Potter and the Deathly Hallows* when the Plaintiff's genuine publication was much in demand all over India, only to mislead the public and the fans of Harry Potter into buying the fake book thinking that it is a genuine publication of Plaintiffs. In doing so the defendants have distorted and altered the Plaintiff No.1's work under the Harry Potter series in a manner prejudicial to the honour and reputation of its author—the Plaintiff No.1. Further the defendants by falsely attributing the authorship of the infringing book to the Plaintiff No.1 have caused immense prejudice to the Plaintiff No.1's reputation.

21. It is alleged that the act of defendants in without permission reproducing the artistic work/illustration comprising the cover of the UK edition of the work titled *Harry Potter and the Deathly Hallows* published by Plaintiff No.2, who owns all copyright in the artwork comprising the said cover amounts to infringement of Plaintiff No.2's copyright in the same under Section 51 of the Copyright Act, 1957.

22. The plaintiffs submit that the defendants have further infringed the copyright of Plaintiff No.3 in the artwork comprising the cover of the US edition of work titled *Harry Potter and the Deathly Hallows*. Defendants have further infringed Plaintiff No.3's copyright in the art work comprising the logo of the Hogwarts School Magic by without permission reproducing the said logo on the title page of the infringing book.

23. The defendants are well aware of the immense popularity and goodwill attached to the Plaintiffs' works under the Harry Potter series and have sought to take direct advantage of the popularity of the Plaintiffs' work under the title "Harry Potter" by using without authorization the title of the Plaintiffs work as also the other essential features of the Plaintiffs original literary works including attributing Plaintiff No.1 to be the author and Plaintiff No.2 to be the publisher of its fake book with the mala fide intention to ride on the Plaintiffs' popularity and dishonestly reap illegal profits by trading upon the hard earned reputation and goodwill of the Plaintiffs, all of which is clearly detrimental to the interest of the Plaintiffs.

24. Along with the suit, I.A. No.11248/2007 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 was listed before court on 1st October, 2007 when an ex-parte ad interim order was passed in terms of paragraph 41 of the interim application. On that day, the court also passed the following order in favour of the plaintiffs:-

"This order has been passed because the plaintiffs have been able to demonstrate, prima facie, that they are the owners of the copyrights in the literary artistic works comprised in the book "Harry Potter and the Deathly Hallows". The Plaintiff No.1 is the author of the said work and the Plaintiff No.2 is the publisher. These books are well known worldwide and the Plaintiffs also have trademark registrations as well as copyright registrations in respect of the characters, covers and literary contents. The Plaintiff has placed before this court the infringing work that has been examined by me. It is apparent that the front cover has been copied though the printing is of a very poor quality. The back cover is an unauthorised identical reproduction of the cover of the US edition of the said work. The matter contained in the book is an

adaptation of the matter contained in the original work. The defendants have copied the main characters.

It is obvious by looking at the two works – the original and the infringing one, that the latter is an unauthorised adaptation of the former.”

25. Despite service, no one appeared on behalf of the defendants, and the same also failed to file the written statement. By order dated 9th November, 2009 Defendants were accordingly proceeded ex parte and the plaintiffs were granted time to produce the ex parte evidence by way of affidavit.

26. The plaintiffs produced the evidence by way of affidavit of Shri Anil Kumar, who reiterated almost the same facts as stated in the plaint. He also proved the following documents in support of the case of the Plaintiffs:-

- (i) Powers of Attorneys duly executed by the Plaintiffs No.1 to 3 in his favour as Exhibit PW1/1 (Colly)
- (ii) Notarised copies of US Copyright Registration Certificate in favour of Plaintiff No.1 as Exhibit PW1/2 (Colly)
- (iii) The News report about the Plaintiffs publications as Exhibit PW1/3 (Colly)
- (iv) Notarized copies of the exclusive licenses issued by Plaintiff No.1 to Plaintiff No.2 as Exhibit PW1/4 (Colly)
- (v) Plaintiff No.2's original publication titled Harry Potter and the Deathly Hallows as Exhibit PW1/5
- (vi) Printouts of the list of best selling books from Forbes.com as Exhibit PW1/6
- (vii) Book reviews of the Plaintiffs' work under the Harry Potter series as Exhibit PW1/7 (Colly)
- (viii) Notarized copy of the Agreement dated 12th November, 2006 as Exhibit PW1/8

- (ix) Copy of US copyright registration certificate for the artwork and illustrations comprising the cover of the US edition of the work titled Harry Potter and the Deathly Hallows in favour of the Plaintiff No.3 as Exhibit PW1/9
- (x) Colour printout of the cover and title page of the US edition of the Plaintiff No.1's work titled Harry Potter and the Deathly Hallows wherein the copyright in the art work comprising the cover vests with the Plaintiff No.3 as Exhibit PW/10 (Colly)
- (xi) Copy of Assignment Agreement dated 29th October, 1999 as Exhibit PW1/11
- (xii) Copy of US Copyright Registration Certificate for style guide of the work titled Harry Potter and the Sorcerer's Stone containing logo of the Hogwarts School of magic along with the logo as Exhibit PW1/12;
- (xiii) Notarized copies of Certificate of Registration of the trademarks in India as Exhibit PW1/13 (Colly)
- (xiv) FIR bearing Crime No.317 of 2007 of Kamakshipalya Police Station in Bangalore and translation of FIR contents in English as Exhibit PW1/14
- (xv) Original letter dated 16th August, 2007 from the Investigating Officer to Plaintiff No.2 seeking copyright documents, copy of power of attorney amongst other information and reply to the said letter by letter dated 20th August, 2007 from Plaintiff No.2 as Exhibit PW1/15
- (xvi) Photographs of the front and spine cover of the Defendants infringing book as Exhibit PW1/16 (Colly)
- (xvii) Photograph of the front and spine cover of the Plaintiff No.2's original publication titled Harry Potter and the Deathly Hallows as Exhibit PW1/17
- (xviii) Comparative pictures of the front and spine cover of the Defendants infringing book and the Plaintiff No.2's publication titled Harry Potter and the Deathly Hallows as Exhibit PW1/18 (Colly)
- (xix) Photograph of the back cover of the infringing book which is an identical reproduction of the cover of the US edition of the Plaintiff No.1's publication titled Harry Potter and the Deathly Hallows as Exhibit PW1/19

- (xx) Copyright page of the infringing book which is an unauthorized ad verbatim reproduction from the Plaintiff No.2's publication Harry Potter and the Half Blood Prince as Exhibit PW1/20
- (xxi) Notarized copy of the Copyright page of the Plaintiff No.2's original publication Harry Potter and the Half Blood Prince as Exhibit PW1/21
- (xxii) Title page of the infringing book bearing the unauthorized reproduction of the Plaintiff No.3's art work comprising the logo of the Hogwarts School of Magic as Exhibit Pw1/22
- (xxiii) Defendants' infringing book as Exhibit PW1/23
- (xxiv) Covers, copyright and title pages of the Plaintiffs' publication under the Harry Potter series as Exhibit PW1/24 (Colly)
- (xxv) FIR Nos.303/2005 P.S. Magadi Road, Bangalore City dated 22nd July, 2005 and FIR No.242/2004 P.S. Magadi Road, Bangalore City dated 23rd July, 2004 registered against the accused, Defendant No.2 as Exhibit PW1/25 (Colly)
- (xxvi) Copies of certified copies of the various orders detailed in paragraph 40 of the affidavit of Shri Anil Kumar as Exhibit PW1/26 (Colly).

27. The evidence produced by the Plaintiffs has gone un rebutted by the Defendants. Learned counsel for the Plaintiffs has already made a statement that the Plaintiffs are not pressing the relief for damages and this fact has been recorded in order dated 22nd December, 2009.

28. In view of the averments made in the plaint and documents placed on record, it appears that the plaintiffs have been able to make a strong case against the defendants for grant of permanent injunction restraining infringement of copyright and trademark. Plaintiffs have successfully proved their case as per the averments made in the plaint, therefore, the Plaintiffs are entitled for grant of permanent injunction in terms of paragraphs 43-A, B and D which read as under:-

“43. (A) An order for permanent injunction restraining the defendants, their directors, partners, promoters, employees as the case may be and their officers, servants and agents including distributors, wholesalers and retailers and all others acting for and on their behalf from printing, distributing, selling, offering for sale the infringing book titled Harry Potter and the Deathly Hallows

(i) which is an unauthorized reproduction and adaptation of the Plaintiff No.1’s literary works under the Harry Potter Series in a manner prejudicial to the reputation and honour of the Plaintiff No.1 amounting to infringement of Plaintiff No.1’s copyright in the same under Section 51 of the Act and violation of Plaintiff No.1’s moral rights under Section 57 of the Act.

(ii) whose front cover is an unauthorized reproduction of the Plaintiff No.2 original artistic works comprising the cover of the UK edition of the work titled Harry Potter and the Deathly Hallows amounting to infringement of Plaintiff No.2’s copyright in the same, under Section 51 of the Copyright Act.

(iii) whose copyright page is an unauthorized reproduction of the copyright page of the Plaintiff No.2 publication titled Harry Potter and the Half Blood Prince amounting to infringement of Plaintiff No.2’s copyright in the same, under Section 51 of the Copyright Act.

(iv) whose back cover is an unauthorized reproduction of the Plaintiff No.3 original artistic works comprising the cover of the US edition of the work titled Harry Potter and the Deathly Hallows amounting to infringement of Plaintiff No.3’s copyright in the same under Section 51 of the Copyright Act.

(v) whose title page bears an unauthorized reproduction of the Plaintiff No.3 original artwork comprising the logo of the Hogwarts School of Magic amounting to infringement of the Plaintiff No.3’s copyright in the same under Section 51 of the Copyright Act.

B. An order for permanent injunction restraining the defendants, their directors, partners, promoters, employees as the case may be and their officers, servants and agents including distributors, wholesalers and retailers and all others acting for and on their behalf from

using the Plaintiff No.3 registered trademark Harry Potter and other associated trademarks detailed in paragraph 23 above on the cover, spine, title page of the infringing book and/or in the infringing book, or in any other manner amounting to infringement of the Plaintiff No.3 registered trademarks.

D. An order for delivery-up to the Plaintiffs, of all the duplicating equipment and other “plates” as defined in Section 2(t) of the Act, and all other infringing material under Section 58 of the Act which are in the possession of the defendants and/or their agents, servants, representatives, etc.”

29. The other reliefs sought in paragraph 43 of the plaint are not pressed in view of the statement made by learned counsel for the Plaintiffs on 22nd December, 2009. Plaintiffs are, however, entitled for costs of the proceedings.

30. In the above terms the suit of the Plaintiffs is decreed. The decree be drawn accordingly.

31. The suit as well as all pending applications, if any, stand disposed of.

MANMOHAN SINGH, J.

JANUARY 13, 2010
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