

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 4TH OCTOBER 2006 / 12TH ASWINA 1928

FAO.No. 173 of 2006

AGAINST THE ORDER DATED 30/06/2006 IN IA 391/2006 IN
OS.4/2006 OF I ADDL.DISTRICT COURT, ERNAKULAM

APPELLANTS/DEFENDANTS 1 & 2:

1. M/S.INFOSEEK SOLUTIONS, MULLAKKAL
ALAPPUZHA, REPRESENTED BY ITS PROPRIETOR
MR.SUDHEESH KUMAR, S/O.SUNDARA PANDIAN,
SURESH BHAVAN, M.O.WARD, ALAPPUZHA.

2. MR.SUDHEESH KUMAR, S/O SUNDARA PANDIAN,
SURESH BHAVAN, M.O.WARD, ALAPPUZHA.

BY ADV. SRI.BENOY K.KADAVAN
SRIJOY C. PAUL

RESPONDENTS: PLAINTIFF & DEFENDANTS 3 TO 5:

1. M/S.KERALA LAW TIMES, REP. BY ITS
MANAGING PARTNER, MR.M.MATHEW,
S/O.M.C.MATHEW ADVOCATE, HIGH COURT ROAD,
ERNAKULAM,KOCHI-31.

2. MR.SETHULAL, S/O.A.V.MURALI,
ANJILIPARAMBIL HOUSE, CANAL WARD,
ALAPPUZHA.

3. AZAD BABU, S/O. NOT KNOWN, AGE ABOUT
40 YEARS, ADVOCATE, RESIDING AT SINDHOORAM,
MULLAKKAL, ALAPPUZHA.

4. M/S.PROFESSIONAL PUBLISHING HOUSE,
NEAR NORTH RAILWAY STATION, SRM ROAD,
KOCHI-18, REP. BY ITS PROPRIETOR.

RI BY ADV. SRI.R.D.SHENOY (SR.)
SRI.K.R.VINOD
SRI.S.VINOD BHAT

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 25/08/2006,
THE COURT ON 04/10/2006 PASSED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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F.A.O.No. 173 of 2006

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Dated this the 4th day of October, 2006.

J U D G M E N T

This appeal is against an order of temporary injunction passed on an application under Rules 1 and 2 of Order XXXIX of the Code of Civil Procedure in a suit for a decree of permanent injunction restraining the defendants, their principal officers, directors, agents, franchisees, servants, licensees and all other persons acting for and on behalf of the defendants from publishing, advertising, reproducing, storing in any manner in any medium now known or in the future being developed, transmitting, offering for sale, selling, distributing, issuing to the public, licensing, renting, allowing access either through their web-site or CD-ROMs either free or for a fee, judgments which are identical, of a substantial and/or colourable reproduction of the text of the judgments of the Kerala Law Times (including head-notes, short notes, long notes, editorial notes, citations,

various copy editing inputs described therein), as published in the KLT, or in any other publications of the plaintiff. During the course of proceedings before the Court below, additional plaintiffs were impleaded. They are collectively called the "plaintiff" hereinafter in this judgment.

2. I.A. 391/2006 was filed for an order of temporary injunction in terms of the reliefs sought for in the suit. On 7-2-2006, the Court below passed an ad interim order of injunction as prayed for. That order, after hearing parties, was made absolute as per the impugned order dated 30-6-2006.

3. Defendants 1 and 2 are the appellants.

4. The lower Court records are obtained and the appeal finally heard on request of parties, in view of the lodgment of caveat.

5. In support of the appeal, Sri.Bency K. Kadavan, the learned counsel for the appellants, contended that the order of injunction passed against the appellants consists of two aspects, to wit, an injunction against the publication of the text of the judgments and an injunction against the publication of the head-notes, short notes, long

notes, editorial notes, citations, various copy editing inputs, as published in the KLT, or in any other publications of the plaintiff. He urged that in so far as the publication of judgments is concerned, the plaintiff cannot claim any copyright. As regards the publication of head-notes, short notes, long notes, editorial notes, citations, he urged that the plaintiff cannot claim any copyright unless it is demonstrated that the head notes, in whatever form, is the contribution made by the editor of the plaintiff by assimilating the contents of the judgment and then presenting it and that if portions of a judgment are merely copied, the same does not create any copyright. It was contended that if the head-notes and short notes are created by the plaintiff by merely extracting portions of the judgment, the same do not create any copyright in favour of the plaintiff. In saying so, the learned counsel for the appellants urged that merely by copying out certain portions of a judgment and placing it in a layout scheme, the plaintiff does not get a copyright.

6. Per contra, the learned senior counsel Sri.R.D.Shenoy, urged on behalf of the contesting respondents, the plaintiff, firstly, that the impugned order is not one that could be faulted on a

principle and that therefore, even if two views are possible on the materials on record, the appellate Court would loath interfere with the discretion exercised by the trial Court. It was further urged that the materials on record unequivocally establish that the head notes, short notes etc. over which the plaintiff has copyright have been slavishly copied and that the plaintiff has copyright in the lay out, presentation and even unavoidable corrections of mistakes in the judgments and thereby, copyright over what is called the plaintiff's "version of the judgment". It was also urged that having regard to the fact that the impugned order of temporary injunction is continuing against the appellants uninterruptedly from 7-2-2006, it may not be appropriate to interfere with that order.

7. At the outset, certain primary questions have to be determined. **Can any one claim copyright over judgments of Courts? If at all, who? Whether the Copyright Act, 1957, hereinafter referred to as the "Act", recognizes any such copyright?**

8. A judgment of a Court is an affirmation, by the authorized societal agent of the State, speaking by warrant of law and in the name of the State. In

law, it is the affirmation by the law of the legal consequences attending a proved or admitted state of facts. - See Gurdit Singh's case, (1974) 2 SCC 260. A judgment is the final decision of the Court, intimated to the parties and to the world at large by formal pronouncement. - See Surendra Singh's case, AIR 1954 SC 194. It is the power by means of which liabilities are enforced. Judgment is the sentence of law pronounced by Court on matter in record. Its declaratory, determinative and adjudicatory function is its distinct characteristic. A judgment is a judicial act of Court by which it accomplishes the purpose of its creation.

9. A Judge is empowered by law to give a definitive judgment in any legal proceedings, civil or criminal. The term "Judge", going by its definition in Section 19 of the Indian Penal Code, denotes not only every person who is officially designated as a Judge, but also every person, who is empowered by law to give such a judgment. The concept of Court of Justice is to denote a Judge or a body of Judges empowered by law to act judicially. This concept is reflected also in Section 20 of the Indian Penal Code.

10. Section 466 of the IPC makes the forgery of a record or proceeding of, or, in, a Court of Justice, an offence. Section 353 of the Code of Criminal Procedure, relating to judgment, provides for its pronouncement in open court by the Presiding Officer. Judgment, that is, a final decision of the Court, is intimated to the world at large by its formal pronouncement or delivery, in open court. The pronouncement or delivery of judgments are judicial acts to be performed in a judicial way. The decision, which is so pronounced or intimated, must be a declaration of the mind of the Court as it is at the time of pronouncement. This is the first official act touching the judgment, which the Court performs after the hearing - See **Surendra Singh's case** (supra). In deciding Surendra Singh, dealing with the non-availability of one of the Judges, constituting the Bench that heard the case, it was held by the Apex Court that when a judgment is delivered, that is a judgment of the Court and not of any Judge. This is the fundamental reason for holding, in that case, that unless all the Judges who heard the case are available, though not present, the judgment of the Court cannot be delivered since a Judge, who is a part of the Court that heard the case, had the right to change his mind before the judgment of the Court is delivered.

11. In civil cases, going by the provisions of the Code of Civil Procedure, a decree or order, which contains the final expression of the adjudication by the Court, follows the judgment. The word "judgment", for the purpose of Code, is defined to be the statement given by the Judge as the grounds of a decree or order. Without a decree or order, there is no judgment since without a result, expression of reasons is uncalled for. The determination by the Court, on being pronounced, is the decision of the Court.

12. The principle that emanates out of the aforesaid is that what the Judges of the superior Courts or the subordinate Courts deliver as judgments are the decisions of the Court, which is an institution, and not of an individual. As soon as the judgment is delivered, that becomes the operative pronouncement of the Court.

13. The judiciary is a limb of the State, as constitutionally conceived and provided. The preamble to the Indian Constitution is its part and it declares India to be a Sovereign, Socialist, Secular, Democratic, Republic. The Constitution has been "given by the people to themselves". This affirms the republican character of the polity and

the sovereignty of the people. When the judiciary acts as the duly authorised societal agent of the State, it acts as the representative of the sovereign, namely, the people. The power to adjudicate, determine, apply the laws and to give the verdict is essentially the power of the Republic, being exercised through the judicial limb of the State and made available through the Courts which are the institutions where the republic carries out its activities that it has to, through the judicial limb of the State. Hence, it is totally inconceivable that the judgments of the Courts could be treated as documents over which there could be any copyright. The judgments belong to the State, to the Sovereign Republic, to her People. There can be no copyright over them.

14. Judgments are public documents. A decree and a judgment are public documents (See Shakuntala Devi Jain v. Kuntal Kumari [(1969) 1 SCR 1006]). A judgment, reportable or not, is a pronouncement in open and therefore becomes public (See 'K' A Judicial Officer, In re [(2001) 3 SCC 54 at 65]). Judgments are within the scope of the subject matter of statutes which make alteration of court records, offences. Being documents, recording facts which

have been enquired into or may have been taken notice of for the benefit of the public or for resolution of disputes in accordance with the law of the land, by the Court as an agent authorised and accredited for that purpose by the law, the judgments are public documents. The information as to judgments and the source of such information are in the public domain and cannot be subject to copyright. Being public documents, judgments are essentially in public domain and cannot be treated as something over which copyright could exist.

15. The Judge made laws, which consist of the judgments of the superior Courts, are themselves a source of law. Article 141 of the Constitution of India makes the law declared by the Supreme Court binding on all Courts within the territory of India. In All India Reporter Karamchari Sangh v. All India Reporter Ltd. [1988 (Supp) SCC 472], the Apex Court states in relation to judgments of the Constitutional courts as follows:

"It cannot be disputed that these decisions are of public importance. Article 141 of the Constitution provides that the law declared by Supreme Court shall be binding on all courts within the territory of India. Even apart from Article 141 of the Constitution, the decisions of the Supreme Court, which is a court of record, constitute a source of law as they are the judicial precedents of the highest court of

the land. They are binding on all the courts throughout India. Similarly the decisions of every High Court, being judicial precedents, are binding on all courts situated in the territory over which the High Court exercises jurisdiction. Those decisions also carry persuasive value before courts which are not situated within its territory. The decisions of the Supreme Court and of the High Courts are almost as important as statutes, rules and regulations passed by the competent legislatures and other bodies since they affect the public generally. It is well known that the decisions of the superior courts, while they settle the disputes between the parties to the proceedings in which they are given, they are the sources of law insofar as all others are concerned."

Thus, the judgments of the superior Courts constitute an important source of law. Law is the expression of the sovereign, manifesting through the constitutional institutions providing for the making and laying down of the laws. None can have copyright over the law of the land.

16. Now, **reverting to the Act**, the following sections are relevant:

2. Interpretation.- In this Act, unless the context otherwise requires,-

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- (d) "author" means,-
 (i) in relation to a literary or dramatic work, the authority of the work;

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(k) "Government work" means a work which is made or published by or under the direction or control of-

(i) the Government or any department of the Government;

(ii) any Legislature in India;

(iii) any Court, Tribunal or other judicial authority in India;

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(o) "literary work" includes computer programmes, tables and compilations including computer databases;

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(y) "work" means any of the following works, namely:-

(i) a literary, dramatic, musical or artistic work;

(ii) a cinematograph film;

(iii) a sound recording;

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(z) "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors;

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16. No copyright except as provided in this Act.- No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other for

the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

17. First owner of copyright.- Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that-

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(d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

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52. Certain acts not to be infringement of copyright.- (1) The following acts shall not constitute an infringement of copyright, namely:-

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(q) the reproduction or publication of-

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(iv) any judgment or order of a court, Tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court, the Tribunal or other judicial authority, as the case may be.

17. Section 16 of the Act provides that no person shall be entitled to copyright or any similar right in any work, otherwise than under and in accordance with the provisions of the Act or of any other law for the time being in force. The definition of 'work' in Section 2(y), in the context

of this case, may mean a 'literary work', which term is defined by the inclusive definition contained in Section 2(o). The term 'author', in relation to a literary work, means the author of the work, going by Section 2(d). 'Work of joint authorship' is defined in Section 2(z) to mean a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors. A work, which is made or published by or under the direction or control of any Court, Tribunal or other judicial authority in India, is 'Government work', by virtue of the definition of that term in Section 2(k). Section 52(1)(q)(iv) provides that the reproduction or publication of any judgment or order of a Court, Tribunal or other judicial authority shall not constitute an infringement of copyright. In enacting the said provision, care has been taken to ensure that it is not meant to authorize reproduction or publication of a judgment or order, the publication of which is prohibited by the Court, Tribunal or other judicial authority. This is the purpose for which the said provision is couched in the manner in which it is. A conjoint reading of Section 17(d) and Section 52(1)(q)(iv), having regard to Section 16, would clearly show that Section 17(d) is subject to Section 52(1)(q)(iv).

This means that the reproduction or publication of any judgment or order of a Court, Tribunal or other judicial authority shall not constitute an infringement of copyright and therefore, the judgment or order of a Court, Tribunal or other judicial authority cannot be treated as a Government work even for the Government to be the first owner of the copyright therein in terms of Section 17(d). The rationale behind this is that the judgment or order is "of" a Court, Tribunal or other judicial authority and is not "a work which is made or published by or under the direction or control of the Court, Tribunal or other judicial authority" to bring it within the term "Government work" as defined in Section 2(k). Hence, the Act does not entitle any person, even the Judge who performs the function of giving the verdict under the warrant of law and in the name of the State, to copyright or any similar right in any judgment.

18. On the basis of the aforesaid, the next issue that arises for decision is as to **whether the plaintiff has any right in law to claim any copyright as claimed by it.** In its essence, what the plaintiff asserts is a copyright on the reports of the judgments made by it in the publication

Kerala Law Times, including head notes, short notes, long notes, editorial notes, citations, various copy editing inputs etc. as published in the KLT of the plaintiff. To consider this, it needs to be recalled that the contention of the appellants is that the injunction issued by the trial Court consists of two aspects, one in relation to the publication of judgments and the other in relation to the publication of head-notes, short notes, long notes, editorial notes, citations etc. The contention on behalf of the plaintiff is that the materials on record show a slavish copying of the literary work of the plaintiff, including of its "version of the judgment" which it had presented in a particular layout presentation, with unavoidable corrections of mistakes, head-notes, editorial notes, etc.

19. To answer the aforesaid issue, I deem it appropriate to consider as to **what are law reports and what is law reporting?**

20. **The Fourteenth Report of the Law Commission of India** provides various relevant materials under the Chapter - Law Reports. Profitable reference in this regard can also be made to the **Working Paper**

on the Scheme for Revised Law Reports as prepared by Shri. V.G.Ramachandran and published by the Indian Law Institute with a Foreword by its then Executive Chairman Shri.B.Jagannadhadas.

21. During the early Hindu period in the history of India, there appears to have been no system of reliance on judicial precedents except where a custom had to be proved. Even during the Mohammedan Rule, judicial precedents were not in vogue. However, during the reign of Emperor Aurangzeb, the 'Fatwah Alamgiri' was compiled. This contained the opinion of law officers on a point of law.

22. It was in the British period that law reporting, as such, commenced, with the establishment of courts of Record by Royal Charter viz., the Supreme Courts in the Presidency Towns of Calcutta (1744), Madras (1801) and Bombay (1823); the Sudder Adawalat Courts of the East India Company having commenced to function from 1772, in those areas. The Sudder Courts delivered their judgments in English and from 1845 issued copies of their judgments for the benefit of the public. Some enterprising barristers and judges published the

reports of the decisions of these courts e.g., Belasis, Barrodail, Marshall and Hyde.

23. The Act (3 and 4 William IV c.41) was passed on August 14, 1833, by Parliament, for the better administration of justice in His Majesty's Privy Council, after which alone appeals already preferred before His Majesty's Council from 1799 onwards from the Sudder Diwany Court and the old Supreme Courts in India, came to be heard. The year 1833 thus marks an important date for law reporting in India because the Privy Council began delivering its judgments on appeals from the decisions of the Indian High Courts.

24. Regular law reports came in the wake of the establishment of the High Courts in India on the passing of the Indian High Courts Act in 1861. The High Courts of Calcutta, Bombay and Madras were created by Royal Charter in 1862, replacing the Supreme Courts and Sudder Adawalats.

25. To mention the oldest reports, we have six volumes of Mac-Naughton's Reports of cases of Sudder Adawalat (1791-1849), six volumes of Sudder Dewany Adawalat (1793-1855) forty-five volumes of Sudder Dewany Adawalat (1818-1862) and seventeen volumes of

Indian Decisions (Old Series 1774-1858). The last named contains the notes of cases by William, Austin, Edward Hyde East, Montrie and those in the two volumes of Moreley's Digest (1849-50) as also the cases in the reports of Bignell, Morton, Taylor, and Bell, Gasper, Baulnois and of the criminal cases heard by the Calcutta Small Causes Court for a specified period.

26. Lord Lindley was quoted by the Law Commission in its 14th Report to state that a law report can serve its true purpose if it reports only cases "which introduce or appear to introduce a new principle or new rule; or which materially modify an existing principle or rule; or which settle or tend to settle a question on which the law is doubtful; or which for any other reasons are peculiarly instructive".

27. Though rendered in a different context, the decision of the Apex Court in **All India Report Karamchari Sangh's case** (supra) requires to be referred to in this context. It was held that the contents of law reports constitute "news" insofar as the subscribers and the readers of the reports are concerned and that it is by reading the law reports

that they come to know of the latest legal position prevailing in the country on any question decided in the decisions reported in the said reports. In **T.V.Ramnath v. Union of India (1975 Lab. I.C. 488)**, the High Court of Madras held Madras Law Journal to be a newspaper and that the said establishment was a newspaper establishment for the purpose of the statute that fell for consideration. That decision was quoted with approval by the Apex Court in **All India Report Karamchari Sangh's case** (supra) stating as follows:

"We agree with the following observations made in the said decision by Ismail, J. (as he then was):

"Similarly, the publications of the petitioner in the second writ petition can be said to contain 'public news' or 'comments on public news' since it contains reports of the judgments of the courts as well as comments on such judgments. Even though, the same may be primarily intended for that section of the public which is concerned with law and the administration of law, in the present days, nothing prevents any educated individual taking interest in such publications and the news themselves being of interest to such persons. Therefore I am clearly of the opinion that the expression 'public news' is of sufficiently wide amplitude to cover the publications of both the petitioners in question.""

(emphasis supplied)

28. Reverting to the 14th Report of the Law Commission, it can be seen that after noticing that the judgments of courts form a lot by themselves and that it makes no difference as to whether a particular judgment is reported or not, for it to be applied as a precedent, the essentials of good law reporting were stated as hereunder:

"25. The doctrine of precedents, which we have explained and accepted above requires that the law reports should be accurate and full, so that the true principle laid down by the decision may be deduced. The report should contain all essential information like the parties, the nature of the pleadings, the essential facts, the arguments of counsel, the decision and the grounds of the judgment. Not the least important part of the report is its head-note which should be accurate and concise and yet in a sense comprehensive.

It is obvious that a law report can serve its true purpose if it reports only cases "which introduce or appear to introduce a new principle or new rule; or which materially modify an existing principle or rule; or which settle or tend to settle a question on which the law is doubtful; or which for any other reasons are peculiarly instructive.

Equally important is the time and form of the publication of the reports. It is desirable that the publication should take place as soon as possible after the judgment but speed should not result in a sacrifice of the accuracy of the judgments reported. In order to ensure the accuracy of the judgments and their being checked by the judges who deliver them, a certain amount of time must elapse before the publication of the report. In the meanwhile the profession and the public

should be kept informed from week to week of decisions of importance by the publication of notes of cases."

29. From the materials noticed above, it can be deduced that what a publisher of a law report does (and is expected to do) is to choose from the public domain, such judgments as are found relevant to be reported and to present each of such judgments in the form of reports containing the gist of the law laid, as also, further references, to the arguments advanced, etc. In doing so, the report may contain all essential information like the parties, the nature of pleadings, essential facts, and arguments of counsel. The report may or may not contain the entire text of the judgment. It is treated as an essential component of good law reporting that the report would have its head note which ought to be accurate and concise, yet in a sense, comprehensive. The reporting and the publication of the reports ought to be prompt, in as much as it does not become a stale information.

30. I deem it apposite in this context to refer to the **Procedure Adopted for Reporting Indian Law Reports (Travancore-Cochin Series)** which have been adopted as the **Rules of the Kerala Law Reporting**

Council. A perusal of the same would show, among other things, that certain general rules and principles have been issued, for being followed in framing the reports. The said guidelines and principles would show that every report "ought to contain a full copy of account of the judgment delivered by the court and by each Judge, thereof or of so much of the judgment as bears on the point of which the case is reported". This also would point out to the fact that the field of reporting of judgments has always treated the full text of the judgment, when reported, to be part of the report of the judgment, which ought to also include the other relevant features like head notes, editorial notes, etc.

31. In H.T.Raghunathan v. All India Reporter (AIR 1971 Bombay 48), the decision in Sweet v. Benning [(1855) 139 ER 838] was referred to, to notice that the head note or the side or marginal note of a report is a thing upon which much skill and exercise of thought is required, to express in clear and concise language the principle of law to be deduced from the decision to which it is prefixed or the facts and circumstances which bring the case in hand within some principle or rule of law or of

practice. Shyam Lal Paharia and another v. Gaya Prasad Gupta 'Rasal' (AIR 1971 All. 192) was referred to by the learned counsel for the plaintiff to urge that a compilation derived from a common source falls within the ambit of literary work. In Govindan v. Gopalakrishna, AIR 1955 Mad.391, it was held, while dealing with a case relating to infringement of copyright in relation to dictionaries, that in the case of dictionary, a man is not allowed to appropriate for himself the arrangement, sequence, order, idioms, etc. employed by another, using his brains, skill and labour. While saying so, it was also stated that even in law reports, containing only approved reports of cases decided by Courts, there is copyright. The learned Judge noticed that every man's copyright, whether big or small, whether involving a high degree of originality, as in a new poem or picture, or only originality at the vanishing point, as in a law report needs to be protected in the modern complex society.

32. If one quotes a particular portion of a document for the purpose of specifying or emphasising a particular view, it cannot be said that the said quotation is merely a copy of a portion of the main text, made without any intention

to serve a purpose. Such purpose is the result of a thought process following the reading and understanding of the text, which is quoted. In a law report, it is the result of the literary exercise of the reporter/editor.

33. In view of the aforesaid conspectus, the report of a judgment by a law reporter is a composite document and is not to be sliced into head note on the one hand and the main text of the judgment on the other, for the purpose of appreciating it as a literary work to determine whether the reporter has a copyright on it. There appears to be no other way of looking at it. What the law reporter is expected to do is to present a judgment with the attendant comments, head-notes etc. That is, by itself, an art, that too, a literary exercise. It is wholly inappropriate to treat the main text of the judgment and the setting in which it is put, as also the head-notes etc., into different slots, for considering whether each such part gives any separate copyright to the reporter. A report is a whole document and the copyright will have to rest on the report as a whole. If a reporter has presented a report,

including a clear presentation of the text of the judgment, may be, by even including permissible indications as to any spelling error etc., there is no reason why such presentation, which requires contribution of literary ability, ought not to be treated as one that creates a copyright as known to law and enjoined by the Act. A report of a judgment, which includes the entire text of the judgment and is placed as a report along with headnotes or editorial notes and in any particular layout of a reporter and publisher, contains such originality as requires it to be treated as an original literary work for the purpose of Section 13 (1)(a) of the Act. Short Notes of cases also stand in the same footing. So much so, the reporter, the plaintiff in this case, has copyright over the reports of judgments which are published in its publications either in the name KLT or otherwise.

34. Referring to the decision in S.K.Dutt v. Law Book Co. (AIR 1954 All.570), the learned counsel for the appellants urged that an author of a law commentary cannot claim a copyright of any passage which he has quoted since it will defeat the defence of "common source" of all others. But for urging

such a legal issue, the appellants do not have a case that they reached at the materials from the common source. Mere selection of passages and abridgement, according to the learned counsel for the appellants, does not constitute a copyright. In support of the said contention, the decision in Macmillan & Co. v. K. and J. Cooper (1924 Privy Council 75) was cited. The said decision does not apply while considering law reports since, as already noticed, a law report has to be treated as a composite document and the application of intellectual labour and skill for presenting the judgment of the court in the form of a report is a crucial incidence that indicates that there is copyright for the reporter and publisher of law reports. The learned counsel for the appellants also referred to the decision in Feist Publications, INC. v. Rural Telephone Service Company, INC. (499 US 340), wherein, the United States Supreme Court held that there could be no copyright in alphabetical listings of names, etc. published in relation to telephone books. In my view, that decision does not have any bearing on the issues arising for decision in this case. The decision in Kenrick & Co. v. Lawrence & Co. [1890 (XXV) Queen's Bench 99], relating to a case of

drawings, cited on behalf of the appellants, also does not help in deciding the case in hand.

35. This takes me to the decisions of the Delhi High Court in the case of Eastern Book Company v. Navin J. Desai, cited by the learned counsel for the appellants, which needs to be considered, being relevant in the context. In the decision reported as AIR 2001 Delhi 185, the learned single Judge, dismissing the application for temporary injunction, on the original side, held that the Eastern Book Company does not have any copyright over its work and therefore, the defendants in that case are not liable to be restrained. The Division Bench in the appeal against the said judgment held in paragraph 39 that even the learned single Judge was conscious of the principle that there can be copyright in the head-notes. The Bench accordingly held that the reading of the judgment and searching important portion thereof and collecting sentences from various places for the purpose of making head-notes would involve labour and skill. Accordingly, an order of injunction was granted by the Division Bench as far as footnotes and editorial comments etc. are concerned. That judgment of the Division

Bench of the Delhi High Court is reported as 2002 (25) PTC 641 (Del) (DB).

36. I have also had the opportunity to see a copy of the interlocutory order passed by the Hon'ble Supreme Court of India in SLP.(Civil) No.3621/203 against the said judgment of the Division Bench. In that SLP by the Eastern Book Company and others, an interlocutory order was passed directing that the respondents (Navin J. Desai and another) will be entitled to sell their CD-ROMs with the text of the judgment of the Supreme Court along with the head-notes which should not, in any way, be of copy of the head-notes and text of the petitioner. Submissions were made by the learned counsel on either side as to the effect of the aforesaid interlocutory order. It was urged on behalf of the appellants that the said interlocutory order is confined to the head-notes while the learned senior counsel for the plaintiff urged that the portion of the order to which I have supplied emphasis, by underlining, would indicate that the embargo to publication is as regards head-notes, as also the text of the judgment as published by Eastern Book Company.

37. Leaving aside the controversy as to the interpretation of the aforesaid interlocutory order of the Apex Court, in so far as the view that I have already taken as regards head-notes, short notes, editorial notes, etc., I find considerable support in the decision of the Division Bench of the Delhi High Court in **Eastern Book Company's case** (supra) holding that the work of preparing head-notes, editorial notes, etc., even by collecting sentences from the text of the judgment, involves labour and skill and that originality and creativity in preparation of head-notes are also available. However, for the reasons stated in the preceding paragraphs, with respect, I am unable to concur with the views of the learned single Judge and the Division Bench of the Delhi High Court in **Eastern Book Company's case** (supra), in so far as they relate to copyright over the published version of the text of the judgment, as reported and published as reports. In my view, a law report is a composite document and its head-notes, editorial comments, foot-notes, setting, layout, presentation, etc. and even the skill and labour involved in choosing as to whether a judgment should be reported, lead to the reporter and publisher acquiring copyright over such report, as a composite document including the text

of the judgment as so published by the reporter. No distinction exists between head-notes etc. on the one hand and the main text on the other, while considering the question as to whether a reporter has a copyright over the publication.

38. On the basis of the aforesaid findings, what is now required, is to consider whether the impugned order is liable to be set aside on the basis of the evidence, on record, regarding the alleged infringement of copyright.

39. Along with the plaint and the application for temporary injunction, the plaintiff produced Ext.A3 series documents. Those documents were neither denied nor their correctness challenged. Ext.A3 is a bunch of documents whereby the plaintiff has clearly established that the CD of the defendants contains slavish copies of the head-notes, short notes etc. as available in the publication of the plaintiff. Having perused Ext.A3 series, I am satisfied, prima facie, that the product of the defendants has been proved to contain verbatim copy of the head-notes, short notes etc. of the plaintiff's publication, though the defendants have merely changed the manner in

which the case number, names of parties, appearing counsel etc. are shown. To demonstrate that the defendants have slavishly copied the head-notes and short notes, the learned counsel for the plaintiff rightly referred to the copy of the short note regarding the decision in M.F.A.No.349/1984. A grammatical error in the head-note in the plaintiff's publication has been carried over to the version of the defendants. I am satisfied that the plaintiff has established a strong prima facie case and it is entitled to the injunction. The impugned order is not liable to be interfered with.


The appeal fails. The same is accordingly dismissed. No costs.

Sha/

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
JUDGE.

- True copy -


PS to Judge