

IN THE HIGH COURT OF DELHI AT NEW DELHI  
CS (OS) NO. OF 2011

NITIN JAIN & ORS.

....PLAINTIFFS

VERSUS

Aakash IIT-JEE

(Division of Aakash Educational Services Ltd.) & Anr

....DEFENDANTS

**SUIT FOR DAMAGES & REIMBURSEMENT OF EXPENSES/  
COSTS OF THIS SUIT/PROCEEDINGS & INTEREST**

1. That Nitin Jain, plaintiff no.1, the son of Plaintiff No.2 & 3 secured top rank in India in the Joint Entrance Exam of IIT-JEE as well as in the All India Engineering Entrance Exam (AIEEE) in 2009. He has also won the National Talent Search Examination (NTSE) in the year 2007. Besides this he did India proud by winning three gold medals in three International Science Olympiads held in Indonesia, Mexico and Iran during the years 2008-09 and received fame in the whole world and generated a respect in the hearts of nations towards the talents of India. For his spectacular success in IIT-JEE and AIEEE entrance examinations in the year 2009, the plaintiff No.1 was honoured by top dignitaries of India like the then Former President of India His Excellency Dr. APJ Abdul Kalam, Honourable Prime Minister Dr. Manmohan Singh, Honourable the then HRD Minister Sh. Kapil Sibal, Honourable Chief Minister of Haryana Sh. Bhupinder Singh Hooda etc. to name a few. And also, Nitin Jain was honoured by the President of Republic of Iran, the President of Republic of Indonesia, the Lok Sabha Speaker of Mexico and a Nobel Prize winner scientist.
2. That the defendant No.1 is a coaching institute and Mr. J.C.Choudhary is the Chairman of the defendant No.1 Institute. Defendant No.2 is the Deputy Regional Co-ordinator, Faridabad area of the defendant Institute and the defendant No1 had contacted the plaintiff through defendant No.2.
3. That the Plaintiff No. 1 won the Gold Medal and awarded Absolute Winner Trophy in the International Olympiad on Astronomy and Astrophysics (International Science Olympiad) held in Bandung-Indonesia from August 18-28, 2008 and as such he had become an icon in India and his name and photograph were shown in the News

Papers circulated in the whole world including India. The whole India has astonished and praised the achievement of plaintiff No.1 and since then it was expected that the plaintiff No.1 will secured a Top Rank in IIT-JEE also.

4. That knowing the achievement and understanding the bright future prospect of plaintiff no.1, the defendants conspired to utilise the name of the plaintiff No.1 for the benefit of its coaching business.
5. That on 30.9.2008 when plaintiff No. 1 was in a Birthday Party of one of his known, a call came on the mobile phone of the plaintiff No.1 from an unknown number 9312230703 informing that he is the employee of Aakash Institute and he got the phone number of plaintiff No.1 from one of his friends. The said unknown person offered to give some books to plaintiff No.1 which he received from his head office and sought permission to come at his home to give those books. The plaintiff No.1 refused to receive any such book mentioning that Aakash Institute has no standing in the market so far as preparation of IITJEE is concerned and he had already plenty of books to study as such he does not require any such freebee and did not permit him to come at his home.
6. That however, on 1.10.2008 when the plaintiff No. 1 just came in his home from the school and was taking his lunch, the same person came at the door. When the plaintiff No.3 opened the door, he requested the plaintiff no.3 that he came from Aakash Institute and wanted to meet plaintiff No.1. When the plaintiff No.3 conveyed this message to plaintiff No.1, he refused to meet with him. The plaintiff No.3 informed the same to the said person, however, he remained on the door for around half an hour and kept on requesting to permit him in the house. After hearing his continuous request, the plaintiff No.3, on humanitarian ground, permitted him to come in. The said person, who informed his name as Ibrahim, defendant No.2 herein, in a very polite and diplomatic manner, convinced the plaintiff No. 1 & 3 by saying that he is having some books which are sent to him from head office to distribute them to the brilliant students free of costs to help them for the preparation of IITJEE. They used to collect information of brilliant students from schools and coaching institutes. He further requested to plaintiff No. 1 that if he will not take those books, he may loses his job as he had been strictly instructed to handed over these

books to plaintiff No.1. He lured the plaintiff no.1 who was just a minor at that time, by saying that whether he read those books or not but kindly take them. Under such circumstances, the plaintiff no.1 took those books which were three in numbers from Mr. Ibrahim. He further requested to fill and sign a form in token that plaintiff No. 1 had taken those books so that he could show to his senior officials at head office that he had handed over those books to plaintiff No.1. The plaintiff No.1 filled the said form and signed the same in bonafide impression. Mr. Ibrahim thereafter requested plaintiff No.3 to sign the said form as signature of the parents is also required. She also signed the said form keeping faith on him as she was not aware of these tactics or frauds which are done by the coaching institutes.

7. That thereafter he demanded two photographs and marksheet of 10<sup>th</sup> class of plaintiff no.1. On asking by the plaintiff No.1 the reason of demanding his photographs and marksheet, the defendant no.2 showed forms of around 100 students affixing their respective photographs explaining that they take them from all such students. As such the defendant No.2 procured the photograph and marksheet of plaintiff No.1 by way of enticement. The plaintiffs at that time had also prepared a file on Olympiads to be sent to various dignitaries and photocopies of which were kept in the room where Mr. Ibrahim met with plaintiff no.1. Defendant No.2 saw those copies of the said file and he liked the said file very much and requested one copy of the said file to show it to his family at his home. The plaintiff No.1 who was a minor at that time could not presumed the real intention of defendant No.2 and innocently gave the copy of the said file to defendant No.2. The moment defendant no.2 was leaving the house of the plaintiffs, plaintiff no.2 came from outside and by the time he could inquire anything from defendant no.2, and he went alongwith his companion on motorcycle. Plaintiff No.2 also could not understood the intention of the defendant No.2 at that time however he directed not to entertain any such unknown person any more.
8. That after this incident defendant No.2, after the forms of IITJEE and AIEEE was filled up by the plaintiff No.1, tried to contact him several times on phones. However, every time plaintiff No.1 refused to entertain him and requested him not to call him any more. But defendant No.2 kept on calling plaintiff No.1 again and again. When the plaintiff no.1 received the roll nos. of IITJEE and AIEEE, defendant

no.1 again tried to contact plaintiff No. 1 several times and requested his roll numbers but he refused to give the same to defendant no.2. Defendant no.2 also tried to contact plaintiff no.3 to get the roll nos. of plaintiff no.1 however; she also refused to disclose the same to defendant no.2. Even some calls came from the office of the defendant no.1 to inquire the roll nos. of the plaintiff no.1 however, the plaintiffs did not give them the roll nos. of the plaintiff no.1

9. That 22.5.2009, defendant no.2 again called at the land line phone of the plaintiffs which was picked up by plaintiff No.3. Defendant no. 2 again demanded the roll numbers of plaintiff No.1 from plaintiff No.3 which she refused. Thereafter he requested the names of the examination centres of plaintiff no.1 which she again refused and cut the phone. That was the last phone of defendant No.2 to the plaintiffs.
10. That when the plaintiff No.2 came to know about the said phone of defendant no.2, the plaintiff no.2, on 23.5.2009 called Mr. Ibrahim on his phone no. 9312230703 which he took from the mobile of plaintiff no.1 whereon the defendant no.2 used to call and asked as to why he is calling his family members again and again and disturbing them specially when plaintiffs never contacted them and plaintiff No.1 neither took admission its coaching institute and nor took any coaching from it, why he are unnecessary calling them. The defendant no.2 could not reply of any question of the plaintiff no.2. The plaintiff No.2 specifically made him clear that plaintiffs has no concern with its coaching institute as such don't contact them further and don't try to use their name in any way.
11. That on 25 May, 2009, just after sometime of the declaration of IIT-JEE result wherein plaintiff No.1 was declared as All India Topper, 4 persons including defendant no.2 claimed to be the executives of Aakash Institute came at the house of the plaintiffs and after congratulating on the success of plaintiff no.1 informed them that the Marketing Manager of its Coaching Institute is on the way near Surajkund and about to reach at the residence of the plaintiffs to meet its student i.e. plaintiff no.1 and he is bringing a cheque for them. Plaintiff No. 2 told them that neither plaintiff wants to meet them nor they required any cheque from them as plaintiff no.1 never take any kind of training or coaching or help from Aakash Institute and then directed them not to connect them self in any way with the success of

plaintiff no.1 and please go. When they insisted the plaintiff No.2 to wait for their Marketing Manager and at least meet with him, plaintiff No.2 plainly spoke them to go otherwise media is just arriving to meet plaintiff no.1 and he (plaintiff No.2) will disclose to the media that Aakash Institute is unnecessary trying to use the name and fame of the plaintiff No.1. Whereas the plaintiffs has no concern with the Aakash Institute. On this they returned from the door of the plaintiffs but stood for some time near their Maruti Car. However, went when the media approached the plaintiffs.

12. That however, on the next date i.e. 26.5.2009, Aakash Institute published an advertisement in the News Papers with the name and photograph of plaintiff No.1 claiming to be its student (Aakashian) and he had taken training from Aakash Institute which was false on the face of it. Since on 26.5.2009 the plaintiffs remained busy in different ceremonies and interviews, on 27.5.2009, the plaintiff No.2 called Mr. Ibrahim on his phone and raised his objection and displeasure with respect to the advertisement wherein Aakash Institute claimed the plaintiff no.1 as their student and directed to stop all such advertisements and not to publish the same any more. Mr. Ibrahim on this informed that he had no control over those advertisements and the same may be stopped only by the head office and requested to talk to the officials at head office of the Aakash Institute.
13. That plaintiff No.2 thereafter called to the Head Office of the defendant No.1 on the phone no. which was shown in the advertisement. The phone was entertained on reception and the receptionist transferred the phone of the plaintiff No.2 to some official and after hearing the request of the plaintiff no.2 of not to publish the name and photograph of the plaintiff No.1, he replied in a rude manner that what will he (plaintiff No.2) do if they publish it. On pressing by the plaintiff No.2 in polite manner not to do so as plaintiff No.1 has no concern with Aakash institute and he had not taken any kind of coaching or help from them, he threatened that they have 14 lawyers on panel, they have money and power and they are a group of Rupees Two Thousand Crore and he (plaintiff No.2) is free to go to police or court anywhere to stop them as police is in their hands and they have not lost any case in any court of India till today. The plaintiff no.2 after understanding that there is no use of talking with him any more disconnects the phone.

14. That however, on the next day i.e. on 29.5.2009 the defendants published another advertisement claiming plaintiff No.1 as its student and this time they also published the form which was got signed from the plaintiff no.1 by way of allurements and when he was only a minor. Mere perusal of the form it can be seen that it was just an attempt to justify and prove that plaintiff no.1 was its student whereas if the plaintiff no. 1 had ever been a student of Aakash Institute, they would have not been required to show any such form to the public. It may also be pointed out that the form was published only when plaintiff no.2 objected to defendants with respect to its advertisement wherein plaintiff no.1 was falsely claimed by Aakash Institute as its student (Aakashians). The name and photograph of the plaintiff no.1 was used for the purpose of business gain and advantage as by this way the defendants were falsely conveying to the general public and students who were willing to join any coaching institute for IITJEE, that the students who take admission in the Aakash institute get not only success in the IITJEE but also secure top rank like plaintiff no.1, therefore, they should also join Aakash institute.
15. That it is also vital to mention here that since one other coaching institute i.e. FIITJEE wherein the plaintiff no.1 actually took coaching for IITJEE, was also indulge in publicity and commercial exploitation of the success of plaintiff no.1 by way of publishing the name, picture of plaintiff no.1 and a false article purportedly written by plaintiff no.1 (though the same was also unauthorised and without permission) in its advertisements in the news papers, the media asked plaintiffs the truth as in which institute plaintiff no.1 actually took coaching as both the coaching institutes i.e. FITJEE and Aakash Institute are claiming plaintiff no.1 was its student, the plaintiff no. 1 & 2 made the statement openly in the media which was published in news papers on 28.5.2009 that plaintiff no.1 had never took any coaching from Aakash Institute and plaintiff no.1 had no concern with them and they only gave some free books just three-four month prior to the exam itself and took signature of plaintiff no.1 on a form and only due to this they can not claim plaintiff no.1 as its student. The said news item was published in All India News Papers.
16. That on publishing the clarification of the plaintiff No.1 & 2 to the effect that the plaintiff no.1 had never took any coaching or help from the

Aakash Institute, the MD of the Aakash Institute made a very serious allegation in the news papers which was published in the news papers dated 30.5.2009, to the effect that plaintiff no.1 had been the student of Aakash Institute and now they (plaintiffs) are denying this alleged fact because “ They are making these claims under pressure from our competitors. Probably, they (plaintiffs) have been paid for that” which is on the face of it a defamatory statement and by making this statement he had tried to send a message that plaintiffs are cheaters and liar and are selling themselves and making statements after taking money from different coaching institutes thereby created a very bad image of plaintiffs in the public at large.

17. That it is also important to mention here that it has come into knowledge of the plaintiffs now and plaintiff No.2 got definite information with documentary proofs and defendant institute contacted with several such students and their parents through their various executives such as defendant No.2 and in fact it is the practice of the defendant institute to get signed such forms from innocent and minor children and even they paid some parents to sign such forms and thereafter use those forms for the purpose of their advertisement and publications and thereby they show to the public that those students were in fact their students which even in the knowledge of defendants is false. Even close scrutiny of those advertisements it can be seen that there are forms who claimed to be signed by the students of Aakash institute but apparently not signed by the students. Even there are certain forms which were shown as signed by the students in the month of March whereas it is the fact that all the students are busy in board examination in the month of March and no student is interested in taking admission in any course of any coaching institute. It is also vital to mention here that all those students including the plaintiff No.1 did not pay any fee for any alleged course. It may be seen from the form which the defendant is showing to the public at large that the plaintiffs have paid a fee of Rs. 100/- for the said course whereas the broacher as available on the net also the fee for such course was determined as Rs. 2500/- and as per the principle of exemption as set by the defendant No.1 itself a student who secure more than 95% in 10<sup>th</sup> class will be given exemption in fee up to 75% which would be Rs. 625/- and since the plaintiff No.1 had secured more than 95% in 10<sup>th</sup> class therefore exemption in fee could be given him only up to 75% i.e. whereas the defendants shown in the said alleged forms a

fee of Rs. 100/- only for the said course which can not be as per the own version of the defendants hence it is clear that the defendant has in fact created the said form and thereby earned a lot by filthy ways.

18. That immediately thereafter, the defendant no.1, following the principle that attack is the best defence, got issue a legal notice dated 3.6.2009 to the plaintiff no.2 threatening both plaintiff no. 1 & 2 not to make any such statement in the news papers and take effective measures and ensures that such material and news are not circulated any further. The said legal notice was full of false and concocted facts and nothing but a device to pressurise the plaintiffs to not to bring truth in the public any further.
19. That as such the aforementioned advertisement of the defendant no.1, claiming plaintiff no.1 as its student was got published several times in the All India News Papers. Under such circumstances as since the defendants were continuously involved in illegal and unethical practice in using the name and fame of plaintiff no.1 falsely and without any permission of any sort from the plaintiffs just for business gain, plaintiff no.2, being a guardian of plaintiff no.1 got issued legal notice on 23.6.2009 through his advocate to the defendant no.1 to the effect that the plaintiff no.1 had never been a student of defendant institute in any manner. He had never sought any sort of favour and had never undertaken any studies or attended any classes. The plaintiff no.1 had never submitted any fee to the defendant institute as he had no intention at any time to be the student of defendant institute but despite that the defendant no.1 continuously and falsely publishing the advertisements claiming the plaintiff no.1 as its student and thereby illegally showing them self to be associated with plaintiff no.1 for the purpose of gaining publicity and undue business advantage, therefore, the defendant no.1 was called upon to immediately stop the false advertisement wherein the plaintiff no.1 was shown as a student of defendant institute and also directed to pay a sum of Rs. 2 crore as damage to the plaintiffs and if they don't stop the said false advertisement the plaintiffs would be entitled to claim Rs. 25 lacs for each day apart from initiating legal proceedings against the defendant institute.
20. That since the defendant no.1, even after receiving the legal notice dated 23.6.2009 on behalf of plaintiff no.1 & 2, neither replied the said

legal notice nor stopped its aforementioned false advertisements, the plaintiff no.2 again got issued another legal notice on 4.7.2009 through his lawyer and directed them to stop the advertisements immediately being false and defendant No.1 is using name and fame of plaintiff no.1 unauthorisedly as plaintiff no.1 had neither taken admission in any of its course nor deposited any fee nor was associated with it in any way.

21. That smelling the seriousness of the matter, the defendant no.1, again using the principle that attack is the best defence, replied the notices of plaintiff no.2 vide its reply notice dated 24.7.2009 through its advocate and without refuting the contents of the notices of plaintiff no.2 directed the plaintiffs by way of said reply notice that since the plaintiffs have issued legal notice to defendant no.1 and did not comply the directions/orders given to them by notice dated 3.6.2009, therefore, they are liable to pay Rs. 3 crore to the defendant no.1 as damage. The plaintiffs were also threatened with the words that a criminal complaint had already been filed against the plaintiffs to prosecute them and if the advocate of the plaintiffs advice to initiate any legal proceedings against the defendant no.1, the cost of the said proceedings would be the sole responsibility of plaintiffs. However, no such criminal case came in the light.
22. That under such circumstances, the plaintiff no.2 got sent a final legal notice dated 8.8.2009 to the defendant no.1 through his advocate clearly pointing out that the defendant no.1 despite continuous request of the plaintiff no. 1&2 not to publish any such false advertisement, keep on publishing the name of the plaintiff no.1 and claiming plaintiff no.1 as its student illegally whereas plaintiff no. 1 had never been a student of defendant institute and as such took maximum commercial advantage and profit from those false advertisements and defendant institute unable to refute any of the contentions contained in the earlier legal notices sent by the plaintiff no.2 and, therefore, requested damage as claimed in the earlier notices besides directing to stop all such advertisements immediately.
23. That defendant institute, under such circumstances and finding that plaintiff no.1&2 are continuously objecting on its false advertisements, again used a tactic of pressure and attack and as such filed a frivolous civil suit in this Hon'ble Court titled as M/s Aakash Educational

Services Ltd versus Nem Chand Jain and Ors. bearing no. CS(OS) 1404/2009 and thereby claimed an amount of Rs. 3 crore from plaintiffs as damage. However, the suit of the defendant no.1 was dismissed by the Ld. Single judge in limini qua plaintiff no.1&2 on 11.8.2009 with the following observations:-

“The above signature of the minor at the foot of the terms and conditions does not constitute a valid contract as far as the minor is concerned. The signature of the parent does not specify that the parent is signing for and on behalf of the minor...

.....The suit is premised on the right of the Plaintiff to have an exclusive right to use the name of Defendant No.2 for publicity. In the considered view of this Court, the parent or guardian of a minor cannot part with the right of the minor to have a say about the use of his photograph for publicity by an institute run on commercial basis in the event of his succeeding in an entrance examination. In the considered view of this Court a clause in a contract that permits commercial exploitation of the skill and talent of a minor would also be opposed to public policy. Such a contract being void in terms of Section 23 of the Act cannot be enforced.”

The suit was, therefore, ordered to carry out against defendant no.3 therein, Mr. Vinod Aggarwal, a teacher of FIITJEE who also made the similar statement that plaintiff no.1 had took coaching in FIITJEE and not Aakash Institute.

24. The being frustrated the defendant institute challenged the said order of Ld. Single Judge before the Hon'ble Division Bench of this Hon'ble Court by way of appeal bearing no. RFA(OS) 74/2009, however the Division Bench of the Hon'ble High Court vide judgment dated 7.9.2009 also dismissed the appeal of the defendant No.1 in limini with the following observations:

“It appears that Defendant No.2 had not attended any classes conducted by the Plaintiff and had not paid any fees. The learned Single Judge has come to the conclusion that since Defendant No.2 was a minor, he could not have entered into a binding contract, and no one else, including his father, could have commercially exploited his photograph, as this would be contrary to what is envisaged in Section 23 of the Indian Contract Act, 1872...

We are in complete agreement with the reasoning of the learned Single Judge to the effect that Defendant No.2 was, at the relevant time, impervious to a claim for damages because

of his minority. Defendant No.1, who is the father of Defendant No.2, can similarly not be found liable due to statutory embargos, inter alia, under Sections 11 and 23 of the Indian Contract Act since his liability flows from Defendant No.2. There is no merit in the Appeal which appears to us to have the oblique motive of creating fear amongst the student fraternity from making any adverse statement against the Plaintiff. Appeal as well as the application is dismissed.”

25. That finding no other way the defendant withdrew the aforementioned civil suit on 28.5.2010 as they were not willing to initiate any legal proceeding against the teacher of its competitor who is as powerful as they are. It is very important to mention here that the defendant no.1 withdrew the said suit despite depositing Court Fee in the Hon'ble Court on the claimed amount of Rs. 3 Crore against the plaintiff No.1 & 2 despite Hon'ble Single Judge directed them to continue the said civil suit against defendant no.3 therein, Mr. Vinod Aggarwal, a teacher of FIITJEE and it establish that the motive of the defendant No. 1 in filing the said frivolous civil suit was only to pressurize the plaintiff not to disclose the truth to the public.
26. That though the suit as well as appeal of the defendant no.1 were dismissed in limini, the plaintiffs were having no knowledge of the same and just few days ago the plaintiff no.2 could know about the same in a random search on the internet. However, it is important to note that despite losing its vexatious, and meritless suit in the Hon'ble High Court against the plaintiffs, the defendant no.1 is still using the name and fame of the plaintiff no.1 by way of advertisements and still claiming the plaintiff no.1 as its student which is false even to the knowledge of the defendant No.1 and as such earning huge profit in the name of plaintiff No.1 which is a clear cut contempt of the verdicts of the Hon'ble High Court which also shows that the defendant No.1 has no respect to the orders of the Hon'ble Court.
27. That since the plaintiff no. 1&2 had already made statement in the media that plaintiff no.1 had never been a student of defendant institute in any manner and even some news articles have already been published in this regard yet the advertisements are continuously coming in the news papers, therefore, people have started thinking that perhaps now the plaintiff No. 1 to 3 have permitted defendant no.1 to use the name and fame of plaintiff no.1 due to some kind of arrangement or settlement with the defendants and plaintiff no.1 is en-

cashing his success and earning huge money by way of advertisements and people are taking him as businessman rather than a brilliant student whereas the truth was otherwise and in fact the defendants are increasing its business by misusing the name of the plaintiff no.1 without any permission and thus were trying to defraud the innocent students and its parents showing that only the students who study in the defendant institute could come on the top and thereby conspired to make huge capital out of it. The facts as emerged aforementioned itself shows that the defendant is infact indulging in using and misusing the name, fame and success of the plaintiff No.1 for its own illegal profit and gain without any authority and permission. These advertisements are false and are misleading Millions of students across India.

28. That the false advertisements of defendant no.1 which are still in the news sent a wrong message for the plaintiff No.1 in the public that the plaintiff No. 1 has become a saleable icon and making money by way of such advertisements whereas the truth was otherwise which distorted the image of the plaintiffs drastically. The defendant maliciously and mischievously treated a topper student of India. The defendant played with the trust of the plaintiff no.1 and committed a fraud with the plaintiffs with the sole motive to earn huge profit.
29. That as such the plaintiffs No.1 to 3 have been harassed mentally and physically in the hands of defendants. Defendants are mis-using the name, fame and position of Plaintiff No.1 illegally and unauthorisedly and without any authority and permission and as such by all these acts they conveyed a message in the public at large that plaintiff No.1 is involved in making money by way of selling himself and as such distorted the image of the plaintiff No.1 and as such lowered the image of the plaintiffs No. 1 in the public which is not permissible so also illegal, unauthorised and unethical. They distorted the picture and respect of plaintiff No. 1 in the public. The conduct/misconduct was done just to malign the image of Nitin jain and attract thousands of innocent students and its parents which also drove huge capital for the defendants. As such the damage to the reputation of Nitin Jain, plaintiff No.1 herein, disturbance and mental harassment experienced by plaintiff No. 1 to 3 is assessed and estimated to Rs. 2,00,00,000/- apart from damage of Rs. 25 lacs for each day from 23.6.2009 when the plaintiff no.2 sent first notice to the defendant and advised to stop

the false advertisement and don't claim plaintiff no.1 as its student however, defendant no.1 did not bother to stop those advertisements in the news papers. As such the total damage is assessed as Rs. 2,00,00,000/- (Rupees two crore only) and the damage of @ Rs. 25 lacs for each day from 23.6.2009 is to be determined by the Hon'ble Court. The plaintiffs are ready to pay the court fee on the amount of damage as determined by the Hon'ble Court. Which the defendants are liable to pay to the plaintiffs No. 1 to 3 as damage.

30. That cause of action for filing the present suit arose for the first time on 30.9.2008 when defendant no.2 called on the phone of plaintiff no.1 for the first time and sought permission to come at home and deliver some books to him. The cause of action further arose on 1.10.2008 when defendant no.2 came at the home of the plaintiffs without any permission and gave the books to the plaintiff no.1 with duress and got signed the form from plaintiff No. 1 & 3. The cause of action further arose on each and every date whenever the defendants called plaintiffs thereafter on their phone to get his roll nos.. The cause of action further arose when defendant no.2 on 22.5.2009 last time called the plaintiffs at their home and tried to know the roll no. and name of the centre of the plaintiff no.1. Cause of action further arose on 25 May, 2009, when the IIT-JEE result was declared and plaintiff No.1 was declared as All India Topper in the said exam and 4 persons including defendant no.2 claimed to be the executives of Aakash Institute came at the house of the plaintiffs and tried to convince plaintiffs that they take a cheque from their Marketing Manager. The cause of action further arose on 26.5.2009 when Aakash Institute published an advertisement in the News Papers with the name and photograph of plaintiff No.1 claiming to be its student (Aakashian). The cause of action further arose on 27.5.2009 when the plaintiff No.2 called Mr. Ibrahim on his phone and raised his objection and displeasure with respect to the advertisement wherein Aakash Institute claimed the plaintiff no.1 as their student and directed to stop all such advertisements and not to publish the same any more. The cause of action further arose when the plaintiff No.2 called to the head office of the defendant no.1 and requested not to publish the said advertisement and in turn the official who ultimately received the said call threatened the plaintiff No. 2 by way of mentioning their strength. The cause of action further arose on 29.5.2009 when the defendants published another advertisement claiming plaintiff No.1 as

its student and this time they also published the form which was got signed from the plaintiff no.1 by way of allurements and when he was only a minor. The cause of action further arose when the plaintiff no. 1 & 2 made the statement openly in the media which was published in news papers on 28.5.2009 that plaintiff no.1 had never took any coaching from Aakash Institute and plaintiff no.1 had no concern with them. The cause of action further arose when the MD of the Aakash Institute made a very serious allegation in the news papers which was published in the news papers dated 30.5.2009, to the effect that plaintiff no.1 had been the student of Aakash Institute and now they (plaintiffs) are denying this alleged fact because "probably they (plaintiffs) have been paid for that". The cause of action further arose on 3.6.2009 when defendant No.1 got issue a legal notice to the plaintiff no.2 threatening both plaintiff no. 1 & 2 not to make any statement in the news papers. The cause of action further arose on 23.6.2009 when plaintiff no.2, got issued legal notice through his advocate to the defendant no.1 directing the defendant No.1 to immediately stop the false advertisement wherein the plaintiff no.1 was shown as a student of defendant institute and also directed to pay damage to the plaintiffs. The cause of action further arose on 4.7.2009 when the plaintiff no.2 again got issued another legal notice to the same effect. The cause of action further arose on 24.7.2009 when defendant no.1 replied the notices of plaintiff No.2 and without refuting the contents of the notices of plaintiff no.2 directed the plaintiffs by way of said reply notice that since the plaintiffs have issued legal notice to defendant no.1 and did not comply the directions/orders given to them by notice dated 3.6.2009, therefore, they are liable to pay Rs. 3 crore to the defendant no.1 as damage. The cause of action further arose on 8.8.2009 when the plaintiff no.2 got sent a final legal notice to the defendant no.1 through his advocate clearly pointing out that plaintiff no. 1 had never been a student of defendant institute and defendant no.1 took maximum commercial advantage and profit from those false advertisements and defendant institute unable to refute any of the contentions contained in the earlier legal notices sent by the plaintiff no.2 and, therefore, requested damage as claimed in the earlier notices besides directing to stop all such advertisements immediately. The cause of action further arose on 11.8.2009 when this Hon'ble Court dismissed the civil suit of the defendant No.1 against plaintiffs No. 1 & 2. The cause of action further

arouse on 7.9.2009 when the Hon'ble Division Bench of this Hon'ble Court also dismissed the appeal of the defendant No.1. The cause of action further arouse on 28.5.2010 when defendant withdrew the aforementioned civil suit. The cause of action further and thereafter arouse on each and every occasion when the defendant show the advertisements on the news papers and net mentioning and claiming the plaintiff no.1 as their student and did not remove all those advertisements which are shown on the internet. The cause of action is still subsisting and continuous as the said advertisements are still shown to the public at large.

31. That this Hon'ble Court has the territorial jurisdiction to entertain and adjudicate the plaint/suit of the plaintiffs No. 1 to 3.
32. That the valuation of the suit for the purpose of court fee and jurisdiction for the relief of recovery is Rs. 2,00,00,000/- and appropriate court fee there on could be Rs. .1,97,592/= and the plaintiffs paid a part court fee of Rs. 25,000/- and undertake to pay the remaining court fee for within two months from filing of the suit.

### **PRAYER**

In view of the aforesaid facts and submissions, it is most respectfully prayed that the Hon'ble Court may kindly be pleased to:

- a. pass a decree of recovery of a sum of Rs. 2,00,00,000/- (Rupees two crore only) and @ Rs. 25 lacs for each day from 23.6.2009 in favour of plaintiffs No.1 to 3 and against the defendants towards damage of reputation;
- b. direct the defendants No.1 & 2 to return all the original materials including photographs of the plaintiff no.1 to the plaintiffs immediately and stop using any such material immediately;
- c. pass a decree for pendente lite and future interest @ 18% per annum on the claimed amount from the date of filing the plaint till the date of realization of the same, in favour of the plaintiffs No. 1 to 3 and against the defendants;
- d. pass such other order or orders as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case

in favour of the plaintiffs No. 1 to 3 and against the defendants  
in the interest of justice.

Plaintiffs No. 1 to 3

Through

New Delhi  
Dated: 28.05.2011

(R.K. SAINI, PUNEET VERMA &  
KIRAN DHARAM)  
Advocates for the Plaintiff No.1 to 3

**VERIFICATION**

Verified at New Delhi on this .....day of .....May, 2011 that the contents of  
para 1 to 29 of the plaint are true and correct to our knowledge and the  
contents of para 30 to 32 of the plaint are true and correct to our knowledge  
on the basis of information received and believed to be true and correct. Last  
para is prayer to the Hon'ble Court.

Plaintiffs No. 1 to 3

