

IN THE HIGH COURT OF DELHI AT NEW DELHI
CS (OS) NO.1431 OF 2011

Nitin Jain & Anr.

....Plaintiffs

Versus

Pie Education
(A Unit of Axis Institute of Learning
Pvt. Ltd.)

....Defendant

**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 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 is a coaching institute and Mr. Raj Kushwaha is the Managing Director of the defendant Institute.
3. That on 25 May, 2009, IIT-JEE result was declared wherein plaintiff No.1 was declared as All India Topper and the name and photograph of the plaintiff No.1 had been shown in all the leading news papers in all language of India and became familiar among the students and their parents and he had become an icon for them who wish to be something in the life.

4. That due to rising fame of plaintiff no.1 several coaching institutes came forward to take commercial benefit of the name of plaintiff No.1 showing as plaintiff No.1 was associated with them either as a direct student or distance learning program or their teachers have taught plaintiff No.1 and thereby tried to attract innocent and aspiring students to join them. The plaintiff no.1 & 2 had to face this flood of unscrupulous coaching institutes and they had to give statements repeatedly in the media with respect to several such coaching institutes that plaintiff no.1 had no concern with them.
5. That defendant institute was also one of those coaching institutes and they also published the advertisements, mostly found between the pages of leading news papers which were in the same size of that of news papers pages wherein the defendant institute had praised its teaching staff with the wordings that they have taught plaintiff No.1 also and as such conveyed a message in the public at large that the plaintiff no.1 had secured his success due to these teachers of it and thereby misused the name, fame and success of plaintiff No.1 and invited the attentions of hopeful students and their parents to wards those advertisements so that they could be pulled toward it to take admission in it by creating a picture that if they would be taught by these teachers, they could also get the success like the plaintiff No.1.
6. That the use/misuse of the name of the plaintiff no.1 was unauthorized as firstly the declaration of the defendant that plaintiff no.1 was taught by those teachers of it was false and secondly no permission was sought from the plaintiff No.1 or 2 this regard. The use of the name of plaintiff No.1 in this fashion was clearly comes under the definition of misuse for which defendant institute was not carrying any authority. The plaintiff No.1 had no concern with the defendant institute or its any of the teachers ever. The defendant institute or its staff and the plaintiff No.1 or 2 both did not know each other and never met however, the defendant institute had taken advantage of the situation that since no body is going to verify the fact, therefore, misuse the name of plaintiff No.1. Besides it by showing that plaintiff no.1 had been nurtured by its team of teachers, they indirectly spread a message in the public that if fact plaintiff no. 1 had studied in this coaching institute and that is why he got this extra ordinary success.

7. That coming to know this advertisement of defendant institute, the plaintiff No.2 contacted to the office of defendant on phone and conveyed his objection and displeasure on misusing of the name of his minor son in this manner, the executive there requested to contacted one Mr. Yadav called to be the in-charge NCR area and gave his mobile no. i.e. 9350509818. The plaintiff No.2 thereafter called him on the aforementioned mobile no. and complained about publication of name of nitin jain unauthorizedly, however, just after hearing the complaint and objection of plaintiff No.2 he cut the phone off. The plaintiff No.2 tried his phone later on several times but he did not pick the same.
8. That Plaintiff No.2 under such circumstances and being a guardian of plaintiff no.1, got sent a legal notices dated 10.6.2010 through his advocate to the Managing Director of defendant institute and pointed out that they are unauthorizedly using the name of plaintiff no.1 for extraneous considerations and unlawful monetary gains and commercial purposes and thereby they are not only defrauding the plaintiffs but also misleading the aspiring students community which caused to tarnish the image of plaintiff no.1 and sent a message in the public that plaintiff No.1 & 2 are selling the name of plaintiff No.1 for money and that is why more than one coaching institutes are declaring that plaintiff No.1 is theirs'. By the said legal notice the plaintiff no.1 called upon the defendant institute to stop immediately the advertisements wherein the name of the plaintiff No.1 was shown in any manner and pay them a sum of Rs. 50,00,000/- as damage for the acts of defamation and communications by which the repute and image of plaintiff no. 1 & 2 has been lowered as people have started blaming that plaintiff No.1 & 2 are earning with such commercial advertisements. Such a blot on the name of the family and minor son of plaintiff No.2 has not only harassed them emotionally and disturbed them but also put them all to social condemnation.
9. The defendant however, did not choose to give any reply to the said legal notice and under such circumstance, the plaintiff no.2 got sent reminder cum final notice on 3.8.2010 to the defendant institute through its managing director and conveyed thereby that it seems that the contents and averments set out in the earlier legal notice are admitted as correct in the absence of any denial of those contents and therefore, requested to send a reply to the earlier notice to the plaintiff

No.2 otherwise an adverse inference shall be drawn against it and the contents of the earlier notice of plaintiff No.2 would be taken as admitted as correct. However, the defendants again did not give any reply to the legal notice or the reminder of the plaintiff No.2 got sent by the advocate of the plaintiff No.2.

10. That however in the month of April 2011 beginning when one of the friends of plaintiff No.2 went to the defendant institute at South Delhi Centre at Kalu Sarai for the purpose of admission of his son, he was provided a broacher along with some other documents wherein again name of plaintiff No.1 was mentioned as the students of its' group of teachers which was false on the face of it and it is establish that the defendant institute is still using the name of the plaintiff No.1 illegally and unauthorizedly for the sole motive of unethical business gain. The name of the plaintiff no.1 was used for the purpose of unlawful monetary 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 this coaching institute get not only success in the IITJEE but also secure top rank like plaintiff no.1 and as such indulge in publicity and commercial exploitation of the success of plaintiff no.1 by way of publishing the name whereas the fact is that the plaintiff no.1 had never took any coaching or help from the defendant Institute.
11. It is also important to mention here that one of such unscrupulous coaching institutes was also publishing false advertisement claiming plaintiff No.1 as its student and on raising objections by the plaintiff No.1 & 2 against it the said coaching institute 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 for making a statement in the media that plaintiff No.1 has never been the student of that coaching institute. 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.

12. The being frustrated the said coaching 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 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.”

13. That as such the law has been settled by this Hon’ble Court that no one including the parents of the minor have any right of commercial exploitation of the skill and talent of the minor which was and is done by the defendant institute by way of false advertisements for its commercial gain and profit as the same is against the public policy

and by doing this the defendant institute had created a picture in the public that plaintiff No. 1 & 2 are permitting the different coaching institutes including defendant institute to use the name of plaintiff No.1 as it student which was taught by the faculty teachers of defendant institute and thereby earning huge money which lowered the image of plaintiffs in the eyes of students, their parents and even general public and people are taking plaintiff No.1 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 defendants are 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.

14. That the false advertisements of defendant institute which are still in the circulation 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 committed a fraud with the plaintiffs with the sole motive to earn huge profit.
15. That as such the plaintiffs No.1 to 2 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 this act 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 and 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 attract thousands of innocent students and its parents which drove huge capital for the defendants. As such the damage to the reputation of Nitin Jain,

plaintiff No.1 herein and disturbance and mental harassment experienced by plaintiff No. 1 & 2 is assessed and estimated to Rs. 50,00,000/- which the defendant are liable to pay to the plaintiffs No. 1 & 2 as damage.

16. That cause of action for filing the present suit arose for the first time when the defendant institute for the first time i.e. after the result of IIT-JEE published the advertisements found in the news papers wherein the defendant institute had praised its teaching staff with the wordings that they have taught plaintiff No.1 also and as such conveyed a message in the public at large that the plaintiff no.1 had secured his success due to these teachers of it and thereby misused the name, fame and success of plaintiff No.1. The cause of action further arose on each and every occasion whenever such advertisement was published in the leading news papers. The cause of action further arose on 10.6.2010 when Plaintiff No.2, being a guardian of plaintiff no.1, got sent a legal notice through his advocate to the Managing Director of defendant institute to stop the advertisement wherein they are claiming plaintiff No.1 as their student and he was taught by teachers of this coaching institute. The cause of action further arose on 3.8.2010 when the plaintiff No.2 again got sent reminder cum final legal notice to the managing director of defendant institute to reply the earlier notice otherwise the contents of earlier legal notice would be treated as admitted and correct. The cause of action further arose in the month of April, 2011 when one of the friends of plaintiff No.2 went to the defendant institute at South Delhi Centre at Kalu Sarai for the purpose of admission of his son, he was provided a brochure along with some other documents wherein again name of plaintiff No.1 was mentioned as the students of its' group of teachers. The cause of action still subsists and continues as it is understood that the defendant institute had still not destroyed and stopped all such false advertisements/pamphlets and are still distributed among the students and their parents and thereby gaining illegal monetary gain and profit which is against the public policy and damaging the image of plaintiffs herein.
17. That this Hon'ble Court has the territorial jurisdiction to entertain and adjudicate the plaint/suit of the plaintiffs No. 1 to 2.
18. That the valuation of the suit for the purpose of court fee and jurisdiction for the relief of recovery is Rs.50,00,000/- and appropriate

court fee there on could be Rs. .51,192/= and the plaintiffs paid a part court fee of Rs. 10,000/- 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. 50,00,000/- (Rupees fifty lacs only) in favour of plaintiffs No.1 & 2 and against the defendant towards damage of reputation of plaintiff No.1 & 2;
- b. direct the defendant to stop using name of the plaintiff No.1 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 & 2 and against the defendant;
- 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 & 2 and against the defendant in the interest of justice.

Plaintiffs No. 1 to 2

Through

New Delhi
Dated:28.05.2011

(R.K. SAINI, PUNEET VERMA &
KIRAN DHARAM)
Advocates for the Plaintiff No.1 to 2

VERIFICATION

Verified at New Delhi on thisday of .May, 2011 that the contents of para 1 to 15 of the plaint are true and correct to our knowledge and the contents of para 16 to 18 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 2