

IN THE HIGH COURT OF DELHI AT NEW DELHI

I.A. NO. 16891 OF 2011

IN

CS (OS) NO. 1429 OF 2011

NITIN JAIN & ORS.

....PLAINTIFFS

VERSUS

Aakash IIT-JEE

(Division of Aakash Education Services Ltd.) & Anr

....DEFENDANTS

REJOINDER TO THE REPLY FILED BY THE DEFENDANT NO.1 TO THE APPLICATION OF THE PLAINTIFFS UNDER ORDER XXXIX RULE 2A READ WITH SECTION 151 CPC

1. The contents of this para of the Preliminary submissions are false and misleading on the face of them as the defendant has no regard of the orders and directions of this Hon'ble Court and if it has some then he should have stopped publishing the advertisements mentioning the name and photographs of the plaintiff no.1 just after losing the battle in this Hon'ble High Court for damage while claiming entitlement of using the name and photograph of the plaintiff no.1. However, the defendant despite clear judgments of single bench **CS(OS)1404 of 2009 Dated 11.08.2009** and even division Bench **RFA(OS) No.74 of 2009 Dated 07.09.2009** of Hon'ble High Court kept on continuing in publishing the name and photograph in the advertisements of its institute which itself reflect that how much respect the defendant has for the orders and directions of this Hon'ble Court. The defendant is well aware that he kept on violating the orders of this Hon'ble Court and only on 1.6.2011 he closed most of the websites of his institute whereas on 7.9.2009 the Hon'ble Division Bench had held that defendant had no authority to publish the same. It is further submitted that even after the order of the Division bench the defendant besides publishing the name and photograph of the plaintiff no.1 published full page news paper advertisement on 14.03.2010 and 22.03.2010 (Hindustan Times) despite of this 29.5.2010 (Times of India), 26.5.2011 (Hindustan Times) (Front page), 27.5.2011 (Times of India), 8.6.2011(Hindustan Times) showing and using name and fame of hundreds of minor children/students for his professional profit and gain. Copies of those newspapers containing aforementioned advertisements are annexed as **ANNEXURE A (COLLY)**. Whereas under law they can not use the

name and skill and talent of a minor child/student for commercial gain this shows how much he has regard of the orders of this Hon'ble Court. It is also pertinent to mention here that a full one front page advertisement in a National Daily news paper rate is not less then One Crore and if the use of name and picture of these minor students dose not fetch money more than one crore, there would be no requirement of these advertisements. This itself shows that using the name and fame of these minor students is a very profitable business. It is also pertinent to mention here that the defendant safely understanding that since no notice was issued to the plaintiffs/defendants therein in the Civil Suit and the appeal of the defendants/plaintiff therein, they could not know the judgment of the Hon'ble Court and as such they could enjoy the situation and keep on utilize the name and fame of the plaintiff no.1 in their advertisements which they continued till the filing of aforementioned contempt and even keep on using the name and photograph of hundreds of miner students till dates despite having no authority to do so under law and against order/judgment of the Hon'ble Court.

2. The contents of this para of the Preliminary Submissions are also wrong and denied. It is submitted that the defendant has to explain that what authority he had to keep on using the name and photographs of the plaintiff no.1 after 7.9.2009 in the websites of his institute. Aakash IITJEE is the owner of these websites and he being Managing Director was/is thus responsible for the materials used therein. Question of uploading is irrelevant when his claim that he has a right to use the name and photographs of plaintiff No.1 on the basis of some alleged and concocted contract had been rejected by the Hon'ble High Court twice. Thereafter he was bound to remove the name and photographs of the plaintiff no.1 from all the websites of its institute which he deliberately did not do and thereby misled the innocent students and their parents and this is so profitable for him. It is further submitted that name and photograph and even false claim that the plaintiff no.1 has been their student had been uploaded once and since the Aakash Institute is the owner of these websites they were bound to remove all the materials from their websites just after declaring the law by the Single Bench and Division Bench of this Hon'ble Court against them, however, they did not do so and kept on misusing the same.

3. The contents of this para are baseless and false hence denied. It is surprising that on 1.6.2011 at about 11:30 am the matter of the plaintiffs was taken up by the Hon'ble Court. The stay was granted at about 11:45 am by the Hon'ble Court and within half an hour the defendant allegedly complied the order i.e. by 12:21 pm on the same day i.e. 1.6.2011 which proves that the defendant is following the plaintiffs so rigorously because of being aware that the plaintiffs are objecting their illegal activities and can go to the Hon'ble Court at any point of time.
4. The contents of this para of the Preliminary Submissions are again wrong and denied. It is submitted that being conversant with the technology or not by the Managing Director of the defendant institute has no relevancy so far as the responsibility of complying the order of this Hon'ble Court is concerned. He is the whole sole in the institute and gets maximum profit from these advertisements and thus can not run away from his responsibility of complying the orders of the Hon'ble Court. If the contempt has been done by the employee of the institute, he being the head of the institute is responsible. It is further denied that Shri Santosh T. had deleted various materials from the websites on 1.6.2011 itself. The websites which came into light now shows that the order of the Hon'ble Court had not been complied with.
5. The contents of this para of the Preliminary Submissions are also wrong hence denied. It is submitted that the defendant deliberately did not delete the name and photograph of the plaintiff no.1 from all the websites of his institute as the same was very much lucrative and the defendant was adamant to take maximum benefit from it. The documents as filed along with this reply are all self created and manipulated documents.
6. The contents of this para of the Preliminary Submissions are denied for want of knowledge.
7. The contents of this para of the Preliminary Submissions are false and baseless hence denied. It is submitted that "*History.aspx*" and "*Intro.swf*" are not the unused or that kind of files which are not displayed on the websites. They were found very easily by the plaintiff no.2 on the internet and opened very easily. Hence it is completely false statement on the part of the defendant that the said files are not accessed through since the same are not displayed. It is quite surprising that the files which were easily found and opened by a layman i.e. plaintiff no.2 on the internet, the expert of the defendant

could not search and opened. It is further submitted that both the websites are very important websites for the defendant and his institute as in the first website the defendant is hyping long history of the institute and thereby alluring the innocent students and in the other website which is closed by the defendant now for the time being contains photographs of topper students which allegedly studied in the defendant institute, therefore, not deleting the material pertained to plaintiff no.1 from these websites was a deliberate action on the part of the defendant and not a bonafide one.

8. The contents of this para of the Preliminary Submissions are also wrong and denied. From the facts mentioned above it is clear that not removing the name and photographs of plaintiff no.1 from the websites as mentioned in the application even after the order dated 1.6.2011 is a deliberate action on the part of the defendant and for the same the defendant is liable for punishment in violating the order of the Hon'ble Court.

REJOINDER ON MERIT

1. The contents of this para of the reply except admitted by the defendant being matter of records are wrong and denied and the plaintiffs refer to and rely upon the corresponding para of the application.
- 2-3. The contents of this para of the reply are wrong and denied and the plaintiffs refer to and rely upon the corresponding para of the application.
4. The contents of this para of the reply are wrong and denied and the plaintiffs refer to and rely upon the corresponding para of the application. The defendant is unable to explain that under which law he can use the name and photographs etc. of the plaintiff No.1 for commercial gain or even otherwise. This also shows that defendant does not respect the order of the hon'ble court even though the plaintiff no.1 never ever studied or has any concern with the defendant institute. Rather the plaintiffs is going to take criminal legal action against the defendant for published false, misleading and untrue advertisement of minor brilliant students and committing fraud and cheating with student community of India and creating false documents just to save their skin and tried to entangle a topper student of this country in such a filthy way and unfair trade practice.

- 5-8. The contents of these paragraphs of the reply are denied being false and the plaintiffs refer to and rely upon the forgoing submissions as well as the contents of the corresponding para of the application in this regard.
9. The contents of this para of the reply are untenable being based on untrue facts. The defendant despite having no authority were using the name and photographs of the plaintiff no.1 and claiming his right to do so he filed civil suit against the plaintiffs no. 1 & 2 demanding a damage of Rs. 3 Crore however, the Hon'ble Single Bench dismissed the said suit of the defendant qua plaintiff no.1 & 2. The defendant approached the Hon'ble Division Bench of this court in appeal, however, the same was also dismissed and while dismissing the said appeal the Hon'ble Division Bench passed a structure against the defendant "that the appeal has been filed with the oblique motive of creating fear amongst the student fraternity". Despite that the defendant continues to use name and photographs of the plaintiff No.1. Even despite passing the restrain order by the Hon'ble Court on 1.6.2011 the defendant did not refrain from his illegal design and kept on using the same on two websites of his institute which was contemptuous and hence the defendant is liable to be prosecuted for contempt of the Court.

In view of the forgoing it is submitted that there is not merit in the defence of the defendant for not complying the order dated 1.6.2011 of the Hon'ble Court and rather he tried to shift the burden on the shoulder of one of his employees whereas if he is a true leader, he should have come forward and take the responsibility on his own, therefore, the defence of the defendant is liable to be rejected and he should be punished for the same.

Plaintiffs No. 1 to 3

Through

New Delhi
Dated: 12.12.2011

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