

IN THE HIGH COURT OF DELHI AT NEW DELHI
(ORDINARY ORIGINAL CIVIL JURISDICTION)

I.A. NO.16912 of 2011

IN

CS (OS) NO.1430 OF 2011

IN THE MATTER OF

NITIN JAIN & ORS.

...PLAINTIFF

VERSUS

Shri D.K.Goel

Founder Chairman M/S FIITJEE LIMITED & Anr.

...DEFENDANTS

**REJOINDER TO THE REPLY FILED BY THE DEFENDANT
TO THE APPLICATION UNDER ORDER 39 RULE 2-A
ALONG WITH SECTION 151 CPC OF THE PLAINTIFF**

PRELIMINARY OBJECTIONS

1. The reply filed by one Ashish Kumar Aggarwal can not be treated as a reply to the application Order 39 Rule 2-A i.e. contempt of the order dated 1.6.2011 as he is not authorised to file any reply to this application as the application for contempt was moved against the contemptner Shri D.K.Goel, Chairman and Director of defendant institute. As per the law the contemptner is personally liable for the contempt and he can not give any power of attorney to any person in this regard. Even the unqualified apology, if any, to the Hon'ble Court can be tendered only by the contemptner and none other. Therefore, the reply and affidavit filed by one Ashish Kr. Aggarwal is not accepted under law and it is to be directed by this Hon'ble Court that the reply along with affidavit be filed by Shri D.K.Goel in his personal capacity.

REPLY TO THE PRELIMINARY SUBMISSIONS:-

1. The contents of this para of the reply are false and incorrect hence denied. The allegations as made in the application are based on documentary and concrete evidence which can not be overlooked. The facts mentioned therein are eye opener and shows the derogatory

attitude of the defendants towards the orders of this Hon'ble Court. It appears that the defendants do not count the orders of this Hon'ble Court in front of their money power and that is why though the defendants were restrained to use/misuse the name and photograph of the plaintiff no.1 on 1.6.2011 yet the defendants are still using the same openly in their broacher and websites. It is further submitted that the defendants are the owner of the websites as mentioned at page 17, 19 and 22 of the application and the said fact has itself admitted by the defendants in reply to para no. 2. The website name/link/URL as mentioned on those pages are also that of domain of www.fiitjee.com and www.fiitjee-ftre.com the defendants have complete control over them. The evidences annexed with the application clearly show that the defendants are still using the name and photographs of the plaintiff no.1 and any version contrary to the said fact are false.

2. The contents of this para of the reply are also wrong and vehemently denied. It is denied that the annexure F Colly are not lifted/copied from the defendant's websites. Mere perusal of the documents annexed alongwith application make the thing clear and there is no scope for escape for the defendant. Even the defendants are still using the name and photographs of the plaintiff no.1 in their websites namely <http://www.fiitjee.com/iitjeeres2009/hindu.pdf>, <http://www.fiitjee.com/test/ftre2009/ftre09main.htm> and <http://www.fiitjee-ftre.com/images/ftre.pdf>. The plaintiffs are annexing the documents taken on 2.11.2011 from the internet to substantiate their submissions as **ANNEXURE-A**. Therefore, it is false on the part of the defendants that the plaintiffs are showing the materials which were published by the defendants in the past and before the order dated 1.6.2011. The list of websites are matter of record and the plaintiffs have already shown that the name and photographs of the plaintiff no.1 was used by the defendants in their three websites and the documents which are annexed along with the application and so also along with this rejoinder make it clear that the defendants used the name of the plaintiff no.1 for commercial gain and profit.

REJOINDER TO THE REPLY ON MERIT:-

1. The contents of this para (reply to para 1 to 3 of the application) of the reply are wrong and denied. It is denied that the defendants complied the orders of this Hon'ble Court and stopped using the name and photographs of the plaintiff no.1 on their websites. The documents are continuously being shown even with the earlier contempt and the present contempt that the defendants have no regard to the orders of this Hon'ble Court and since the name of the plaintiff no.1 is so profitable for the defendants that they do not wish to leave it at any cost and they are continuously using the name and photographs of the plaintiff no.1. It is further submitted that not only in the websites/URL mentioned by the plaintiffs, the defendants are also still using the name of the plaintiff no.1 in their facebook page at the web address <http://www.facebook.com/FIITG?v=info> and heading FIITJEE BHOPAL | Facebook. The plaintiffs are annexing some documents taken from the internet/facebook of the defendants as **ANNEXURE B**.
2. The contents of this para (reply to para 4 of the application) of the application are also wrong and denied. It is denied that the defendants have complied the orders of this Hon'ble Court. It is further submitted that the defendants have not filed any reply to the earlier contempt (I.A. No. 11666/2011) which is still pending till date and as such admitted that they have infact committed contempt of this Hon'ble Court and they have filed a false affidavit before this Hon'ble Court they have stopped using the name and photographs of the plaintiff no.1 whereas they are still using the same. The misconduct on the part of the defendants is obvious.
3. The contents of this para (reply to para 5 of the application) of the reply need no rejoinder.
4. The contents of this para (reply to para 6 & 7 of the application) of the reply are again false and hence vehemently denied. It is denied that the affidavits filed by the plaintiffs are false and so also the same were filed in conspiracy with some other persons. It is submitted that the persons who have filed their respective affidavits along with application would

come in the witness box to depose as the truth stands on its own footings and the defendants are also bound to bring Ms. Deepika Upadhyay, Counsellor (admission) at Faridabad centre in witness box if they are not afraid from truth. Besides it is further vehemently denied that the defendants had taken steps to print new brochures deleting the name of plaintiff no.1 from the said brochures as whatever brochures the defendants annexed alongwith their reply are published only for some specific tests and reasons whereas the brochure which was annexed by the plaintiffs along with the application is a complete brochure which include overall information of the defendant institute which is valid for whole academic year (2011-12) from April 2011 . It is the brochure which is being given to all the students and parents who wish to take admission in the defendant institute. The brochures which are annexed by the defendants are for "FIITJEE TALENT SUPPORT EXAM-2011 (25.09.2011), FIITJEE NATIONAL SCIENCE TALENT SEARCH EXAM-2011 (09.10.2011), FIITJEE FORTUNATE 40-SELECTION TEST 2011 (13.11.2011), FIITJEE TALENT REWARD EXAM-2011(25.12.2011) which are published in the months of August and October, 2011 whereas the brochure which was annexed by the plaintiffs was "FIITJEE, FOR STUDENTS OF CLASS VI,VII, VIII, IX, X, XI & XII PASS, NOT JUST IIT-JEE, AIM TOTAL SUCCESS WITH FIITJEE" which is still being used by the defendants by openly using/misusing the name and photographs of the plaintiff no.1. This fact makes it amply clear that the defendants are infact trying to misguide this Hon'ble Court and trying to befool everybody. It is further submitted that the defendant no.1 in his reply to the application of the plaintiffs under order 39 rule 1 & 2 (I.A. No. 9455/2011) made his stand clear which is reproduced herein that "That the defendants have already spent huge amount in printing brochures of the institute of defendant no.1 and the admissions are already on. They will suffer huge loss in case the material goes waste, as a result of an interim order passed by the Hon'ble Court" and that is why the defendants did not destroy or stop using those brochure and are still using the same. This is the brochure which is published for an academic year (2011-12) and since the name of the plaintiff no.1 is a great source of making money that is why the defendants are not ready to leave the name of the plaintiff no.1 at any costs.

5. The contents of this para (reply to para 8 of the application) of the reply are wrong and denied and those of the corresponding para of the application as well as foregoing submissions are reiterated.
6. The contents of this para (reply to para 9 & 10 of the application) of the reply are wrong and denied. The defendants have no regard to the authority of this Hon'ble Court and the submissions as made in the earlier contempt as well as the aforementioned application make it ample clear that the defendants are continuously disobeying the orders of this Hon'ble Court.
7. The contents of this para (reply to para 11 of the application) of the application are again wrong and denied. Shri D.K.Goel being the Chairperson and Director of the defendant institute can not escape from its liability of being answerable whatever illegal had been and is being done by the officials of the institute. More so the publications which involve crores of Rupees can not be published and sent on net without the information of Mr. D.K.Goel. Institute misuse names and photographs of hundreds of minor students in its advertisement every year and spent crores of rupees in those publications and Mr. D.K. Goel does not know that where and in which manner those crores of rupees are spent by the officials of the institute? Obviously this is a futile exercise to save Mr. D.K.Goel who is answerable to these illegal activities. This is the matter of illegally misusing the name, photograph and exploiting the skill and talent of a brilliant and minor students for commercial gain and profit which is not permissible under law and despite a clear cut verdict of this Hon'ble Court and a restrained order of the Hon'ble Court, the defendants are in a derogatory manner still misusing the same and thus this is a sheer contempt of the order of this Hon'ble Court. For the rest the plaintiffs refer to and rely the contents of the corresponding para as well as foregoing submissions.
8. The contents of this para (reply to para 12 of the application) of the reply are again wrong and denied. It is denied that the application is based on falsehood, suppression of material facts and being malafide is liable to be dismissed. The documents on record can easily show that

who is guilty of falsehood and suppression of material facts. Hence the defendants are liable to be suitably punished for the gross contempt of the orders of this Hon'ble Court continuously till date.

(PLAINTIFFS No.1 to 3)

Through

(R.K. SAINI, PUNEET VERMA & KIRAN DHARAM)
Advocates for Plaintiffs
328, Lawyers' Chamber,
Delhi High Court,
New Delhi-110 003

New Delhi
Dated:

