

IN THE HIGH COURT OF DELHI AT NEW DELHI

(ORDINARY ORIGINAL CIVIL JURISDICTION)

I.A. NO. 10295 OF 2011

IN

CS (OS) NO. 1430 OF 2011

IN THE MATTER OF

NITIN JAIN & ORS.

.... PLAINTIFFS

VERSUS

FIITJEE LIMITED & ORS.

... DEFENDANTS

REPLY ON BEHALF OF THE PLAINTIFFS TO THE APPLICATION UNDER ORDER 39 RULES 4 READ WITH SECTION 151 CPC FOR VACATION OF INTERIM INJUNCTION PASSED BY THIS HON'BLE COURT ON JUNE 1, 2011 FILED BY THE DEFENDANT

1. The contents of this para of the application so far as it relates to the facts of the case as elaborated in the plaint need no reply, however, anything contrary to that are denied.
2. The contents of this para of the application are matter of record.
3. The contents of this para are vehemently denied being meritless and baseless. It is submitted in this regard that the law has already been established by the Hon'ble Single Judge as well as Hon'ble Division Bench of this Hon'ble Court that nobody had an authority or right to commercial exploit or get benefits the name, photographs and personal achievements of plaintiff no. 1(a minor student who got success through own skill and talent) being oppose the Public Policy, however, despite that the defendant continued to use the name, fame and photographs of the plaintiff no.1 for his commercial gain and profit which was illegal, under such circumstances, the plaintiffs had to approach this Hon'ble Court for necessary redressal and relief and it is not the case that interim injunction can not be given in a suit for damage rather the injunction was granted as per law the defendant had no authority and right to use/misuse the name, fame, photograph of plaintiff no.1 and any other material relating to his achievement in the

advertisement and publication at all. Since the defendant has no right to use/misuse them the injunction was rightly granted by this Hon'ble Court. Secondly keeping in view the aforesaid it is crystal clear that all the three conditions such as prima facie case in favour of the plaintiff, balance of convenience lies in his favour and the plaintiff will suffer irreparable loss and injury in case injunction is refused were/are in favour of the plaintiff. The plaintiff has annexed all the relevant papers in support of his submissions which could not be denied or refuted by the defendant.

4. The contents of this para of the application are also vehemently denied being false and contrary to the legal proposition. The defendant had moved the aforementioned application for complaining that why this Hon'ble Court had stopped them to misuse the name and photograph of the plaintiff no 1 for their commercial profit and gain and they are suffering a lot as they mentioned in their reply to the application Under Order 39 Rule 1 & 2. It is further submitted that question of damage will come into play later on whereas first the defendant has to explain to this Hon'ble Court as to whether the law permits them to use/misuse the name, fame, photograph of plaintiff no.1 and any other material relating to his achievement in their advertisement and publication at all and when the said right was not there to the defendant even for a day, they can not seek from this Hon'ble Court to vacate the stay dated 1.6.2011 so that they could carry on their illegal activity to use/misuse name, photograph and other achievements in their advertisement and publications. It is further submitted that Section 41 clause (h) of Specific Relief Act does not come in the way of the plaintiffs as firstly a legal embargo is already in the way of the defendant and no permission can be granted by this Hon'ble Court to the defendant to use/misuse the name, photograph and other materials of the plaintiff no.1. Rest of the paragraphs are denied being baseless. It is further denied that there was any agreement between the plaintiffs and respondent or any breach of agreement. The statement is false even to the knowledge of the defendant. It is further strongly denied that plaintiffs ever acquiesced of any act done by the defendants. It is further strongly denied that plaintiffs themselves appeared before the camera for videography. It is submitted that the stay was granted only in favour of plaintiff No.1 against the illegal activities as aforementioned of the

defendant and admittedly the videography was done by the defendants themselves to the plaintiff no.1 when the plaintiff no.1 was minor and the defendants and no one else had no authority to use/misuse those video of plaintiff no.1 in the internet or anywhere. It is further submitted that those video were prepared by the defendants themselves two days before the result of IIT-JEE 2009, however those videos were distorted later on by them and edited in the manner so that those videos were shown as interview of plaintiffs to the journalists as they mentioned in their civil suit No. 666/2010 which was false. It is further submitted that the plaintiffs objected on the conduct of the defendant several times and even got sent legal notices and even the plaintiffs approached the Faridabad Police and Delhi Police and even CBI to stop the said videos and the police investigated the matter, however, defendant did not stop in a derogatory manner and ultimately the plaintiffs approached the Hon'ble Court under section 156 (3) CrPC and after considering all the material on record the Hon'ble Court had directed to lodge an FIR against the defendants for his illegal activities qua plaintiff no.1. Therefore, the contention of the defendant that the plaintiffs ever acquiesced with the illegal activities of the defendant is totally false and far from truth rather an attempt to prejudice to this Hon'ble Court. Rest of the para of the application are also denied being incorrect and false and the plaintiff reiterates the foregoing submissions as well as submissions as made in the plaint as well as application under Order 39 Rule 1 & 2 CPC.

Keeping in view aforesaid, it is humbly prayed to this Hon'ble Court that the aforementioned application moved by the defendant be dismissed with costs being meritless and baseless.

(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:

