

MANU/DE/1566/2002

Equivalent Citation: 101(2002)DLT205

IN THE HIGH COURT OF DELHI

FAO (OS) Nos. 43 and 45 of 2001, CCP Nos. 377 and 402 of 2001 and CM No. 163 of 2002

Decided On: 27.09.2002

Appellants: **Eastern Book Company and Ors.**
Vs.

Respondent: **D.B. Modak and Ors. and Mr. Navin J. Desai and Anr.**

Hon'ble Judges/Coram:

S.B. Sinha, C.J. and A.K. Sikri, J.

Counsel:

For Appellant/Petitioner/plaintiff: Sunil Gupta, Saikrishna Raj Gopal Vivek Vishnoi and Sumeet Malik, Advs

For Respondents/Defendant: P.N. Lekhi, Sr. Adv., S.K. Mohanty, Sangeeta Goel, Pratibha Singh, Teena James and Ritika Anand, Advs.

Subject: Intellectual Property Rights

Subject: Law of Evidence

Acts/Rules/Orders:

Copyright Act - Section 2, Copyright Act - Section 13, Copyright Act - Section 14, Copyright Act - Section 16, Copyright Act - Section 17, Copyright Act - Section 51, Copyright Act - Section 52, Copyright Act - Section 52(1), Copyright Act - Section 52(4); Indian Evidence Act - Section 4; Code of Civil Procedure (CPC) - Order 39 Rules 1, Code of Civil Procedure (CPC) - Order 39 Rules 2

Cases Referred:

Butterworth v. Robinson, (1801) 5 Ves. Jjn, 709; Sweet v. Benning, 16C.B. 458, (1855); Wales v. W. Green and Sons, (1912) WN (Eng) 243 (1912); Jogesh Chandra Chaudhari v. Mohim Chandra Ray, (1915) 18 CWN 1078; N.T. Raghunathan v. All India, AIR 1971 Bom 48; Callaghan v. Myers, 128 US 617, 32 L. Ed 547 (1988); West Publishing Co v. Mead Data Central Inc., 799 F.2d 1219 (8th Cir. 1986); Oasis Publishing Co v. West Publishing Co., 924 F. Supp. 918 (D. Minn. 1996); Walter v. Lane; University of London v. University of Tutorial Press; Jagdish Prasad v. Parmeshwar; Govindan v. Gopalakrishna; Burlington Home Shopping v. Rajnish Chibber; Macmillan & Co. v. K & J Cooper, AIR 1924 P.C. 75; Rampal Singh v. Rias Ahmad Ansari and Anr. 1990 Suppl SCC 727; Colgate Pamolive India Ltd. v. Hindustan Lever Ltd., AIR 1999 SC 31; R.G. Anand v. Delux Films and Ors., AIR 1978 SC 1613; S.K. Dutt v. Law Book Company and Ors., AIR 1954 Allahabad 570; Sukhwinder Singh Alias Jaggi v. State of Punjab, 1994 Supp (3) SCC 727; Bolineedi Venkataramaiah and Ors. v. State of A.P., 1994 Supp (3) SCC 732; Mahadev Bapuji Mahajan (Dead) and Anr. v. State of Maharashtra, 1994 Supp (3) SCC 748; Mafatlal Industries Ltd. v. Union of India, 1995 Supp (3) SCC 316; Chand Rani (Smt.) (Dead) by LRS. v. Kamal Rani (Smt.) (Dead) by LRS, (1993) 1 SCC 519; Surendra Nath Mohanty and Anr. v. State of Orissa, (1999) 5 SCC 238; Caliga v. Inter Ocean Newspaper Co., 215 US 182 (1909); Grove Press Inc v. Collectors Publication Inc., 264 F. Supp 603 (CD Cal 1967); Feist Publications v. Rural Telephone; Raghupati v. State of Andhra Pradesh, AIR 1988 SC 1681; Wander Ltd. & Anr. v. Antox India P. Ltd., 1990 (Supp) SCC 727; Bellsouth Advertising & Publishing Corporation v. Donnelley Information Publishing INC and Anr., 33 IPR 587

Case Note:

a) The case focused on the comparison between the 'compact disc-read only memory' (CD-ROM) and the printed book – It was held that the CD-ROM cannot be compared with the printed book, as the features of both the articles is completely different from each other

b) The case discussed the scope of claim of copyright within the provisions of Section 2(a), (o), 14, 16, 51, 52 and 55 of the Copyright Act, 1957 – It was held that the copyright can be claimed only in a derivative work consisting of a contribution of the original material to a pre-existing work for recasting the transformed or the pre-existing work

c) The case discussed whether the respondents had infringed the copyright under Section 2(a), (o), 14, 16, 51, 52(1)(q) and 55 of the Copyright Act, 1957, by preparing and selling the 'compact disc-read only memory' (CD-ROM) of the Supreme Court judgments – The petitioner was the publisher of the journal called 'Supreme Court Cases' (SCC) and had claimed interim injunction against the respondents on the ground of infringement of copyright – It was held that the CD-ROM cannot be

compared with the printed books and the CD-ROM were containing the judgments even for the period for which any SCC journal was not published – Further, the CD-ROM were containing a special feature of hyper-linking – Further, the respondents could have copied down the head-notes of the SCC journals, in their earlier versions, but the new versions were entirely different from SCC journal

d) The case discussed whether the respondents had infringed the copyright under Section 2(a), (o), 14, 16, 51, 52(1)(q) and 55 of the Copyright Act, 1957, by preparing and selling the 'compact disc-read only memory' (CD-ROM) of the Supreme Court judgments – The petitioner was the publisher of the journal called 'Supreme Court Cases' (SCC) and had claimed interim injunction against the respondents on the ground that the respondents were copying their publication – It was held that the petitioner was not the author of judgments, as it had acted only in choosing the judgment to be reported in the journal, making certain corrections or giving paragraph numbers – Further, the judgments of the Court were under the public domain Therefore, the same could not be subjected to the claim of copyright

e) The case discussed the scope of copyright under Section 2(a), (o), 14, 16, 51, 52(1)(q) and 55 of the Copyright Act, 1957, for the judgments of the Court – It was held that the copyright can be claimed only for the short-notes, head-notes, foot-notes and the editorial notes of the judgment – However, the reproduction from the judgment in the long head-notes cannot give rise to claim of copyright, but the arrangements made from different portions of judgments could result in limited copyright

f) The case discussed the role and importance of the Law reports under the doctrine of 'stare decisis' – It was held that the doctrine of 'stare decisis' in a well known concept of Law of precedent and the role and importance of the Law reports is recognised in all the legal systems and all the jurisdictions throughout the world – Thus the Law reports have been considered to be the original literary work, particularly in the earlier days

JUDGMENT

S.B. Sinha, C.J.

1. Eastern Book Company, a well known publishing concern had filed two suits bearing Nos. 624/2000 and 758/2000 before this Court for permanent injunction restraining infringement of copyright, moral rights, unfair competition, damages etc against the respondents.

The appellant is a publisher of a well-known journal known as Supreme Court Cases. It allegedly reports all reportable and unreportable judgments of the Supreme Court. In 1996, the second appellant introduced a data based package on CD-ROMs for finding out the Supreme Court ruling known as SCC-Online Case Finder. The respondents launched a software package entitled "The Laws" and "Jurix".

The said suits were founded, inter alia, on infringement of copyright and unfair competition. Copyright was claimed in the copy-editing of the judgment. According to the appellant, the respondent had copied the said notes and copied the text of the judgment as published in the SCC and thereby infringed its copyright.

2. Various interim applications were filed for injunction and interim orders of injunction was passed in the suits from time to time. However, the respondent filed applications for vacation of the stay order. The said IAs filed by the parties were taken up for hearing together and by reason of the impugned judgment dated 17.1.2001, a learned Single Judge of this Court dismissed the appellant's applications for injunction.

However, before the learned Single Judge the respondent conceded that appellants have copyright of head notes and as such they undertook not to reproduce these head notes in their CD ROMS.

3. By order dated 9.3.2001 applications for injunction filed in both the suits were dismissed, the operative portion whereof reads as follows :-

"Accordingly, it is ordered that during the pendency of these appeals the respondents will be entitled to sell their CD-ROMs with the text of the judgment of the Supreme Court along with their own head notes which should not in any way be copy of the head notes and the text of the appellants".

4. Alleging willful violation of the said order the appellant also filed a CCP Nos. 402/01 and 377/01. The respondents also filed an application for clarification of the said order.

5. Mr. Sunil Gupta, the learned counsel for the appellants would submit that although the appellants cannot claim any copyright in the judgments which is within the public domain and is covered by Section 14 of the Copyright Act, but in relation to the other matters as specified in the complaints, they are so entitled.

6. In the said process, effort, imagination, and skill of the Chief Editor of the SCC is involved.

manupatra It was a common case of both the parties that the judgments of the Supreme Court are in public domain and nobody can claim copyright therein. However, the argument of Mr. Gupta counsel for the appellant was that for publication of these judgments in their journal - SCC - the appellant is made upon certified copies thereof from the Registry of the Supreme Court, which forms the raw material. The appellants through their editor and other employees etc. apply labour, skill, expertise and expenditure and thereafter the judgments are published in SCC. In the process not only punctuation marks like coma, semi colon etc are added in the text of the judgment but also corrections are made in the judgment for which the consent is obtained from the Hon'ble Judge concerned, the author of the said judgment. Head notes and long notes are prepared and editorials, wherever necessary are added. This is ultimate product involving labour and skill of the appellant in which the appellant has copyright.

7. The copyright is claimed in three broad heads - i) original literary work; ii) editorial work comprising of selection, sequence and arrangement of head notes, editorial notes and comments, para numbers, verification, cross citation, pre-reference and footnotes; and iii) copy-editing works and proof reading.

8. Learned counsel would contend that it is beyond any pale of doubt or dispute that law reports can claim copyright in relation to the aforementioned. Reliance has been placed on :

English Law

A. Butterworth v. Robinson (1801) 5 VJ 709

B. Sweet v. Benning 1955 16C.B. 458

C. Incorporated Council of Law Reporting for England and Wales v. W. Green and Sons (1912) WN (Eng) 243 (1912) Cc 1911

D. Halsbury's Laws of England Vol 9(2) (Reissue) Butterworths, 1998

Indian Law

E. Jogesh Chandra Chaudhari v Mohim Chandra Ray (1915) 18 CWN 1078

F. N.T. Raghunathan v All India Reported MANU/MH/0270/1957 : AIR 1971 Bom 48

American Law

I. Oasis Publishing Co v. West Publishin

G. Callaghan v Myers 128 US 617: 1988 32 L. Ed 547

H. West Publishing Co v. Mead Data Central Inc. 799 F.2d 1219 1986 8 Cir.

g Co. 1996 924 F. Supp. 918

J. Paul Goldstein: Copyright: Principles Law and Practice, Vol I (Little Brown & Co)

9. It was contended that literary and original in the expression 'original literary work' in the copyright law is enumerated in several English and Indian authorities, which are as follows :-

a) The standard of originality is a low one, no quality, style or literary finish is required; what is required is the expenditure of more than trivial effort and the relevant skill in the creation of the work (Copinger & Skone Jones on Copyright 14th Edn. (Sweet & Maxwell, 1999), paras 3-89 to 3-94; Walter v. Lane, University of London v. University of Tutorial Press, Jagdish Prasad v. Parmeshwar, Govindan v. Gopalakrishna; Burlington Home Shopping v. Rajnish Chibber). Reliance has also been placed on the meaning of terms "literary" and "original" in the expression "original literary work" in the context of copyright law has been given in several English and Indian authorities and can be summarized as follows :

i) Independent labour, skill and expenditure by the author are required;

ii) No original or inventive thought is required, the originality required relates to the expression of the thought; and

iii) What is required is not that the expression must be in an original or novel form but that the work must not be copied from another work; it should originate from the author.

b) The appellants make various creative, imaginative and useful inputs, insertions and improvements in and also make various other contributions and additions to the official texts of the judgments and orders of the Supreme Court before printing and publishing them as their version of the judgments in SCC. These acts involve considerable amount of time, labour, skill,

learning, judgment and expenditure on the part of the appellant. Hence these inputs, insertion and improvements are well above the mark of originality required in law for the appellants work to be called an original literary work.

10. According to the learned counsel inputs, insertion and improvement as a result of the editing to the final text of judgments would amount to originality wherein the following kinds of contributions are made by the authors.

Copy-editing : Copy-editing is an activity essential for publication of any standard work and is universally recognised and practiced by all reputed publishing houses throughout the world. It is aimed at achieving uniformity in spelling of names, checking of spellings, grammar, idioms, maxims, abbreviations, capitalization, hyphenation, indentation for quotes, formatting, type setting etc. In SCC copy-editing is done as per the long standing house style of SCC and the appellant.

11. The learned counsel contends that the learned Single Judge in passing the impugned judgment wrongly relied upon the decision of the American Supreme Court in Callaghan v Myers 128 US 617 in so far as it failed to take into consideration that the labour, skill and expenditure form an integral part of the original literary work wherein copyright subsists. Learned Single Judge, Mr. Gupta, would argue, omitted to consider that the inputs can improve the judgment whereupon the appellant relied upon for claiming copyright so far as selection, verification, particular reference, footnote etc.

12. Learned Single Judge, according to Mr. Gupta, failed to correctly apply the said principles covering the concept of original literary work. Importance of copy-editing in publication of the work, learned counsel would contend would also be legal work but the learned single Judge committed a serious error in holding that some addition of commas, removing typing error does not allow the claim of copyright.

13. Learned counsel as was done before the learned Single Judge as also before us, gave several examples to show that the respondent barring few omissions extensively copied the appellant's judgments, case by case, page by page and word by word. It has been contended that the respondent with the help of computer device and electronic data converted and digitized the entire material published in SCC and reproduced verbatim on their CDs and sold them in the name of Grand Jurix and the Laws.

14. Although the learned Single Judge has noticed the same and recorded a finding that the respondents have copied appellants' various works but wrongly applied the legal text for determining piracy with the respondent. It was submitted that although in the judgment of a court, no copyright can be claimed but in relation thereto the appellant did go to original source, i.e., the court's official/certified copy of the judgment and spent its own skill, labour and expenditure for reproducing the same. The appellant's work being the original work the respondent were not entitled to copy the same by putting the same on CD ROMs. The appellant's version of the judgment is printed and published by the appellant in their journal.

15. Mr. Lekhi, the learned counsel appearing for the respondent submitted that exercises purportedly taken recourse to by the appellant would amount to copyright. Counsel would contend that whereas short head notes may be the subject matter of copyright, the long head notes only contain quotations are made from the judgment of the Supreme Court. According to the learned counsel, if at this stage an order of injunction is passed the suit itself, for all intent and purport, will stand disposed of.

16. According to the learned counsel, the manner and mode of the alleged labour, skill and expenditure made by the appellant will have to be tested in evidence so as to enable the Court to find out as to whether the appellant have been able to discharge their burden of proof. Learned counsel would contend that in terms of the provisions of Section 4 of the Evidence Act, no presumption can be raised in favor of the appellant. Learned counsel would argue that a great deal of changes have been made by the Parliament in enacting the 1957 Act vis-a-vis from 1912 Act or 1914 Act. The scheme of 1957 Act is entirely different and in that view of the matter decisions, which had not been rendered under the new Act would not be considered to binding authority. Counsel would contend that the appellants have not registered their copyright. Originality within its scheme, as such cannot be protected like passing off matters. There is not creativity or originality in the knowledge and scheme in the matter of editorial or copying work, which would entitle the appellant to have injunction in their favor.

17. Skill, according to the learned counsel, is a relative question, which at this stage is based on a statement and not on fact. Drawing our attention to various provisions of the Copyright Act, the counsel would contend that computer programme stands on a different footing. According to the learned counsel, it was incumbent upon the appellant to show, having regard to the provisions of the Act, as to what rights have been infringed and who is the author of the computer programme. Before us, the learned counsel has drawn our attention to the originality of the work by comparing the judgments in Macmillan & Co. v. K & J Cooper. AIR 1924 P.C. 75 to show that the head note in the Indian Appeals is a clear pointer to the originality and abridgement.

18. Learned counsel would contend that on cross-reference or cross citation, no copyright can be claimed nor correction of some typographical error in the judgment would lead to any infringement of copyright. Learned counsel would submit that having regard to the decision in Callaghan's case (Supra) originality has to be proved. Learned counsel would submit that the matter has to be considered also from the point of view

as to who are using the materials and the nature thereof. According to Mr. Lekhi, lawyers who are subscribers of the CD-ROMs normally would not go for head note and for their own use, they will have to read the entire judgment and Therefore question of lawyers being mislead would not arise. It was submitted that the appellate court would not normally interfere with the discretionary jurisdiction exercised by the trial court. In support of the said plea reliance has been placed on Rampal Singh v. Rias Ahmad Ansari and Anr. MANU/SC/0595/1990.

19. Relying on the decision of the Supreme Court in Colgate Pamolive India Ltd. v. Hindustan Lever Ltd. MANU/SC/0494/1999 : AIR1999SC3105 , counsel would submit that the test laid down therein must be taken into consideration before an injunction is granted. Learned counsel would also contend that interest of general public in disseminating knowledge as regards the legal position must be kept in view before the order of injunction is passed. Learned counsel in this connection has relied upon R.G. Anand v. Delux Films and Ors. MANU/SC/0256/1978 : [1979]1SCR218 .

20. Ms. Pratibha Singh, learned counsel appearing for the respondent in FAO (OS) 45/2001, would submit that the petitioner has not prayed for any relief in the selection of judgments and, thus, their submissions on that score should not be entertained. Even in the application for injunction, the appellants have not claimed for any such relief as it was presumed that there cannot be any copyright on mere selection of judgments.

As such the argument of Mr. Gupta, according to the counsel, is merely an afterthought and amounts to expanding the scope of appeal. Counsel would submit that in its CD-ROMs the respondent has put in 27000 judgments from 1950 till March, 2000. Even the Central Acts and rules framed there under are available in the said CD-ROMs. Therein various search mechanism have been provided including subject-wise, by name, by parties name, name of advocate, by the name of the High Court or the name of the Act, by the date of judgment and by the name of the impugned judgment, etc. Also cross-references for each judgment is provided so as to enable the user to immediately know the decisions cited, where the same has been reported. Even details regarding the judgments, which have been reversed, have been provided. According to the respondent one of the important features of the respondent's work is the feature of hyper-linking, in terms whereof when a user arrives at a head note a link is provided and a list of various judgments, which deal with the subject appear on the screen. Counsel has placed before this court the salient differences between the appellants' and respondents' work which are in the following terms :-

S.No.	PARTICULARS	SCC	THE LAWS
a)	Supreme Court Judgments (Priod)	1969-2000	1950-2000
b)	No. of judgments	20900 Appx	26000 appx
c)	Central Acts	Nil	1000
d)	Rules on Central Acts	Nil	700 appx
e)	Regulations	Nil	100 appx
f)	orders	Nil	200 appx
g)	Schemes	Nil	30 appx

SCC ONLINE DIFFERENCES:

h)	Hyper linking feature	Nil	Yes
i) Text of judgment	Contains only head notes (Full text CD ROMs have been recently introduced)	Contains text also since launch	
ii)	Equivalent journals	Equivalent judgments of 10 journals	Equivalent for 45.

21. According to the counsel, the prices are incomparable. So far as the appellant's work is priced at Rs. 72,000/- that of the respondent is only Rs. 12,000/-. Drawing our attention to certain reported judgments, it has been pointed out that the purported originality as claimed in para 15 of the plaint is not correct. Our attention has been drawn to the following chart :-

Discrepancies in Uniform styling claimed by SCC

SCC Plaint	The Laws Reply	SCC's Reply	The Laws Reply
1. Phrase used "Judgment was delivered by"	We do not use it	Has been copied by the espondent	Not true as we do not use 1.

2. Paragraph numbering	Common to other journals like "Judgment Today" and AIR viz. 1979(4) SCC 429 and MANU/SC/0379/1979 : [1980]1SCR354	Shown some examples of different paragraph numbers	Numbering of paragraphs is a common practice
3. Uniform style of writing date as December 26, 1968 or 26-12-1998 claimed	Inconsistent as in MANU/SC/1297/1998 : (1998)8SCC598 format of date used is 26.12.1968 and also 26 th December, 1968	Differences only in quoted parts	Not stated earlier
4. Uniform style of writing prosecution witness as PW claimed.	Inconsistent as in 1973 (3) SCC at page 232 'P.W.' used. Also in 1970(1) SCC 430 again 'P.W.'	Feature adopted after 1971 and copied by the appellant	Admit that no uniform style and so have no copyright.
5. Manner of representing amounts in four figures	Inconsistent as in MANU/SC/0080/1969 : [1970]2SCR455 amounts are shown as "Rs. 2,000" and "Rs. 1,650"	Standard Format adopted after 1 980 only	Admit that no uniform style and so have no copyright.
6. Use of ¹ footnotes for giving citation.	Common to other journals like SCR viz. 1972(3) SCR 764	Admit that it is common to other journals	As not unusual practice it clearly follows That they have no unique uniform styling
7. Latin words and phrases not in italics	Inconsistent as in 1995(4) SCC 281 under para b ' <i>certiorari</i> ' written in italics and in 1994(4) SCC at page 321 under para d " <i>generalia specialibus non derogant</i> " again in italics and in 1998 (9) SCC under line f " <i>causae sine quibus non</i> is again in italics.	Admit as editorial mistake	Proves no uniform styling as they admit.
8 Hindi Words in italics	Inconsistent as in 1994(4) SCC at page 591 Thekedar word not in italics. Similarly in 1998 9 SCC under para 4 of the word 'muklawā' is not in italics and also on page 2 1 7 under para 5 the wrd 'namsudra' does not appear in italics. In 1999(1) SCC page 152 para 4 the words 'chhuras' 'lathis', 'dandas' do not appear in	Again admit as few editorial mistakes	As random sample taken, innumerable others are bound to exist and prove no uniform styling adopted by the appellant.

italics. On page 314 under line d the word 'zirayai' does not appear in italics. On page 325 under para 12, line 6 the word 'lathi' does not appear in italics.

9. Manner of writing sub-section etc.	Similarly written in other journals like Judgment Today etc. '	Admit as found in other journals	As admitted show that no unique uniform style.
10. Uniform capitalization in manner of writing court, appeals, etc	Inconsistent as in 1987 1 SCC 506 'Courts' written as Courts and in 2000 (#) SCC at page 535 under para g similarly 'Court' written as 'court'	Admit the discrepancies and claim that so copies by the respondent	Shows no uniform styling and even if copies by the respondent does not give them a copyright.

22. It was submitted that unless the appellant show uniformity no copyright can be claimed. According to the counsel, the appellant also reproduced the judgment with a view that such incorporation or change in the judgment could not give rise to copyright. Counsel would contend that it is well-established principle of law, public policy and statutorily provided exception that no one can own copyright in the judgment. Reliance has been placed on Section 52(4) of the said Act, as also on the following decisions:-

* R.G. Anand's case (Supra);

* Macmillan & Co.'s case (Supra);

* S.K. Dutt v. Law Book Company and Ors., MANU/UP/0223/1954 : AIR1954All570 ;

* Sukhwinder Singh Alias Jaggi v. State of Punjab MANU/SC/0168/1994 : 1994CriLJ1117 ;

* Bolineedi Venkataramaiah and Ors. v. State of A.P. MANU/SC/0021/1994 : 1994CriLJ61

* Mahadev Bapuji Mahajan (Dead) and Anr. v. State of Maharashtra MANU/SC/0364/1994 : 1994CriLJ1389 ;

* Mafatlal Industries Ltd. v. Union of India MANU/SC/0671/1995 : [1995]2SCR224 ;

* Chand Rani (Smt.) (Dead) by LRS. v. Kamal Rani (Smt.) (Dead) by LRS MANU/SC/0285/1993 : AIR1993SC1742 ;

* Surendra Nath Mohanty and Anr. v. State of Orissa MANU/SC/0314/1999 : 1999CriLJ3496 .

23. Learned counsel would submit that decisions cited by Mr. Gupta, counsel for the appellant, has no application to the present case. Learned counsel would submit that for claiming copyright, the requirement is originality of the work. In this connection, it is argued that in order to qualify for a separate copyright as a derivate or collective work, the additional matter injected in a prior work, or the manner of rearranging or otherwise transforming a prior work, must constitute more than a minimal, contribution.

It was urged that to extend copyright ability to miniscule variations would simply put a weapon for harassment in the hands of mischievous copiers intent on appropriating and monopolizing public domain work. Cert. Denied. 1976 429 US 87 . See Caliga v. Inter Ocean Newspaper Co. (1909) 215 US 182 Grove Press Inc v. Collectors Publication Inc. 264 F. Supp 603 (CD Cal 1967) (400,00 changes consisting "almost entirely to elimination and addition of punctuation, changes of spelling of certain words, elimination and addition of quotation marks and correction of typographical errors "held trivial and hence, not copyrightable).

24. Learned counsel would contend that in any event, as the appellant has asked for damages as also qualified the same no injunction as prayed for should be granted, as, in the event of success in the suit, the appellant can be adequately compensated in the monetary terms.

25. Ms. Pratibha Singh had pointed out that although in this appeal the correctness of decision of the American Supreme Court in Feist Publications v. Rural Telephone had been challenged, the said decisions was cited by the appellant in support of their case.

26. Having regard to the order proposed to be passed by us, it is not necessary to refer to all the decisions

27. Copyright can be claimed in respect of the original literary, dramatic and or artist work, cinematographic films and sound recording. Copyright has been defined in Section 14 of the Copyright Act to mean exclusive right to do or authorised to do any of the acts as enumerated in Clause (a) to (e). Clause (a) and (b) which are important for the purpose of the instant case, reads as under:

(a) in the case of a literary, dramatic or musical work, not being a computer programme.-

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to perform the work in public, or communicate it to the public;

(iv) to make any cinematographic film or sound recording in respect of the work.

(v) To make any translation of the work

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or in adaptation of the work, any of the acts specified in relation to the work in Sub-clause (i) to (vi)

(b) in the case of a computer programme.-

(i) to do any of the acts specified in Clause (a)

(ii) to sell or give on hire, or offer or sale or hire any copy of the computer programme, regardless of whether such copy has been sold or given on hire on earlier occasions;

28. Section 16 specifies that no copyright can be claimed except as provided in the Act. Chapter 10 provides for registration of the copyright but it is well settled that copyright need not be registered.

Chapter 11 provides for infringement of copyright.

Section 51 provides:-

"51. When copyright infringed.-- Copyright in a work shall be deemed to be infringed-

a) when any person, without a license granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a license so granted or of any condition imposed by a competent authority under this Act.-

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes the infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person-

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright.

29. Section 52, which is an exception to Section 51, provides for the matter, which would not constitute matter of copyright.

30. As noticed hereinbefore, the law stands well settled that a copyright can be claimed on short notes. Short note is not necessarily an abridgement of judgment.

manupatra 31. The doctrine of 'State decisis' is well known concept of law of precedent which was taken recourse to by the lawyers whence it was found that instead of repeating the arguments over and over again in a similar matter citation of the judgments, which had laid down the law in an earlier case serve the purpose.

Role and importance of the law reports stand recognized in all legal systems and all the jurisdictions of the world. Law reports, Therefore, have been considered to be the original literary work particularly in those old days when the solicitors used to remain present in the court during arguments and in their reports used to state the fact of the matter and arguments presented by the counsel.

32. Short note of judgment, however, is relatively a modern concept. The importance of head-notes lies in the fact that not only for initial research a lawyer or a judge knows what are the points which are decided in the case as also to locate the same in the judgment. Head notes, in fact, have given rise to publication of digests, which, as is well known, is effective tool in the hands of advocates and judges for making research as also to find case law on a particular issue involved. Sometimes, the court of law instead of quoting from the judgment, quoted from the headnote itself. See for example Raghupati v. State of Andhra Pradesh MANU/SC/0200/1988 : 1988(38)ELT225(SC) .

33. Quotations from the judgments in support of the short notes namely long notes may also aim at creativity in as much as it requires a great deal of labour and skill and as such in the long notes not only relevant sentences are excerpts and such excerpts are made from different paragraphs in case there is more than one.

We, Therefore, are of the opinion that learned counsel for the respondents have rightly conceded that the appellants can claim copyright in head-notes/short notes.

There cannot be any doubt that a copyright can be claimed in the editorial. Editorial notes are the creation of the editor himself. The same not only requires originality, it may be fruit of the research as for example in Wander Ltd. & Anr. v. Antox India P. Ltd. MANU/SC/0595/1990, whereupon Mr. Lekhi and Ms. Pratibha Singh had placed strong reliance as regards passing off the editorial note. In such head notes the editor adds his own understanding or view with regard to some aspect of the judgment, which may not only be clarificatory in nature but also bear a critical note in regard thereto. In such editorial note a personal thought, a precept is reflected in the law report and the same cannot form part of the main judgment itself. Such editorial notes and comments are given not only at the beginning of the judgment but also in between or footnote.

34. Copyright can be claimed only in derivative work. A derivative work consists of a contribution of original material to a pre-existing work so as to recast, transform or adapt the pre-existing work. This would include a new version of a work in the public domain and abridgment adaptation, arrangement, dramatization or translation. A collective work will qualify for copyright by reason of the original effort expended in the process of compilation, even if no new matter is added. In determining whether a work based upon a prior work is separately copyrightable as a derivative or collective work, the courts may not properly consider whether the new work is a qualitative improvement over the prior work. However, in order to qualify for a separate copyright as a derivative or collective work, the additional matter injected in a prior work or the manner of rearranging or otherwise transforming a prior work, must constitute more than a minimal contribution. Applying this test we will have to examine as to which aspect of the reported judgment in SCC, the appellant can claim copyright.

32. In the present case, we are dealing with allegations of the appellants to the effect that judgments of the Supreme Court, which have been published by the appellant in its Journal, namely, Supreme Court Cases are copied by the respondent herein while preparing their CD-ROMs. It is not disputed that under Section 52(1)(q) of the Copyright Act, the reproduction or publication of any judgment or order of a Court, Tribunal or other judicial authority shall not constitute infringement of copyright of the Government in these works. It is because of the reason that orders and judgments of the Courts are in public domain and everybody has a right to use and publish them. However, the case of the appellant is that after getting certified copies of the judgments, the appellant has invested its skill and labour and, Therefore, it acquires copyright therein. The skill, according to it, is in the following manner:-

(a) In collection of judgments and to decide as to which judgment is to be reported, making corrections in the judgments. It further alleges that paragraphs in the judgments are numbered. In addition, lay-out and pagination of the judgments reported by the appellant are totally different as per the style it has adopted, which is unique to its Journal and is not available in other law Reports;

(b) Head-notes and footnotes are prepared and wherever necessary editorial comments are given; and

(c) After the head-notes, long notes are added for giving fair idea of what the judgment is about.

33. Insofar as alleged labour and skill in respect of (a) above is concerned, according to the learned counsel appearing for the appellant, it involves tremendous expenditure in terms of collection of judgment(s), selection of judgment(s), editorial skill, analysis, proof reading, etc. and on this basis, it is claimed that the work

manupatra becomes literary work of the appellant in terms of Section 2(o) of the Copyright Act. Although the learned counsel appearing for the appellant admitted that the other persons had right to public the same judgments, they could do so only after obtaining the same from the original source, i.e., after obtaining certified copy of the judgment.

We do not agree entirely with the submission of the learned counsel appearing on behalf of the appellant. Merely by making certain corrections in the judgment(s) or putting numbers or arranging the said judgment(s) in a particular manner while printing, the appellant cannot claim that it becomes the original literary work of the appellant. If the right of persons like the appellant, who are merely reporting the judgments of the Courts, is stretched to this extent, then after a judgment is reported by a particular Journal, others would be barred from doing the same and the very purpose of making these judgments in public domain, Therefore, would be frustrated.

As already pointed out above Section 2(a) of the Copyright Act clearly stipulates that a work, which is made or published under the direction or control of any Court, Tribunal or judicial authority in India is a Government work. As per Section 52(1)(q) of the Copyright Act, the reproduction or publication of any judgment or order of the Court, Tribunal or other judicial authority shall not constitute infringement of copyright of the Government in these works.

34. It may not be disputed that the appellant is not the author of these judgments and merely by choosing as to which judgment should be reported or making certain corrections therein or giving paragraph numbers, the character of the judgment does not change and neither it becomes so materially different from the original judgment nor it becomes the original literary work of the publisher.

Once a person has right to obtain certified copy of the judgment from the Registry of a Court and to publish it, we cannot subscribe to the argument of the appellant that he cannot have right to take the text of the judgment from a Journal where it is already reported and he has to obtain it from the Court only in order to publish it. Once a thing is in public domain, no copyright can be claimed therein, it would be permissible for any person to copy the same.

35. The learned Single Judge after dealing with the case of Bellsouth Advertising & Publishing Corporation v. Donnelley Information Publishing INC and Anr. 33 IPR 587 culled out the ratio in the following manner:-

"It is thus clear the protection of copyright must inhere in a creatively original selection of facts and not in the creative means used to discover the facts. In the present case, all that has been argued by learned counsel for the plaintiff is that the manuscripts of the judgments are obtained from the raw source, they are carefully reviewed, corrections made, cross references and cross citations added, lay out and pagination is done, arranged in a specific sequences and after giving a uniform style of dates, is printed and published in the journal. None of this, in my opinion, is a creatively original selection by the plaintiff and at best can be said to be a reproduction of the judgments of the Court by giving paragraph numbers and correcting the mistakes, if any, therein. The judgments of the Court are available to every person and just because another person instead of obtaining the judgments from the raw source has copied them from the publication of the plaintiff will not mean that the work has become the original literary work of the publisher who published it for the first time. There being no copyright in the judgments of the Court, the plaintiffs cannot claim copyright therein merely by first publishing them in their journal."

We do not find any fault with the aforesaid reasoning so far as the question of copyright in printing text of the judgment(s) after making certain corrections of the nature mentioned by the appellant is concerned.

36. We may state here that the learned counsel appearing for the appellant had tried to argue that the American test laid down in the aforesaid case was different from the test, which was laid down by the English Courts and insofar as the copyright law in India was concerned, it was the English text, which was to be applicable and the aforesaid test should not have been applied. We need not go into this question while deciding this aspect of the matter, namely, the claim of copyright of the appellant in the text of the judgment(s) after making certain changes, as we are of the opinion that merely by making such corrections or giving paragraph numbers, etc. the appellant cannot claim copyright in the text of the judgment(s).

Suffice it to state, in this connection, that in S.K. Dutt's case (Supra), it is held even by an Indian Court that an author of law commentary cannot claim that once he quoted a passage in his book from either a decided case or a standard work then no one else has any right again to quote that passage.

Therefore, we do not agree with the learned counsel appearing for the appellant when he argues that the only mode of publication of these judgment(s) should be to apply certified copy from the concerned Court(s) and only then publish the same.

37. We may also note with approval the following observations of the learned Single Judge:-

"A reading of the aforesaid judgments clearly show that a matter in public domain cannot be a private property. Under the Copyright Act, 1957 except under the provisions of the Act, there cannot be copyright under the common law. Under Section 16 of the Act, no person is entitled to copyright or any similar right in any work whether published or unpublished otherwise than in accordance with the provisions of the Act. Under Section 13 of the Act, copyright subsists in the original literary, musical and artistic work, cinematograph films and sound recordings and literary work includes computer programmes, tables and compilations including computer data base. It is the contention of learned counsel for the plaintiffs that since the publication of the plaintiffs is their original literary work, which includes computer programmes as well, reproduction of the same by the defendants in a data base programme is clearly in infringement of their copyright subsisting in their publications.

Under Section 17 of the Act, author of a work shall be the owner of a copyright provided that in the case of a Government work, Government shall in the absence of any contract to the contrary, be the first owner of the copyright therein. The act of reproduction of any judgment or order of the Court, Tribunal or any other judicial authority under Section 52(q) of the Act, is not an infringement of the copyright. As already mentioned above, the judgment of the Court after it is delivered is available to any person on his being made an application to the Court for the purpose. The plaintiffs are admittedly of the authors of the judgments. The judgments are delivered by the Courts. Any person, Therefore, can publish judgments of the Courts. The plaintiffs may have happened to have first published the judgments but the same will not mean that it can have a copyright therein. In my considered opinion, no person can claim copyright in the text of the judgment. Merely because the plaintiffs have made certain corrections in the judgments will not give them a right to claim copyright therein. What has been done by the plaintiffs is to correct the typographical mistakes in the judgments, insert commas and full stops wherever necessary and give paragraph numbers to the judgments. Almost all journals give their own paragraph numbers and paragraph numbers of the plaintiffs publication as well as the publication of other publishers are almost similar. Even if the paragraph numbers are different, it will not mean that the plaintiffs can claim copyright in the paragraphs or the mistakes, which have been made in the judgments of the Courts which are in public domain. Nimmer on Copyright has observed that the changes consisting of elimination, changes of spelling, elimination or addition of quotations and corrections of typographical mistakes being trivial are not copyrightable. I am fully in agreement with the observations of Nimmer mentioned above. It is claimed by the plaintiffs that there is uniformity in style of writing and they have, Therefore, a copyright in their style of writing. I am unable to agree with the plaintiffs. As already held, the judgments published in the journal of the plaintiffs are only reproduction of the judgments of the Courts with certain additions of commas, full stops, correction of errors, etc. in which, in my opinion, the plaintiffs cannot claim any copyright."

38. As far as claim of copyright in the head-notes is concerned, the learned Single Judge observed:-

"There being no copyright in the text of the judgments, can be plaintiff claim copyright in the head-notes? This is the only question, which remains for consideration. A genuine abridgement of judgments of the Court is an original work and can be the subject-matter of infringement of a copyright even if the amount of originality is very small. However, in case the head-notes are verbatim extracts from the judgments of the Court, there is no amount of skill or labour involved in preparing the head-notes and no person can claim a copyright therein."

We are of the opinion that the approach of the learned Single Judge was not correct in making the aforesaid observation.

The learned Single Judge further observed:-

".....But, in case, the head-notes have been prepared by the plaintiffs with their own labour and skill and there is originality and creativity in the preparation of head-notes, there cannot be any dispute that the party which has produced the head-notes will have a copyright therein. Re-production of either a few sentences from the judgments of the Court or the entire paragraph or the joining together of some of the sentences of the judgment in the head-note, in my opinion, cannot be said to be either the creative or the original work or the abridgement of the judgment of the Court."

39. It is clear that the learned Single Judge was conscious of the principle that there can be copyright in the head-notes. However, what was observed that it would be only if these head-notes had been prepared by the appellant with their own labour and skill; and there is originality and creativity in preparation of the head-notes, but not when they are verbatim extracts from the judgments. In observing this, to our mind, the learned Single Judge committed an error. We are of the opinion that reading the judgment and searching the important

manupatra portion thereof and collecting sentences from various places for the purpose of making head-notes would involve labour and skill.

40. We have already stated the importance of such head-notes. A glimpse of these head-notes would reflect as to what the particular case has decided. Preparing of head-notes, it goes without saying, is an art. Many times head-note, if prepared nicely, would indicate as to what the reported case decides. On the other hand, a poorly prepared head-note may not be able to reflect the true nature of the decision.

Therefore, even if while preparing the head-note, the sentences appearing in the judgment at various places are simply reproduced definitely labour and skill is still involved in selecting those sentences, which give palm top idea of wider screen, namely, the wider version. These head-notes, as already mentioned above, become tools for initial research and many times knowing the ratio of the case and also where to locate the same in the judgment. Head-notes have given rise to publication of Digest, which is an important tool for making research and also to find case law on a particular issue involved.

In fact, the abridged version of CD-ROM of the appellant, namely, "SCC Online" itself contains only the head-notes followed by long notes and not the entire text of the judgment. Therefore, we hold that there would be copyright in the head-notes to the judgment prepared by the appellant.

41. Insofar as footnotes and editorial comments are concerned, it cannot at all be denied that these are publisher's own creations and based on publisher's own research. It does not require any lengthy discussion to hold that there shall be copyright of the appellant in such footnotes and editorial comments also. It is not necessary to discuss this aspect of the matter in much more detail inasmuch the counsel appearing for the respondents conceded at the bar that the appellant shall have a copyright in the head-notes as well as footnotes and editorial comments.

42. Insofar as long notes are concerned, we may hasten to add that, however, reproduction from the judgment in the long head-notes by itself may not give rise to right of copyright, but the arrangements made from different portions of the judgment may give rise to a limited right in that behalf.

43. Having determined the correct legal principles of copyright relating to reporting of the judgments, we address the question of the nature of order, which is required to be passed in the present case.

44. The appellant had filed suits claiming injunction, which have been rejected by the learned Single Judge and the applications for injunction under Order XXXIX Rules 1 & 2 CPC filed by the appellant in these cases were dismissed. The respondents are, as pointed out above, preparing and selling CD-ROMs of the Supreme Court judgments. The respondents are bringing new CD-ROM every year. During this period, many versions of respondents' CD-ROMs have been produced. Over a period of time, they have made various improvements.

The products, namely, CD-ROM cannot be compared with the printed book. For operating a CD-ROM, one needs a computer. The access to the CD-ROM and search for a particular judgment can be by adopting various search mechanism. The quality of a CD-ROM depends on search mechanism inputs provided by its producer. The ultimate product, Therefore, may be entirely different from printed Journal, namely, SCC in the instant case. For example, in FAO (OS) No. 45 of 2001, Ms. Pratibha Singh, the learned counsel appearing on behalf of the respondent pointed out these features by explaining that the respondent had put into about 7,000 judgments from 1940 till March, 2000. The Journal 'Supreme Court Cases' started in the year 1969. Thus, the CD-ROM of the respondent contains judgment seven for the period for which there are no SCC Journals. Not only this, it was explained that the Central Acts and the Rules framed there under are available in the said CD-ROM. Various search mechanism have been provided, namely, subject-wise, by name, by parties name, name of Advocate, name of the High Court, name of the Act, by date of the judgment, etc. In addition, court references for each judgment are also provided. Even details regarding judgments, which have been reversed, have been provided. Another important feature highlighted is that of hyper-linking. All this needs labour and skill, which in no case, could have been copied from the appellant's Journal.

45. Similar features are found in the products of the other respondents. However, the CD-ROMs of different respondents are different in nature. This itself goes to show that the said product cannot be the result of mere copying as alleged. The respondents, as claimed by them, have their own infrastructure with formidable work force, who put their collective brains, skill and labour in producing the products in question. The latest versions of CD-ROMs of these respondents are materially different from the appellant's publication. It may be that in their initial version(s), the respondents had copied the head-notes from the appellant's publication. However, that is not the position now. Their product, which is available in the market today, is entirely different. Therefore, no useful purpose would be served in granting the relief of injunction as claimed by the appellant. The appellant by taking specious plea that the respondents are copying the text of the judgment and/or at the most some of the text of the judgments as reported by the appellant in its Journal may have lifted in preparing CD-ROMs. That by itself would not be sufficient to grant the appellant any injunction when in the text of the judgment the appellant cannot claim any copyright. By adopting such a course, the appellant cannot drive the respondents out of the said trade.

46. For the reasons aforementioned, we are of the opinion that the ends of justice would be met, if the Order

manupatra of the learned Single Judge is modified by directing, "the respondents/defendants shall be entitled to sell their C.D. Roms with the text of the judgments of the Supreme Court along with their own head-notes, editorial notes, if any, which should not in any way be copy of the head-notes of the appellant / plaintiff. The respondents / defendant shall also not copy the footnote(s) and editorial comment(s) appearing in the Journal of the appellant/plaintiff." Before parting with the matters, however, we may observe that we have considered the questions raised before us only for a limited purpose viz. as to whether any order of injunction should be granted or not and, Therefore, it would be open to the learned Single Judge trying the suit to adjudicate upon the respective contentions of the parties as their own merits.

The appeals are disposed of in the aforesaid terms. For the view we have taken, we do not intend to pass any separate orders in the Contempt Petitions or the applications for clarifications. CM No. 163 of 2002 is also disposed of.

There shall, however, be no order as to costs.

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