

## Case comment: Neetu Singh v. Rajiv Saumitra

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### Abstract

This paper deals with the case comment on '*Neetu Singh v. Rajeev Saumitra*', which is related to the Copyright Act, 1957. This is the case where the dispute between husband and wife aroused over the authorship of the books. The wife (plaintiff) claimed that the writing and authoring of books is the original work of her which is also protected under the Copyright Act, 1957 while the husband claimed that the authoring and writing of books was done by a team which includes the plaintiff as an employee of the educational institute. Therefore, the question of 'first owner of Copyright' was raised which is provided under section 17 of the Copyright Act, 1957. Several arguments were put forward by both the parties to claim the ownership of copyright in the authoring and writing of books.

This paper seek to discuss the introduction, background of the case, the main contentions which were put forward by both the parties, followed by the issues raised from both the sides, thereafter the judgement given by the court. Eventually, the critical analysis of the judgement is discussed, which is followed by the conclusion.

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## **Introduction**

The present Case *Neetu Singh v. Rajeev Saumitra*<sup>2</sup> is related to the Copyright Act, 1957. This is the case where the dispute between husband and wife aroused over the authorship of the books. The wife (plaintiff) claimed that the writing and authoring of books is the original work of her which is also protected under the Copyright Act, 1957 while the husband claimed that the authoring and writing of books was done by a team which includes the plaintiff as an employee of the educational institute. Therefore, the question of 'first owner of Copyright' was raised which is provided under section 17 of the Copyright Act, 1957. Several arguments were put forward by both the parties to claim the ownership of copyright in the authoring and writing of books.

## **Background of the case**

Neetu Singh (plaintiff) is a renowned author, having business of providing services in relation to 'Education, training and educational consultancy in the field of engineering, medical, marketing, management and many more. Rajeev Saumitra, i.e. Defendant No.1; is the husband of plaintiff, who owns, runs and manages defendant No.2 i.e. 'Paramount Coaching Centre Pvt. Ltd.' and defendant No.3 is the key publishing house of defendant No.1.

The facts of the case are that the plaintiff started an education and training institute namely 'Paramount Coaching Centre' in the year 1982. In and around 2006, she (plaintiff) married the defendant No.1, who was a teacher at the plaintiff's coaching centre at the time of marriage. With the purpose of growing the business further, both the plaintiff and defendant No.1 formed and incorporated a company namely 'Paramount Coaching Centre Pvt. Ltd.' in the year 2009. Both the plaintiff and the defendant No.1 became as its Directors. However, the plaintiff later found (after separating from the defendant No.1) that the defendant No.1 has copied several books which were authored by her, as her original work and selling the same in the market without the permission of the plaintiff.

Consequently, the plaintiff filed a civil suit in high Court for granting permanent injunction restraining the defendants, their agents, dealers, distributors, etc. From reproducing, publishing, distributing, selling, offering for sell the literary work "English for General Competitions".

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<sup>2</sup> CS (COMM) 935/2016.

### **Contentions of the Plaintiff**

1. The Plaintiff claimed that the aforesaid literary work is her original work, which is created and authored first time by the Plaintiff only. Infact, she has been granted copyright certificates in literary works after filing application for the same.
2. The plaintiff contended that the books authored by her was titled ‘English for General Competitions- from Plinth to Paramount’ in May 2012 and was highly succeeded in the market.
3. In Feb, 2015, the Plaintiff amended the title as ‘English for General Competitions’ from ‘English for General Competitions-From Plinth to paramount.’ The books authored by the Plaintiff are now known as ‘K.D. Publications Pvt. Ltd.’ which was earlier known as ‘Paramount Reader Publications OPC Pvt. Ltd.’.
4. Later in June,2016 the Plaintiff found that the Defendant No.1 in collaboration with Defendant No.2 published its first book under title ‘English for General Competitions-Plinth to Paramount’ which was the exact copy of Plaintiff’s book having identical title and slight colour variation in graphic representations. There was no mention of the author and the only difference between the two was the price. Even the mistakes which were there in Plaintiff’s books were copied. This caused the misled and confusion among the students regarding the original work of the Plaintiff.
5. The Learned counsel for the plaintiff submitted that there was no contract of service between Plaintiff and Defendant No.2 in terms of section 17 of Copyright Act, therefore the ownership of literary work resides with the plaintiff only. He further contended that there is no material with the Defendant to show that the Defendant No.2 was the employer of Plaintiff; this makes it clear that the plaintiff is the real owner of copyright in terms of section 17(c) of Copyright Act.

### **Contentions of the Defendant**

1. The Defendant No.1 & 2 filed a written statement and a counter claim in response to the claim made by the plaintiff. The Defendant argued that the plaintiff is not the exclusive owner/author of the book because she authored /compiled the books with the help of a team while she was working as a Director of Defendant No.2 from 2012-2014.

2. The Learned Counsel for the defendant mentioned the judgement given by the Supreme Court in the case Ram Pershad Vs. The Commissioner of Income-tax, New Delhi<sup>3</sup> and V.T Thomas and Ors. Vs. MalayalaManorama Co. Ltd.<sup>4</sup>
3. The learned counsel for the defendant further contended that the plaintiff demanded salary from defendant which shows that the plaintiff was an employee of the defendant. Moreover, the defendant cannot author the number of books individually for various competitions as she has the educational qualification of B.Sc., LLB only. Therefore, the plaintiff cannot be the exclusive author of the books as she authored all the books with the team members of the Defendant No.2.

### **Issues**

1. Whether the literary work was authored as a part of duties and obligations of a director by the plaintiff?
2. Whether the plaintiff is entitled absolute ownership of the literary work according to section 17 of the Copyright Act, 1957?
3. Whether the selling of copyright books by the defendant comes within the meaning of section 52 of Copyright Act, 1957?

### **Judgement**

In the judgement given by the court, the High Court of Delhi read the Section 17 of the Copyright Act, which defines the first owner of copyright.<sup>5</sup> This section clearly states that the author of a work shall be the first owner of the copyright if no agreement is made under a contract of service in the employment. The court further said that there is no doubt that the plaintiff was working as a Director of defendant No.2 when the literary works were made, however, the defendants failed to show that the literary work was authored as a part of the duties and obligations of a director of defendant No.2. Moreover, the defendants also failed to show any documents regarding any agreement between them and the plaintiff. Therefore, in the absence of any terms and condition describing that the literary work was also a part of the duties and obligations of the plaintiff in her capacity as a Director of the defendant No.2, the plea of the defendants based on the decision of the Supreme Court in Ram Pershad and V.T. Thomas was rejected by the court.

The court held that a director of a company is not a servant but an agent of the company because the company acts through its directors. The court further mentioned the section 52 of

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<sup>3</sup>(1972)2 SCC 696.

<sup>4</sup> AIR 1989 Kerala 49.

<sup>5</sup>DR. B L WADEHRA, LAW RELATING TO INTELLECTUAL PROPERTY 299(5<sup>th</sup> ed. 2017).

the Copyright Act<sup>6</sup> which deals with the concept of fair use of copyright work. The court referred the case, *The Chancellors, Masters and Scholars of University of Oxford &Ors. v. Rameshwari Photocopy Service &Ors*<sup>7</sup>; where the distinction between the use of copyrighted work for the purpose of teaching/studies and commercial purpose was made. Therefore, the court disposed of the suit by granting interim injunction in favour of the plaintiff and dismissed the written statement and a counter claim filed by the defendant No.1 and 2.

### **Analysis**

In the present case, several facts were put forward by both the parties which were quite different from each other. However, the court consequently granted an interim injunction in favour of the plaintiff since the defendants could not show any document to prove that the plaintiff was working as an employee of the Defendants when the literary works were going on. This clearly indicates that the court decision was totally dependent on the facts as well as on evidences of the case. Both the parties were highly successful in bringing the several facts in the case but the defendants ultimately failed to show the evidences or records in front of the judge to make their points stronger.

### **Lacunae**

On studying the present case thoroughly, I found that the only lacuna in the judgment of the case was that of the compensation. The court must grant compensation to the plaintiff for the loss which she caused due to the selling of interim copies of her books by the defendant which created confusion and misled the students about the original work of the author.

Secondly, as far as the legislation is concerned, there is need of widening the scope of Copyright Act from just literary and artistic work to all forms of copyright works.

However, on summing up, this is a very interesting case because unique facts were created from both the sides and the questions of copyright law which were put up were extremely important for the employer as well as for employee in an employment. This case clarifies that whenever the dispute arises between the employer and the employee over the ownership of copyright, the terms of employment of the employee has to be seen very specifically. Thus, this judgment opened the doors for all the cases which are related to employment by simplifying the terms of employment.

### **Conclusion**

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<sup>6</sup>*Ibid.*

<sup>7</sup>2016 (235) DLT 409.

The present case is an interesting case as adequate facts were put forward by both the parties who were present in the case. The decision was given in favour of the plaintiff as the plaintiff succeeded in bringing all the evidences or records related to her contentions in front of the honourable Judge. This case clarified that the terms of employment of the employee is the essence in deciding the ownership of copyright of any literary work. The decision given in this case also suggest that the registration of any literary work under Copyright Act is the requirement to claim ownership of copyright in any literary work. Moreover, this decision has opened gates for similar cases related to copyright Act to protect the people for their ownership of copyright and they can move the court if any right of them is infringed by the other person in an employment.