

Team Code: TC020

**VIIIth SURANA & SURANA AND SHAASTRA IIT MADRAS,
INTELLECTUAL PROPERTY LAW MOOT COMPETITION 2023-2024**

BEFORE THE HON'BLE HIGH COURT OF HILED

IN THE MATTERS OF:

SAMAY SINHA

.....PLAINTIFF

V.

EPIONA PRIVATE LIMITED

.....DEFENDANT

ON SUBMISSION TO THE HON'BLE HIGH COURT OF HILED

UNDER SECTION 62 OF THE COPYRIGHT ACT, 1957

WRITTEN SUBMISSIONS ON BEHALF OF THE DEFENDANT

COUNSEL APPEARING ON BEHALF OF THE DEFENDANT

TABLE OF CONTENTS

LIST OF ABBREVIATIONS.....	3
INDEX OF AUTHORITIES.....	4
STATEMENT OF JURISDICTION.....	7
STATEMENT OF FACTS.....	8
ISSUES RAISED.....	9
SUMMARY OF ARGUMENTS.....	10
ARGUMENTS ADVANCED.....	11
<u>ISSUE 1:</u> WHETHER THE SUIT IS MAINTAINABLE?.....	11
<u>ISSUE 2:</u> WHETHER THE ACT OF THE DEFANDANT AMOUNTS TO INFRINGEMENT OF COPYRIGHT UNDER COPYRIGHT ACT, 1957?.....	15
<u>ISSUE 3:</u> WHETHER THE PLAINTIFF IS ENTILTLED FOR THE RELIEF OF INTERIM INJUNCTION, COMPENSATION AND OTHER RELIEFS?.....	19
PRAYER.....	26

LIST OF ABBREVIATIONS

ABBREVIATION	TERM
&	And
§	Section
AIR	All India Report
Anr.	Another
HC	High Court
e.g	Example
Hon'ble	Honourable
i.e.	Id Est/ That Is
Ltd.	Limited
MANU	Manupatra
No.	Number
Ors.	Others
Pvt.	Private
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporters
UOI	Union Of India
v.	Versus
IP	Intellectual Property
w.r.t	With respect to
CPC	Civil Procedure Code
Vis – a - vis	In relation to

INDEX OF AUTHORITIES

BOOKS

1. ADVOCATE K. RAMA BHAT, THE CIVIL PROCEDURE CODE, 1908, PUBLISHED BY G.V. MURTHY, FIRST EDITION 2005, SECOND EDITION.
2. DR. BL. WADEHRA, LAW RELATING TO INTELLECTUAL PROPERTY, PUBLISHED BY UNIVERSAL LAW PUBLISHER CO. PVT. LTD., 2007, FIFTH EDITION.
3. DR. RAGHBIR SINGH, COMMENTARY ON THE COPYRIGHT ACT, PUBLISHED BY UNIVERSAL LAW PUBLISHING CO.PVT.LTD, NEW DELHI, SEVENTH EDITION 2010.
4. M P JAIN, THE CODE OF CIVIL PROCEDURE, PUBLISHED BY LEXISNEXIS, HARYANA, THIRD EDITION, 2011.
5. PROF. MEENU PAUL, INTELLECTUAL PROPERTY LAWS, PUBLISHED BY ALLAHABAD LAW AGENCY, 2014, FIFTH EDITION, 2011, VOLUME 1, SECTION 1 TO ORDER 18, RULE 2.
6. RAMA SARMA, COMMENTARY ON INTELLECTUAL PROPERTY LAWS, VOLUME 2, EDITION 2009, PUBLISHED BY LEXISNEXIS, BUTTERWORTHS, WADHWA, NAGPUR.

STATUTES

1. THE CODE OF CIVIL PROCEDURE, 1908
2. THE COPYRIGHT ACT, 1957
3. INFORMATION TECHNOLOGY ACT, 2000
4. THE LIMITATION ACT, 1963
5. THE SPECIFIC RELIEF ACT, 1963

CASE LAWS

1. ADAMS V. BATLEY, 18 Q. B. D. 625 (1887).
2. AMERICAN CYANAMID CO V ETHICON LTD [1975] UKHL 1[1975] AC 396, [1975] 2 WLR 316, [1975] 1 ALL ER 504, [1977] FSR 593.
3. ANTON PILLER KG V. MANUFACTURING PROCESSES LTD. AND OTHERS [1975 A. NO. 6292]
4. ARNSTEIN V. PORTER, 154 F.2D 464 (2D CIR. 1946).
5. ARTE INDIANA V. P. MITTULAU LALAH AND SONS, 2000 PTC 140 (BOM).
6. AUGUSTINE V. MEDLYCOTT, I.L.R. 15 MADRAS 241
7. COLGATE PALMOLIVE (INDIA) LTD. V. HINDUSTAN LEVER LTD. (1999)
8. DOLY GHOSH V. KUMUD CHANDRA GOSH (2004) 3 CALLT 138 : (2004) 2 CHN 585.
9. GOPAL V. SHAMRAO, AIR 1941 NAG 21.
10. H.M. MAHESH V. B (1992)
11. HUBBARD V VOSPER, [1972] 2 Q.B. 84.
12. JEFFREYS V. BOOSEY, (1854) 4 HLC 815.
13. MAZHAR HUSAIN AND ANR. V. NIDHI LAL (1885) ILR7ALL436.
14. MITASO APPLIANCES LTD V. MEHTA ZINABHAI BHIMJI BHAI, 1995 PTC (15) 294 (DEL).
15. SEGA ENTERPRISES LTD. V. ACCOLADE, INC., 977 F.2D 1510 (9TH CIR. 1992).
16. V RAMAMIRTHAM V. RAMA FILM SERVICE, AIR 1951 MAD 93
17. WILEY EASTERN LIMITED V/S INDIAN INSTITUTE OF MANAGEMENT (OS) NO. 78 OF 1995.
18. WARNER BROS. ENTERTAINMENT INC. V. HARINDER KOHLI AND ORS. [IA NO.9600/2008 IN CS(OS) 1607/2008]
19. WRIGHT V. GOODLAKE SC 34 L J. EX. 82, 12 JUR. (N. S) 14, 13 W. R. 349, 13 L T. 120.

ARTICLES

1. BFVLAW, <https://www.bfvlaw.com/copyright-infringement-what-are-the-potential-damages/>
2. BYTESCARE, <https://bytescare.com/blog/can-facts-be-copyrighted>
3. INDIANKANOON, [H.M. Mahesh vs B on 24 March, 1992 \(indiankanoon.org\)](https://www.indiankanoon.org)
4. IPLEADERS, <https://blog.ipleaders.in/the-long-arm-jurisdiction-of-courts-regarding-copyright-law-in-india/>
5. LEGALSERVICEINDIA, <https://www.legalserviceindia.com/legal/article-2467-the-judicial-exercise-in-weighing-balance-of-convenience-in-granting-interim-injunctions.html>
6. SIMRANLAW, <https://simranlaw.com/injunctions-in-civil-law-understanding-order-39-of-cpc/>
7. SURANAANDSURANA, <https://suranaandsurana.com/2022/09/02/doctrine-of-fair-dealing-in-indian-copyright-law/>

WEBSITES

1. www.manupatra.com
2. www.lexisnexis.com
3. www.sconline.com
4. www.indiankanoon.com
5. www.legalserviceindia.com

STATEMENT OF JURISDICTION

The suit has been filed in the jurisdiction of this Hon'ble court under Section 62 of the Copyright Act, 1957. The Plaintiff has approached this Hon'ble court for the infringement of Copyright under the Copyright Act, 1957. Section 62 provides copyright owners and their licencees an exception to the normal rules of jurisdiction as enshrined in section 20 of the Code of Civil Procedure 1908. Therefore, the Plaintiff maintains that, the jurisdiction of section 62 of the Copyright Act, 1957 which protects the copyright owners and licencees from the infringement of copyrights, is applicable in the present case.

STATEMENT OF FACTS

1. Samay Sinha, a celebrated literary figure, began his influential literary journey in 1999 with 'Demelops,' a historical novel that earned widespread acclaim and culminated in the Sahitya Akademi Award, marking a distinguished career. In the artificial intelligence domain, EPIONA emerged as a notable player, specializing in large language models (LLMs) and featuring the Interactive Creative Pre-Conditioned Metamorphoser (IntCPM).
2. On November 16, 2023, Sinha issued a Cease-and-Desist Notice to EPIONA, alleging unauthorized use of training datasets sourced from copyrighted works without proper authorization, credit, or compensation. The dispute centered around IntCPM's training dataset, with a significant portion controversially obtained from Smashwords, including over 7,000 unique unpublished books in the BookCorpus. EPIONA extended this practice to CPM-3, incorporating 15% of the training dataset from "Books1" and "Books2," the latter containing titles from notorious "shadow library" websites known for illegal book aggregation.
3. Sinha's concerns expanded beyond dataset sourcing, raising issues about IntCPM producing seemingly accurate summaries of his books upon prompt, implying the unauthorized ingestion of his copyrighted materials. He argued that these outputs constituted derivative works or adaptations, lacking reproduction of copyright management information.
4. In response, on December 14, 2023, EPIONA argued that copyright protection does not extend to underlying concepts, factual details, or fundamental elements of creative expression. They contended that statistical information, such as word frequencies, syntactic patterns, and thematic markers, falls outside copyright protection, aligning with principles supporting intellectual and artistic progress.
5. Despite EPIONA's legal stance, on January 4, 2024, Sinha filed a lawsuit under the Indian Copyright Act, 1957. The lawsuit seeks interim injunctive relief, damages for copyright infringement, final injunctive relief, accounts of profits, attorneys' fees, costs, and further relief. The claim designates the High Court of Hiled as the appropriate judicial venue, given EPIONA's activities in Chennai and the substantial events within this jurisdiction. Meanwhile, Sinha resides in Kolkata, West Bengal.

ISSUES RAISED

ISSUE 1

WHETHER THE SUIT IS MAINTAINABLE?

ISSUE 2

WHETHER THE ACT OF THE DEFANDANT AMOUNTS TO INFRINGEMENT OF
COPYRIGHT UNDER COPYRIGHT ACT, 1957?

ISSUE 3

WHETHER THE PLAINTIFF IS ENTILTLED FOR THE RELIEF OF INTERIM
INJUNCTION, COMPENSATION AND OTHER RELIEFS?

SUMMARY OF ARGUMENTS

I. WHETHER THE SUIT IS MAINTAINABLE?

The suit is not maintainable under section under section 62 of the Copyright Act 1957, which says that every suit or other civil proceedings arising under this chapter in respect of the infringement of copyright in any work or the infringement of any other rights conferred by this Act. So according to this provision, the suit is triable by district court having territorial jurisdiction.

II. WHETHER THE ACT OF THE DEFANDANT AMOUNTS TO INFRINGEMENT OF COPYRIGHT UNDER COPYRIGHT ACT, 1957?

The act of the defendant does not amounts to infringement of copyright because under Section 52 of the Copyright Act 1957, it states that a fair dealing with literary, dramatic, musical or artistic work [not being a computer programmer] for the purposes like education, research, criticism or review and not for commercial gain. Fair dealing helps to promote creativity, innovation, and the exchange of ideas. In the section 102(b) of the U.S law it says that only the expressions are protected and not the ideas.

III. WHETHER THE PLAINTIFF IS ENTITLED FOR THE RELIEF OF INTERIM INJUNCTION, COMPENSATION AND OTHER RELIEFS?

The plaintiff is not entitled for the said reliefs in the absence of Prima facie case, Irreparable Injury and Balance of convenience. In such instances it will be obvious that the plaintiff has to prove that he cannot protect himself from the consequence of such an injury except by an injunction being the remedy open to him under the copyright act which is not the case.

ARGUMENTS ADVANCED

ISSUE 1: WHETHER THE SUIT IS MAINTAINABLE?

It is humbly submitted before the Hon'ble Court that the suit filed by the plaintiff is not maintainable for following reasons:

1.1 SUIT SHALL BE FILED IN THE LOWEST FORUM OF THE COUNTRY: SECTION 15 OF CODE OF CIVIL PROCEDURE¹.

Under section 15 of the Code of Civil Procedure 1908, it is stated that Every suit shall be instituted in the Court of the lowest grade competent to try it. This rule being of a procedural nature does not affect the jurisdiction of the courts. Thus, as the Nagpur Bench of the Bombay High Court observed in the case of *Gopal v. Shamrao (1941)*, a decree passed by a higher court cannot be said to have been passed without jurisdiction. The two-fold objective of Section 15 has been provided hereunder: Reduce burdens of the higher courts; Afford convenience to the parties and witnesses who may be called for examination in such suits. The jurisdiction of a court under Section 15 is determined by the plaintiff's valuation in the plaint and not the amount for which the decree will be finally passed by the court².

In *Mazhar Husain And Anr. v. Nidhi Lal (1885)*³. The pre-independence case of *Mazhar Husain And Anr. vs Nidhi Lal (1885)* which was heard by the Allahabad High Court, had laid down the objectives of Section 15 of the Code of Civil Procedure, 1908. The objectives

¹ CPC, section 15, (5 of 1908), 1908, The Code of Civil Procedure 1908, India.

² IPLEADER, [Place of suing under the Code of Civil Procedure, 1908 : an insight through case laws - iPleaders](#) last visited on 20th December 2023

³ IPLEADER, [Place of suing under the Code of Civil Procedure, 1908 : an insight through case laws - iPleaders](#), last visited on 20th December 2023

which have been observed are provided hereunder: a) To avoid overburdening of the courts of higher grades with suits;

b) To afford the convenience of the parties and witnesses who may be examined in such suits.

Therefore in the above case law of Allahabad High Court which serves as a precedent says that, there should not be overburden of the courts of higher grades with suits, hence instead of filing the suit directly to the higher grade courts, which are burden to them when there is a lower grade courts to competent it.

In *Doly Ghosh v. Kumud Chandra Gosh on 24th march, 2004*⁴. Submission on behalf of the appellant: Mr. Roychowdhury, appearing on behalf of the appellant, contends that it is the learned District Judge who is the competent Court to entertain all kinds of civil suits, including the kind of suit for negative declaration that there was no marriage. He may not be the lowest grade of Court of competent jurisdiction but that does not mean that the learned District Judge was not competent to entertain the suit. It was open to the learned District Judge to return the plaint for being presented to the appropriate Court or to retain the same and grant relief. He relies on Sections 9, 13 and 18 of the Bengal, Agra and Assam Civil Courts Act, 1887. Relying on Section 18, he contends that it is the learned District Judges who are competent to take cognizance of all suits triable by the Civil Courts, subject to Section 15 of the Code of Civil Procedure (CPC). Section 15 of CPC prescribes institution of every suit in the Court of lowest grade competent to try it. Section 15 is a procedural provision. It does not curtail the jurisdiction of the Court of higher grade of competent jurisdiction. It is only for the sake of convenience and in order to relieve or ease the pressure of suit on the higher grade of Courts and to leave such higher grade of Courts to

⁴ Indiankanoon, [Doly Ghosh vs Kumud Chandra Ghosh on 24 March, 2004 \(indiankanoon.org\)](https://www.indiankanoon.org/cases/2004/1027/), last visited on 20th december 2023

deal with appeal and other matters. (c). *H.M. Mahesh v. B on 24 March, 1992*⁵. "Section 2(4) "District" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a 'District Court'), and includes the local limits of the ordinary original **civil** jurisdiction of a High Court."

Section 15 of the Code of Civil Procedure is extracted hereunder: - "Section 15 Court in which suits to be instituted: "Every suit shall be instituted in the Court of the lowest grade competent to try it.". The rule in Section 15, C.P.C., is intended for the protection of Courts of higher grade and does not affect their jurisdiction. It has been uniformly held by our High Court starting with *Augustine v. Medlycott*,⁶ that there is no lack of jurisdiction for the Superior Court to try the suit. In *Ramamirtham v. Rama Film Service*, (F.B.) Satyanarayana Rao, J, observed as follows:- "While it enjoins the institution of a suit in the Court of the lowest grade competent to try it, it does not oust the jurisdiction of the Court of a higher grade. Even if the Court of a higher grade tries and disposes of a suit which could have been instituted in a Court of a lower grade, the decision referred is not without jurisdiction and is not a nullity."

Hence by referring the above cases, it says that the suit shall be instituted in the Court of lowest grade as the High Courts has to deal with the appeal and other matters, therefore it can be said that this suit is not maintainable under section 15 of Code of Civil Procedure.

1.2 JURISDICTION SPECIFIED BY THE COPY RIGHT ACT IS DISTRICT COURT: SECTION 62.

Section 62 of The Copyright Act, 1957 which speaks about the Jurisdiction of court over matters arising under this Chapter –

⁵Indiankanoon, [H.M. Mahesh vs B on 24 March, 1992 \(indiankanoon.org\)](https://indiankanoon.org/), last visited on 20th December 2023

⁶ *Augustine v. Medlycott*, I.L.R. 15 Madras 241

(1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose of sub-section (1), a “district court having jurisdiction” shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.

*In Arte Indiana v. P. Mittulaul Lalah and Sons, 2000 PTC 140 (Bom)*⁷.

The Plaintiff filed the leave to sue the Defendant before the Honourable Court under clause 14 of the Letters Patent. The Plaintiffs wanted to sue for infringement of Copyright under Section 62(2) of the Copyright Act. The matter in issue here was whether the right to sue accrued out of the provision in the Copyright Act which is an enactment of the Parliament. The Plaintiff was carrying on business in Bombay and he alleged that there was copyright infringement by the Defendant No who resided and carried on business in Chennai, and he was marketing some products in violation of the Copyright of the Plaintiff to the Defendant No. 2 in Kuwait. The Defendant No. 1 contended that a close reading of clause 14 of the Letters Patent would indicate that at least one of the causes of action must have arisen within the original jurisdiction of this Court. The Court held that for the leave to sue to be granted at least a part of the cause of action must fall within the territorial jurisdiction of this Court. Section 62(2) of the Copyright Act was interpreted as not a part of the expression "cause of action", but a right conferred by the statute to a plaintiff to maintain a Suit where he resides or carries on business. Therefore the Court accepted the contention of the Defendant

⁷ Rama Sarma, Commentary on Intellectual Property Laws, page 1793, published by LexisNexis Butterworths Wadhwa Nagpur, Volume 2, Edition 2009.

No.1 and held that no part of the cause of action having arisen within the territorial jurisdiction of this court, leave to sue cannot be granted. The suit was dismissed.

In *Mitasa Appliances Ltd v. Mehta Zinabhai Bhimji Bhai, 1995 PTC (15) 294 (Del)*⁸.

Facts: The Plaintiffs filed this Suit for infringement of both trademark and copyright. The Defendants objected on the ground that no part of the cause of action arose in Delhi. Hence, this Court has no jurisdiction.

Held: The Court held that as per Section 62 of the Copyright Act a suit for infringement is maintainable in any place where the Plaintiff resides or carries on business. Hence, this Suit was maintainable.

1.3 THIS HIGH COURT HAS NO TERRITORIAL JURISDICTION:

As the Plaintiff is from Calcutta and Defendant company is based in Chennai.

It is humbly submitted before the Hon'ble Court that the plaintiff resides in Kolkata, State of West Bengal and the defendant i.e, EPIONA is incorporated in Chennai, State of Tamil Nadu, and the plaintiff i.e, Samay Sinha has filed a law suit in The High Court of Jharkhand (with the same jurisdictional powers as the Hon'ble High Court of Delhi) which has not a territorial jurisdiction as both are from different territories. *Per Contra* there is no law relating to online activities which are developed properly, this lawsuit would have been either in the place of Plaintiff nor in the place of Defendant, as this suit is filed outside the territories, we can conclude by saying that this suit is not maintainable.

ISSUE 2: WHETHER THE ACT OF THE DEFENDANT AMOUNTS TO INFRINGEMENT OF COPYRIGHT UNDER COPYRIGHT ACT, 1957?

⁸ Rama Sarma, Commentary on Intellectual Property Laws, page 1793, published by LexisNexis Butterworths Wadhwa Nagpur, Volume 2, Edition 2009.

We humbly submit before the bench that No copyright subsists in the work alleged to be infringed. The defendant's work is independent and is not copied from the Plaintiffs work⁹. The defendant's action does not constitute infringement of the Plaintiffs work and is permissible under one or more of the exceptions to infringement under section 52 of Copyright Act ,1957.

2.1. COPYRIGHT IS THE PROTECTION IN MATERIAL FORM AND NOT THE IDEA.

Copyright is a right given to or derived from works and it is not a right in novelty only of ideas. There is no copyright in ideas. Copyright subsists only in the material form to which the ideas are translated. The object of copyright is not to create any legal or intellectual property rights in the idea but in the final objects or the work which is created as a result of the effort made to give a "physical" shape to an idea. In the field of literary work the words chosen by the author to express his ideas are peculiar to himself and no two descriptions of the same idea or fact can be in the same words, just as no two answers written by two different individuals to the same question can be the same. The order and arrangement of each man's words is as singular as his countenance. It is the form in which a particular idea, which is translated that is, protected; IN *Jeffreys v. Boosey, (1854)* ¹⁰4 HLC 815. A person may have a brilliant idea for a story or for a picture but if he communicates that idea to an artistic or play writer then the production which is the result of the communication of the idea is the copyright of the person who has clothed the idea in a form (whether by means of a picture or play) and the owner of the idea has no rights in that product; *Donoghue v. Allied Newspapers Ltd*¹¹, (1937) 3 All ER 503. Since there is no copyright in ideas or information, it is no infringement of copyright to adopt the ideas of another or to publish information

⁹ Dr. B L Wadehra, Law relating to intellectual property, page no. , published by LexisNexis, 2017 Fifth edition ,Page 343

¹⁰ *Jeffreys v. Boosey, (1854)* ¹⁰4 HLC 815

¹¹ *Donoghue v. Allied Newspapers Ltd*¹¹, (1937) 3 All ER 503

derived from another, provided there is no copying of the language in which those ideas have or that information has been previously embodied.

Therefore in our suit, copyright safeguards the specific manner in which an author conveys an idea, excluding protection for the underlying concept itself, factual details encompassed within the author's articulated communication, or other fundamental elements of creative expression. Consequently, every concept, theory, or fact presented in a copyrighted work becomes promptly accessible for public utilization upon publication. Hence, although an author may register a copyright for their literary work, statistical information related to word frequencies, syntactic patterns, and thematic markers within said work falls beyond the ambit of copyright protection.

2.2. THE DOCTRINE OF FAIR DEALING W.R.T. SECTION 52 OF COPYRIGHT ACT,1957 AS AN EXCEPTION TO THE INFRINGEMENT OF COPYRIGHT .

The term fair dealing has not been defined in the Act. It is a legal doctrine, which allows a person to make limited use of copyrighted work without the permission of the owner. Whether a person's use of copyrighted material is 'fair' would depend entirely upon the facts and circumstances of a given case. The line between "Fair dealing" and infringement is a thin one. In India, there are no set guidelines that define the number of words or passages that can be used without permission from the author. Only the Court applying basic common sense can decide this. It may however be said that the extracted portion should be such that it does not affect the substantial interest of the Author. Fair dealing is a significant limitation on the exclusive right of the copyright owner, it has been interpreted by the courts on a number of occasions by judging the economic right of the copyright owner. It has been interpreted by

the courts on a number of occasions by judging the monetary impact it has on the copyright owner. Where the economic impact is not significant, the use may constitute fair dealing¹².

In *Hubbard v Vosper, [1972]*¹³, is a leading English copyright law case on the defence of fair dealing. The Church of Scientology sued a former member, Cyril Vosper, for copyright infringement due to the publication of a book, *The Mind Benders*, criticizing Scientology. The Church of Scientology alleged that the books contained material copied from books and documents written by L. Ron Hubbard, as well as containing confidential information pertaining to Scientology courses. Vosper successfully defended the claim under the fair dealing doctrine, with the Court of Appeal deciding unanimously in his favour. The judgment given by Lord Denning clarified the scope and content of the fair dealing defence¹⁴.

The court in the case of *Wiley Eastern Ltd. v. IIM*¹⁵ laid down that the rationale of Section 52 and stated that it is to protect the freedom of expression (through research, private study, criticism or review or reporting of current events enshrined in Article 19 (1) of the Constitution of India¹⁶.

So, In this particular suit, EPIONA'S use of copyrighted material amounted to fair use and that fair use is not an infringement.

2.3. THERE IS NO SUBSTANTIAL SIMILARITY.

Substantial similarity" is a legal term used in copyright law to assess whether there is sufficient similarity between two works to conclude that one is an infringement of the other. It involves an examination of the expression of ideas, the arrangement of elements, and the overall structure of the works. It's important to note that substantial similarity does not mean an exact copy. Rather, it focuses on whether the expression of ideas in the alleged infringing

¹² https://suranaandsurana.com/2022/09/02/doctrine-of-fair-dealing-in-indian-copyright-law/#_edn3

¹³ *Hubbard v Vosper*, [1972] 2 Q.B. 84

¹⁴ DBpedia, https://dbpedia.org/page/Hubbard_v_Vosper

¹⁵ Pandey, V. (2014, March 13). 'Fair Dealing' In Copyrights : Is The Indian Law Competent Enough To Meet The Current Challenges?

¹⁶ <https://suranaandsurana.com/2022/09/02/doctrine-of-fair-dealing-in-indian-copyright-law/>

work is similar enough to constitute a violation of the original work's copyright. This analysis is context-specific and varies based on the nature of the works involved.

In *Arnstein v. Porter (1946)*: This case involved a dispute over the song "Swing and Sway." The court established the Arnstein test, emphasizing that substantial similarity should be determined by the response of the ordinary person rather than experts.

In *Sega v. Accolade (1992)*: This case dealt with the video game industry, where Accolade reverse-engineered Sega's video game console to create compatible games. The court determined that the non-literal elements of the computer code were not substantially similar, establishing an important precedent for the protection of reverse engineering.

So, therefore in our suit, there is no substantial similarity and to assess the two contested works by (1) disregarding elements that are not eligible for protection, and (2) evaluating whether the remaining protectible elements, in isolation, exhibit substantial similarity. Since IntCPM's creation does not display substantial similarity to the original, it does not qualify as a "copy" or a "derivative work."

Therefore, by the above established arguments it can be said that the use of copyright materials amounted to fair use and that fair use is not an infringement. The defendant's action does not constitute infringement of the Plaintiffs work and is permissible under one or more of the exceptions to infringement under section 52 of Copyright Act ,1957.

ISSUE 3: WHETHER THE PLAINTIFF IS ENTITLED FOR THE RELIEF OF INTERIM INJUNCTION, COMPENSATION AND OTHER RELIEFS?

3.1 THE PLAINTIFF IS NOT ENTITLED FOR THE INTERIM INJUNCTION FOR THE REASONS STATED BELOW.

- i. As discussed earlier it has failed to put forward the Prima facie case which is bed stone while granting interim injunction.

The complainant must prima facie establish originality and the copying complained of must be substantial and should not be a mere chance of occurrence. An interlocutory injunction will not, however, be granted where the defendant might suffer irreparable injury from an injunction restraining him for publishing pending the trial and the plaintiff can be properly protected by the defendant being ordered to keep an account, nor will it normally be granted where a *bona fide* defence of fair dealing has been pleaded or if the plaintiff has been guilty of undue delay in coming to the Court or his conduct has amounted to acquiescence in the infringement or if there is any substantial doubt as to the plaintiff's right to succeed. It has been said that in considering whether to grant an interlocutory injunction the judge must look at the whole case and that the remedy by interlocutory injunction must not be made the subject of strict rules.

In the *Anton Piller case*¹⁷ laid down the three essential pre-conditions. "First, there must be an extremely strong *prima facie* case, Secondly, the damage, potential or actual, must be very serious for the applicant. Thirdly, there must be clear evidence that the defendant have in their possession incriminating documents or things, and that there is a real possibility that they may destroy such material before any application inter paries can be made.

Hence Samay Sinha does not have a strong *prima facie* case and there is no damage and no clear evidence.

ii. Claim of injunction

Not to be vexatious and frivolous at the hearing of the application for an interlocutory injunction the Court must first be satisfied that the plaintiff has a real prospect of succeeding

¹⁷ ANTON PILLER KG V. MANUFACTURING PROCESSES LTD. AND OTHERS [1975 A. NO. 6292]

in his claim for a permanent injunction at the trial. If the Court is of the view that the claim is frivolous or vexatious an injunction will not be granted. The words "frivolous" and "vexatious", in this context are understood in a somewhat different sense than the same words are when used on an application to strike out a statement of claim or a defence as being frivolous or vexatious. The plaintiff does not as was formerly thought, have to establish that he has a strong prima facie case or even a probability that he will succeed at the trial.

iii. It is not, however, sufficient for the plaintiff to establish that he has an honest, though virtually hopeless claim. It is clear that the Court has no power to grant an interlocutory injunction, except in protection or assertion of some legal or equitable right which it has jurisdiction to enforce by final judgment. The injunction sought in the action must be part of the substantive relief to which the plaintiffs cause of action entitles him. Furthermore, in a substantial number of cases of infringement of copyright passing off and breach of confidence, there is no substantial dispute on the facts. All the essential facts are ascertained and in those circumstances it will be permissible for the Court to see whether the plaintiff has a strong prima facie case and whether there is a reasonable good answer. Many cases of this kind are therefore, in effect, decided on motion because the grant or refusal of the injunction is decisive of the action and disposes of the dispute.

iv. Damages Compensatory

In Adams v. Batley¹⁸, LORD ESHER, M.R., observed :

"The payment is treated in the Act as a payment by way of damages and not by way of penalty. It is imposed not as a punishment upon defendant, but as compensation to plaintiff. In my opinion, the legislature in using the expression 'whichever shall be greater damages'

¹⁸ ADAMS V. BATLEY, 18 Q. B. D. 625 (1887).

intended to enable plaintiff to recover as damages an amount of not less than 40s. in respect of each representation, or the amount of the benefit or advantage derived by defendant from the representation, or the injury or loss sustained by plaintiff therefrom, and this is not a penalty so as to bring the case within the rule that in actions for penalties administered to defendant."

v. Ascertainment of damages

In Wright v. Goodlake¹⁹, the Court held in an action for infringement of plaintiff's copyright in a book, the Court will permit interrogatories, as to the sale of the book for a certain period before and after the date of the alleged infringement, to be administered to plaintiff, for the purpose of ascertaining the amount of damage sustained and enabling defendant to pay a sufficient sum into Court to meet it.

Hence, as already mentioned in the facts of this suit, we submit before the bench stating that copyright safeguards the specific manner in which an author conveys an idea, excluding protection for the underlying concept itself, factual details encompassed within the author's articulated communication, or other fundamental elements of creative expression. Consequently, every concept, theory, or fact presented in a copyrighted work becomes promptly accessible for public utilization upon publication. Hence, although an author may register a copyright for their literary work, statistical information related to word frequencies, syntactic patterns, and thematic markers within said work falls beyond the ambit of copyright protection.

3.2. Balance of convenience:

Balance of convenience is not in the favor of the plaintiff, for following reasons:

- a. There is no substantial similarity.

¹⁹ WRIGHT V. GOODLAKE SC 34 L J. EX. 82, 12 JUR. (N. S) 14, 13 W. R. 349, 13 L T. 120.

- b. Use of copyrighted materials is for fair use
- c. There is no unauthorized use of copyrighted materials of the plaintiff.
- d. There is no monetary loss caused to the plaintiff.

The court will consider the balance of convenience between the plaintiff and the defendant. If the balance tilts in Favor of the plaintiff, an injunction may be issued. However, in this instance there is no serious issues to be tried and it is not only the balance of convenience test would resolve the matter but the court should also look at the relative strength of the parties.

American Cyanamid Co v Ethicon Ltd (1975)²⁰:

This case from the United Kingdom is a landmark decision that established the modern approach to granting interim injunctions. The court emphasized the need to balance the risk of doing an injustice to one party against the risk of doing an injustice to the other

Colgate Palmolive (India) Ltd v Hindustan Lever Ltd (1999)²¹:

In this Indian case, the court considered the balance of convenience when deciding on an application for an interim injunction to prevent a rival company from airing an allegedly disparaging commercial.

Warner Bros. Entertainment Inc. v. Harinder Kohli (2014)²²:

In this case, the Delhi High Court considered the balance of convenience when dealing with an application for an interim injunction in a copyright infringement dispute related to the film "Harry Potter."

These examples illustrate how the principle of balance of convenience is applied in various legal contexts, including intellectual property disputes and commercial cases. Keep in mind

²⁰ AMERICAN CYANAMID CO V ETHICON LTD [1975] UKHL 1[1975] AC 396, [1975] 2 WLR 316, [1975] 1 ALL ER 504, [1977] FSR 593.

²¹ COLGATE PALMOLIVE (INDIA) LTD. V. HINDUSTAN LEVER LTD. (1999)

²² WARNER BROS. ENTERTAINMENT INC. V. HARINDER KOHLI AND ORS. [IA NO.9600/2008 IN CS(OS) 1607/2008]

that the specifics of each case may vary, and the application of the balance of convenience principle is fact-specific.

3.3 Irreparable Loss:

There are two possible outcomes in the end of this suit.

- a. This court will rule not in favor of the plaintiff as there is no violation of copyright.
- b. This court will reject the claim of plaintiff.

The defendant must show that granting an injunction would lead to irreparable harm or loss that cannot be compensated by damages. The defences of the arguments of the defendants are as follows:

Availability of Monetary Damages:

Any harm suffered by the plaintiff can be adequately compensated through monetary damages. They might contend that the financial loss claimed by the plaintiff can be quantified and, therefore, does not meet the criteria for irreparability.

Lack of Immediate and Irreversible Harm:

Immediacy and irreversibility of the harm alleged by the plaintiff can be disputed. If they can show that the harm is not imminent or that it can be rectified or compensated at a later stage, they may contest the need for immediate injunctive relief.

Balancing of Harms:

Issuing an injunction would cause the defendants irreparable harm. They could present evidence that stopping their current activities would disrupt their business operations or cause financial hardship.

Fair Use or Legitimate Use:

If the defendant believes that their use of the copyrighted material falls under fair use or other legal exceptions, defendant may argue that the plaintiff has not demonstrated a valid claim of irreparable harm.

Chilling Effect on Speech or Creativity:

In some cases, granting of an injunction would have a chilling effect on free speech, creativity, or the development of new ideas. They may contend that such potential impacts should be considered in the determination of irreparable harm.

Therefore, we have presented the evidence to counter the plaintiff's claim of irreparable loss. Now the Court has to weigh the arguments from both sides and determine whether injunctive relief is warranted based on the specific facts of the case. Thereby in this case there is no clear or compelling evidence to show that the plaintiff has suffered irreparable loss. Moreover, Plaintiff has not quantified the Damages and not paid proper court fee.

PRAYER

In the light of facts stated, arguments advanced, and authorities cited, the Defendant, humbly prays before this Hon'ble High court may please to adjudge and declare:

1. Dismiss the suit filed by the Plaintiff before this Hon'ble Court with the exemplary cost.

And pass any other order, which the Hon'ble Court may deem fit in light of justice, equity, and good conscience. All of which is humbly prayed.