

DLCT010107132018



**IN THE COURT OF SH. SANJEEV KUMAR AGGARWAL : DISTRICT
JUDGE (COMMERCIAL) -01 : CENTRAL, TIS HAZARI COURTS,
DELHI**

CS (Com.) No. 972/2020

Islamic Book Service (P) Ltd.,

Through its Director

Sh. Khalid Siddiqui,

1511-12, Pataudi House,

Darya Ganj, New Delhi – 110002.

..... Plaintiff.

Versus

Sh. Abdur Rauf Najeeb Bakali,

Proprietor of M/s. Maktabah As - Sunnah,

Shop No. 1, Firdaus Manzil,

12, Ghoghari Mohalla,

Bhendi Bazar, Mumbai – 400003.

.... Defendant.

Date of institution : 20.08.2018

Date of reserving Judgment : 06.07.2022

Date of decision : 25.07.2022

**SUIT FOR PERMANENT, MANDATORY INJUNCTIONS, DAMAGES
AND RENDITION OF ACCOUNTS.**

JUDGMENT

1. Vide this Judgment, I shall decide the suit for permanent and mandatory injunctions, damages and rendition of accounts filed by the plaintiff against the defendant.

2. It is stated in the plaint are that the plaintiff is a company duly incorporated under the Companies Act, 1956 having its registered office at 1511-12, Pataudi House, Darya Ganj, New Delhi and Sh. Khalid Siddiqui is one of the directors of the plaintiff company and has been duly authorized to sign, verify and institute the present suit vide resolution dated 9.7.2018.

3. It is further stated that Maulvi Abdul Aziz, S/o Maulvi Mohammadin was the owner and author of literary work in Urdu language entitled as "Islami Taleemat" series of books part I to VIII and he has assigned the copyright in the aforesaid literary work to the plaintiff unconditionally and also handed over the manuscript of the said work against consideration. Hence, he has left with no right, title or interest in the said literary wok

and plaintiff becomes the sole / exclusive owner of all rights of the said work.

4. It is further stated that the copyright was granted by the Registrar of Companies vide registration No. L-13204/92 to L-13210/92 in the name of the plaintiff on 26.5.1992. It is further stated that the books "Studies in Islam" Grade one to Grade eight is being published by the plaintiff exclusively and continuously since 1992 because of said copyrights and it has become distinctive and said book has been sold on extensive scale in Delhi as well as abroad. The plaintiff has spent huge amount on the advertising, publicity and sale promotion through printing, visual and electronic media to popularize the said book.

5. It is further stated that in the month of May 2018, plaintiff came to know that the defendant has engaged himself in the same business and started publishing the literary work of Maulvi Abdul Aziz in the name and style of "Islamic Studies Grade I to Grade 5" thereby misrepresenting the contents of the said books and literary work of Maulvi Abdul Aziz. The defendant has illegally and malafidely adopted and started using and violating tradename / copyright of the plaintiff in respect of identical books and its contents and thus, infringed the

copyright of the plaintiff. Hence, the defendant is trying to cheat the unwary purchaser by putting them into the belief as if they are buying the genuine books published by the plaintiff written by Maulvi Abdul Aziz. Therefore, the defendant be restrained from printing, publishing, selling and distributing the books in the name and style of “Islamic Studies Grade I to Grade 5” or the books which is identical and similar and further, mandatory injunction be granted in favour of the plaintiff and against the defendant directing the defendant to furnish an undertaking that he will not use the similar and identical copyright of plaintiff and to furnish the details of dealers, stockists, school, institute etc. with all blocks, dyes, papers and other packing material, computers printers to the plaintiff and further plaintiff has also sought the decree of damages of Rs. 10 lacs and decree for rendition of accounts against the defendant.

6. Summons of the suit were issued to the defendant and the defendant contested the suit by filing the written statement. In his written statement, defendant has taken the following preliminary objections :

1. That though it is denied that Maulvi Abdul Aziz has assigned copyrights of his Urdu literary work “Islami

Taleemat” to the plaintiff vide affidavit dated 6.7.1989, even then, the said affidavit reveals that the copyrights were assigned by Maulvi Abdul Aziz to one M/s. Islamic Book Service, 2241/32, Kucha Chelan, Darya Ganj, New Delhi – 110002 and not to the plaintiff which is entirely different entity;

2. That the plaintiff company was never assigned copyright by Maulvi Abdul Aziz and letter dated 25.9.1992 is forged and fabricated;

3. That from the letter dated 25.9.1992, it is evident that the same was assigned to third party namely Sh. Abdul Moin and not to the plaintiff;

4. That the publisher under the name, “Studies in Islam” is not the original thoughts or words of either Maulvi Abdul Aziz or anyone else in the world and nobody can claim copyright upon the basic tenets and principles of Islam and neither it can be altered nor substituted with any other thought, ideology or principles;

5. That during the period 1982 to 2002, Maulvi Abdul

Aziz was serving Government of UAE under Ministry of Education Dubai and hence, he was not authorized or empowered to assign his work in favour of third party as he was not the owner of said work and the Department of Private Education / Government of UAE was its owner;

6. That no time period is fixed for assignment in favour of plaintiff or any other person, either by way of affidavit dated 6.7.1989 or the letter dated 25.2.1992 and sub-clause (5) of Section 19 of the Copyright Act provides that if no specific period of assignment is stated then the maximum time period for such assignment shall be deemed to be five years from the date of assignment. Hence, the period has expired for which the assignment was made by Maulvi Abdul Aziz;

7. That the suit is bad for non-joinder of necessary party i.e. Maulvi Abdul Aziz;

8. The copyright registration of "Studies in Islam" by the plaintiff is based on forged and fabricated documents as copyright board has dismissed all 7 English publications of respondent Sh. Abdul Moin on the ground that he was

neither the author of published work nor had any document to show his copyright in any manner with respect to English version of said work vide order dated 16.4.1999 passed in case 'Dr. M. Shoiab Quraishi Vs. Abdul Moin';

9. That the plaintiff has fraudulently obtained letter dated 14.10.1999 by manufacturing a back dated letter of Maulvi Abdul Aziz whereby he tried to show that he was assigned the rights with respect to English Version of the work of Maulvi Abdul Aziz;

10. That a person can write several books on teaching of Islam. Maulvi Abdul Aziz has written several books including 'Islamic Studies', '20 Hadith For Kids', 'History of Islam', and 'Islam A Total Beginner's Guide' etc. and since the books published by the parties and their contents are altogether different, then merely for the reason that both the books are written by same person, plaintiff cannot claim that it amounts to infringement of its copyright;

11. That the plaintiff has concealed the fact that work published by the defendant is entirely different from the work

published by plaintiff, the concept, contents, layout, cover page, designs and pictures etc. of the books published by defendant have no similarity with the books of plaintiff. The said differences are mentioned as under : -

Particulars	Plaintiff's Book	Defendant's Book
Name	Studies in Islam	Islamic Studies
Author	Maulvi Abdul Aziz, M.A., Dip in Ed. (London)	Maulvi Abdul Aziz (UAE) M.A. English Literature
Cover Page (front side)	Name of Book, its Grade, name of author, letters "SI" and complete name of plaintiff, with monogram, different colour scheme, different design, different size, no photographs.	Name of Book, its grade, name of author, different colour scheme, different design, different size, several photographs.
Cover Page (back side)	All the books have promotional contents / synopsis / blurb at the backside cover page.	Back side cover page of books published by defendant does not contain any such promotional message of the books. Only name and details of defendant and few pictures are printed on backside cover page.
Price	Price from Rs. 90 to Rs. 120 is mentioned	No price is mentioned as the books were

	on different Grades.	published on no profit no loss basis and for religious benefit only.
About Author	In introduction columns the author is introduced merely as an Islamic Scholar.	In publisher's note the author is introduced as a scholar who held different posts including that of Senior Administrative Office in the Department of Private Education, Ministry of Education, Dubai, UAE from 1982-2002.
Introduction	Two introductions one by Late Mr. Abdul Badee Saqar and another by Mr. Abul Hasan Ali Al-Hasani an-Nadwi. Entirely different message from that of defendant's books.	None. However, in columns about the book and publisher's note the narration of importance and utility of book and its background etc. is entirely different.
Certificate	Certificate of All Ceylon Jamiyyathul Ulama	None.
About Book and Publisher's Note	None. However, in introduction columns the narration of importance and utility of book and its background etc. is entire different.	Column about the book and publisher's note, having entirely different message from that of plaintiff's books.
Contents	Index, names of chapters, sequences	Index, names of chapters, sequences of

	of topics, contents and length of chapters, method of presentation are entirely different.	topics, contents and length of chapters, method of presentation are entirely different.
Examples and Exercises	Activities are provided however, no activity is similar to that of defendant's books.	Exercises are given without any heading, totally different from those of plaintiff's books.
Pictures	Pictures are rarely used to demonstrate the concept or contents of the books. Grade-IV & V books do not have any pictures.	Each and every page of each and every book bears colourful pictures to demonstrate the concept and contents of the books.
Grades	Up to Grade-VIII books are published.	Up to Grade-V, books are published.
Total Number of pages.	Grade-I (Pages 56). Grade-II (Pages 48). Grade-III (Pages 60). Grade-IV (Pages 96). Grade-V (Pages 107).	Grade-I (Pages 159). Grade-II (Pages 146). Grade-III (Pages 115). Grade-IV (Pages 147). Grade-V (Pages 155).
Quality of paper	Maplitho paper is used.	Glossy paper is used.
Font	Font style and font size of both Arabic as well as English languages are different.	Different Font Style and bigger size is used for both Arabic and English Languages.
Layout	Simple flowing layout in black and other	Different font styles in different font sizes and

	colour's ink on white or other light colour background. Grade-IV & V do not have any colourful background or ink.	manners are used. Background is generally white but at different places different colours are also used. Ink is also of different colours including black ink.
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7. On merits, the defendant has denied the contents of the plaint as incorrect and defendant has denied that "Islami Taleemat" is a literary work of Maulvi Abdul Aziz and he assigned copyright of the same to the plaintiff. It is further denied that the plaintiff has continuously publishing 'Studies in Islam' since 1992 or that same has been sold at extensive scale in India and outside India. It is also denied that the defendant has adopted identical contents in the books to trade upon the goodwill and reputation of the plaintiff and to undue profits in illegal manner or that the defendant is trying to sell its books by creating deception amongst the general public that he is selling genuine books written by Maulvi Abdul Aziz and thus, the defendant has prayed for dismissal of the suit with cost.

8. Plaintiff has filed replication to the written statement of the defendant in which it has denied contents of the written statement as

incorrect and reiterated the contents of plaintiff as true and correct.

9. On the basis of the pleadings of the parties, the Ld. Predecessor has framed following issues vide order dated 28.9.2019 for consideration :-

1. **Whether suit filed by the plaintiff is not maintainable as plaintiff has no locus standi to file the present suit? OPD.**
2. **Whether the copyright as alleged by the plaintiff has never been issued to him? OPD.**
3. **Whether suit filed by plaintiff is not maintainable as it is bad due to non-joinder of necessary parties? OPD.**
4. **Whether suit filed by plaintiff is not maintainable as plaintiff has alternative efficacious remedy available with him? OPD.**
5. **Whether plaintiff is entitled for a decree of permanent injunction thereby restraining the defendants, his agents, representatives etc. from printing, publishing, selling and distributing the**

books under the name and style of 'Islamic Studies' Grade-1 to Grade-5 of Maulvi Abdul Aziz under the name and style of 'Studies in Islam' Grade one to Grade eight? OPP.

- 6. Whether plaintiff is entitled for a decree of mandatory injunction directing the defendant to furnish an undertaking regarding not using similar / identical copyright of the plaintiff and to furnish the details of dealers / stockiest / school / institute etc. with blocks, paper material etc.? OPP.**
- 7. Whether plaintiff is entitled for a decree of damages to the tune of Rs. 1 lac along with interest, as prayed for? OPP.**
- 8. Whether the plaintiff is entitled for a preliminary decree of rendition of accounts? OPP.**
- 9. Whether the plaintiff is entitled for a final decree of rendition of accounts? OPP.**
- 10. Relief.**

10. In order to prove its case, the plaintiff has examined its Director Sh. Khaliq Siddiqui as PW1 who led his evidence by way of affidavit Ex. PW1/A

11. On the other hand defendant has examined himself as DW1 who, led his evidence by way of affidavit Ex. DW1/A,

12. I have considered the arguments and have gone through the record. My issuewise findings are as follows : -

ISSUES NO. 1.

Whether suit filed by the plaintiff is not maintainable as plaintiff has no locus standi to file the present suit? OPD.

And

ISSUE NO. 2.

Whether the copyright as alleged by the plaintiff has never been issued to him? OPD.

13. As per section 54, the owner of copy right under this chapter (chapter XII Civil Remedies” shall include (a) exclusive licensee (b) and in case of anonymous literary, dramatic, musical or artistic work until the identity of author is disclosed publicly by author, the publisher. Section 55 also, entitles the owner of copyright to remedies by way of

injunction, damages, accounts or otherwise as are conferred by law for infringement of a right, only when copyright is infringed and except as otherwise provided by the Copyright Act. Thus unless there is infringement of copyright within the meaning of the Act, owner of copyright is not entitled to sue.

14. From the aforesaid provision of Copy Right Act it is evident that only author or exclusive licensee can sue for infringement of copy right. In order to proved that plaintiff company has copy right in book "Studies in Islam" Plaintiff examined Sh. Khaliq Siddiqui as PW1 to proved its case. In order to prove the same, plaintiff has examined only one witness i.e. PW1 who in his testimony led through affidavit Ex. PW1/A has deposed that Maulvi Abdul Aziz was the owner of literary work of Urdu language entitled as Islami Taleemat series of books Part I to Part VIII and he has assigned the literary work to the plaintiff unconditionally and handed over the manuscript to the plaintiff after consideration amount and in this regard, he has proved affidavit dated 6.7.1989 of Maulvi Abdul Aziz as Ex. PW1/3. He has also deposed that after the said assignment, plaintiff applied for copyright and on 26.5.1992, the Registrar of Copyright had registered the copyright of the

said literary work, Studies in Islam Grade I to Grade VIII, vide registration No. L-13204/92 to L-13210/92 in th name of plaintiff. PW1 has proved the extracts of the same as Ex. PW1/5 and also relied upon the order dated 16.4.1999 passed by the Copyright Board of Jaipur as Ex. PW1/6, forwarding letter dated 28.4.1999 as Ex. PW1/7 and copy of letter dated 14.10.1999 as Ex. PW1/8. He further deposed that the plaintiff publish the books Studies in Islam Grade I to Grade VIII at an extensive scale in India as well as in U.K., UAE and spent huge amount over advertisement, publicity and sale promotion through printing, visual and electronic media to promote and popularize the same and has earned a wide recognition, unique goodwill and reputation.”.

15. PW1 has also relied upon copy rights extract PW1/5. On perusal of copy right extract Ex. PW1/5, I found that same is in name of Abdul Moin, Islamic Book Service whereas present suit has been filed by Islamic Book Service Pvt. Ltd. PW1. PW1 in his testimony has not deposed that plaintiff firm and Islamic Book service are one and same entity.

16. In his cross examination PW1 has admitted that he has not produced any document to show that Sh. Abdul Sami, Abdul Moin and

Sh. Abdul Naeem are the Directors, promoters of the plaintiff company nor has filed any certificate of incorporation of plaintiff company on record nor has filed minutes of books where from the board resolution Ex. PW1/1 has extracted. He also admitted that in Ex. PW1/1, no power has been given to him to institute the suit. He also admitted that he is not sure whether the copyright in question has been changed in the name of plaintiff company Islamic Book Service Pvt. Ltd. in the record of Registrar of Copyright and also admitted that no such document has been placed on record which shows that copyright in question has been transferred in the name of plaintiff company Islamic Book Service Pvt. Ltd. or any document has been placed on record showing that Islamic Book Service has assigned copyright in favour of Islamic Book Service Pvt. Ltd to publish book "Studies in Islam.

Admittedly, present suit has been filed by the Islamic Book Service Pvt. Ltd and from copy rights Extract Ex. PW1/5 proved by PW1, it is evident that copy right is in the name of Abdul Moin, Islamic Book Service. Though PW1 has denied the suggestion that Islamic Book Service and Islamic Book Service Pvt. Ltd. are two different entities but the same cannot be accepted because he has admitted in cross

examination that Islamic Book Service was a partnership firm whereas Islamic Book Service Pvt. Ltd. is a company. Hence, they are two different entities. Neither the plaintiff in plaint nor PW1 in his evidence by way of affidavit Ex. PW1/A has deposed nor any document has been placed on record to prove that Islamic Book Service to whom Maulvi Abdul Aziz granted copyright in "Islami Taleemat" and "Studies in Islam" Grade1 to Grade VIII was assigned / given license to Islamic Book Service Pvt. Ltd., In my view, without specific assignment of the copyright of Islamic Studies Grade1 to Grade VIII in favour of plaintiff company, it has no locus standi to file the present suit for violation of copyright by the defendant. Hence through the testimony of PW1, plaintiff has failed to prove that it has copy right ownership or license to publish book " Studies in Islam"

17. On the other hand, Defendant has examined himself as DW1 who in his evidence by way of affidavit Ex. DW1/A has deposed that he is proprietor of M/s. Maktabah As-sunnah. He further deposed that plaintiff has alleged in the plaint that the copyright was assigned by Maulvi Abdul Aziz of his Urdu Literary work "Islamic Taleemat" vide affidavit dated 06.07.1989 to M/s. Islamic Book Service, 2241/32, Kucha

Chelan, Darya Ganj, New Delhi – 110002 hence copy right was assigned to entire different firm than plaintiff company which was formed in the year 1994 hence plaintiff company was never assigned copy rights by Maulavi Abdul Aziz. He further deposed that plaintiff has alleged in the plaint that vide letter dated 25.02.1992 was assigned copy rights with respect to “Studies in Islam” Grade 1-VIII in English language work however perusal of said letter revealed that said copy rights was assigned to Abdul Moin and not to plaintiff, moreover plaintiff company was formed in 1994, therefore assignment of copy rights in favour of plaintiff company is not possible.

18. In the cross examination of DW1, no suggestion has been given by the plaintiff that deposition made by DW1 in para 2 of its affidavit are false and fabricated or even no suggestion has been given that the copyright was assigned in favour of plaintiff company by Islamic Book Service. Hence, I am agreed with the contention of Ld. Counsel for defendant that there is no ground to disbelieve his testimony that Islamic Book Service Pvt. Ltd. has no locus copyright of books Islamic Studies G-1 to G-8 copy rights of which has been allegedly infringed by the defendant.

19. I am not agreed with the contention of Ld. Counsel for the plaintiff that PW1 in his cross examination has duly explained that plaintiff company was incorporated and partners of the said company were Sh. Abdul Sami, Sh. Abdul Moin and Sh. Abdul Naeem and since copy rights is in the name of Abdul Moin who was partner in Islamic Book Service therefore presumption arise that the plaintiff company in whose Abdul Moin is Director has become owner of copy right in book Study in Islam. In my view, even if I presume that the partners of Islamic Book Services are also the Directors of Islamic Book Services Pvt. Ltd., no presumption can be raised that the Islamic Book Services has transferred the copyright of the book in question to Islamic Book Service Pvt. Ltd. unless the plaintiff is able to prove the same through cogent evidence that the copy rights in book "Studies in Islam" Grade I to Grade VII was assigned to plaintiff company.

20. In view of above discussion, I held that the plaintiff has failed to prove that exclusive licensee of copyright in book "Studies in Islam Grade I to Grade VIII was given in favour of plaintiff by the Author Maulvi Abdul Aziz or the same was never assigned by Islamic Book Service in whose license in Copy Right was granted by Maulvi Abdul Aziz and copy

right was registered by Registrar Copy Right vide copy Right extract Ex. PW1/5. Since plaintiff is neither the owner of copy rights nor licensee in copy right of Book “Studies in Islam grade I to Grade VIII” has plaintiff no locus standi to file the present suit and thus present suit is not maintainable. Issues No. 1 and 2 are decided accordingly in favour of the defendant and against the plaintiff.

21. **ISSUE NO. 3.**

Whether suit filed by plaintiff is not maintainable as it is bad due to non-joinder of necessary parties? OPD.

The onus to prove this issue is placed upon the defendant. The defendant in para 7 of preliminary objections has stated that as per law laid down under Section 61 of the Copyright Act, in a suit for infringement of copyright if the plaintiff claims himself to be a licensee of copyright owner, it is necessary and mandatory to implead such owner of copyright as defendant. DW1 in his evidence affidavit has not stated the said fact on oath. Further, as per Section 61 of the Copyright Act, the owner of the copyright is required to be made a party only when the suit is filed by the licensee whereas in the present case, Sh. Abdul Moin, Islamic Book Service is not the licensee but the copyright owner as per

extracts of copyright issued by Government of India Ex. PW1/5. Hence, in my view, it was not necessary to make Maulvi Abdul Aziz as party in the present suit. Issue No. 3 is decided in favour of the plaintiff and against the defendant.

22. **ISSUE NO. 4.**

Whether suit filed by plaintiff is not maintainable as plaintiff has alternative efficacious remedy available with him? OPD.

The onus to prove this issue is upon the defendant but the defendant neither in the written statement nor in testimony of DW1 has deposed that the plaintiff has no other efficacious remedy than filing of present suit therefore, in my view, defendant has failed to prove that the suit of the plaintiff is not maintainable as plaintiff has other efficacious remedy available with him. Therefore, issue No. 4 is decided in favour of the plaintiff and against the defendant.

23. **ISSUES NO. 5.**

Whether plaintiff is entitled for a decree of permanent injunction thereby restraining the defendants, his agents, representatives etc. from printing, publishing, selling and

distributing the books under the name and style of 'Islamic Studies' Grade-1 to Grade-5 of Maulvi Abdul Aziz under the name and style of 'Studies in Islam' Grade one to Grade eight? OPP;

ISSUES NO. 6.

Whether plaintiff is entitled for a decree of mandatory injunction directing the defendant to furnish an undertaking regarding not using similar / identical copyright of the plaintiff and to furnish the details of dealers / stockiest / school / institute etc. with blocks, paper material etc.? OPP;

ISSUE NO. 7.

Whether plaintiff is entitled for a decree of damages to the tune of Rs. 1 lac along with interest, as prayed for? OPP;

ISSUE NO. 8.

Whether the plaintiff is entitled for a preliminary decree of rendition of accounts? OPP;

And

ISSUE NO. 9.

Whether the plaintiff is entitled for a final decree of

rendition of accounts? OPP.

24. Since all these issues are interlinked therefore, I shall decide these issues simultaneously. The case of the plaintiff is that defendant infringed its copy rights in “Studies in Islam” by publishing book “Islamic Studies.”

25. In order to get relief as sought in above mentioned issues plaintiff need to be owner of copy right in book “Studies in Islam” or Licensee. In view of my finding of issue No. 1 and 2 that plaintiff company has failed to prove that it is the owner / licensee of copy right of book “Studies in Islam” hence no question of plaintiff suing the defendant for its infringement arise hence all the above said issue are to be decided against the plaintiff on this ground alone.

26. Now I will examine whether defendant has copied contents from book “Studies in Islam grade I” in its book “Islamic Studies and thus infringed copy rights.

27. Onus to prove these issues is upon the plaintiff. He has deposed that Maulvi Abdul Aziz assigns copy rights in literary work in Urdu language titled as “Islami Tameemat” series of books part 1 to VIII to the plaintiff unconditionally vide affidavit Ex. PW1/3 dated 06.07.1989.

After the said assignment plaintiff applied for copy rights which was granted which he exhibited as Ex. PW1/5 and plaintiff is publishing books “Studies in Islam” grade I to VII since 1992. PW1 has also deposed that the defendant started publishing the said book after infringing the copyright of the plaintiff’s book Studies in Islam after making slight changes with the malafide intention. He has also deposed that after came to the knowledge that defendant has published these books and infringed his copyright, he sent a letter dated 11.6.2018, Ex. PW1/10 and defendant sent its reply dated 12.7.2018, Ex. PW1/11. He also placed that the books published by the plaintiff, Studies in Islam as Ex. PW1/12 and books published by defendant as Ex. PW1/13. He further deposed that due to illegal act of the defendant, the plaintiff is entitled to recover Rs. 10 lacs from the defendant.

28. He was cross examined at length by the Ld. Counsel for the defendant he admitted that he has not file any record in judicial file that plaintiff was publishing ‘Studies in Islam’ Grade 1 to Grade 7 continuously since 1992 till date and has also not produced advertisement of Studies in Islam. He has admitted that only first six pages of book “Studies in Islam”Grade I has been placed and he has

placed copies of pages upto index of the book of “ Islamic Studies”

29. In **R. G. Anand Vs. M/s. Delux Films & Ors., 1978 AIR 1613, 1979 SCR (1) 218** Hon’ble Supreme Court while dealing with of infringement of copy right held that :

*“***Thus, on a careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge:*

1. There can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyright work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendants work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a

substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to seeing the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case law discussed above.

7. Where however the question is of the violation of the copyright of stage play by a film producer or a Director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, a wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved”.

30. If I apply these principles in the present case, it is evident that plaintiff neither in the plaint nor PW1 in his testimony has deposed how defendant's book "Islamic Studies" infringed the copyright of the plaintiff book "Studies in Islam" Grade-I to Grade -VIII. Even if I presume that the plaintiff has copyright over the said book, neither in the plaint nor in the testimony of PW1 it is mentioned what are the similarities between plaintiff book and defendant book. Admittedly, at the time of filing of suit no book was placed on record by the plaintiff and only five photocopies pages of books of Grade I of its book "Studies in Islam grade I" has been placed. From perusal of the same, it is evident that first page is cover

page, second page is also appear to be cover page, third and fourth pages are introduction and fifth page is index, whereas he filed 7 photocopies pages each of 5 books “Islamic Studies Grade I” to “Islamic Studies Grade 5” and each set of photocopied page of aforesaid books contains the cover page, and first page after cover page, publisher note and index. The entire book of Studies in Islam grade I and Islamic Studies grade I to Grade V was placed during evidence. No comparison of the books of plaintiff and defendant was given to show either in the plaint or in the evidence of PW1 so that it could be said that the defendant has copied the plaintiff book and thus infringed the copyright work of book ‘Studies in Islam’.

31. On the other hand defendant through testimony of DW1 has categorically deposed that differences in the book Studies in Islam and Islamic Studies are as under :-

Particulars	Plaintiff’s Book	Defendant’s Book
Name	Studies in Islam	Islamic Studies
Author	Maulvi Abdul Aziz, M.A., Dip in Ed. (London)	Maulvi Abdul Aziz (UAE) M.A. English Literature
Cover Page (front side)	Name of Book, its Grade, name of author, letters “SI” and complete name	Name of Book, its grade, name of author, different colour scheme, different

	of plaintiff, with monogram, different colour scheme, different design, different size, no photographs.	design, different size, several photographs.
Cover Page (back side)	All the books have promotional contents / synopsis / blurb at the backside cover page.	Back side cover page of books published by defendant does not contain any such promotional message of the books. Only name and details of defendant and few pictures are printed on backside cover page.
Price	Price from Rs. 90 to Rs. 120 is mentioned on different Grades.	No price is mentioned as the books were published on no profit no loss basis and for religious benefit only.
About Author	In introduction columns the author is introduced merely as an Islamic Scholar.	In publisher's note the author is introduced as a scholar who held different posts including that of Senior Administrative Office in the Department of Private Education, Ministry of Education, Dubai, UAE from 1982-2002.
Introduction	Two introductions one by Late Mr. Abdul Badee Saqar	None. However, in columns about the book and publisher's

	and another by Mr. Abul Hasan Ali Al-Hasani an-Nadwi. Entirely different message from that of defendant's books.	note the narration of importance and utility of book and its background etc. is entirely different.
Certificate	Certificate of All Ceylon Jamiyyathul Ulama	None.
About Book and Publisher's Note	None. However, in introduction columns the narration of importance and utility of book and its background etc. is entire different.	Column about the book and publisher's note, having entirely different message from that of plaintiff's books.
Contents	Index, names of chapters, sequences of topics, contents and length of chapters, method of presentation are entirely different.	Index, names of chapters, sequences of topics, contents and length of chapters, method of presentation are entirely different.
Examples and Exercises	Activities are provided however, no activity is similar to that of defendant's books.	Exercises are given without any heading, totally different from those of plaintiff's books.
Pictures	Pictures are rarely used to demonstrate the concept or contents of the books. Grade-IV & V books do not have any pictures.	Each and every page of each and every book bears colourful pictures to demonstrate the concept and contents of the books.

Grades	Up to Grade-VIII books are published.	Up to Grade-V, books are published.
Total Number of pages.	Grade-I (Pages 56). Grade-II (Pages 48). Grade-III (Pages 60). Grade-IV (Pages 96). Grade-V (Pages 107).	Grade-I (Pages 159). Grade-II (Pages 146). Grade-III (Pages 115). Grade-IV (Pages 147). Grade-V (Pages 155).
Quality of paper	Maplitho paper is used.	Glossy paper is used.
Font	Font style and font size of both Arabic as well as English languages are different.	Different Font Style and bigger size is used for both Arabic and English Languages.
Layout	Simple flowing layout in black and other colour's ink on white or other light colour background. Grade-IV & V do not have any colourful background or ink.	Different font styles in different font sizes and manners are used. Background is generally white but at different places different colours are also used. Ink is also of different colours including black ink.

32. No suggestion has been given to DW1 that above differences are not exist between plaintiff and defendant book. I am not agreed with the submission of Ld. Counsel for the plaintiff that the name of both the books 'Islamic Studies' and 'Studies in Islam' are almost

similar as it contain word Islam and Studies therefore both book name are deceptively similar. In my view there cannot be any copy rights on word "Islam or studies". The name of the plaintiff's book is 'Studies in Islam" whereas the name of the defendant's book is 'Islamic studies'. The colour printing of the cover page of both the books is also quite different. Further, through the testimony of DW1, defendant has deposed that there are fundamental differences in the books Grade1 of the plaintiff and defendant and no suggestion has been given to the defendant that these are not the differences between the books of plaintiff and defendant since books of both the plaintiff and defendant are on Islam. Some contents are bound to be similar as teaching given in the Holy Books *Quran* and *Hadees* and other religious text related to Islam religion are bound to be same in all books which are about teaching on Islam. In my view, nobody can have copyright on these teachings which are written in the Holy Books *Quran* and *Hadees* or other Islamic books.

33. Undoubtedly, as per book "Islamic Studies" same has also been written by Maulvi Abdul Aziz who has written plaintiff book "Studies in Islam" but in my view same cannot be infringement of copy rights. I

am agreed with the submission of Ld. Counsel for the defendant that even if Maulvi Abdul Aziz has assigned the copyright of the literary work of his book "Studies in Islam" in favour of the plaintiff, he can write another book having different contents and he has also written book "Islamic studies grade I to grade VIII" and assigned copy right to defendant contents of which is quite different than the book "Studies in Islam. Undoubtedly defendant has also not produced any assignment deed/ or license that Maulvi Abdul Aziz permitted defendant to publish book "Islamic Studies.". However, even if I presume that the defendant has not been assigned copy right in literary work "Islamic Studies" by Maulvi Abdul Aziz and defendant is publishing the books without his prior authority from him, it is Maulvi Abdul Aziz who can take action against the defendant and not the plaintiff or if the same is not written by Maulvi Abdul Aziz even then only he can take sue and plaintiff.

34. In view of the aforesaid discussion, I held that the plaintiff has miserably failed to prove that it has any copyright over the book 'Islamic Studies' or that the defendant has committed any infringement of copyright of plaintiff book, 'Studies in Islam' by publishing the book 'Islamic Studies'. Hence, issues No. 5 to 6 are decided against the

plaintiff and in favour of the defendant.

35. **RELIEF.**

In view of my findings on aforesaid issues, I held that plaintiff is not entitled for any relief and the suit of the plaintiff is hereby dismissed with cost of Rs. 50,000/- which the plaintiff shall pay to the defendant for the fees and expenses incurred by him. Decree sheet be prepared accordingly. File be consigned to record room.

**Announced in the open court
on 25.07.2022**

(Sanjeev Kumar Aggarwal)
DJ (Commercial)-01, Central,
THC/Delhi / 25.07.2022.