

(2010) 05 DEL CK 0252

In the Delhi High Court

Case No : C.S. (OS) 2488 of 2008 and I.A. No. 2856 of 2009

John Wiley and Sons Inc. and Others

APPELLANT

Vs

International Book Store and Another

RESPONDENT

Date of Decision : 20-05-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A, 151
Copyright Act, 1957 — Section 13, 13(1), 14, 19, 19(6)

Citation : (2010) 43 PTC 496

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Jyoti Taneja and Shine Joy, for the Appellant; None, for the Respondent

Judgement

S. Ravindra Bhat, J.—This suit is for permanent injunction by the plaintiffs seeking to restrain the defendants from infringing their copyright. The plaintiffs have also made a claim for damages and rendition of accounts. An application by the plaintiffs under Order XXXIX Rule 2A read with Section 151 of the CPC alleging that the defendants had willfully disobeying and violating the of this Court dated 01.12.2008 is also pending. By the said order the defendants and their agents and assigns were restrained from advertising, offering for sale/ exporting any publications of the plaintiffs to the countries outside the territories specified on the books published by the plaintiffs and from removing and concealing the notices appearing on the said books, till the disposal of this application.

2. According to the suit averments the first, third and fifth plaintiffs are corporations incorporated and existing under the laws of the State of New York, USA and the second plaintiff is exclusive licensee of the first plaintiff; the fourth and sixth plaintiffs (subsidiary of the fifth plaintiff) are companies incorporated in India. The seventh and ninth plaintiffs are corporations incorporated under the laws of the State of Delaware and the eighth (affiliate and exclusive licensee of

the seventh plaintiff). The tenth plaintiff is a company incorporated in India.

3. It is claimed that the first plaintiff, a world renowned publisher of academic, scientific and technical materials and has been in business for the past 200 years (established in 1807), headquartered in Hoboken, New Jersey has set up offices and companies in Australia, Canada, China, Denmark, England, Germany, Japan, India, Russia, Scotland and Singapore. It is stated that the plaintiff's products, services and resources are of a high quality and available globally in print as well as online, including notifications, books, journals, encyclopaedias, textbooks, and integrated learning systems for professionals, consumers, scientists, researchers, teachers, undergraduates and graduates and lifelong learners.

4. All the plaintiffs are engaged in the business of publishing and distributing works in the field of education and academics, e.g. higher education, science and technology, engineering, medical science, computer science, economics, business, etc., depending on their field of operation. The first plaintiff's business in Asia dates back to 1966 and, it is stated, has grown in the last 15 years. In India the first plaintiff established its operation in 2001 and publishes and distributes works stated to be used by millions of people on various disciplines including Physics, Engineering and Chemistry amongst others; in Para 7 some of the works of the first plaintiff are listed. In 2001 the first plaintiff acquired one "Dreamtech", which became its wholly owned subsidiary (i.e. of the first plaintiff) and later its name was changed to Wiley India Pvt. Ltd. (the second plaintiff). The first and second plaintiff amongst hundreds of other titles, especially publish concessionally priced Wiley Student Editions (WSE), meant for Higher Education, of their latest content only for sale in India and neighbouring countries, which are significantly priced below the European and American markets.

5. By agreement effective 01.05.2006, the second plaintiff was authorized by the first plaintiff to publish its works in WSE for distribution in territories of India, Bangladesh, Nepal, Pakistan, Sri Lanka, Indonesia, Myanmar, Philippines and Vietnam, to this effect a copyright territory notice is published in each of its WSE publications, under which more than 414 titles are published by the second plaintiff. The first plaintiff is the copyright owner in the aforementioned works.

6. The third plaintiff, avers the suit, was founded in 1880 and takes its name from the family publishing house established in 1580, and is engaged in publishing works in the field of science and health care. Some of the best selling works of the third plaintiff in India are listed in para 14 of the suit. In 2002 the third plaintiff commenced publishing operation through the fourth plaintiff, which was incorporated in 1996-97, and holds the exclusive right to print, publish and sell the said works with copyright territory notice specifying that these books are specifically meant for sale only in Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. The third plaintiff holds the copyright in the aforesaid works.

7. Likewise, the fifth plaintiff is claimed to be a world leading publisher in

educational material and professional information markets, with office in more than 30 countries and publications in more than 40 languages. The fifth plaintiff claims to be a leader in financial services information market with renowned brands in three core businesses including Educational and Professional Publishing, Information and Media Services and Financial Services. It is stated that in 1970 the fifth plaintiff established operations in India through an arrangement wherein it holds majority shares in the sixth defendant and the rest are owned by the TATA Group. As a part of the re-print and adaptation program the sixth plaintiff publishes concessionally priced Indian editions of the fifth plaintiff's publications; some of them are listed in para 20 of the plaint. The fifth plaintiff has granted the sixth plaintiff the right and license to reprint and distribute the abovementioned works amongst others for sale only in a specified territory; a copyright territory notice specifying that its books are meant for sale only in India, Pakistan, Nepal, Bangladesh, Sri Lanka and Bhutan.

8. It is contended that the seventh plaintiff is the world's largest provider of tailor made books and educational materials, available in virtually all media, for secondary, post-secondary and graduate-level students, teachers, and learning institutions in both traditional and distance learning environments. The eighth plaintiff is claimed to be the exclusive licensee of the seventh plaintiff, and has been publishing and distributing its works in India and its neighbouring countries. The works particularly relate to accounting, business, computer science, engineering, economics, hard sciences, soft sciences, health & beauty, etc. to domestic and international students, teachers, academicians and professionals. The eighth plaintiff also specializes in sourcing world class literary content and reprinting the concessionally priced Indian versions of the same. Some of the works reprinted by this defendant are given in para 24 of the plaint, which are published under a copyright territory notice limiting the extent of circulation to India, Pakistan, Bangladesh, Nepal and Sri Lanka only. Additionally, each of its books bears a blue colour band at the top of the cover with the term India Edition appearing prominently, as well as the logo of India Edition, both on the front and the back cover.

9. It is stated that the ninth plaintiff is a world leader in integrated educational publishing and online learning. The tenth plaintiff is authorized to publish and distribute works of ninth plaintiff in India and its immediate neighbouring countries. The tenth plaintiff also specializes in sourcing world class literary and educational content and reprinting and distributing the same in LPEs (hereafter "LPEs"). Some of the works published by the tenth plaintiff are listed in para 28 of the plaint. The works of the tenth plaintiff too come with a copyright territory notice on the covers, which states that the works are meant for sale only in India, Bangladesh, Bhutan, Pakistan, Nepal, Sri Lanka and Maldives. Additionally, each book bears a yellow colour band at the top of the cover with the term "Low Price Edition" appearing prominently both front and back cover, as well as abbreviation "LPE" on the spine of each book.

10. The plaintiffs" claim that their works are original, literary and artistic works (as apart from text, these books also contain illustrations, including figures, tables, drawings, charts, photographs, etc.) that have been first published in the USA by the first, third, fifth, seventh and ninth plaintiffs and have been later reprinted by the second, fourth, sixth, eighth and tenth plaintiffs, respectively in India, for sale and distribution in only the territories stated on these books. The plaintiffs assert that in the past they have apprised the Indian Customs Authorities about unauthorized exports of the said LPEs of their works and steps have been taken to prevent the same; some details are provided in para 34 of the plaint.

11. The plaintiffs claim that on 04.10.2008, they came across the first defendant running a website under the domain name www.ibstextbooks.com on which the LPE books of plaintiffs were offered for sale over the internet with worldwide delivery facility. A WHOIS search revealed that the said domain name was registered in the name of the second defendant. Further inquiries revealed that the second defendant earlier a seller of plaintiffs" LPEs on www.ibstextbooks.com and had been exporting the same to western countries from India and was later removed from e-bay on plaintiffs" complaints. Later, the second defendant set up the first defendant and its website www.ibstextbooks.com. It is claimed that a representative of the plaintiffs visited the said domain name on 05.10.2008 and came across offers by the defendants to sell, supply and export various publications of the plaintiffs by describing them as "international paperback edition, printed overseas with different ISBN", allegedly with a view to attract customers in United States. The said representative placed an order to purchase the following 10 titles (hereafter the ordered works) and paid a total sum of US\$ 440.95 (price of the book plus the shipping cost):

- (1) Fundamentals of Physics Extended 6th edition by David Halliday, Robert Resnick and Jeart Walker.
- (2) Organic Chemistry 8th edition by T.W. Graham Solomons, Craig B. Fryhle.
- (3) Thermodynamics and Statistical Mechanics by Phil Attard.
- (4) Introduction to Probability Models 9th edition by Sheldon M. Ross.
- (5) Vector Mechanics for Engineers: Statics and Dynamics 8th edition by Ferdinand P. Beer & E. Russell Johnston.
- (6) Economics 18th Edition by Paul Samuelson, William Nordhaus.
- (7) Investment Analysis and Portfolio Management, 8th edition by Frank K. Reilly, Keith C. Brown.
- (8) Fundamentals of Analytic Chemistry 8th edition by Skoog, West, Holler, Crouch.
- (9) Molecular Biology of the Gene 5th edition by Watson, Baker, Bell, Gann, Levine, Losick.

(10) Microbiology An Introduction 9th edition by Tortora, Funke, Case.

12. It is claimed that on 11.10.2008 and 14.10.2008, the plaintiffs' representative received 6 and 4 UPS sealed packages, respectively, bearing order No. 1153, which were sent to the Constituted Attorney in Delhi. The packages were opened by the Notary Public and recorded the contents in the Notarial Certificate dated, 22.10.2008.

13. The first, third, fifth, seventh and ninth plaintiffs have assigned the exclusive license/rights to the second, fourth, sixth, eighth and tenth plaintiffs, respectively to publish, print and distribute/sell the said LPEs in the geographically limited territories of India and the neighbouring countries. Thus, these LPEs are meant to be sold/distributed only in the said territories and not in the USA or other western countries.

14. The suit alleges that the defendants, by un-authorizedly and with mala fide intentions, making available for sale worldwide and selling such LPEs in the USA have infringed the plaintiffs' copyright in the said works. The books sold in the USA by the defendants are unlicensed copies of the plaintiffs' works and hence prejudicial to their rights in the same. The right to exploit the copyright in their respective publications all over the world, sole and exclusively vests in the first, third, fifth, seventh and ninth plaintiffs, hence any sale of these LPEs bearing the territorial notice, outside the territory specified on the cover of each book, is not authorized and is in violation of the permission granted by the said plaintiffs, who own the copyright to their exclusive licensees, as such, infringing the copyright.

15. The order sheets in this case reveal that an ex-parte ad interim injunction was issued against the defendants on 01.12.2008. The defendants in the matter were set down ex-parte by order dated 21.07.2009, since they remained unrepresented on four consecutive dates 04.02.2009, 02.03.2009, 18.04.2009 and 15.07.2009. By the same order the interim injunction was confirmed till the disposal of the suit.

16. Besides relying on the pleadings, and documents filed along with the suit, the plaintiffs examined PW1, Anil Kumar, who tendered his affidavit in examination-in-chief. In view of the fact of defendants being ex-parte, only the facts established by the plaintiffs, through evidence supplied, are to be considered for the disposal of the suit.

17. In the evidence by way of affidavit the averments made in the plaint are affirmed. Ex. PW-1/1 (Colly) are copies of the Power of Attorneys executed by the first to ninth plaintiff and Board Resolutions passed by the second, fourth, sixth and eighth plaintiffs in favour of the deponent. Ex. PW-1/2, Ex. PW-1/3 and Ex. PW-1/5 to Ex. PW-1/10 and Ex. PW-1/12 are the copies of various certificates of incorporation pertaining to the respective plaintiffs. Ex. PW-1/4 and Ex. PW-1/11 are the second and eighth plaintiffs' original catalogue and price list for the year 2008. The certificates of registration of copyright issued by the United States Copyright Office for their various works/titles in favour of the first, third,

fifth, seventh and ninth plaintiffs are exhibited as Ex. PW-1/13 (Colly). The plaintiffs have also supplied colour copies of the front, back and copyright pages of their various publications in India bearing the copyright territory notice, same is marked as Ex. PW-1/14 (Colly). Exhibits PW-1/15 to PW-1/17 are in respect of past actions taken by executive authorities, on insistence of the plaintiffs, to prevent infringement of their copyright. The interim injunction orders and decree of this Court in some other actions by the plaintiffs against different defendants has been filed as Ex. PW-1/18 (Colly). Some other orders of this Court that the plaintiffs have cited in support of their case are produced as Ex. PW-1/19 (Colly).

18. The plaintiffs claim to have conducted a WHOIS search on the domain name www.ibstextbooks.com and further claim to have received an e-mail from www.ibstextbooks.com providing details of the second defendant and confirming that he had been removed from the list of sellers on the said website; a copy of the WHOIS search and the email from www.ibstextbooks.com is provided as Ex. PW-1/20 (Colly). The plaintiffs have also supplied lists of publications meant only for sale in India and neighbouring countries being advertised and offered for sale worldwide by the defendants on their website www.ibstextbooks.com are marked as Ex. PW-1/21 (Colly). Printouts of offers made to the plaintiffs representative in Michigan on 05.10.2008, order placed by the said representative, review your payment, receipt for payment all dated 05.10.2008 and Invoice issued by the defendants towards the said order No. 1153 dated 05.10.2008 alongwith transaction details are supplied and marked as Ex. PW-1/22 (Colly). Ex. PW-1/23, 24, 29, 30, 36, 37, 41, 42, 46, 47 are the packages received from the defendants against the order placed by the plaintiffs' representative, containing the ordered works. Ex. PW-1/25 (Colly), PW-31 (Colly), PW-38 (Colly), PW-43 (Colly), PW-48 (Colly) are the colour print outs of the front, back and photocopies of the copyright page of the respective plaintiffs' ordered works. Copies of assignment agreements and Copyright registration certificates for the ordered works of the respective plaintiffs are supplied and marked as Ex. PW-1/26 (Colly), 27 (Colly), 32, 34, 39 (Colly), 44 (Colly), 49 (Colly). Further, the plaintiffs have placed on record the Reprint Permission for the works from the respective plaintiffs by their Indian subsidiaries, which are also plaintiffs in the suit, the same are marked as Ex. PW-1/28 (Colly), 33, 35, 40, 45 (Colly). Original Notarial Certificate issued by Notary Public dated, 22.10.2008, including photographs of the sealed/unopened package, opened package, its contents, the front and back cover of each book in each package and the copyright page and the affidavit of Constituted Attorney of the first, third, fifth, seventh and ninth plaintiffs, dated 22.10.2008 are placed on record as Ex. PW-1/50 (Colly).

19. The deponent further stated that the defendants have earned huge illegal profits from selling and exporting the plaintiffs LPEs to the USA and other western countries. The plaintiffs allege that the defendants have amassed huge wealth in Mumbai by selling the plaintiffs' works unauthorizedly over the internet and the same has resulted in huge and accruing losses to the plaintiffs. It is stated that the extent of actual; damage and loss can be only measured after

discovery in these proceedings. The plaintiffs claim that they have suffered losses measuring in millions of rupees, but conservatively estimate it to rupees 20 lakhs.

20. The evidence produced by the plaintiffs has gone un-rebutted by the defendants in view of the defendants being ex-parte. From the averments in the plaint and documents placed on record, the Court is of the opinion that the plaintiffs have established their claim for copyright infringement, against the defendants. The plaintiffs have disclosed that they are copyright owners or exclusive licensees in respect of the published works, that are the subject matter of the suit. They have also proved that the defendant used to market unauthorized copies of such works, on his website.

21. It would be necessary, at this stage, to reproduce certain relevant provisions of the Copyright Act, 1957; they are extracted below. Section 2(m) defines "infringing copy" of a copyrighted work, as follows:

(m) "infringing copy" means,-

(i) In relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii) In relation to a cinematographic film, a copy of the film made on any medium by any means;

(iii) In relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) In relation to a programme or performance in which the such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance,

If such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;].

23. Sections 3 and 4 spell out the circumstances in which publication of a work is deemed or not deemed to be so, as the case may be. They read as follows:

3. Meaning of publication.- For the purposes of this Act, "publication" means making a work available to the public by issue of copies or by communicating the work to the public.

4. When work not deemed to be published or performed in public.- Except in relation to infringement of copyright, a work shall not be deemed to be published or performed in public, if published, or performed in public, without the licence of the owner of the copyright.

For the purposes of this case, Sections 13, 14, 40 and 51 are relevant. They read as follows:

13. Works in which copyright subsists. - (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say-

(a) Original, literary, dramatic, musical and artistic works,

(b) cinematograph films, and

(c) [sound recordings]

(2) Copyright shall not subsist in any work specified in Sub-section (1), other than a work to which the provisions of Section 40 or Section 41 apply, unless-

(i) In the case of published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India,

(ii) In the case of an unpublished work other than [work of architecture], the author is at the date of the making of the work a citizen of India or domiciled in India; and

(iii) In the case of [work of architecture], the work is located in India
Explanation. In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist-

(a) In any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;

(b) In any [sound recording] made in respect of a literary, dramatic or musical work, it in making the [sound recording], copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a [sound recording] shall not affect the separate copyright in any work in respect of which a substantial part of which, the film, or as the case may be, the [sound recording] is made.

(5) In the case of a work of architecture, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods or construction.

14. Meaning of copyright.- For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:

(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 make any cinematograph 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 an adaptation of the work, any of the acts specified in relation to the work in sub Clauses (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 commercial rental or offer for sale or for commercial rental any copy of the computer programme: Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.]

(c) In the case of an artistic work,-

- (i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;
- (ii) to communicate the work to the public;
- (iii) to issue copies of the work to the public not being copies already in circulation;
- (iv) to include the work in any cinematograph film;
- (v) to make any adaptation of the work;
- (vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub Clauses (i) to (iv);

(d) In the case of a cinematograph film-

- (i) to make a copy of the film, including a photograph of any image forming part thereof;
- (ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;
- (iii) to communicate the film to the public

(e) In the case of a sound recording-

(i) to make any other sound recording embodying it;

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

(iii) To communicate the sound recording to the public

Explanation - For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.]

40. Power to extend copyright to foreign works.- The Central Government may, by order published in the Official Gazette, direct that all or any provisions of this Act, shall apply.

(a) to work first published in any territory outside India to which the order related in like manner as if they were first published within India;

(b) To unpublished works, or any class thereof, the authors whereof were at the time of the making of the work, subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were citizens of India;

(c) In respect of domicile in any territory outside India to which the order relates in like manner as if such domicile were in India;

(d) To any work of which the author was at the date of the first publication thereof, or, in case where the author was dead at the date, was at the time of his death, a subject or citizens of foreign country to which the order relates in like manner as if the author was a citizen of India at that date or time, and thereupon, subject to the provisions of this Chapter and of the order, this Act shall apply accordingly. Provided that-

(i) before making an order under this section in respect of any foreign country (other than a country with which India has entered into a treaty or which is a party to a convention relating to copying to which India is also a party), the Central Government shall be satisfied that foreign country has made, or has undertaken to make, such provision, if any, as it appears to the Central Government expedient to require for the protection in that country of works entitled to copyright under the provisions of this Act;

(ii) the order may provide that the provisions of this Act shall apply either generally or in relation to such classes of works or such classes of case may be specified in the order;

(iii) the order may provide that the term of copyright in India shall not exceed that conferred by the law of the country to which the order relates;

(iv) the order may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities, if any,

as may be prescribed by the order;

(v) In applying the provisions of this Act as to ownership of copyright, the order may make such exceptions and modifications as appear necessary, having regard to the law of the foreign country;

(vi) the order may provide that this Act or any part thereof shall not apply to works made before the commencement of the order or that this Act or any part thereof shall not apply to works first published before the commencement of the order.

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

(a) When any person, without a licence granted by the owner of the Copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any conditions 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 an 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 on 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 purposes of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) By way of trade exhibits in public, or

(iv) Imports [***] into India,

any infringing copies of the work:

[Provided that nothing in Sub-clause (iv) shall apply to the import of one copy of any work, for the private and domestic use of the importer.]

Explanation - For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy".

24. Section 19 enables the assignment of copyright; it has to be in writing. Importantly, if the terms of assignment are silent about the territoriality, Section 19(6) enacts that the assignment shall extend only to India. The provision

pertaining to licensing of copyright extends Section 19, *mutatis mutandis*.

25. A joint reading of the extracted provisions reveal that the copyright proprietor of any literary or artistic work has exclusive rights, u/s 14, to authorize the sale of the subject of copyright. If such copyrighted works are sold, or offered for sale, or copied, or rented out, or even performed in public, without license or authorization, such copies are infringing copies, and such actions are deemed to be infringement u/s 51. Here, the plaintiffs' grievance is that their expensive publications are offered for sale, and sold in India, through authorized exclusive licensees, at concessional prices. Market segmentation ? either vertically, or horizontally, in terms of geographical areas, or in terms of copies authorized to be made, or sold or rented, is an integral part of a copyright proprietor's legitimate strategy to exploit his exclusive rights. The sale, and offer for sale, of such LPEs, meant for exclusive use in India, by the defendant, who is clearly targeting overseas buyers, to whom such products cannot be sold at Indian prices, constitutes acts of infringement u/s 51. The plaintiffs therefore, are entitled to permanent injunction restraining infringement of copyright in terms of paragraph 50(i).

26. On the question of damages it is settled that the assessment of damages has to be based on cogent evidence furnished for the purpose. In the affidavit evidence, the plaintiffs have not provided any record of the business procured by the defendants as being detrimental to their business; nor have they annexed a statement of loss of profits suffered by them on account of business diversion due to the defendants infringing activities. All that is stated by the plaintiffs is that the profits made by the defendants by misappropriating the goodwill and reputation, and unauthorizedly and illegally selling plaintiffs LPEs is the loss suffered by the plaintiffs and that as they have no access to the accounts of the defendants, they are unable to assess the actual profits made by them. In the opinion of this Court bald assertions of loss of business without any evidence in this respect cannot and do not entitle the plaintiffs to damages. The plaintiffs cannot claim anything more than reasonable damages, which are quantified at Rs. 3,50,000/-, to be paid to the plaintiffs within one week and shared equally by the second, fourth, sixth, eighth and tenth plaintiffs equally.

27. The suit is decreed in the above terms, with costs. All pending applications are accordingly disposed of.