

Institute For Inner Studies & Ors. vs Charlotte Anderson & Ors. on 10 January, 2014

Author: Manmohan Singh

Bench: Manmohan Singh

..* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: January 10, 2014

CS(OS) 2252/2011 & I.A. No.14617/2011, I.A. No.18553/2011, I.A.
No.20143/2011, I.A. No.20144/2011, I.A. No.20167/2011, I.A.
No.20762/2011, I.A. No.448/2012 and I.A. No.15808/2012

INSTITUTE FOR INNER STUDIES & ORS Plaintiffs
Through Mr. Amit Chadha, Sr. Adv. with
Mr. Karan Mehra, Mr. Lalit
Jhunjhunwala, Ms. Bahaar Dhawan &
Ms. Chandni Goel, Advs.

versus

CHARLOTTE ANDERSON & ORS Defendants
Through Mr. B.B. Sawhney, Sr. Adv. with
Mr. Dipak Kumar Jena, Adv. &
Ms. Minakshi Jena Ghosh, Adv. for
D-1.
Mr. Viplav Sharma, Adv. for D-2.
Mr. Sandeep Sethi, Sr. Adv. with
Mr. Mayank Kshirsagar, Adv. for
D-3.
Mr. Ajit Pudussery, Adv. with
Mr. Dinesh Khurana, Adv. for D-11.
Mr. Raghav Awasthi, Adv. for D-14.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The plaintiffs, (ten in numbers) have filed the present suit seeking declaration, permanent injunction and mandatory injunction alongwith damages against the defendants in order to restrain the defendants from carrying out activities of spreading Pranic Healing teachings, techniques, practices and courses, or any other techniques, practices, courses and other teachings invented by the Master Choa Kok Sui ("Master") and organizing and continuing to organize workshops, training programmes, seminars in relation to Pranic Healing without authorization from the plaintiffs.

2. Plaintiffs' Case i. Plaintiff No.1 is a company incorporated in Philippines under and in accordance with the provisions of the Corporation Code of Philippines. Plaintiff No.1 was established by Late

Samson Lim Choachuy (Legal Name), reversed as Master Choa Kok Sui (hereinafter referred to as Master) on 27th April, 1987 to spread Pranic Healing, Arhatic Yoga, Inner Teachings and Practices globally. The plaintiff No.1 is the head institution which controls the functioning of plaintiff Nos.2 to 3 and also the functioning of plaintiff No.4 to 6 established in India.

ii. It is alleged by the plaintiffs that the Master is a world renowned authority in the field of Pranic Healing and Esoteric Sciences, who adapted and systematized the ancient science of Pranic Healing. The Master was a spiritual guru, and an internationally read author of numerous books and manuals on the subject of Pranic Healing. The Master established plaintiff No.1 with primary objective to engage in and carry on business of distribution, publishing books and printed material, to conduct workshops, seminars, lectures on Pranic Healing and Esoteric Sciences across the globe. iii. The plaintiff No.2 is the organization authorized by the plaintiff No.1 to issue licenses and certificates to other affiliates/institutions/organizations/ teachers to spread teachings of Pranic Healing all around the world. iv. Plaintiff No.3 is a company incorporated in Philippines by the Master on 23rd July, 1990 in order to spread teachings of Modern Pranic Healing in the developing countries and poorer areas. The function of the plaintiff No.3 is to organize and provide training programmes, seminars and teachings and to disseminate books, pamphlets and training materials relating thereto, to put up and maintain charitable centres for meditation and Pranic Healing, to extend relief to the distressed, especially to the poor and under privileged and in pursuit of the foregoing objectives "to undertake, support and assist related activities, movements and projects, on its own or in cooperation or coordination with other persons, association, entities, agencies and instrumentalities, whether private or public". Plaintiff No.3 issues guidelines for the functioning of plaintiff No.4 and is also the majority shareholder of plaintiff No.5.

v. The plaintiff No.4 is a public charitable trust, which was established by the Master on 21st January, 1999 in Bangalore to assist the defendant No.2 in acting as a coordinating body for all Pranic Healing activities in the entire Indian Sub-Continent and to collect royalties due from the various trusts established in India under the affiliation of the plaintiff No.3. vi. The plaintiff No.4 was earlier authorized by the plaintiff No.1 to publish all the books and CDs on Pranic Healing in India, which were sold to the defendant No.2, which in turn sold them to various state level foundations established all over India by the defendant No.2 under the affiliation of the plaintiff No.3. It is alleged that the plaintiff No.4 was authorized by the Master to publish some of the books authored by the Master. Royalties from different state level Pranic Healing Foundations established in India were paid to the defendant No.2, which in turn paid a portion to the plaintiff No.4, which collected the same on behalf of the plaintiff No.3.

vii. Plaintiff No.5 is a private limited company in Bangalore as a majority owned subsidiary of the plaintiff No.3 who holds 92% of the shares in plaintiff No.5 and Mr. Hector Ramos and Sriram Rajagopal each hold 4% of its shares. The objective of the plaintiff No.5 is to promote Pranic Healing teachings and related activities through agreements or by way of franchisees, to obtain licenses for all courses of the Master from plaintiff No.3 and to give these licenses to state-level Pranic Healing Foundations, granting them the rights to organize and conduct Master's courses in India, and in turn pay royalty to plaintiff No.3.

viii. Plaintiff No.6 is a private limited company with the object of publishing books, other printed material such as posters, audio and video recordings of the Master and other authors, and to import and export materials connected with Pranic Healing. The plaintiff No.6 is a majority owned subsidiary of the plaintiff No.1.

ix. Plaintiff Nos.7 to 10 are the children and allegedly legal heirs of the Master. Ms. Christine Choachuy, the plaintiff No.7, is the eldest daughter of the Master and is also the President of the plaintiff No.1. After the death of the Master, the entire estate of the Master, including intellectual property rights of all over the world, has devolved upon the plaintiff Nos.7 to 10 under the operation of law. They have executed an extra judicial settlement of estate of the Master on 25th July, 2007 dividing the properties of the Master amongst themselves. The plaintiffs have thereafter assigned trademarks originally owned/applied for by the Master to plaintiff No.1 vide a Transfer and Assignment Deed dated 18th September, 2007.

3. In order to strengthen their case, it is alleged by the plaintiffs that Yoga Vidya Pranic Healing Foundation Trust, Cochin, defendant No.12 herein, filed a suit bearing Original suit OS No.1207/2010 against Dr. Joy Joseph and Yoga Vidya Pranic Healing Foundation Trust, Cochin, Kerala (which is affiliated to plaintiff No.5 herein) in the Court of the Principal Munsif, Ernakulam. In the above mentioned suit, the defendant No.12 herein being the plaintiff made statement about the ownership of the mark and copyright in favour of the present plaintiffs. The Principal Munsif, Ernakulam though refused to grant injunction however, concludes that plaintiff No.3 is the supreme authority to conduct courses to teach Pranic Healing. The plaintiff thus claims the intellectual property rights in the Pranic Healing Techniques/ Modern Pranic Healing Techniques. CASE SET UP AGAINST THE DEFENDANTS BY PLAINTIFFS

4. The case set up by the plaintiffs against the defendants is that the defendant Nos.1 and 2 through the various State Foundations affiliated to them i.e. defendants No.3 to 14 are conducting courses, issuing certificates and selling material (books, audio, video) without due authority from the plaintiffs, in violation of licensing agreements and deeds of assignment which have been terminated and which have expired by efflux of time respectively. The defendant No.3 Pranic Healing Foundation of Delhi, has regularly been conducting Master's courses in an unauthorized manner in New Delhi. None of the defendants have the authority to conduct these courses/workshops and both the terms Kriyashakti and Pranic Feng Shui are registered trademarks in the name of the Master which were assigned to plaintiff No.1.

The defendants are authorizing Pranic Healing and Arhatic Yoga instructors, who are not properly qualified and do not follow the guidelines originally issued by the Master and followed by the plaintiffs, and are conducting training without proper licenses from the global bodies established by the Master. The defendant No.2 has not removed the words "affiliated to World Pranic Healing Foundation, Manila, Philippines" from its certificates who alongwith other defendants continue to advertise on their website regarding several courses being conducted by them based on the teachings and methods devised by the Master without holding a valid license issued by the plaintiffs. They are also publishing and distributing books, CDs and certificates relating to Pranic Healing and selling the same in the similar and identical manner to the material published by the plaintiffs. The

said activities of the defendants is causing innocent persons to believe as genuine material authorized by the plaintiff institutions. Further, the courses conducted by the defendants do not adhere to the quality and standards prescribed by the Master, and are not conducted by persons authorized to conduct the same. The material such as books, CDs etc. produced is sub- standard and detrimental to public interest as well as the goodwill and reputation of the plaintiffs and deceased Master.

5. It is alleged as the plaintiffs left with no option, the plaintiffs compelled to file the suit against the defendants for violation of their legal rights. The abovementioned suit alongwith interim application under Order 39 Rule 1 and 2 CPC were listed before Court on 14th September, 2011 when the summons and notice were issued to the defendants. The interim order was also passed on that date. The operative portion of the interim order reads as under :

"Accordingly, till the next date of hearing, defendants No.1 and 2 are restrained from conducting the proposed Kriyashakti workshop and Pranic Feng Shui workshop in New Delhi in collaboration with defendant No.2 in September, 2011, and further defendants, their agents, assigns, affiliates, subsidiaries, servants, or any person or body claiming directly or indirectly through defendant Nos.1 and 2 and all the foundations, institutions, trust, companies and other bodies functioning under the authority of defendant Nos.1 and 2 are restrained from organizing and continuing to organize workshops, training programmes, seminars and teachings of the Master's courses, techniques, distributing of CDs/DVDs, books, recording of the Master's courses and all other items loaned to defendant No.1 under the licensing agreements executed including instructor's manuals, unused certificates of participation and other documents relating to the licensed activities. It is made clear that in case any course or workshop is in progress, with a view to avoid any inconvenience to the person enrolled for the course, the same shall not be disturbed till the end of the course. Plaintiff shall comply with the provisions of Order XXXIX Rule 3 CPC within seven days from today. DASTI." (Emphasis added)

6. Upon service of the defendants, they filed their written statements. Some of defendants have also filed the reply to interim application as well as application under Order 39 Rule 4 CPC for vacation of interim order by raising the various defences. The defendants also filed applications under Order 39 Rules 3 & 4 CPC for vacation of interim order for non-compliance of the provisions of Order 39 Rule 3 CPC and rejection of plaint for want of valid cause of action and territorial jurisdiction of this Court. By order dated 22nd December, 2011 it was observed by this court that the objection of non- compliance of Order 39 Rules 3 & 4 CPC would be considered on the next date as the pleadings were yet to be completed. The defendant Nos.2 and 14 have also filed applications for rejection/return of plaint under the provisions of Order 7 Rule 10 and 11 CPC.

7. In the following pending applications parties have made their respective submissions which are being decided by this common order :

- i) I.A. No.14617/2011 (Order 39 Rule 1 & 2 CPC, filed by the plaintiffs for temporary injunction),
- ii) I.A. No.18553/2011 (Order 39 Rule 4 CPC, filed by defendant No.3 for vacation of ex-parte order dated 14th September, 2011),
- iii) I.A. No.20143/2011 (Order 39 Rule 4 CPC, filed by the defendant No.2 for vacation of ex-parte order dated 14th September, 2011),
- iv) I.A. No.20144/2011 (Order 7 Rule 11 CPC, filed by the defendant No.2 for rejection of the plaint),
- v) I.A. No.20167/2011 (Order 39 Rule 4 CPC, filed by the defendant No.11 for vacation of ex-parte injunction),
- vi) I.A. No.20762/2011 (Section 151 CPC, filed by the plaintiffs for taking the additional documents and written submissions on record),
- vii) I.A. No.448/2012 (Order 39 Rule 4 CPC, filed by the defendant No.1) in CS(OS) No.2252/2011 for vacation of ex-parte order.
- viii) I.A. No.15808/2012 filed by defendant No.14 (Order 7 Rule 11 and Order 7 Rule 10 CPC for return of plaint).

As far as IA No. 20762/2011 filed by the plaintiffs for taking the additional documents and written submissions on record is concerned, the prayer is not opposed by the other side. The same is according allowed. The application is disposed off.

8. Defendant Nos.3, 11 and 14 and plaintiffs at one stage wanted to settle their respective disputes through mediation. By order dated 8th February, 2012 with the consent of said parties, a Mediator was appointed who conducted various meetings. However, the disputes between them could not be settled and therefore, they also made their submissions on merit and also filed their written submissions. The orders in the pending applications were reserved, but plaintiffs and some of the defendants have filed their written submissions at later stage, thus, it took time to deliver the order in the pending application. Even certain clarifications from the defendants were sought, the details of which are mentioned in the order dated 9th December, 2013 when the matter was listed for direction. CASE OF DEFENDANT NO.1

9. The case of defendant No.1 in her written statement is that the letter of authorization, signed by the Master in his lifetime, entitles her to practice Pranic healing. Furthermore, in any event, the defendant No.1 is an expert in the field by her own right and that, as a joint author, she has the same intellectual property rights over the work as the Master. Although she was authorized to do so by the master. Even otherwise, there is no copyright subsisting in favour of the plaintiffs as all information relating to Pranic Healing is available in the public domain.

Further, the attempt of the plaintiffs to register the trademark in Australia was dismissed as well. Further, the Master has himself learnt Pranic healing from his satguru Lord Mahaguruji Mei Ling and his disciples; therefore, calling the Master as the inventor of Pranic Healing is a baseless claim. Most of the Masters work's are derivative works and he has himself acknowledged the same. The defendant No.1 teaching Pranic Healing for the past fourteen years, with the knowledge of the Master. The defendant No.1 learnt from the Master and has imbibed his skills. The defendant No.1 has also written numerous books about the healing techniques used in Pranic Healing. She claims as legal heir of the Master, other than the plea of authorization letter. She states that all trademark rights associated with Master's publications would devolve upon her.

COMMON CASE OF OTHER DEFENDANTS

10. The defence of other defendants are common. The defendant Nos.2 and 3 have taken all possible defences in their written statement. From the entire pleading of the defendants, they put up their following defences :

a) This Court does not have the territorial jurisdiction to entertain and try the present suit as they have their business activities and their offices outside the jurisdiction of the Court. They are unconnected with each other and they have no connection of any nature with defendant No.3.

b) The plaintiffs have indulged in forum shopping. Prior to the institution of the present Suit, a Suit bearing number O.S. No. 4291/2010 titled C. Sundaram v. All India Yoga Vidya Pranic Healing Foundations Trust, was filed against the defendant No.2 herein by the Plaintiffs, through Mr. Sundram (who is a trustee in plaintiff No.'s 3 and 4 herein) before the Court of the City Civil Judge at Bangalore, seeking relief in the nature of a permanent injunction restraining the defendant No.2 from functioning independently in India. As no relief, interim/temporary relief was granted in the said proceedings, the plaintiffs in the said suit, they have now approached this Court for the grant of substantially similar reliefs by suppressing the factum of filing of the earlier suit and were able to get the interim orders without any interference given to the defendant No.2.

c) After obtaining interim orders from this court, the plaintiffs have failed to comply with the requirements of Order 39, Rule 3 being mandatory, non-compliance of the same will lead to the vacation of the interim order as the plaintiffs have dispatched the incomplete set of documents which amounts to non-compliance of the said provisions of Order 39 Rule 3 CPC. Thus, ex-parte order is liable to be vacated.

d) Pranic Healing name and concept is pre-existing in public domain, therefore, the plaintiffs cannot claim an exclusive right over the same under the Trade Marks Act and Copyright Act as the concepts alleged to be "developed" by the Master are generic and in public domain since 1906.

e) The Trade Mark Act does not provide any protection in respect of techniques, processes or sequences, hence the plaintiffs cannot claim any Trade Mark protection in relation to the same. It is submitted that Pranic Healing and/or Modern Pranic Healing and techniques related thereto, are incapable of receiving trade mark protection.

f) Pranic Healing is a term which was not coined by the Master, the term "Pranic Healing" is publici juris and is a generic/common term. It does not constitute an original literary, dramatic and musical works and hence cannot be subject to copyright protection under the provisions of Section 13 of the Copyright Act. Even otherwise, Copyright Act does not provide any protection in relation to process or method; hence no protection in respect of techniques, processes or steps in relation to "Pranic Healing" or "Modern Pranic Healing" can be claimed by the Plaintiffs under the Copyright Act.

g) The Copyright Office (Library of Congress, USA) issued a statement of policy to clarify the practices relating to examination of claims in compilations, particularly with relation to claims in selection, arrangements of exercise (yoga poses) and choreographic work. It has been clarified in the policy that the Yoga poses and routine exercises are not protectable as compilation and are not the compilations which US law would protect as per the definition of the compilation under the copyright law in US.

h) No exclusivity or monopoly rights were claimed by the Master, it was clarified by the Master that Pranic Healing techniques were revealed in other books, which were "rediscovered" by the Master. Hence the Plaintiffs claim that Master developed "Modern Pranic Healing" is without basis and denied.

i) The term Pranic Healing and related techniques, series sequence of steps, concepts, terminologies etc have not been invented by the Master or by the plaintiffs, hence they are incapable of being claimed as an "invention" and receiving protection under the Patent Act. The Plaintiffs in the replication filed in the aforesaid suit have expressly admitted that the Master did not invent Pranic Healing, hence no exclusivity or rights can be claimed by the Plaintiffs over Pranic Healing and its techniques.

CASE OF THE DEFENDANTS ON MERIT

11. On merit, the case of defendants No.2 to 14 is that they have no connection or any business relations with each other, hence, the suit is bad for mis-joinder of parties. In various documents and pleadings they allege that they have not published any book of Master nor they have sold in the market on commercial scale. They even have no intention to publish or sell any book of Master in future. The Defendants also stated that they will not use any trade literature, CDs any other literary work of the master while performing PRANIC HEALING. However, the defendants state they are

entitled to impart and teach PRANIC HEALING techniques at their centers or conduct any workshop or seminar in relation to the said PRANIC HEALING Techniques.

12. It is stated by the defendant no. 2 that the Master, at his very young age, was already interested in yoga, psychic phenomena, mysticism, Chinese Chi Kung (the art of generating internal power) and other esoteric sciences. Because of his strong interest, he spent nearly two decades researching and studying books and literature on esoteric sciences.

It is also submitted that the master also made close association with yogis, healers, practitioners of ancient Chinese esoteric sciences and a few extraordinary persons who were in telepathic contact with their spiritual gurus. The Master established the defendant No.2 herein, as a Public Charitable Trust, by a Deed of Declaration of Trust dated 30th January, 1996, to further the object of advancement of Pranic Healing, for the benefit of the public. The defendant No.2 is the central coordination body for all Pranic Healing activities in the entire Indian Sub-Continent. As per Clause 3(g) of the Deed of Declaration of Trust, defendant No. 2 is expressly entitled to organize, conduct and provide training programs, seminars and workshops and to disseminate books, pamphlets and training material relating to meditation and the attainment of inner peace and harmony, Pranic Healing and other alternative forms of alleviating human ailments and through subsequent Deed of Amendment dated 6th August, 2003 Yoga as well. The Master had created the defendant No. 2 herein, inter alia, to spread Pranic Healing and in this regard to disseminate his books, pamphlets and training material relating to meditation and the attainment of inner peace and harmony, Pranic Healing and other alternative forms of alleviating human ailments, without expecting royalty or monetary returns. The defendant No.2 thus is entitled to use the same for dissemination purposes, the Master's works, books, pamphlets and training material relating to meditation and the attainment of inner peace and harmony, Pranic Healing and other alternative forms of alleviating human ailments, in perpetuity, without any approval, permission, sanction, license, assignment from either of the Plaintiffs, including the Master's legal heirs is not required. 12.1 It is stated by the defendant No.2 that the plaintiff No.3 herein was established by the Master in 1990 as a "private" and "non-stock"

corporation. That with respect to plaintiff No.4, it is pertinent to mention that the idea behind establishment of the plaintiff No.4 was opening up of a branch of plaintiff No.3 in India. The plaintiff No.3 had applied to the Reserve Bank of India, Mumbai, sometime in the middle of 1997, to set up a branch office in India. However, due to lack of response from the Reserve Bank of India, the plaintiff No.4 was set up on 21st January, 1999 in Bangalore. This fact is further established by a bare perusal of the content appearing on the website of the Plaintiff No.3 herein, which inter alia states that the plaintiff No.4 is functioning as a branch office of the plaintiff No.3. The purpose behind opening up of a branch office in India was to make investments in immovable property in India. However, since the plaintiff No.3 could not, through the plaintiff No.5 which was established as a public trust, make such investments, other methods were put into use for acquisition of the immovable property. The registration of the immovable property in the name of the plaintiff No. 4 was against the very provisions of the Deed of Declaration of Trust in relation to the plaintiff No.

4, which mandates that acquisitions/alienation of immovable property shall be done with the prior approval of the Director of Income Tax (Exemptions) which according to the knowledge of defendant No.2, was not obtained. A bare perusal of the Deed of Declaration of Trust in relation to the plaintiff No.4 would demonstrate that the same was established to assist the defendant No.2 in acting as the central co-ordinating body for all Pranic Healing activities in the Indian sub-continent. The domain of the plaintiff No.4 herein with respect to Pranic Healing activities was limited to "the neighbouring countries and the Middle-East countries."

12.2 It is stated by the defendant No.2 that the Master had additionally granted the defendant No. 2 the authority to protect the intellectual property rights in his above-mentioned works, in every manner, from all third parties in the Indian Sub-Continent. The Master had not granted any such right to protect his intellectual property to any other organisation in India. This is further established by the fact that the Certification for all the courses was granted by the defendant No.2. The rights were granted to the defendant No.2 directly by the Master, and not through the plaintiff No.1 or plaintiff No.3. No similar documents were executed by the Master in favour of any other organisation in so far as India is concerned, including the plaintiff No.4. As a matter of fact, right from inception, the plaintiff No.4 was never engaged in the spreading of Pranic Healing activities, like the defendant No.2. It was always a source to commercially exploit the intellectual property of the Master to make profit.

12.3 It is further stated by the defendant No.2 that several amendments were carried out to the Deed of Declaration of Trust in respect of the defendant No.2, during the lifetime of Master from time to time. In terms of one of such amendments, carried out in terms of the Supplementary Trust Deed dated 29th May, 2002 the authors divested themselves of all proprietary rights in the properties which vested in defendant No.2 on the date of the said amendment. The above-mentioned Supplementary Trust Deed provided for incorporation of the following clause in the Trust Deed:

"(15) The authors declare that they have completely & finally divested themselves of all proprietary rights in the properties & assets of the Trust & also that all the income accruing or arising there from has been and shall be utilized for the benefit of the Trust & none of the donors or their legal heirs, executors, administrators, successors and assignees shall ever have or claim any proprietary rights therein."

The effect of the above mentioned amendment was to vest in the defendant No.2 the above mentioned intellectual properties, in respect of which it was enjoying the rights on the said date, making it the lawful owner in respect of the same, to the exclusion of all others. It is stated by defendant No.2 that by the above-mentioned divestiture, the authors/founders of the defendant No.2, the master and C. Sundaram, have become donors of all their proprietary rights in the properties and assets of the defendant No.2 and have expressly bound themselves, and their legal heirs, etc., with the stipulation that all the income accruing or arising there from is to be utilized for the benefit of the defendant No.2 and that none of the donors or their legal heirs, executors, administrators, successors or assignees would/could ever have or claim any proprietary rights therein.

The only propriety rights, belonging to the Master, i.e. vested in the defendant No.2 on the relevant date were intellectual property rights granted by him to the defendant No.2 and under Indian Law, no trustee has any right over the assets and any other physical property of the trust. In any event, the original Deed of Declaration of Trust dated 30th January, 1996, in relation to the defendant No.2 specifically provided thus:

"8. In the event that the purpose and objectives of the trust shall become impossible to attain the assets of the Trust shall in no circumstances be distributed among the Trustees but the same shall be transferred to another Trust, society association, or institution whose objects and purposes are similar to those of this Trust.

10. The Trustees shall hold the properties of the Trust for the objects stated herein. No part of the funds/income of the trust shall be taken directly or indirectly by way of remuneration or otherwise by any of the Trustees." [Emphasis added] (pgs. 120-121 of the Suit Documents) 12.4 Similarly, the Supplementary Trust Deed in respect of the defendant No. 2 dated 22nd December, 1999, provides that :

"1. That clause (8) in page No. 5 of the original Trust Deed be deleted and the following clause be inserted in its place:

"That in the event of dissolution or winding up of the Trust, the assets remaining as on the date of dissolution shall under no circumstances be distributed among the trustees but the same shall be transferred to another charitable trust whose objects are similar to those of the trust and which enjoys recognition u/s. 80G of the Income tax Act 1961, as amended from time to time"

2. That the following clauses be added after clause (10) in the page No. 5 of the original Trust Deed:

(13) The Funds and Income of the Trust shall be solely utilized for the achievement of its objects and no portion of it shall be utilized for payment to the Trust or members by way of profit, interest dividend etc." [Emphasis added] 12.5 It is submitted by the defendant no. 2 that the Deed of Declaration of Trust, and various Supplementary Trust Deeds in relation to the defendant No.2 having specifically provided that properties of the defendant No.2 would be held only for the objects for which it was established and that the assets, profits, interest, dividend, etc. of the defendant No.2 shall not be distributed amongst the Trustees (the Master was himself a Trustee of the defendant No.2 at the relevant time), there was no occasion for the Master to make specific relinquishment of his rights in the assets and physical properties in the defendant No. 2 herein by the Supplementary Trust Deed dated 29th May, 2002. It further establishes the fact that the above-

mentioned relinquishment was in relation to the intellectual propriety, belonging to the Master, which vested in the defendant No.2 herein on the relevant date, and were granted to the defendant No.2 herein by the Master himself. In this regard, a divesture of rights was never done by the Master

to/or in any other entity, thereby clearly intending, making and ensuring that the defendant No.2, inter alia, remains unscathed in any manner from/by any influence, vested/personal interests or vice circumstances and continues to function undeterred in carrying out its objective of creation. Soon after the above-mentioned divesture, the Master withdrew himself as a trustee of the defendant No.2, and never again became a trustee therein.

The above-mentioned rights, interests and claims was never recalled, revoked, amended, rescinded, annulled, invalidated or cancelled by the said authors/founders and continues to be so vested, absolute, final and subsisting with the defendant No.2. That the above-mentioned divesture was done by the Master with the sole intention of ensuring that the defendant No.2 is an independent body not to be affected or hampered in any manner from achieving the purpose and objective of its very creation by any of then existing Foundations/entities persons as well as the future Foundations/entities/persons, the authors/founders of the defendant No.2. By placing reliance on the deeds of declaration of trust and supplementary deeds and other events as stated above, it is the case of the defendant No.2 that the defendant No.2 has independent right to impart Pranic Healing techniques and carry out its objects as public charitable trust and the plaintiffs having waived the right to object by not recalling or rescinding the divesture cannot now turn around and object to the functioning of the defendant No.2 trust.

12.6 It is further stated by the defendant No. 2 that in July 2008, C. Sundaram, the then President of the defendant No. 2, along with some other trustees of the defendant No.2, which included Sriram Rajagopal (who has initiated the present proceedings on behalf of the Plaintiffs) in an arbitrary manner and without the approval of the Board of Trustees of the defendant No.2, decided to register, and did in fact register, a "Supplementary Deed"

in respect of the defendant No.2 which in total contrast of the system of administration that existed for almost eleven (11) years, provided for the decision making of the defendant No.2 to vest in five (5) permanent trustees. There was refusal of accept the above-mentioned "Supplementary Deed" by Mr. C. Kailash, the current President of the defendant No.2, and he insisted upon the immediate cancellation of the same. As a result of the said opposition, which was supported by the majority of Trustees of the defendant No.2, and with great difficulty, a "Deed of Cancellation", cancelling the above-mentioned "Supplementary Deed" was executed and registered by C. Sundaram.

In view of unprecedented protest to the above-mentioned actions on part of C. Sundaram, there was relentless pressure on him to step down as the President of the defendant No.2. Consequently, C. Sundaram resigned as President of the defendant No.2 on 20th October, 2008. Subsequently, Mr. C. Kailash took over as the President of the defendant No.2 on 20th October, 2008, upon his unanimous election by the Board of Trustees of the defendant No.2 and upon his assuming charge as the President of the defendant No.2, Mr. C. Kailash sought the handing over the complete documents pertaining to the affairs of the defendant No.2 from C. Sundaram, Sriram Rajagopal and Sumi Lazar (who was acting as the General

Manager of the defendant No.2 at the relevant time). However, no co-operation was received from them with regard to handing over the said documents to the new management of the defendant No.2. The above- mentioned individuals, in active connivance with the plaintiff No.'s 1 to 4 and plaintiff No.'s 7 to 10, saw their efforts to take control of the defendant No.2 thwart by active opposition from all quarters, which was viewed by them as a strong challenge to their supreme control of the Pranic Healing Movement in India, they indulged in several other illegal acts to take control of the Pranic Healing activities in India.

13. It is specifically alleged by all the Defendants that there is no Intellectual Property Rights over certain Terms and Terminologies. Defendants have placed on record large number of documents in support of their submission. The said documents reveals that the art of Pranic healing is a form of yoga, dealing with mechanism of inner healing techniques, commonly known and used by healers and users of esoteric sciences. Yoga, as an art and science, is prevalent and existing from time immemorial and are very ancient. All forms of yoga and terms and techniques, including the rights claimed by the plaintiffs thereon substantially, are in the public domain. The techniques developed by the Master are an adaptation of yoga techniques and terms. No one can claim exclusivity over any form of yoga, including Pranic Healing, and the terms and techniques relating thereto. Reference is made to books titled " The Science of Physic Healing" and 'Hatha Yoga" written by Yogi Ramacharaka way back in 1906, which talk about the principles and practice of Pranic Healing, and various terms and techniques of Pranic Healing including, Pranic Breathing, Pranic Treatments, Pranic Energy, Pranic Exercises, etc. The Master, at page 8 his autobiographical work, "The Origin of Modern Pranic Healing and Arhatic Yoga", makes a reference to the above-mentioned work book.

14. At the time of submissions made by the learned counsel for the parties. Mr. Amit Singh Chadha, learned Senior counsel appeared on behalf of the plaintiff and Mr. B.B Sawhney, Senior Advocate appeared on behalf of the defendant No.1 and Mr. Sethi, learned Senior counsel appeared on behalf of the defendant No.3. Mr. Viplav Sharma, Advocate appeared on behalf of defendant No.2. These pending applications have been argued by these counsel from time to time and same time other counsel also appeared as per appearances recorded.

15. Mr. Chadha, learned Senior counsel appearing on behalf of the plaintiffs has made his submissions which can be outlined in the following manner :

I. Firstly, Mr. Chadha, learned Senior counsel has explained the concept of the Modern Pranic Healing in detail and has argued that the said concept is originated from that of the plaintiffs. It has been argued that the reliance of the defendants upon the several sources in order to say that the Pranic Healing is pre-existing concept and art is misconceived. Mr. Chadha, learned Senior counsel has further elaborated his submission on the aspect of the originality of the concept by relying several documents and his submissions point wise can be enumerated as under:

i) Mr. Chadha, relied upon the books written by Master and stated that Master has also compiled his research in CDs, books, manuals etc which clearly show that the

immense hard work, labour and effort is involved in creating the said books and thus the concept which has been further developed by the Master (who is the predecessor of the plaintiffs) by devising new techniques and adding on several aspects to the basic concept of pranayam is an independent work which is worthy of the copyright protection.

ii) Mr. Chadha, alongside also replied to the challenge raised by the defendants on the originality of the concept of the Pranic Healing by contending that the defendants reliance upon the book of "Science of Psychic Healing" is misplaced in as much as the said book merely provides the basics and ancient concept of the Pranic Healing and the concepts elucidated by the Master are far more complex and novel. There are vast differences between the concept which was pre-existing and the one which has been devised by the Master. Mr. Chadha, relied upon the chart comparing the books of the Master with that of Yogi Ramacharaka in order to demonstrate the differences.

iii) Mr. Chadha, further argued that it is only the Master who introduced Modern Pranic Healing in India. It is submitted that the first Pranic Healing Foundation in Kerala was established in the year 1991. There were number of Pranic Healing centres which were established later on by the Master. It is submitted that in 1992, the Master established plaintiff no. 4 to collect royalties from Defendant no. 2. Thus, the said concept of Pranic Healing has been introduced by the Master and the plaintiffs in India. It is argued by him that the defendants organizations admit themselves to be the bonafide users of the Modern Pranic healing techniques, cannot dissociate themselves from the plaintiff and carry on their activities by using the Master's name.

For all these reasons, as per Mr. Chadha, it is the plaintiffs who are the owners of the concept of the Modern Pranic Healing in India who have also acquired the rights from LRs of the Master and the defendants' allegation that the said concept is not original concept of the plaintiff is totally misconceived and baseless.

II. Secondly, Mr. Chadha, learned Senior counsel for the plaintiffs has argued that the defendant No. 1 being a licensee of the plaintiff No. 2 and was authorized to perform the Pranic Healing activities under twenty licensing agreement dated 26th September, 2006 which have been terminated by the letter dated 17th May, 2010 is estopped from taking the plea of the prior authorization of the said concept by the Master once the defendant no. 1 herself took licences from the plaintiff No. 2.

It has been argued that the defendant No.1 has not challenged the termination letters dated 17th May, 2010 and thus the reliance of some letter dated 2nd November, 2004 written by Master is misconceived. This is due to the reason that by taking licenses from the plaintiff No. 2, the defendant No. 1 has implicitly acknowledged the plaintiffs rights under the concept of the Pranic Healing concept. It has been further argued that the letter of authorization was superseded by the licensing agreements and thus the reliance of the prior authorization is of no avail in view of the later licenses which have been now terminated.

III. Thirdly, Mr. Chadha has argued that the defendant No. 1's claim that she is the joint author of the books along with the master and therefore entitled to use the Pranic Healing techniques in her own right is also baseless and without any merit. It has been urged that the defendant No.1 merely acted as a mere transcriber who has simply put the Master's word from his lectures in to the written form along with the help of team of people without changing any of the words of the Master. There is no active intellectual collaboration or cooperation on the part of the defendant No.1 to claim herself to be a joint author. Thus, the claim of the defendant No.1 is totally false and misconceived.

It has been argued that the acts of the defendant No.1 are infringing in nature as the defendant continued to hold seminars and promote the Pranic Healing without any authorization from the plaintiffs and also depriving the plaintiffs from the royalties. It has been argued that the defendant No.1 has been garnering funds through sponsorship which amounts to commercial exploitation and has been accepting offerings from disciples. Thus, the acts of the defendants are not merely charitable but aimed at reaping commercial profits and are clearly infringing in nature.

With regard to alternative plea taken by her, it is argued by Mr. Chadha that defendant No.1 was one of the Master's followers and senior disciple, who has been claiming to have been married to the Master on 31 st December, 2006. However, the Competent Court of Philippines dismissed her claim, which has not been denied by her. Even she has acknowledged the uniqueness of the concepts developed by the Master and vide her email dated 23rd March, 2007 has stated as under :

"In order to 'Preserve the Purity' of the priceless teachings of our Beloved Grand Master Choa Kok Sui, the Institute of Inner Studies, Inc., Manila would like to announce the immediate implementation of certain protective measures to safeguard the integrity of MCKS Works.

Effective Immediately :

ALL PRINTED and Audio and/or Video RECORDED materials, obtained during the workshops or any session given by MCKS, including all materials related to the trademarked and copyrighted works of MCKS-will be immediately subject to review and approval by IIS, Inc. Manila, prior to publication and production...."

She was authorized to perform Modern Pranic Healing activities under twenty (20) Licensing Agreements, all dated 26 th September, 2006 executed between plaintiff No.2 and defendant No.1. The above mentioned twenty (20) Licensing Agreements executed between plaintiff No.2 and defendant No.1 have been terminated by plaintiff No.2 vide Termination Letter dated 17th May, 2010. It is also a matter of record that, till date, defendant No.1 has not challenged the above Termination Letter dated 17 th May, 2010 and therefore, defendant No.1 is no longer authorized to perform Modern Pranic Healing activities. The defendant No.1 has sought to rely upon one Letter of Authorization dated 2nd November, 2004 which was signed by the Master in the capacity of the President of plaintiff No.1. The same was superseded by the subsequent twenty (20) Licensing Agreements all executed on 26th September, 2006. The aforesaid fact is evident from the website pages of 'The Inner Sciences' created by defendant No.1 which does not recognize or mention the

Letter of Authorization dated 2nd November, 2004 and instead states as under :

"He granted her 20 years, global licences for all of his courses in 2006. These were subsequently revoked by the organization after his passing from the physical body."

The said twenty (20) Licensing Agreements have been terminated on 17th May, 2010 within her knowledge and said defendant No.1 has ceased to have the authority to perform Modern Pranic Healing and/or communicate the same to the public. In fact on 14th June, 2010, defendant No.1 was also removed from Trusteeship of plaintiff No.4. The authorization letter, which defendant No.1 relies upon, mandates payment of royalty to plaintiff No.2 by defendant No.1, however no royalty is being paid by her since 2008.

There is no merit in submission of defendant No.1 as she is a transcriber and editor of various books on Modern Pranic Healing, authored by the Master and therefore, she is the concurrent user of Modern Pranic Healing and the copyright owner. Defendant No.1 is also not the copyright owner of any of the books over which she claims copyright by virtue of being a transcriber/editor. The original and plagiarized books produced in the Court would show that the copyright in respect of the said work vests in the name of the Master. Further, the defendant No.1 had been granted permission to perform Modern Pranic activities only in the capacity of a licensee under the twenty (20) Licensing Agreements, which have been terminated by plaintiff No.2 vide Termination Letter dated 17th May, 2010.

The reliance of decision in the case of *Najma Heptulla Vs. Orient Longman Ltd. & Ors.*, AIR 1989 Del 63 in support of her contention that she is a joint author and copyright holder of the works of the Master is completely misplaced. In the said case, this Court has held that if there is intellectual contribution by two more persons pursuant to a pre-concerted joint design to the composition of a literary work, then those persons have to be regarded as 'joint authors'. However, in the present case, defendant No.1 has acted merely as a transcriber, who simply put the Master's words from his lectures into written form alongwith the help of a team of people, without changing any of the words of the Master. The Golden Lotus Sutras produced by Master's lectures and the words and preaching enunciated by the Master. There is no active intellectual collaboration or cooperation on the part of the defendant No.1 to claim herself to be a joint author. In the decision referred by defendant No.1 in the *Najma* (supra) it was observed that :

"If a scientist takes the services of another person with a view to transcribe his thoughts, findings and materials in form of books or articles, can it mean that the author of the scientific material is not the scientist himself but the author is the person in whose language the material is expressed ? In such a case, the person who transcribe a thought may not even be able to understand the material which is being written."

IV. Fourthly, Mr. Chadha has argued that the defendant no. 2's claim that it has independent right to use the Pranic Healing in India by virtue of the th supplementary trust deed dated 29 May, 2002 which as per the defendant's divest any right of the master in the property of the trust and thus the

plaintiffs have no right to object against the defendant's use of the Pranic Healing techniques is frivolous one. As per Mr. Chadha, the said argument is flawed due to manifold reasons which have been given by the counsel for the plaintiffs in the following manner:

a) Admittedly the Master established defendant No.2 on 30th January, 1996 who was the founder Chairman of defendant No.2. The Trust Deed of defendant No.2 stipulates that it has to frame its rules and regulations in concurrence with the rules of plaintiff No.3. Therefore, defendant No.2 was established to promote pranic healing and, inter alia, to :

i) Standardize course fees, certificates and coordinate the schedule of classes and retreats of the Master among all Pranic Foundations in India.

ii) Collect and hold royalties from all the state pranic healing foundations, for the benefit of defendant No.2 as well as for and on behalf of plaintiff No.3 herein.

The right claimed by the defendant No.2 is defeated in view of the fact that the defendant No.2 on behalf of trust had obtained orders against third parties restraining them from performing Modern Pranic Healing activities, recognizing the uniqueness of the Master's works. The list of cases filed by defendant No.2 are :

All India Pranic Healing Foundation Trust Vs. Jaico Publishing House and Ors. being CS No.480/2002 in the High Court of Judicature at Madras.

All India Yoga Vidya Pranic Healing Foundation Trust Vs. Adelfo Q Pe and Ors. being CS No.610/2006 in the High Court of Judicature at Madras.

All India Yoga Vidya Pranic Healing Foundation Trust Vs. Adelfo Q Pe and Ors. being CS No.614/2006 in the High Court of Judicature at Madras.

wherein defendant No.2 has admitted that :

"...the said Master Choa Kok Sui has designed curtailed unique Pranic Healing techniques and also coined certain words, terms and terminology as well as developed several modalities, techniques and diagrams besides the narrative texts. Apart from the text, the various modalities and techniques originally developed by the said Master and incorporated in the above said book....includes the following (i) The concept of lag time; (ii) The concept and techniques of sensitizing the hands and fingers; (iii) The concept and techniques of cleansing/sweeping including localized sweeping..."

b) The defendant no. 2 had been claiming the rights through assignment deeds which were signed in the year 2004 and also on 15th March, 2006. The term of the said deeds was for the period of 5 years. The plaintiff has averred in the plaint that the term of the assignment deed dated 15th March,

2006 has come to an end, to which the defendant no. 2 did not deny the same but instead started claiming the right through the supplementary trust deed dated 29th May, 2002. Therefore, As per Mr. Chadha, the defendant No.2 has no explanation to use the concept of the Pranic Healing after entering into the assignment deed for limited period and the claim of independent right is a sham.

c) The defendant No.2 had also claimed the rights deriving the strength from the extension of assignment deeds given to defendant No. 1. It has been argued that the permission to use the said Pranic Healing concept was withdrawn from the defendant No.1 on 23rd January, 2010 and still the defendant No. 2 continued to publish books in India, CDs, course material and certificates in violation of the rights of the plaintiff even after the permission was withdrawn from the defendant No. 1. Thus, the conduct of the defendant No. 2 is malafide and the stand taken by the defendant No. 2 is inconsistent and should not be believed by the court.

d) It has been further pointed out that bare perusal of the supplementary trust deed shows that authors have divested themselves of properties and assets of the trust and not the assets and properties owned by the authors. Thus, to say that the plaintiffs have relinquished their rights qua the trade mark and the concept of the Pranic Healing and indefinitely allowed the same to the defendant No. 2 is totally contrary to the intent of the trust deed.

e) The defendant No. 2 has now claimed all rights for India based on extension of Assignment Deeds through defendant No. 1, however, on 23rd January, 2010 all support to defendant No. 1 was withdrawn by the Plaintiff with effect from 23rd January, 2010 but in February 2010, defendant No. 2, under authority of defendant No. 1 was publishing books in India, making CDs, publishing course material and certificates. Pranic Healing is well evidenced by the facts stated hereunder:

a. Relevant provisions of the Trust Deed of defendant No. 2 are reproduced as under:

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"3. Objects of trust: The objects of the trust shall be:

(a) To act as the central coordinating body for all Pranic Healing activities in the entire Indian subcontinent.

(b) Xxx

(c) Xxx

(d) To collect and hold royalties from all the state Pranic Healing Foundations, for the benefit of the Trust, as well as for and on behalf of the world Pranic Healing Foundation."

Board Resolution passed by the Board of Trustees of defendant No. 2 at a meeting held on 18th February, 1996 specifically states that an " All India body will formulate policies based on recommendations from the World Pranic Healing Foundation designed to standardize the requirement for admission of basic Pranic Healing graduates. These policies will be adhered to by all foundations."

f) Mr. Chadha states that it is admitted position as mentioned that the defendant No. 2, on behalf of itself and other defendants, had been sharing royalties received from them with Plaintiffs. This is evident from defendant No. 2's own documents at Annexure a/15 Colly of IA No. 20143 of 2011, which give details of the amounts due from defendant No. 2 to plaintiff No. 4. That defendant No. 2 was sharing royalties with Plaintiffs is also evident from pages 317 and 318 of IA No. 20143 of 2011.

In the minutes of meeting of Board of Trustees of defendant No. 2 held on 31st January, 1996, signed by the Master himself, it is stated that defendant No. 2 shall enter into agreements with each state level foundation concerning the remittance of royalties and submission of reports, "including those royalties and reports intended for World Pranic Healing Foundation."

The master had, during his lifetime, given instructions that in respect of legal agreements granting rights to organize and conduct various courses of the Master, these agreements will first be signed between plaintiff No. 3 and plaintiff No. 4 and then rights would be granted by plaintiff No. 4 to defendant No. 2, which would in turn authorize all the local foundations. These understanding has been recorded in the minutes of the meetings of Board of Trustees of defendant No. 2 dated 9th June, 2006.

By placing reliance of the aforesaid events, it has been argued by Mr. Chadha that the stand taken by the defendant No. 2 in order to justify the continuance of the usage of the concept of Pranic Healing is wrong and baseless.

V. Fifthly, it has been argued by Mr. Chadha that Modern Pranic Techniques have been conceptualized by the Master comprising several postures and Asanas and the same deserves the protection under the realm of copyright being the compilation of the works. The said postures and the manner of performing the Pranic Healing is also the choreography works within the meaning of the copyright Act and thus deserves protection under the provisions of Copyright Act, 1957.

i) In the case of Academy of General Education, Manipal and Another Vs. Malini Mallya (Para 58, 63-64, 68, 79-80), it has been held that the teachings contained in the books/manuals are not capable of being distinguished or segregated from the teachings/preachings and other forms of communication to the public and hence, the manuals which set out the manner in which 'Modern Pranic Healing' is to be manifested protect not only the literature embodied in the manuals and books but also the manner of performance of the same.

ii) It is submitted that copyright subsists in the sequence of asanas determined by the Master. This Court, in University of Cambridge v B.D. Bhandari & University of Oxford v. Narendra publishing House, 2009 (39) PTC 642 (Para 9) has opined that copyright subsists in a sequence of information is complied in a creative arrangement by virtue of selection, coordination and sequencing that makes it different from the pre-existing data.

iii) In the case of Open Source Yoga Unity v. Bikram Chaudhary, 2005 WL 756558 (N.D. Cal. (Paras 3-5)), it is held that copyright law does extend protection to an arrangement of information in the public domain assembled in a sufficiently creative fashion. In this case, copyright is a selection and

arrangement of asanas was upheld and it was held that a sequence of yoga position could be one's intellectual property . it was held:

"Thus, OSYU has provided no persuasive authority that a compilation of yoga asanas cannot be protected under the Copyright Laws in the same manner as other compilations. The court, while recognizing, and even agreeing that application of law of compilations to yoga asanas appears to violate the spirit of yoga, has been unable to locate any authority that precludes such application. Therefore, if the trier of fact determines that a sufficient number of individual yoga asanas are arranged in a sufficiently creative manner, copyright protection for the yoga sequence would be available."

In order to substantiate the argument, Mr. Chadha relied upon the following judgments :

- a) Academy of General Education , Manipal and Another v. Malini Mallya, (2009) 4 SCC 256 and
- b) University of Cambridge v. B.D Bhandhari & University of Oxford v. Narendra Publishing House.

It is submitted by Mr. Chadha that from these decisions, it appears that the courts have given protection to the literary works and also the sequence of information present in the public domain provided that the information is compiled in a creative arrangement by virtue of selection, coordination and sequencing that makes it different from the pre-existing data.

Mr. Chadha also placed heavy reliance on the judgment passed by the US district court in case of Open Source Yoga Unity v. Bikram Chaudhary (supra) wherein the court has treated the activities of Yoga as compilation when the same are assimilated in the book form and the performance of the same without permission of the owner is held to be violation of the copyright in the compilation and choreography work.

It is further argued by Mr. Chadha that copyright extends to the performance of that work as set out in the literature. In Academy of General Education, Manipal and Another v Malini Mallya, (2009) 4 SCC 256 (Para

40), it has categorically noted that the copyright in a literary work cannot be distinguished from its performance in the manner set out in the literature.

He stated that Modern Pranic Healing as developed by the Master was set out in the instruction manuals and books. Undisputedly, there subsists a copyright in these instruction manuals and books manifesting the teachings of the Master. Borrowing the rationale of the Supreme Court in Malini Mallya, copyright in the books/instruction manuals extends to the performance and preaching of Modern Pranic Healing to the public.

Moreover, Section 14 of the Copyright Act, 1957 confers upon the holder of copyright, the exclusive right to 'perform the work in public, or communicate it to the public' among others things. Furthermore, as established in the light of the Supreme Court decision in *Malini Mallya*, the copyright on sequence of asanas is manifested in the published preachings of the Master or the instruction manuals of Modern Pranic Healing and cannot be segregated from the performance of those instructions.

VI. Sixthly, it is argued that the defendants by copying the books, manuals, CDs and other literature of the plaintiffs are clearly reproducing the literary work of the plaintiffs and are causing infringement of the copyright in the literary works as contained under the provisions of the Copyright Act, 1957.

His submission is that in view of the above, copyright subsists in Modern Pranic Healing methods for being developed by systematically arranging and sequencing asanas. Although these asanas may have been known to exist and may have been available in the public domain, Master carefully studied and experimented with the information in Public domain and he systematically collated the same into a unique sequence of asanas that was subsequently reduced to a tangible medium, copyrightable under Section 13 of the Copyright Act, 1957.

Mr. Chadha argued that in the present case the Defendants activities do not fall within the exception of 'Fair Use' as teachings of the Master have been performed in public by the defendants and also displayed and communicate for a fee, which violate Section 14 of the Copyright Act, 1957. All programs of defendants No. 1 are sponsored and sponsors are gaining mileage, making it more or less a commercial event. Defendant No. 1 is earning money by way of offerings by the followers. The other defendants are selling books, CDs, course material and photographs of the Master which are all pirated/infringed copies of the copyrighted material and hence it amounts to be commercial exploitation. The said Defendants cannot take the defence of 'fair use' under Section 52 of the Copyright Act, 1957 as they have been resorting to uncontrolled commercial exploitation of the techniques developed by the Master.

The following cases are referred by the learned counsel appearing on behalf of plaintiffs Counsel :

- i) In the cases of *University of Cambridge Vs. B.D. Bhandari & University of Oxford v. Narendra Publishing House*, 2009 (39) PTC 642 and *Super Cassettes Industries Vs. Hamar Television Network*, 2011 (45) PTC 70 (Del) (Para 63), it has been clearly laid down that commercial exploitation of works protected by intellectual property rights will take the matter outside the ambit of "fair use".
- ii) In *Church of Scientology International Vs. Enid Vien*, 827 F. Supp 629, the United Stated District Court used the mandate in Section 107 of the Copyright Act which states that the following factors have to be considered in determining whether the activity is covered under the fair use doctrine:

"a. The purpose and character of the use, including whether such use is of commercial nature or it is for non-profit educational purposes: b. The Nature of copyrighted work; c. The amount and substantiality of the portion used in relation to copyrighted work as a whole; d. The effect of the use upon the potential market for or the value of the copyrighted work."

Therefore, as the defendant Nos.1 and 2 have used whole of Master's creations and teachings for commercial exploitation instead of restricting the use to private use or teacher-pupil instruction. The use, therefore, cannot be defended as 'fair use' under Section 52 of the Copyright Act, 1957. VII. Seventhly, It has been argued by the learned counsel for the plaintiff that the mark MODERN PRANIC HEALING has been used by the Master as well as the plaintiff for the considerable period of time in India and thus by virtue of such long standing use and the efforts made by the plaintiffs in popularizing the trade mark PRANIC HEALING, the said trade mark MODERN PRANIC HEALING OR PRANIC HEALING has acquired distinctiveness qua the plaintiffs and the same has been associated with that of the Master and his descendants and no one else.

Even assuming that the concept the Pranic Healing was available in public domain, however, the methodologies and principles as developed and practiced by the Master are unique to the Master and are not available in the public domain. In fact, by virtue of Master having spent years developing and spreading Modern Pranic Healing, the term Pranic Healing as prevalent and practiced in India today, has acquired a secondary meaning and distinctiveness which has come to be exclusively identified and recognized with the Master. In fact, protection of such rights acquired by reason of use and practice over period of time is afforded under Section 32 of the Trademarks Act, 1999 ("Trademarks Act") which provides as under:

Section 32: Protection of registration on ground of distinctiveness in certain cases- where a trade mark is registered in breach of sub-section of section 9, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration and before commencement of any legal proceedings challenging the validity of such registration, acquired a distinctive character in relation to the goods or services for which it is registered.

VIII. Eighthly, Mr. Chadha has argued that the performance of the work cannot be segregated from the copyright which subsists in the literary work as the literary work prepared by the Master contains the manner of doing the ASANAS as well as the postures in which the said ASANAS are required to be performed. Thus, by performing the work of the plaintiff in public as per the manuals, books and CD Roms, the defendants are infringing the plaintiffs copyright in the work of MODERN PRANIC HEALING.

Mr. Chadha again relied upon the judgment passed in the case of Academy of General Education, Manipal v. Malini Mallya (supra) wherein there is an observation that the copyright in a literary work cannot be distinguished from its performance in the manner set out in the literature in order to support his argument.

IX. Ninthly, it has been argued that the acts of the defendants do not constitute fair use as all the programs performed by the defendant No. 1 and others are sponsored and the sponsors are gaining the popularity on the strength of the popular work of the plaintiffs. The defendants No. 1 is also earning money by way of confusing the disciples and accepting the offerings. The defendants are also selling the books, CDs, course material along with the photographs of the master which are all for commercial purpose and thus it is an infringement of the plaintiffs copyright.

X. Tenthly, Mr. Chadha has also countered the plea of the lack of the territorial jurisdiction of this court by stating that the plaint contains ample averments in the plaint that the defendants are conducting their illegal activities of performing the PRANIC HEALING CLASSES in Delhi and therefore the cause of action has arisen within the territorial jurisdiction of this Court.

By making the aforementioned submissions, it has been prayed by Mr. Chadha that the injunction order passed on 14th September, 2011 in IA No.14617/2011 should be confirmed by this court and prayer made in the application be granted and applications filed by the defendants for vacation of interim orders are liable to be dismissed with cost.

16. Per contra, Mr. Sawhney, learned Senior counsel for defendant No.1 and Mr. Sandeep Sethi, learned Senior counsel appearing on behalf of defendant No.3 have made their respective submissions as per their own case on merit. The other counsel on behalf of rest of defendants have also made their submissions. Except the submissions of defendant No.1, the arguments of other defendants are common which can be outlined in the following manner:

A. Firstly, Mr. Sandeep Sethi, learned counsel for the Defendants have argued that the plaintiff has come before this court with unclean hands and have not disclosed the material facts before this Court in the suit and interim application at the time of passing of the ex-parte ad interim order dated 14th September, 2011. The said concealment of the material facts are enumerated as under:

a) That the suit bearing No. 4291/2010 titled as C. Sunderam v.

All India Yoga Vidya Pranic Healing Foundation Trust seeking injunction against the defendant No. 2 (Containing similar prayer as in the present suit) was filed by Mr. S.C. Sunderam (Trustee of the plaintiff No. 4) before District Court, Bangalore at page 2 of the documents filed by the defendant No. 3. It has been argued that the Plaintiffs did not get the interim order in the suit bearing No.4291/2010 before the District Court, Bangalore and thereafter filed the present suit by intentionally suppressing and concealing the said suit. It has been argued that the statement contained in para 73 of the plaint that there is no proceeding instituted similar to the aforesaid suit is false and is aimed at misleading this court.

B. Secondly, learned counsel for the defendants have argued that the plaintiffs have failed to comply with the provisions of Order 39 Rule 3 CPC as prescribed by the law. It has been argued that the perusal of the postal receipt affixed on the envelope addressed to them would reveal that the weight of the documents which were dispatched by the plaintiffs was 400 grams, it has been argued that the records of the suit and applications filed by the plaintiff was quite bulky and the same was not supplied to the defendants and thus the provisions of the Order 39 Rule 3 CPC has not been complied with which warrants the vacation of the interim orders passed by this court.

C. Thirdly, learned counsel for the defendants argued that the concept of Pranic Healing is the sequences of steps, concepts, principles, techniques of performing the ancient exercise of yoga is incapable of protection in the field of the Intellectual Property Rights as they form part of the public knowledge in the public domain and thus cannot form subject matter of the protection. It has been argued that the concept of Pranic Healing being a facet of Yoga forms part of the traditional knowledge of India and thus cannot be appropriated by anyone exclusively much less the plaintiff under the guise of the intellectual property rights.

D. Fourthly, learned counsel for the defendants argued that the plaintiffs did not inform the court as to what is the difference between the Pranic Healing and Modern Pranic Healing and the basis behind the said distinction. It has been argued that the plaintiffs mere saying may not be enough but the plaintiffs have to explain as to what constituted the Pranic Healing and how the Modern Pranic Healing is a significant departure from the ancient Pranic Healing. It is thus argued that the plaintiffs alleged work slack originality and therefore the same do not deserve the copyright protection.

E. Fifthly, it has been argued that by the learned counsel for the defendants that the plaintiffs have also not explained in the plaint or in the injunction application as to how the Pranic healing techniques, practices and concept amounts to a work of Choreography and thus the same has not been pleaded nor explained cannot give rise to the valid claim of copyright protection. As per the defendant's counsel, this court should reject the submission that the Pranic Healing Techniques are subject matter of the choreography and thus protected under the law of copyright.

F. Sixthly, learned counsel for the defendants argued once the plaintiffs do not have any exclusive right to use the Pranic Healing techniques in law, the grant or non grant of the license by the plaintiffs to the defendant No. 3 or any of the defendants is inconsequential. Thus, the defendants use of the common place Pranic Healing techniques cannot be prevented by the court when the plaintiffs do not have any legal right to restrain the defendants to use the Pranic Healing techniques.

G. Seventhly, learned counsel for the defendants argued that the Pranic Healing Techniques form part of the traditional knowledge of India and is also available in ancient and recent literature available in Public domain and thus cannot be protected by way of conferment of the exclusive right to the plaintiff.

H. Eighthly, learned counsel for the defendants argued that this court should disregard the additional points contended by the plaintiffs in the replication as the replication cannot alter the

entire nature of the case of the plaintiff. It has been argued that the disclosure of 13 points in the form of techniques allegedly invented by the Master should be disregarded as the same nowhere form part of the plaint. Additionally, it has been argued that the thirteen concepts are denied and disputed by the defendants as stated by the plaintiffs to be allegedly invented by the master.

I. Ninthly, learned counsel for the defendants argue that 13 techniques allegedly invented by the master have already been explained in several books which are available in the public domain for almost a century ago. The defendants have provided the list of the said books and publications in order to show that the plaintiffs Pranic Healing techniques lack originality which are enlisted in the following manner:

The thirteen concepts (sought to added as an after by the plaintiffs) do not form part of the pleadings contained in the plaint and the application seeking temporary injunction sought from this court, it is pertinent that the thirteen concepts claimed to have been founded by the Masters, have been set out, explained and discussed in the following books; hence it is erroneous to contend that the concepts were developed by the Master or are novel or unique to Master alone :

i. Pranic Psychotherapy as a concept of healing from emotional/psychological point of view : Reference is made to a book titled the Science of Psychic Healing by Yogi Rama Charaka, Yogi Publications Society, Chicago, Illinois (copyrighted in 1906). Chapter V to IX of the said book sets out the detailed concepts such as "Pranic Healing", "Pranic Breathing", "Longitudinal Passes" "Horizontal Passes" (sweeping), to effect healing from an emotional, psychological point of view by diagnosing the persons energy conditions by use of hands referred to as "laying on of hands".

Thus the concepts alleged to be developed by the Master are generic and in public domain since 1906 and it would be absurd for the plaintiffs to contend that the concepts set out in paragraph 3 of the reply are unique or that they have been developed by the Master, as alleged or at all. Reference is also made to a book titled Hands of Light USA written by Brennan, Barnara Ann (1988): Bantam Books wherein, the said book set out the concept relating to scanning and healing human aura (energy field) and later details the concepts relating to psychological function of the seven major chakra from pages 244-245.

ii. Concept of sensitizing the hand and how to feel energy : Reference is made to book titled Hands-on-Spiritual Healing written by Bradford, Michael (First Indian edition 1998, Copyright 1993) Health and Harmony, a division of B. Jain Publishers (P) Ltd., New Delhi. The technique of activation of hand and sensing energy field through hands is also known and practiced in Reiki, and this concept has been set out in book titled The Joy of Reiki by Nalin Narula and Renoo Narula : Hind Pocket Books (copyright 1996) which explains concepts relating to activation of hand and sensing of energy using hand. Concepts relating to sensitizing of hand have also been set out in book titled Hands of Light USA written by Brennan, Barnara Ann (1988) : Bantam

Books.

iii. Concept of scanning to make diagnosis of a persons energy condition :

The said concept is set out at pages 63-65 of the book titled Hands-on- Spiritual Healing. Written by Bradford, Michael (first Indian edition 1998, Copyright 1993) Health and Harmony, a division of B. Jain Publishers (P) Ltd., New Delhi and at pages 165-166 of book titled Hands of Light. USA written by Brennan, Barnara Ann (1988) : Bantam Books.

iv. Concept of congestion and Pranic Depletion : The concept of "local congestion", "congestion of magnetism", "congested or diseased etheric matter" has been explained at pages 75 to 77 of the book titled The Etheric Double : the Health Aura. Wheaton, IL : written by Powell, A.E. (Sixth Printing 1996, copyright 1925) Theosophical Publishing House. The concept of energy blockage and depletion has been set out at pages 101 to 103 of book titled Hands of Light. USA written by Brennan, Barnara Ann (1988) : Bantam Books.

v.&vi. Specific technique for how clean or removal dirty energy, general cleansing and localize cleansing; concept of how much to energize, hand chakra technique of energizing; The concept of cleansing dirty energy, flicking a hand, disposal of dirty energy into a basis of water, washing hands etc has been set out at page 76 of book titled The Etheric Double : the health aura. Another technique of using one's hand to pull the blocked energy out of the patient's field is detailed at page 217 of book titled Hands of Light.

vii & viii. Concept of stabilizing, concept of cutting or releasing : The book titled book titled Hands-on Spiritual Healing at pages 55, 148-149 sets out detail energization with hand, when to stop energizing. The book titled Etheric Double, at page 74 explains the concept of energizing. Concept of cutting and releasing is very commonly known in Reiki. The book titled Psychic Self-Defence by Dion Fortune explains the concept of cutting and releasing energy. Reference is made to a book titled The Psychic Healing Book, by Amy Wallace and Bill Henkin, copyright in the year 1978 specifically details the concepts of stabilizing, cutting (pulling chords) and releasing energy.

ix & xi. Concept of different color pranas, their properties and how to produce them; Concept of how to use color pranas in various specific combinations to heal various ailments; Specific advanced healing techniques using colors such as cleansing the blood technique, cleaning the internal organ technique, Master healing technique : The book titled book titled Hands-on Spiritual Healing at page 142 sets out detail relating to healing with color prana. Similar concept has also been set out in the book titled Hands of Light at page 239 and 240. It is submitted that cleansing of blood technique and internal organs, Master Technique have been known to ancient Indian

yoga practitioners and finds its basis in medical science wherein blood is purified in the liver and lungs, hence ancient yoga practitioner mastered the art of breathing exercise, which purified the blood and thereafter healed internal organs. Such breathing and other exercises are contained in pranayam i.e. Yoga. Hence cleansing of blood technique, cleansing of internal organ technique, Master healing technique has been documented in various books and has been practised and popularized by masters such as Swami Ramdev, B.K.S. Iyengar etc and it is erroneous for plaintiffs to contend that the same are only found in the books authored by the Master. Reference is made to the book titled *Your hands can Heal You* by Master Stephen Co. And Eric B. Robins, published by Free Press, New York 2002, the said book contains detailed concepts which are alleged to be developed by the Master and found in works authored by him.

Xii to xiii. Concept of negative elementals, how negative thoughts forms attach to chakras and how they affect human behaviour; concept of how to remove negative thought forms and elementals. The concept of astral entities, negative elementals and its relation with thought formation, chakras in human being and how they affect human behaviour, concepts relating to removal of negative elementals and through forms are well documented in the following books namely *The Astral Body and Other Astral Phenomena* published by A.E. (Sixth Printing 1996, Copyright 1927) Wheaton, IL, Theosophical Publishing House (at pages 43-65, 136, 175-187, 188-191) and in the book titled *Psychic Self-Defence* by Dion Fortune and the book titled *the Etheric Double*. Relevant extracts of the aforementioned books have been filed with rejoinder filed by the defendant No.3 (in application seeking vacation of stay).

At the cost of repletion, it is reiterated that Pranic Healing and techniques related thereto, are in public domain and no exclusivity can be claimed in respect of such techniques, sequences, steps or form, by the plaintiffs.

J. Tenthly, learned counsel for the defendants argued that the plaintiffs claim in relation to the exclusivity of Pranic Healing lacks originality as the said concept finds mention in the following books :

1. Brennan, Barnara Ann (*hands of Light*), (1988)

2. The plaintiffs cannot claim exclusivity over Pranic Healing and its techniques since reference to Pranic Healing was found in works of Yogi Ramacharaka as early as the year 1906. Other authors namely :

Brennan, Barnara Ann (*Hands of Light*) (1988),

Bradford Micheal (*Hands-on Spiritual Healing*) (1993),

Nalin Narula and Renoo Narula (*The Joys of Reiki*) (1996),

Powell, A.E. (The Etheric Double : The Health Aura) (1998),

Dion Fortune (Psychic Self Defense) (1988),

A.E. (The Astral Body and Other Astral Phenomenon) (1927),

Amy Wallace (The Physic Healing Book) (1988),

Master Stephen Co (Your Hands can Heal) (2002)

have extensively written about Pranic Healing and its techniques and in some cases the writings are prior to the work of the Master, hence it is specious for plaintiffs to contend that they have exclusive or monopoly rights over Pranic Healing or "Modern Pranic Healing". It is denied that defendant No.3 can be restrained from practicing or propagating Pranic Healing, whilst relying on books, material, CD/DVD or information available in public domain, wherein such use is not commercial and does not violate any IPR rights vested with the owner of such work.

K. Eleventhly, learned counsel for the defendants argue that the plaintiffs cannot claim any exclusive monopoly over the expression "PRANIC HEALING" or "PRANIC" as the said form the name of the technique which is used to describe the exercises, methods which form part of the said healing techniques.

PRANIC HEALING is a part of the traditional knowledge of India has been used by several gurus or persons who impart training relating Pranic healing and thus the said expression PRANIC HEALING is incapable of distinguishing the services of the plaintiffs from that of other persons who are rendering similar services. Therefore, the word PRANIC HEALING as registered trade mark is not a valid trade mark within the meaning of the Trade Marks Act as the same lacks distinctive character and is a generic expression.

L. Twelvethly, it has been argued by the learned counsel for the defendants that the Pranic Healing techniques do not form subject matter of the copyright protection and the same are not dramatic work as stated by the plaintiff. It has been argued that the copyrights do not protect methods or techniques or process and thus the plaintiff cannot claim such protection under the guise of the copyright.

M. Thirteenthly, learned counsel for the defendants have placed reliance on the clarification issued by US copyright office on 22nd June, 2012 wherein the copyright office has stated that the compilation of exercises or selection or arrangement of yoga poses will be refused registration. This has been relied upon to contend that the plaintiffs claim that there will be copyright in the yoga poses in the form of compilation has been expressly negated by US Copyright Office.

N. Fourteenthly, it has been argued by the learned counsel for the defendant no. 3 even assuming that there exists valid copyright in the Pranic Healing in favour of the plaintiffs, the defendant No. 3 acted under the bonafide belief that the defendant No. 1 and defendant No. 2 had good title being the legally wedded wife of the Master and assignee respectively. Defendant No. 3 had never communicated with the plaintiffs and was never informed about the termination of the license and thus the defendant No. 3 cannot be said to be licensee acting under the permission of the plaintiff.

O. Fifteenthly, learned counsel for the defendants have argued that there is no valid deed of assignment in favour of the plaintiffs entitling them to sue for the infringement of copyright. It has been argued that the wife of Master namely Ms. Mary Jane Choachuy has not executed the assignment deed along with the plaintiff No. 7 to 10 in favour of the plaintiff, thus the deed of assignment cannot be said to be valid one. It has also been stated that the assignment is inadequately stamped and thus is not in accordance with law.

P. Sixteenthly, it has been argued by the learned counsel for the defendant No. 3, that the defendant No. 3 is an independent and autonomous public charitable trust and is not an agent or affiliate or servant or person who is claiming directly or indirectly through defendant No. 1 and defendant No. 2, thus the injunction order dated 14th September, 2011 should be clarified against the defendant No. 3.

17. Some additional submissions have been made by the learned counsel for the defendant No. 1 and defendant No. 2 which have been summarized in the following manner:

Learned counsel for the defendant No. 1 has argued that teaching of Pranic Healing has been permitted expressly by Master Choa Kok Sui vide a written authorization letter dated 2nd November, 2004 and the said letter is valid uptill 2025, thus, the plaintiffs being the descendants of the master deriving title from him cannot withdraw the consent and permission which has been given by the master himself and the said permission was never withdrawn or cancelled in any manner by the master during his life time. Thus, the defendant No. 1 is entitle to carry on its activities of teaching Pranic healing which it has been carrying on for the last 19 years from now.

Learned counsel for the defendant No. 1 has argued that the order dated 14th November, 2011 was passed without informing the court that the defendant No. 1 is the concurrent user of Pranic Healing as a teaching technique and the defendant No. 1 is the transcriber and editor of the various published books (more than 9) of the master and therefore is the joint author of the said books. The aspects have been concealed from this court while seeking interim orders. The defendant No. 1 has named the said books which are enlisted below:

a. Achieve the impossible (The Golden Lotus Sutra on Spiritual Business Management) b. Beyond the Mind (The Golden Lotus Sutra on Spiritual Business Management) c. Compassionate Objectivity (The Golden Lotus Sutra on Character

Building) d. Creative Transformation (The Golden Lotus Sutra on Spiritual Practice) e. Experience Being (The Golden Lotus Sutra on Spiritual Practice) f. Inspired Action (The Golden Lotus Sutra on Life) g. Possible Miracle (The Golden Lotus Sutra on Pranic Healing) h. The Origin of Modern Pranic Healing and Arhatic Yoga i. The existence of Gold is Self Evident.

As per the defendant No. 1, due to the said co-authorship, the defendant No.1 has distinct and independent title to practice Pranic Healing techniques.

Learned counsel for the defendant No. 1 has also argued that the Pranic Healing techniques, practices are very ancient not only in India but in other parts of the world as well and the same have been in public domain for centuries. It has argued that the books of Yogi Ramacharaka and Swami Sivananda on Pranic Healing clearly predate the works of the Master and thus the plaintiffs cannot claim any exclusive monopoly rights on the same.

Learned counsel for the defendant No.1 has argued that the plaintiffs attempt to register the mark Pranic Healing has been rejected in Australia on the similar grounds that the combination of the two common words having significance in ancient Hinduism lack distinctive character and cannot attain the trade mark significance. As per the learned counsel for the defendant, this court should also accept the same and proceed to hold that the expression Pranic Healing is a generic one.

Learned counsel for the defendant No.1 has argued that there is lot of evidence available on record to suggest that Pranic Healing is very ancient in nature and has been part of the Yoga Vidya system in ancient India. It has been argued that Master himself has admitted and acknowledged in all books published by him that he has learnt the Pranic Healing techniques from his satguru Lord Mahaguruji Mei Lind and his disciples especially Chaham Jing Mei Ling and other spiritual teachers. Thus, the plaintiffs contention that the master is the inventor of Pranic Healing has no basis in any manner whatsoever. Learned counsel for the Defendant no. 1 has also argued that the master intended to spread the Pranic Healing techniques worldwide and for the same reason granted the authorization to the defendant No.1 to impart the said techniques on worldwide basis. It has been argued that once the intention of the master was to spread the said techniques and the defendant No. 1 was openly carrying on the said teachings within the knowledge of the plaintiffs for 14 years, the plaintiffs are now estopped from claiming any relief of injunction against the defendant No.1. It has been argued that the plaintiff has not properly disclosed this fact before this court while asking for the interim orders from this court.

Learned counsel for the defendant No. 1 has taken objection that the names of the legal heirs have not been substituted before the trade mark office in relation to the trade mark granted to the master and thus the plaintiffs have no locus standi to bring

any action before this court and also are not entitled to any relief in any manner whatsoever.

All other submissions of the defendant No.1 are common to the ones stated above.

18. Learned counsel for the defendant No.2, 11 and 14 have also raised the objections that this court lacks territorial jurisdiction to entertain and try the present suit against the said defendants. It has been argued that the offices of the said defendants are situated outside the jurisdiction of this court. It has been argued that the answering defendants are not operating through the defendant No.3 and they are independent from that of the defendant No.3. Thus, this court lacks territorial jurisdiction to entertain and try the suit against the answering defendants.

Learned counsel for the defendant No.2 argued that the defendant No. 2 is the public charitable trust which has been formed by the master and the articles of the trust deed make it clear that the trust has the right to impart the pranic healing techniques without any permission or authorization from the plaintiff. It has been argued that the master himself had the intention to spread the teachings of Pranic Healing worldwide and that's the reason the defendant No. 2 trust was created. The defendant No.2 has the independent right to use and using for dissemination of Pranic Healing techniques without any permission from the plaintiffs including the legal heirs of Master.

Learned counsel for the defendant No. 2 argued that the defendant No.2 as a trust was formed in the year 1996 and the deed of declaration of the trust of the defendant No. 2 had undergone the amendments from time to time during the life time of the master. It has been argued that on 29th May, 2002, the authors divested themselves of all the proprietary rights in the properties vested in defendant No. 2 on the date of the said amendment. The supplementary deed was prepared pursuant to the amendment which contained the following clause :

"(15) The authors declare that they have completely and finally divested themselves of all proprietary rights in the properties and assets of the Trust and also that all the income accruing or arising there from has been and shall be utilized for the benefit of the Trust and none of the donors or their legal heirs, executors, administrators and assignees shall ever have or claim any proprietary rights therein".

By placing the reliance upon the said clause in the deed of trust, it has been argued that the said amendments in the deed of the trust clearly go on to show that the plaintiffs being the legal heirs are estopped from claiming any right against the properties of the trust which is defendant No.2 which include the imparting of the Pranic Healing techniques. The plaintiffs objection to carrying out of the object of functioning of the trust is thus unfounded and suffers from waiver as the plaintiffs predecessor master has given up any right to object to such use of the techniques by the defendant No.2.

Learned counsel for the defendant No.2 has argued that the master was clear in his mind while distribution of the rights in relation to charitable purposes and commercial purposes. It has been argued that the imparting of the Pranic Healing techniques, philosophym esoteric science and

related activities were never intended to be commercialized by the master and thus the same was vested with the defendant No.2 as public charitable body. Thus, the plaintiffs objection to the defendant's use of the Pranic Healing techniques is baseless as the plaintiffs are themselves have no right to use the Pranic Healing techniques exclusively.

Learned counsel for the defendant No. 2 has argued that soon after the death of the master, the plaintiffs attempted to encash on the goodwill of the master by commercializing the Pranic Healing movements in India and undermining the role of the defendant No. 2 in relation to the said activities. The defendant No. 2 narrates the entire events after the death of the master which as per the defendant No.2 suggest that the plaintiffs started opening private limited companies in India in order to capture the market and commercialize Pranic Healing and claiming itself to be owner of the intellectual property rights in the same when the master had created the defendant No. 2 trust from his own hands in order to further the object of imparting the Pranic Healing techniques on charitable basis. Thus, the plaintiffs have concealed all this from the court and is not entitled to any relief of the interim injunction against the defendant No.2.

Learned counsel for the defendant No. 2 has argued that there cannot be any monopoly over the term Pranic Healing as the said term has ancient origin which can be traced in Indian yoga. As per the learned counsel for the defendant No.2, the expression Pranic Healing is Prana Vidya which is connected with Pranayama and is commonly found in literature relating to Yoga. Accordingly, the said word Pranic Healing cannot be monopolized by the plaintiffs exclusively.

The above were submissions of defendant Nos. 1, 2, 3 advanced by them separately in the form of oral arguments and written submissions provided after the conclusion of the hearing in the matter. By raising the aforementioned submissions, it has been prayed by the defendants that for different reasons stated in the submissions, this court should allow these applications filed under Order 39 Rule 4 CPC and proceed to vacate the interim order dated 14th September, 2011 passed by this court.

19. I have gone through the plaint, written statement, replication and the documents filed along with the same. I have also given my careful consideration to the submissions advanced by the learned counsel for the parties as well as in the written submissions. I shall now proceed to deal with the various aspects which fall for consideration in the present case as raised by the parties and shall answer them point wise. Territorial Jurisdiction

20. As the learned counsel for the defendant No. 2 has raised the issue of lack of territorial jurisdiction of this court to entertain and try the present suit, I shall first deal with the said objection.

Learned counsel for the defendant No. 2 has vehemently raised the objection as to lack of territorial jurisdiction of this court by contending that the defendant No. 2 is not associated with defendant No. 3 or for that matter any other defendants and is an independent trust functioning in the territory of Bangalore and thus this court has no territorial jurisdiction to entertain and try the suit proceedings qua defendant Nos.2, 11 and 14.

21. It is trite law that for the purpose of testing the jurisdiction of the court in the civil suit on the basis of the objection which has been taken on demurer, the court should see the averments made in the plaint and the same must be assumed to be correct.

The reference is invited to the Supreme Court dictum of *Expfar S.A & Anr v. Eupharma Laboratories Ltd.*, (2004) 3 SCC 688 wherein Hon'ble Justice Ruma Pal (as her lordship then was) speaking for the apex court observed as under:

"Besides when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts as pleaded by the initiator of the impugned proceedings are true. The submission in order to succeed must show that given those facts the Court does not have jurisdiction as a matter of law. In rejecting a plaint on the ground of jurisdiction, the Division Bench should have taken the allegations contained in the plaint to be correct. However, the Division Bench examined the written statement filed by the respondents in which it was claimed that the goods were not at all sold within the territorial jurisdiction of the Delhi High Court and also that the respondent No. 2 did not carry on business within the jurisdiction of the Delhi High Court. Having recorded the appellants' objections to these factual statements by the respondents, surprisingly the Division Bench said:

"Admittedly the goods are being traded outside India and not being traded in India and as such there is no question of infringement of trademark within the territorial limits of any Court in India what to of Delhi".

Apart from the ex-facie contradiction of this statement in the judgment itself, the Division Bench erred in going beyond the statements contained in the plaint." (Emphasis Supplied). From the bare reading of the afore quoted observations of the apex court in *Expfar* (supra), there seems to be settled position in the law that the averments made in the plaint have to be seen as correct while testing the jurisdiction of the court and the court should proceed to return the plaint only when the court does not have the jurisdiction as a matter of the law and not when it requires an enquiry into facts beyond to what has been contained in the plaint.

22. It is equally well settled that the cause of action required for attracting the jurisdiction of the civil court is also the bundle of material facts which are required to be seen from the careful and meaningful reading of the plaint as whole and not merely by considering a singular para in the plaint. Likewise, for the purposes of testing whether the court lacks territorial jurisdiction to entertain and try the suit for the purposes of applicability of Order 7 Rule 10 and 11 CPC, the cause of action for the purposes of jurisdiction has to be culled out from the reading of the plaint in its entirety and not in isolation.

23. In *Sopan Sukhdeo Sable & Ors vs. Assistant Charity Commissioner*, it has been observed by the Supreme Court thus:

There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.(Emphasis Supplied)

24. The combined effect of the applicability of principles that the averments made in the plaint are to be assumed as correct for the purposes of deciding the application seeking rejection or return of the plaint under Order 7 Rule 10 and 11 CPC and the plaint has to be read as whole for the purposes of the culling out of the cause of action for testing the plaint on the thresholds of Order 7 Rule 10 and 11 CPC, is that given the allegations contained in the plaint as correct in the entirety, if ex facie the court lacks territorial jurisdiction to entertain and try the suit proceedings as a matter of law without enquiry into any further disputed facts, then court must reject or return the plaint for the presentation before the court of appropriate jurisdiction. If on the other hand, if the court finds that upon meaningful and fair reading of the plaint, there exists a doubtful case which does not make the plaint returnable on the mere applicability of law but also enables the court to indulge in to the disputed question of facts and preference of one sets of facts over the other beyond the purview of the allegations in the plaint, then the same very question of the lack of territorial jurisdiction becomes a mixed question of fact and law and is necessarily required to be postponed upto trial.

25. Let me now read the allegations made in the plaint and evaluate as to whether the given allegations contained in the plaint, it can be said that this court lacks territorial jurisdiction to entertain and try the present suit qua defendant Nos.2, 11 and 14 or not.

26. The plaint contains the allegations relating to defendant No.2 in paragraph 12 and 13 which reads as under:

"12. Defendant No.2 is a public charitable trust, which was established and registered by the Master on 30 th January, 1996 in the name of All India Pranic Healing Foundation Trust ("AIPHFT"). The defendant No.2 was established to collect and hold royalties on behalf of the plaintiff No.3 from all the state-level foundations opened under the affiliation of the plaintiff No.3. The Master was the founder chairman of the defendant No.2. The name of AIPHFT was changed to All India Yoga Vidya Pranic Healing Foundation Trust ("AIYVPHFT") on 6th August, 2003. The defendant No.1 and defendant No.2 by themselves and through their affiliate foundations have been continuously violating the intellectual property rights of the Master that are now the property of the plaintiffs.

13. Defendant Nos.3 to 13 are the various state level organizations which were established under authority of the Master. However, defendant No.1 and defendant No.2 have caused the above stated foundations to disassociate itself from the plaintiffs and now they operate exclusively under the control of the defendant No.2 without due authority from the plaintiffs herein. Defendant No.14 is a foundation which has been established and is under the control of defendant No.1 and/or defendant No.2 and is spreading Pranic Healing without any authority of the plaintiffs. It is submitted that the aforementioned defendant organization/foundations/trusts have been conducting Master's courses on Pranic Healing and are using the copyright material of the Master as well as the trademarks registered in the name of the Master or the plaintiff No.1, on a regular basis, without having any legal authority to do so. These intellectual property rights have developed upon the plaintiff Nos.7 to 10 or assigned to plaintiff No.1. It is submitted that at present the plaintiffs are only aware of the said defendant institutions which are affiliated to defendant No.1 or 2, however, there may exist more such institutions that have been established by the defendants without any authority from the plaintiffs. The plaintiffs crave leave of the Hon'ble Court to add such institutions as co-defendants as and when the plaintiffs become aware of their existence."

27. Thereafter, para 26 enlists several organizations which are teaching Pranic Healing and techniques which are authorized by the plaintiff.

28. The paragraph 27 of the plaint contains another allegation that the other organizations which are carrying on Pranic Healing are not authorized to carry on the courses of Master or to use any other property which is owned now by the plaintiffs. The said para 27 reads as under:

"27. It is submitted that other organizations that are functioning either under defendant No.1 or defendant No.2 or independently are not authorized to carry on the courses of the Master or to use any other property, which is owned now by the plaintiffs."

29. In paragraph 55, there are allegations contained in the plaint that the defendant No. 2 has joined hands with the defendant No. 1 and is operating Pranic Healing Classes in collusion with each other. The defendant No. 1 and defendant No. 2 have illegally established their own independent state level foundations in various cities of the country without any due authority from the plaintiff No. 1 and/or the plaintiff no. 3. The said para 55 reads as under:

"55. It is pertinent to mention that initially defendant No.2 itself was against the unauthorized and illegal action of defendant No.1 of conducting the Kriyashakti Course in August 2009 in violation of licensing agreements, i.e. by charging a lower course fee than that authorized. However, on account of purported extension of deeds of assignment executed between Master and defendant No.2, now defendant No.2 has joined hands with the defendant No.1 and is operating Pranic Healing Classes in collusion with each other without any due authority from the plaintiffs

hereinabove. Defendant No.1 and defendant No.2 have illegally established their own independent state- level foundations in various cities of the country without any due authority from the plaintiff No.1 and/or the plaintiff No.3. The defendant Nos.1 and 2 alongwith their independent state- level foundations, being defendant Nos.3 to 14, are spreading teachings of the Pranic Healing and conducting courses, seminar and conferences without proper license from the plaintiff No.1 and/or plaintiff No.3."

30. In para 58, it has been averred that despite the letter dated 23rd January, 2010 issued by the plaintiff No. 2, the defendant No. 2 is continuing to function independently and imparting so called teachings of Pranic Healing. The said paragraph 58 reads as under:

"58. Despite the letter dated 23rd January, 2010 being issued by the plaintiff No.2, the defendant No.2 is continuing to function independently and imparting so called teachings of Pranic Healing, conducting seminar and classes without proper licenses from the plaintiff institutions. It is submitted that the defendant No.2 has also refused to pay royalties from the classes, sales of books, cassettes and CDs to the plaintiff institutions and the plaintiffs are claiming the same under this suit as part of the damages."

31. In para 59, again there is an allegation that the defendant Nos. 1 and 2 through the various state foundations affiliated to them - defendant Nos. 3 to 14 are regularly conducting the courses, issuing certificates, selling material without the due authority from the plaintiffs, in violation of licensing agreements. Para 59 reads as under:

"59. The defendants No.1 and 2, through the various State Foundations affiliated to them i.e. defendant Nos.3-14 are regularly conducting courses, issuing certificates and selling material (books, audio, video) without due authority from the plaintiffs, in violation of licensing agreements and deeds of assignment which have been terminated and which have expired by efflux of time respectively."

32. Thereafter in Para 69 of the plaint contains the cause of action paragraph containing the allegations that the defendant No.1 and defendant No.2 are the cause of disassociation of the defendant No. 3 to 14 with the plaintiffs. The said para 69 reads as under:

"69. The cause of action in the present suit first arose when the defendant No.1, without due permission from the plaintiffs, conducted a Kriyashakti class in Chennai on 23rd August, 2009 through defendant No.8 herein. The cause of action again arose when the defendant No.1, in violation of the licensing agreements, conducted teacher's training course to train instructors to teach Arhatic Prep in Chennai from 11 th - 13th December, 2009 organized by defendant No.2 without any authority to do so. The cause of action arose further when the plaintiff No.2 issued a letter dated 15 th December, 2009 to all trustees of the state level Pranic Healing Foundations of India clarifying that they have not authorised defendant No.1 or any institute under the control of defendant No.1 to run such courses. The cause of action further arose

when the defendant No.2 issued a letter dated 16th January, 2010 announcing to all the state level foundations that it works independently in India even though the same was established by the Master and was affiliated to the plaintiff No.3. The cause of action again arose when the defendant No.1 as well as defendant No.2 caused defendant No.3 to 14 to disassociate themselves and the same cause of action is still continuing. The cause of action further arose when defendant No.14 was established. The cause of action also arose when the plaintiff No.1 vide its letter dated 23rd January, 2010 withdrew all its support to the defendant No.2. The cause of action also continues because the defendant No.2 are issuing certificates without mentioning the words "affiliated to World Pranic Healing Foundation, Manila, Philippines". The cause of action arose yet again when the plaintiff No.2 issued Termination Notice date 17th May, 2010 to the defendant No.1 cancelling all the licensing agreements. The cause of action further arose when all reconciliation efforts by the plaintiffs with the defendants failed. The cause of action is a continuing one as the defendant No.1 and the defendant No.2 are continuing to conduct Pranic Healing Classes in Delhi and all over the country without the due authority of the plaintiffs. Further, they are on a regular basis conducting seminars, issuing and selling books and CD's and carrying out other such activities without authority from the plaintiffs. Cause of action will continue to arise till such time that the defendants are not restrained from carrying on their impugned activities."

33. Again in para 70 relating to jurisdiction, there is an averment that this court has jurisdiction to entertain the present suit as the defendant No. 2 through defendant No. 3 is carrying on its activities which have been challenged in the present suit. The said paragraph 70 of the plaint reads as under:

"70. This Hon'ble Court has the jurisdiction to entertain and try the present suit as the defendant No.1 is habitually residing at the last known address of the defendant No.1 within the territorial jurisdiction of this Hon'ble Court. This Hon'ble Court also has jurisdiction on the grounds that the cause of action for filing the present suit has arisen, and that the defendant No.2 through defendant No.3 is carrying on its activities which have been challenged in the present suit within the territorial jurisdiction of this Hon'ble Court without any authority from the plaintiffs herein."

34. On the combined reading of the aforementioned allegations in the form of paragraphs contained in the plaint, it is clear that the plaintiffs have made several allegations against the defendant No.2 and have clearly stated that the defendant No. 2 has illegally caused the defendant Nos. 3 to 13 to be disassociated with the plaintiffs and now the said defendant Nos. 3 to 13 are clearly operating under the control of the defendant No.2. It has also been alleged that the defendant No.2 has joined hands with the defendant No.1 by illegally carrying such offending activities of imparting the Pranic Healing techniques by themselves and by authorizing others to impart them through the state level organization.

35. The said allegations contained in aforementioned paras especially in para 13 relating to the role of the defendant No.2 have been disputed by the defendants in their written statements by taking different stands. The Defendant No.1 do not comment upon the allegations relating to role of the defendant No.2 with that defendant Nos.3 to 14 in reply to the para 13 in its written statement. The defendant No.1 also remained silent with its joining hands with the defendant No.2 while replying the paragraph 55 of the plaint in its written statement. The defendant No.2 clearly disputes the allegations that it has any connection with defendant no. 1 as well as the defendant No.3 and other entities and stating to be operating independently of the said organizations. Likewise, defendant No.11 has taken a stand while replying to para 13 of the plaint that the defendant No.2 was established with the blessings and approval of the master directly and as such one of the functions of the defendant No.2 is to help establishing autonomous foundations in various states of India and thus not completely ruling out of the possibility of involvement of the defendant No. 2 in the various state level foundation signalling towards consistency in the allegations in the plaint. Likewise the other defendants also have taken different stands in the written statement.

36. Under these circumstances, it is clear that there are allegations in the plaint as to the defendant No.2's participation and involvement in carrying out the activities by the other defendants which have been disputed by the defendant No.2 and contested by the other defendants by taking different stands. Therefore, the contention of the defendant No.2 it is an independent trust having no relation with the other defendants including defendant Nos.3 to 13 is merely the defence raised by the said defendant No.2 and is thus a disputed question of fact.

37. If at this juncture, the plea that the defendant No. 2 is an independent trust cannot be believed as the disputed question of fact, accordingly, the assertions made in the cause of action and jurisdiction paragraph that the defendant No.2 is carrying on their activities through other defendants in Delhi can also as a matter of necessary consequence become a disputed question of fact dependent upon the conclusive finding as to whether defendant No.2 is completely an independent trust having no role to play in the activities carried out by the other defendants who are also carrying business within the territorial jurisdiction of this court. Therefore, the objection raised by the defendant on the lack of territorial jurisdiction is a mixed question of fact and law in the instant case.

38. The different kinds of eventualities occurring when the court is faced with the issue of jurisdiction for adjudication and the appropriate recourse to be adopted has been finely laid down by the learned Division Bench of this court in the case of State Trading Corporation of India Limited v. Government of the Peoples Republic of Bangladesh (DB), 63 (1996) DLT 971, wherein Hon'ble Justice R.C. Lahoti (as his lordship then was) observed thus:

"A court seized of a suit and a prayer for the grant of ad interim relief may be faced with a doubt or challenge as to the availability of jurisdiction to try the suit in a variety of circumstances. The court has to act as under :- (a) In the case of inherent lack of jurisdiction apparent on the face of the record, court cannot exercise jurisdiction over the suit so as to pass any interlocutory order or grant interim relief; (b) If it appears from a bare reading of the plaint that the court does not have

jurisdiction to try the suit, the plaint itself may be returned for presentation to a proper court under Order 7 Rule 10 CPC; (c) If the suit appears to be barred by any law, the plaint may be rejected under Order 7 Rule 11 Civil Procedure Code ; (d) It may be a disputed question of fact or law or both- whether court has jurisdiction over the suit or not. Such a question if it be a pure question of law it can be decided on hearing the parties on a preliminary issue. Such a challenge to the jurisdiction of the court to entertain the -suit being laid by the defendant as a pure question of law, it is incumbent upon the Judge to determine that question as a preliminary issue before making absolute the rule issued earlier; (e) If the determination of jurisdiction of the Court is a question of fact or mixed question of fact and law requiring evidence to be adduced before recording a finding, the determination of the question may in appropriate, cases be liable to be postponed till after the determination of all or several other issues if the evidence to be adduced by the parties may be common on the issue of jurisdiction and such other issues." (Emphasis Supplied)

39. Applying the said exposition of law in the instant case, it can be seen that, on meaningful reading of the averments made in the plaint in relation to the defendant No.2's role in controlling the affairs and activities of the other defendant Nos.3 to 13, it cannot be said that ex facie, it is borne out from the plaint that the defendant No. 2 is a trust operating independently and having no control over the other defendants. Thus, the defence raised by the defendant No.2 that it has no role to play or control over the acts of the other defendants is a disputed question of fact. Thus, this court cannot proceed to hold that on mere reading of the plaint, this court lacks the territorial jurisdiction to try the suit against the defendant No. 2 as a matter of law. Rather, this court has to first arrive at the finding on the disputed question of fact that the defendant No.2 is independently operating and have no control over the acts of the other defendants which is fact finding enquiry and then proceed to evaluate such facts by applying law.

40. Therefore, the issue of territorial jurisdiction in the instant case as urged by the defendant No.2 is not a pure question of law which is apparent from the mere reading of the plaint but is a mixed question of fact and law and is thus necessarily required to be deferred for trial as the said question requires consideration and evaluation of the defence of the defendants and also the applicability of law thereon. However, it is made clear that the objection raised on the territorial jurisdiction would be considered at the time of final hearing of the suit and after framing of issues. I.A. No.20144/2011 filed by defendant No.2 and I.A. No.15808/2012 filed by defendant No.14 are disposed off.

CONCEALMENT AND SUPPRESSION OF FACTS

41. I shall now proceed to discuss the ground of concealment and suppression of material facts which has been raised by the Defendants in order to seek the vacation of the interim order dated 14th September, 2011 passed by this court.

42. Learned counsel for the defendants have argued that the plaintiff has come before this court with unclean hand and have not disclosed the material facts before this Court in the suit and interim application at the time of passing of the ex-parte ad interim order dated 14th September, 2011. The

said concealment of the material facts as per the defendants is that the suit bearing No. 4291/2010 titled as C. Sunderam v. All India Yoga Vidya Pranic Healing Foundation Trust seeking injunction against the defendant No.2 (Containing similar prayer as in the present suit) was filed by Mr. S.C. Sunderam (Trustee of the plaintiff No. 4) before District Court, Bangalore at page 2 of the documents filed by the defendant No.3.

43. It has been argued that the Plaintiffs did not get the interim order in the suit bearing No.4291/2010 before the District Court, Bangalore and thereafter filed the present suit by intentionally suppressing and concealing the said suit. It has been argued that the statement contained in para 73 of the plaint that there is no proceeding instituted similar to the aforesaid suit is false and is aimed at misleading this court.

44. As per the defendants, the suit against the defendant No.2 on the basis of similar prayers was pending in Bangalore Civil court in which the court did not pass any interim order and thus the filing of the present suit which in effect leads to similar relief without disclosing the pendency of the previous suit has been deliberately done in order to seek the interim orders from this court and thus this court should vacate the interim order on the grounds of concealment of the material facts from this court.

45. I have gone through the plaint filed by Mr. C. S. Sunderam against the defendant No. 2 before Bangalore Civil Court . The said suit has averments in the plaint as to the functioning of the defendant No. 2 trust and also that the activities of teaching Pranic Healing Techniques by defendant No. 2's trust. The plaint also contends that the despite the withdrawal of the support from the institute for Inner Studies Inc and also from World Pranic Healing Foundation Inc, the defendant trust is actively organizing, conducting and providing the training programs based on the concepts devised by Grand Master.

46. It has been urged in the plaint filed before the Bangalore court that the Plaintiff Mr. Sundaram in the said case as an author of the defendant's trust and follower of Grand Master is aggrieved by the actions and illegal activities of the defendant trust/defendant No.2 in publishing the books which is contrary to objects of Institute of Inner Studies Inc. and World Pranic Healing Inc and in advertising on the website regarding holding of several courses devised by the master without holding a valid license as opposed to the objective for which it was created.

The cause of action para of the said plaint provides that the defendant trust by functioning independently and is continuing to act independently as opposed to the purpose for which it was created is violating the rights of the plaintiff. The prayer clause seeks a prayer of injunction restraining the defendant trust/defendant No.2 in the instant case from functioning independently in India as opposed to the original purposes for which it was created.

47. The defendant No. 2 in the instant case seeks to derive the strength from the prayers made by Mr. Sundaram in the said suit pending before the Bangalore court wherein the plaintiff seeks to restrain the defendant No.2's trust from independently functioning in India which include the cause of action relating to the carrying on Pranic Healing activities in India by the defendant No.2 as an

independent body. As per the defendants, the plaintiff ought to have disclosed the present suit before this court while seeking interim orders from this court and the non grant of the interim relief by the Bangalore City Civil Court as the same could have material bearing for the purposes of grant or non grant of interim relief by this Court at the ex-parte ad interim stage. It has been further argued that Mr. Sunderam is the trustee of the plaintiff No.4 on the date of filing of the suit in City Civil Court in Bangalore and therefore, the said concealment of the fact in the suit is deliberate one and has been made with a view to seek advantage over the defendant No.2 by seeking interim relief.

48. On the other hand, the plaintiffs respond to the said ground of concealment by contending that the nature of the civil suit pending before Bangalore City Civil Court is altogether different which has been filed by one of the authors of the defendant No.2's trust against the functioning of the defendant No.2 trust though there may exist some kind of similarity with the plaintiffs grievance. The said fact as per the plaintiffs is not material fact for the grant of the injunction by this court against the defendants in the present case. Thus, there is no concealment made by the plaintiffs in the instant suit.

49. After considering the submissions advanced by the learned counsel for the parties and also reading the plaint filed by Mr. Sunderam against the defendant No.2 and the averments made in the present suit, I am of the view that there is sufficient disclosure contained in paragraphs 53 to 58 about the defendant No.2's attempt to function independently to that of the plaintiff since the year 2009. The suit which has been filed by Mr. Sunderam before the Bangalore court is on account of the author of the defendant No.2's trust and as an ex president of the defendant No.2's trust. It is true that some of the allegations about the functioning of the defendant No.2's trust are similar to that of the allegations contained in the plaint and the plaintiffs grievance as stated in the plaint. But the nature of the said suit pending before City Civil Court in Bangalore filed by one ex trustee and author of the defendant No.2 about the malfunctioning of defendant No.2 trust against its object is entirely distinct from the complaint made before this court by the plaintiffs who claim to be lawful owners of the intellectual property rights in Pranik Healing. It is also noteworthy to mention that though Mr. Sunderam is stated to be trustee of the plaintiff No.4 and is alleged to have deliberately concealed the factum of pendency of the Civil Court in Bangalore court, is not party to the present suit. The present suit has been filed by the plaintiffs entities as owners of the Intellectual property rights vested in them and not as trustees of the defendant No.2.

50. Under these circumstances, it would be too farfetched to assume that the plaintiffs have deliberately chosen not to disclose a suit pending before the Bangalore City Civil Court when the prayer of the said suit is not the same as the prayers contained in the present suit though somehow incidentally it may connect with some reliefs against the defendant No.2 as a matter of necessary consequence. Although, this court felt that there was no harm on the part of plaintiffs to disclose about the suit filed before the Bangalore City Civil Court. The said argument of the defendant No.3 relating to concealment of pending suit in Bangalore in the present suit in order to succeed is calling upon this court to make too many inferences which are quite convoluted and the same is not plainly coming out of the reading of the plaint filed before Bangalore City Civil Court along side the plaint filed in the instant case. Therefore, it cannot be said that the plaintiffs have made any concealment of the material fact as alleged by the defendants while seeking interim relief against the defendants.

51. Moreover, the disclosures made in paragraph 53 to 58 of the plaint filed before this court is quite elaborative and commenced from the year 2009 uptill the bringing of the present suit which include the defendant No.2's attempt to act independently all over India and its refusal to associate with the plaintiffs. The Bangalore suit was filed in the year 2010 which is later than 2009 which is the earliest disclosure made in the plaint. Therefore, it cannot be said that the plaintiffs actually gained anything by not disclosing the suit pending before the civil court in Bangalore. Thus, the said suit being entirely of different nature and based on separate cause of action is prima facie not material for the purposes of the grant or non grant of the interim relief in the instant case and not even at the ex-parte ad-interim stage.

NON-COMPLIANCE OF PROVISION UNDER ORDER 39 RULE 3 CPC

52. Now I shall be proceeding to discuss another ground of non compliance of the provisions of Order 39 Rule 3 CPC as raised by defendants in order to seek vacation of interim order before advertng to the grounds on merits.

53. It has been argued by the learned counsel for the defendant No. 2 that the plaintiffs have failed to comply with the mandatory provisions of Order 39 Rule 3 CPC within the prescribed period of 7 days from the date of Order dated 14th September, 2011. It has been argued that the plaintiffs though have sent a copy of the plaint and interim injunction application to the Defendant No. 2 herein by way of letter dated 14th September, 2011 which was received on 17th September, 2011 but the plaintiffs have served the documents along with the plaint by way of letter dated 20th September, 2011 which was received merely on 24th September, 2011 which was after passing of the period of the compliance of the provisions of Order 39 Rule 3 CPC. The plaintiffs have also filed the postal receipts and courier receipts alongwith an affidavit of Ravinder Sharma. The same was filed on 21st September, 2011 within one week as time granted by the court while passing the interim order.

54. It has been further argued that the plaintiffs have failed to comply with the prescribed mode of service through the delivery of documents by hand or registered post as per the provisions of Order 39 Rule 3 CPC for the purposes of serving the documents filed along with the plaint on 20 th September, 2011 and have deliberately sent the document through courier. In view of the same, it has been said that the plaintiffs have not complied with the provisions of Order 39 Rule 3 CPC in the prescribed form.

Various judgments have been cited at the bar to lay stress on the proposition that the provisions of Order 39 Rule 3 CPC are mandatory in nature and the same cannot be given a go bye by the court.

55. I have gone through the affidavit in compliance filed by the plaintiff along with the annexures containing the particulars of the dispatch of the records of the present case and have also given careful consideration to the submissions advanced by the learned counsel for the defendant No.2 on the ground of the non-compliance of the mandatory provisions of Order 39 Rule 3 CPC by the plaintiff. After considering everything, I am of the opinion that the defendant No.2 is agitating on the aspect of strict compliance of the provisions on Order 39 Rule 3 CPC not on the ground that the

plaintiffs have failed to act by supplying the documents as provided in code within the time prescribed by the court but on the ground that the defendants have received the documents outside the outer limit of the time period prescribed by the plaintiff to act upon. It is also not the case of the defendant No. 2 that in fact the said defendant did not receive the nature of the documents including the plaint, injunction application and documents as filed by the plaintiff in the court as the prescribed manner in the code. On the contrary, the defendant is aggrieved by the later delivery of the list of documents along with the documents, the steps to serve the same have already been taken by the plaintiff within the time period of 7 days as provided by the court.

56. I find after going through the records that the plaintiffs have sufficiently complied with the provisions of the Order 39 Rule 3 CPC within the period of 7 days. The defendant No.2 is too much insistent on hyper technicalities in order to just bring the issue when as a matter of fact the plaintiffs have acted within the period of 7 days of the passing of order and proceeded to send the entire set of the documents to the defendant No.2.

57. It is true that the courts have from time to time emphasized the mandatory nature of the provisions of Order 39 Rule 3 CPC and proceeded to vacate the order by withdrawing the discretion of the injunction exercised in favour of the plaintiff who is at fault in not complying the provisions of the Order 39 Rule 3 CPC. Having said that, the court's while withdrawing or vacating the injunction on the grounds of failure to comply with the provisions of Order 39 Rule 3 CPC have always taken into consideration the facts and circumstances of each case. In cases, where it is plain and unambiguously clear from the record, the courts have discharged or vacated the injunction on the counts of failure to comply with the provisions Order 39 Rule 3 CPC.

58. On the other hand, there are line of cases where it is doubtful to ascribe any motives to the plaintiffs and it seems that the plaintiffs have acted with due diligence in substantially complying the provisions of Order 39 Rule 3 CPC without causing any real prejudice to the defendants except enabling the defendants to raise the ground for sake of agitating the same. In the later kind of cases, the courts have also acted judiciously by not withdrawing the discretion and vacating the order on the said ground. The reason for the same is plain and simple which is that it is true that the provisions of the Order 39 Rule 3 CPC are mandatory in nature, but the consequence of its non compliance is not provided explicitly in the code of civil procedure. It is the judicious approach which the court has to adopt while seeing the facts of each case in order to infer in which case there exists violation of the provisions of Order 39 Rule 3 CPC and in which case there is no such violation in true sense but the ground is urged only on hyper technicalities.

59. The said judicious approach which the courts have adopted normally is by insisting upon the strict compliance of the provisions of Order 39 Rule 3 CPC so that the valuable right of the defendant to know the case filed by the plaintiff should not be taken away and the defendant may be entitled to approach the court with earnest opportunity. (Kindly see Agi Logistics, Ashok Kumar Chadha etc.). But that does not imply that the court is powerless to exercise the discretion in favour the plaintiff in a given case where it is seen that there exists a substantive compliance of the provisions which is not really depriving the right of the defendant to approach the court at the earnest opportunity.

This is due to the reason that rules of the procedure are handmaiden to justice. The inherent power to do complete justice between the parties still vests with the court. The said power cannot be curtailed by any mandatory rules of procedure which are all subservient to the powers of the court. In the present case, once the plaintiffs have fairly acted within 7 days period prescribed by the court in the order and proceeded to comply with the provisions of Order 39 Rule 3 CPC and the defendants have received the papers on 24th September, 2011 when the plaintiffs had taken the steps to send them the documents on 20th September, 2011 which was again within the period of 7 days prescribed in the code. Thus the mere objection that about the mode of the service about the registered post to have been adopted by the plaintiff in order to serve the documents to the defendants when in fact the plaintiffs took steps in time and defendants got the document is mere technicality and such strict insistence upon the same in a case when defendants did get the documents from the courier mode would be too rigid, technical and pedantic interpretation of the said provision.

COPYRIGHT CLAIM IN PRANIC HEALING TECHNIQUES

60. It is now for me to deal with the various aspects fall for consideration seeking vacation of interim order on the merits case. The first question which falls for consideration is the legal sustainability of the copyright claim in the Pranic Healing Techniques and literary works comprising therein.

61. The plaintiffs claim of copyright in the Pranic Healing techniques is premised on the following counts:

- a) The plaintiffs ownership over the copyright titles in the books written by master, trade literature, CD Roms etc.
- b) The plaintiffs claim of copyright in the material stated in the books and thereby seeking the prohibitory orders on the performance of Pranic Healing techniques in form imparting teachings, performing Asanas or implementing the techniques by performance of the Pranic Healing Techniques in action by the defendants on the strength of the copyright claim in the compilation of the exercises which as per the plaintiff is the original compilation of the plaintiffs.
- c) The plaintiff claim of the copyright in the Pranic Healing techniques and exercises as the works of choreography which finds place of protection under the head of dramatic works under the law of copyright and the performance of the Pranic Healing techniques physically should be prevented by this court on the said ground.

62. On the aforementioned basis, the plaintiffs claim that the defendants by reproducing the books written by the master, trade literature of the plaintiffs coupled with the performance of the said exercises or Pranic Healing techniques is infringing the plaintiffs copyright in the works of the plaintiffs.

PLAINTIFFS OWNERSHIP OVER THE COPYRIGHT IN THE LITERARY WORK AND ITS SCOPE OF PROTECTION As the claim of the plaintiffs relating to copyright in Pranic Healing Techniques is premised on the copyright in the Literary works/ books and trade literature authored by the plaintiff's predecessor master, it is first necessary to comprehend as to what is the scope of the protection in the original literary work as per the provisions of the Copyright Act, 1957. The understanding of the scope of protection of copyright in the literary work will delimit the boundaries of the protection and will enable this court to answer as to whether the claim of copyright raised by the plaintiffs on three pillars are legally sustainable or not.

63. I deem it expedient to first enlist the provisions of Copyright Act, 1957 relating to literary and Dramatic work which will be helpful to further the discussion on the subject.

"Section 2 (o) of the Act defines as

(o) "literary work" includes tables and compilations;

Section 13 of the Act provides for the works in which the copyright subsists which reads as under:

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) 42[sound recordings;].....

Section 14 provides for the meaning of the copyright and enumerates the kind of the rights available to the author and the owner of the copyright in respect of the various kinds of the works. The relevant portion of the section is reproduced hereinafter:

Meaning of copyright.-For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorize 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);

The expression communication of the work to the public is defined under section 2 (ff) which reads as under:

ff) "communication to the public" means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.

Explanation.- For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public."

64. The aforementioned provisions provided under the Copyright Act, 1957 relates to the literary work which is one of the subject matter of the protection and also provide for the kinds of rights or bundle of rights as available to the author and the owner of the copyright. The collective reading of the aforenoted provisions give clarity only as to following aspects:

- a) That the original literary works are protected under the provisions of the Copyright Act. The said literary work is defined inclusively under the provisions of Section 2 (o) of the Copyright Act.
- b) The rights available to the owner of the literary copyright owner are the ones which are enumerated as Section 14 (1) (a) (i) to (vii).
- c) The definition of the literary work includes compilation and tables as well and would thus enjoy similar treatment as the literary work.
- d) The rights available to the copyright owner include the right to reproduce the work in any material form including storing of it in any medium by way of electronic means and to perform the work in public or communicate the work in public.

e) The expression communication of the work to the public is defined to mean that making any work available for being seen or heard or otherwise enjoyed by the public directly or by means of display or diffusion.

f) The expression "perform the work in public" is not defined under the provisions of the Copyright Act.

65. Though the provisions of the Copyright Act, 1957 give a hint that original literary works as the subject matter of protection and also provide for the kinds of the rights including right to reproduce the work in material form and right to perform the work in public or communicate the work to the public, still the provisions of the Act nowhere give any indication to several other unsolved areas which come to the mind immediately after reading the aforementioned provisions which are :

a) what constitutes the original literary works.

b) what is the meaning of the expression "reproducing the work in material form".

c) whether the performance of the work in public in relation to literary work would include merely a recitation of the work in the cases of the literary work in public or in the alternative performance of the entire facts/narration stated in the literary work in public in the form of performance by action or otherwise.

d) whether there are any exceptions to the said right of the performance of the work in the public in relation to literary work or whether all the literary works enjoy similar level of protection which give the owner of the copyright an exclusive right to perform the literary work in public in any manner including right to restrain the implementation of the facts stated in the literary work under the guise of the performance of the work in public.

66. All these unsolved questions are necessary to determine the scope or the ambit of the protection required to be extended to the literary works under the law of the copyrights are not defined or clarified by the Act but the said questions and concerns have been attempted to be answered by the courts from time to time as and when the courts face the propositions which indulge the courts attention to go into the enquiry of the scope of protection in relation to the various kinds of the works under the law of the copyright including the literary work.

67. The broad propositions which have been laid down by the courts in India after following the position of law in UK and other common law countries are enlisted below for the understanding:

In *University of London Press Limited v. University Tutorial Press Limited* [1916] 2 Ch 601, J. Peterson observed that: The word original does not in this connection mean that the work must be the expression of original or innovative thought. Copyright Acts are not concerned with the originality of ideas, but with the expression of thought. The originality which is required relates to the expression of

thoughts. But the Act doesn't require that the expression must be in the original or novel form, but that the work must not be copied from another's work- that it should originate from the author. (The said definition of originality has been followed by the Privy Council in India in the case of *Macmillan and Company Limited vs. K. and J. Cooper*. AIR 1924 Privy Council 175, which is often quoted in various judgments in India) In the case of *Macmillan vs. Cooper* (supra), the learned Privy Council had also observed that no precise definition can be given the amount of skill, labour and judgment required to constitute originality in the work, it is question of fact and degree which has to be evaluated from case to case basis. In the words of privy council, it was observed thus:

"What is the precise amount of the knowledge, labour, judgment or literary skill or taste which the author of any book or other compilation must bestow upon its composition in order to acquire copyright in it within the meaning of the Copyright Act of 1911 cannot be defined in precise terms. In every case it must depend largely on the special facts of that case, and must in each case be very much a question of degree. But their Lordships have no hesitation in holding that there is no evidence in the present case to establish that an amount of these several things has been applied to the composition of the text of the appellants' book, as distinguished from the notes contained in it, to entitle them to the copyright of it. As to the notes it is altogether different. Their Lordships do not take the view that these notes are trifling in their nature or are useless." (Emphasis supplied) In the case of *Eastern Book Company v. DB Modak*, 2008(1) SCC 1, The Supreme Court again revisited the entire case law on the subject of the originality and proceeded to observed thus:

"The exercise of the skill and judgment required to produce the work is trivial and is on account of the labour and the capital invested and could be characterized as purely a work which has been brought about by putting some amount of labour by the appellants. Although for establishing a copyright, the creativity standard applies is not that something must be novel or non-obvious, but some amount of creativity in the work to claim a copyright is required. It does require a minimal degree of creativity. Arrangement of the facts or data or the case law is already included in the judgment of the court. The exercise of the skill and judgment required to produce the work is trivial and is on account of the labour and the capital invested and could be characterized as purely a work which has been brought about by putting some amount of labour by the appellants. Although for establishing a copyright, the creativity standard applies is not that something must be novel or non- obvious, but some amount of creativity in the work to claim a copyright is required. It does require a minimal degree of creativity. Arrangement of the facts or data or the case law is already included in the judgment of the court. (Emphasis Supplied) In the case of *R.G. Anand v. Delux Films*, 1979 SCR (1) 218, The Hon'ble Supreme Court proceeded to lay down some tests after analyzing the case laws decided in UK, India and US which somehow define the scope of the protection of the copyright in law in general. The said propositions are:

I. 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 title author of the copy-righted work.

II. 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 defendant's 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.

III. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if 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.

IV. 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.

V. 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 words are clearly incidental no infringement of the copyright comes into existence.

VI. 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 decided cases.

VII. Where however the question is of the violation of the copyright of a 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, 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.

68. The said tests laid down by the Supreme Court in R.G. Anand (supra) throw some light on the significant aspect of no protection of idea and but only to the form of expression under the laws of copyrights and also defines the aspects relating to substantial nature of copying and all other necessary tests required to prove infringement in the case of copyright.

There are other cases which have been decided in India relating to copyright infringement but broadly the said cases take the similar line of reasons as laid down by the Supreme Court in the case of RG Anand (Supra), Eastern Book (supra) and Privy council in the case of MacMillan (supra) and proceed to decide the cases by describing the kind of the originality required for conferring copyright in the work and then sometimes deciding the question of infringements and sometimes holding that the defendants have merely taken an idea and not the manner of expression.

69. The said propositions of law laid by the courts in India till date are helpful in understanding the concepts like originality, substantial nature of copying required for infringement, non availability of the protection to ideas but only the manner of expression of ideas which are not provided under the written law i.e. Copyright Act, 1957 and rightly so as they are more or less question of facts and degree present in each case.

70. The enquiry of originality of the work from the author and passing the test of originality in each case relating to copyright infringement where it is a disputed question is a basic thrust on which the copyright claim of the party rests. The said concept of originality has an immediate nexus with another limb of enquiry which is significant in each case that is the distinction between the idea and expression of an idea. This is due to the reason that the copyright vests not in an idea but in an original expression of an idea. In short, what is protected in the copyright law is not merely an idea but the original way or manner of presentation of an idea.

71. We have seen cases in India as stated above where the courts have been able to identify the difference between ideas and expression promptly without any overlap between the two like plots, themes of the play as against the manner of the presentation of the plays where such distinctions are clearly evident without any further enquiry. On the other hand, there are the cases where the courts have to draw the line between the ideas and expression of an idea by themselves by indulging into the depth enquiry into the work in order to identify first as to what may constitute idea in a particular work and what is an expression of idea where the originality resides in order to delineate the scope of the protection of work and dissecting it from the ideas. Such a kind of enquiry by courts in copyright cases is more commonly known as idea and expression dichotomy.

72. The said concept of idea expression problem has been evolved firstly by the courts in US and recently has also been recognized by the courts in UK. India is still in the process of accepting the said proposition as the courts are in the process of facing the factual situations wherein the dividing line between idea and expression is blurred though some cases in India shed some light on the subject by quoting the international cases relating to idea expression problems but do not clearly spell out the problem relating to idea and expression in so many words as laid down in the said judgments in US and in UK.

73. I find that this case is an opportune time to discuss in detail the said concept of idea and expression dichotomy as the present case seek to prevent the implementation of facts and narrations stated in the book which are Asanas of Yoga on the premise that the said facts and narrations, descriptions of Asanas and techniques stated in Books authored by master are his copyright and thus the performance of the said works in physical form actions or performing such Pranic Healing

Yoga Asanas must result in the copyright infringement. On the first blush, the argument is seemingly convincing considering the provisions of the Act and in the manner they are worded so as to include the performance of the work in public or communication of the work to the public unguided by the exposition of law relating to idea and expression. But once the said argument is tested from the glasses of idea expression distinction which sometimes the courts have to make in a given case, the answer becomes clearer and the shadow of doubt which exists in the mind proceeds to obliterate.

74. Such kind of Idea expression problems often arises in the cases where the protection is sought for the derivative nature of the works or in cases where the work contains the historical facts collated from history or ancient times or in cases where work consists of methods of construction, any theorems, principles which are common place or scientific principles or experiments touching the patents which are sought to be protected under the guise of original works of authorship. In all such cases, the court makes fair attempt to draw a line between what is an idea and expression within the same work by testing the originality quotient of the work.

75. The idea expression problem faced by the courts has been aptly explained by the House of Lords in UK recently in the case of *Designers Guild Ltd v Russell Williams (Textiles) Ltd.*, [2001] F.S.R. 11, by Lord Hoffman in his speech in the context of artistic works. In the words of Lord Hoffman, it was observed thus:

"It is often said, as Morritt L.J. said in this case, that copyright subsists not in ideas but in the form in which the ideas are expressed. The distinction between expression and ideas finds a place in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) ([1994] O.J. L336/213), to which the United Kingdom is a party (see Article 9.2 : "Copyright protection shall extend to expressions and not to ideas ..."). Nevertheless, it needs to be handled with care. What does it mean? As Lord Hailsham of St Marylebone said in *L.B. (Plastics) Ltd v. Swish Products Ltd* [1979] R.P.C. 551 at 629 , "it all depends on what you mean by 'ideas'". (Emphasis Supplied) 24 Plainly there can be no copyright in an idea which is merely in the head, which has not been expressed in copyrightable form, as a literary, dramatic, musical or artistic work, but the distinction between ideas and expression cannot mean anything so trivial as that. On the other hand, every element in the expression of an artistic work (unless it got there by accident or compulsion) is the expression of an idea on the part of the author. It represents her choice to paint stripes rather than polka dots, flowers rather than tadpoles, use one colour and brush technique rather than another, and so on. The expression of these ideas is protected, both as a cumulative whole and also to the extent to which they form a "substantial part" of the work. Although the term "substantial part" might suggest a quantitative test, or at least the ability to identify some discrete part which, on quantitative or qualitative grounds, can be regarded as substantial, it is clear upon the authorities that neither is the correct test. *Ladbroke (Football) Ltd v. William Hill (Football) Ltd* [1964] 1 W.L.R. 273 establishes that substantiality depends upon quality rather than quantity (Lord Reid at 276, Lord Evershed at 283, Lord Hodson at 288, Lord Pearce at 293),

and there are numerous authorities which show that the "part" which is regarded as substantial can be a feature or combination of features of the work, abstracted from it rather than forming a discrete part. That is what the judge found to have been copied in this case. Or to take another example, the original elements in the plot of a play or novel may be a substantial part, so that copyright may be infringed by a work which does not reproduce a single sentence of the original. If one asks what is being protected in such a case, it is difficult to give any answer except that it is an idea expressed in the copyright work. (Emphasis Supplied) 25 My Lords, if one examines the cases in which the distinction between ideas and the expression of ideas has been given effect, I think it will be found that they support two quite distinct propositions. The first is that a copyright work may express certain ideas which are not protected because they have no connection with the literary, dramatic, musical or artistic nature of the work. It is on this ground that, for example, a literary work which describes a system or invention does not entitle the author to claim protection for his system or invention as such. The same is true of an inventive concept expressed in an artistic work. However striking or original it may be, others are (in the absence of patent protection) free to express it in works of their own: see *Kleeneze Ltd v. D.R.G. (U.K.) Ltd* [1984] F.S.R. 399 . The other proposition is that certain ideas expressed by a copyright work may not be protected because, although they are ideas of a literary, dramatic or artistic nature, they are not original, or so commonplace as not to form a substantial part of the work. *Kenrick & Co. v. Lawrence & Co.* (1890) 25 Q.B.D. 99 , is a well- known example. It is on this ground that the mere notion of combining stripes and flowers would not have amounted to a substantial part of the plaintiff's work. At that level of abstraction, the idea, though expressed in the design, would not have represented sufficient of the author's skill and labour as to attract copyright protection." (Emphasis Supplied)

99. Upon the meaningful reading of Lord Hoffman's speech in the case of *Designers Guild* (supra), I find para 25 of the judgment summarizes the idea expressions problem faced and recognized by the courts in England with clarity. Thus, it would not be out of place to state there may arise sometimes the cases or instances where within a work, what appears to be an expression because of its presence in the work as a whole is merely an idea and the protectable area which is the manner of expression lies somewhere else. The courts have attempted to distinguish such expressions of idea which are unrelated to copyright which in the opinion of the court are falling within the broader ambit of idea itself from that of the expression of ideas where originality resides in copyright sense. The former are not protected but the later do. This is emerging from the Speech of Lord Hoffman in *Designers Guild* (supra).

100. The reading of the Lord Hoffman's speech in para 25 also makes it clear that this kind of problem more than often arises in cases where literary work describes a system or invention as such which supports my conclusions above as it touches aspect between the patents and copyright and sometimes raises the concern relating

to discovery of fact vis a vis creation of fact and challenges the originality quotient of the work."

76. As we have now seen the position of law in UK which recognize this concept of non protectable areas within the same work itself due to lack of originality and calling them as mere ideas or unprotectable expressions unrelated to copyright as against the protectable manner of expression of an idea, It is now time to understand the true import of such line of cases more closely where such idea expression problem had in fact fallen for consideration in the context of literary works and compilations so as to discern the reasoning given by the courts in such circumstances.

77. The celebrated case on the subject and most likely the starting point of the debate of idea expression problem in the context of Literary works has been decided by US Supreme Court in *Baker vs. Selden*, 101 U.S. 99 in the year 1880. It is noteworthy to first mention the facts of the said case which are as under:

"Charles Selden, the testator of the complainant in this case, in the year 1859 took the requisite steps for obtaining the copyright of a book, entitled "Selden's Condensed Ledger, or Book-keeping Simplified," the object of which was to exhibit and explain a peculiar system of book- keeping. In 1860 and 1861, he took the copyright of several other books, containing additions to and improvements upon the said system. The bill of complaint was filed against the defendant, Baker, for an alleged infringement of these copyrights. The latter, in his answer, denied that Selden was the author or designer of the books, and denied the infringement charged, and contends on the argument that the matter alleged to be infringed is not a lawful subject of copyright. The parties went into proofs, and the various books of the complainant, as well as those sold and used by the defendant, were exhibited before the examiner, and witnesses were examined on both sides. A decree was rendered for the complainant, and the defendant appealed. The book or series of books of which the complainant claims the copyright consists of an introductory essay explaining the system of book-keeping referred to, to which are annexed certain forms or blanks, consisting of ruled lines, and headings, illustrating the system and showing how it is to be used and carried out in practice. This system effects the same results as book-keeping by double entry; but, by a peculiar arrangement of columns and headings, presents the entire operation, of a day, a week, or a month, on a single page, or on two pages facing each other, in an account-book. The defendant uses a similar plan so far as results are concerned; but makes a different arrangement of the columns, and uses different headings. If the complainant's testator had the exclusive right to the use of the system explained in his book, it would be difficult to contend that the defendant does not infringe it, notwithstanding the difference in his form of arrangement; but if it be assumed that the system is open to public use, it seems to be equally difficult to contend that the books made and sold by the defendant are a violation of the copyright of the complainant's book considered merely as a book explanatory of the system.

Where the truths of a science or the methods of an art are the common property of the whole world, and author has the right to express the one, or explain and use the other, in his own way. As an author, Selden explained the system in a particular way. It may be conceded that Baker makes and uses account-books arranged on substantially the same system; but the proof fails to show that he has violated the copyright of Selden's book, regarding the latter merely as an explanatory work; or that he has infringed Selden's right in any way, unless the latter became entitled to an exclusive right in the system."

78. Given the aforementioned facts in hand, the Supreme Court of US decided the question as to the scope and the extent of the protection which can be given to a book or a literary work describing the process of well known book keeping or methods of accounting. In the process of deciding the present case, the Supreme Court has made some very significant observations which describe the fundamentals of the copyright protection in simplistic words. One such observation is that the protection which is conferred by the copyright is the book containing the manner of the expression of the art and not the art described in the book. Even if the book illustrate the process of the book keeping or accounting in detail, the similarity in said process of book keeping in another book is due to the art or process described in the book which is common place cannot be exclusively appropriated by the author. In the words of the Supreme Court, it was observed thus:

"There is no doubt that a work on the subject of book-keeping, though only explanatory of well-known systems, may be the subject of a copyright; but, then, it is claimed only as a book. Such a book may be explanatory either of old systems, or of an entirely new system; and, considered as a book, as the work of an author, conveying information on the subject of book-keeping, and containing detailed explanations of the art, it may be a very valuable acquisition to the practical knowledge of the community. But there is a clear distinction between the book, as such, and the art which, it is intended to illustrate. The mere statement of the proposition is so evident, that it requires hardly any argument to support it. The same distinction may be predicated of every other art as well as that of book-keeping. A treatise on the composition and use of medicines, be they old or new; on the construction and use of ploughs, or watches, or churns; or on the mixture and application of colors for painting or dyeing; or on the mode of drawing lines to produce the effect of perspective, -- would be the subject of copyright; but no one would contend that the copyright of the treatise would give the exclusive right to the art or manufacture described therein." (Emphasis Supplied).

79. The reading of the aforenoted illuminating observations of Supreme Court of US, it is clear that even if the book describes in detail the new and the old processes or system and the same may be very valuable to the acquisition of the practical knowledge of the community. The mere fact, it describes the art does not imply that the art described in the book becomes the proprietary interest of the author. It is only the manner in which it is described is required to be protected by preventing the reproduction of the substantial part of the book and not the performance of the process provided in the book in practice.

80. Thereafter, the Supreme Court of US had further noted that the novelty of the description of the process in the book is also immaterial as it is merely an assertion of the person seeking protection, the actual testing of the novelty in the subject matter is the domain of the patent office and not the copyright office. The court then gave a fine distinction between the patents and copyrights and the problem which lies with the extension of the monopoly to the books describing the process to the process itself is that it creates a monopoly which is akin to that of the patents to the author of the book under the guise of copyright without the author having any patent over the said process. This has been explained by the Supreme Court of US in the following words:

"The copyright of the book, if not pirated from other works, would be valid without regard to the novelty, or want of novelty, of its subject-matter. The novelty of the art or thing described or explained has nothing to do with the validity of the copyright. To give to the author of the book an exclusive property in the art described therein, when no examination of its novelty has ever been officially made, would be a surprise and a fraud upon the public. That is the province of letters-patent, not of copyright. The claim to an invention or discovery of an art or manufacture must be subjected to the examination of the Patent Office before an exclusive right therein can be obtained; and it can only be secured by a patent from the government. (Emphasis supplied) The difference between the two things, letters-patent and copyright, may be illustrated by reference to the subjects just enumerated. Take the case of medicines. Certain mixtures are found to be of great value in the healing art. If the discoverer writes and publishes a book on the subject (as regular physicians generally do), he gains no exclusive right to the manufacture and sale of the medicine; he gives that to the public. If he desires to acquire such exclusive right, he must obtain a patent for the mixture as a new art, manufacture, or composition of matter. He may copyright his book, if he pleases; but that only secures to him the exclusive right of printing and publishing his book. So of all other inventions or discoveries." (Emphasis Supplied)

81. It is noteworthy to mention that the reference to the case of Baker vs. Selden, 101 U.S. 99 (1879) is invited and the case has been discussed in detail not to explain the general proposition of law that there cannot be any copyright in ideas but exists in expression of an idea. But, the reliance has been placed on the said decision in order to demonstrate that in cases involving books and literary works describing and defining useful arts, medicines, scientific principles and historical events, the scope of protection in relation to copyright lies in the manner of language employed in the book in order to describe the said art and selection and arrangement of the incidents and overall compilation of the work and not in the art or the performance of art itself howsoever new or unique it may be.

82. By reading the statement of law in Baker (Supra), one can say that the statement of law that the copyright vests in literary work in the language employed in order to describe the art and not the art itself is no different from the proposition that the copyright lies in expression of an idea and not the idea itself. Apparently, the comparison between the two propositions is correct and they are akin to each other but the only point of difference which distinguishes the former from the latter is that in the former one, it is the court which has deduced after judicially applying the mind what is an idea and what is an expression. However, the latter is simply a general proposition of law.

83. This can be explained in more detail if one takes an example of a book/literary work describing the useful art or principle of science. In such a case, the overall book describes the art step by step and the ways to perform the said art in the words of author. Now, if one has to find out what can be idea and what can be an expression of an idea, it can be said that the way the author has described the art is not an idea but the expression of an idea and therefore the manner of performing the art should also be given protection due to the unique expression of art or principle of science mentioned in the book and the idea is merely the plot of the book which is the book on scientific principle/art but the manner indicated in the book for performing the art is unique to the author and thus deserve protection.

84. The said argument is quite attractive and if a person goes merely by the general proposition that there can be a copyright in an expression of an idea and not an idea itself, then it is too confusing to understand as to whether the description of a scientific principle or performance of art in the manner indicated by the author is an expression or an idea. But, if one goes by the former proposition which is that the copyright vests only in the language employed to describe the art and not the art itself, it becomes clearer that in cases where there are literary works describing scientific principle, useful arts or compiles any pre-existing data though the description of the art may be unique or novel in the book and is seemingly an expression of an idea but actually the same is merely an idea and not the expression. Thus, in some cases like in Baker (Supra) the boundaries of idea get expanded in order to cover within its ambit not merely the general plot of the book but also the descriptions contained in the book relating to the said art and the extension of boundaries of an idea delimits the scope of expression of an idea by confining the contours of protection within the four corners of reproduction of the said works in substantial form and ruling out any possibility of giving protection towards performance of the said art as described in the book.

85. In this way, the proposition explained in Baker (Supra) that there cannot be any copyright in the art described in the book but copyright resides in reproducing the said book in material form in the form of language employed, selection and arrangement has in-depth meaning and the court in the said case has balanced out the protection vis-à-vis the public domain by identifying the boundaries of an idea and expression of an idea.

86. The said case of Baker (Supra) has been decided in 1880 by the Supreme Court of US laying down some very significant propositions relating to identifying the idea and the expression and also the interplay of conferring copyright in the useful arts and scientific principles with that of patents and how the consequences of giving protection to the useful arts described in the books can lead to intrusion in the domain of patent regime.

87. Thus, the case of Baker (Supra) was one of its own kind where it was difficult for the court to identify the idea and the expression of an idea. Such kind of cases have also gained the attention of the courts in US as well as in UK and the courts have time and again come to the similar conclusion by identifying the ideas and the expressions of an idea in a given case considering its own typical facts and circumstances.

88. Similar question again came up before the Supreme Court of US more than 100 years later in the year 1991 in the case of Feist Publications Inc Vs Rural Telephone Services Company, 499 U.S. 340 (1991) wherein the court was concerned with the question relating to the scope and the extent of protection of copyright in the compilation of pre-existing data in the form of telephone directory. The question which arose before the court was as to what is the scope and the extent of protection in respect of compilations of the work more particularly the telephone directory and whether the copyright in compilation extends to the facts stated in compilation or merely vests in arrangement and selection of the complied work. The Court after placing reliance on Baker (Supra) decision had proceeded to observe that the facts stated in the compilations are merely an idea as they lack originality and the expression of an idea is merely arrangement and the selection which is the manner of presentation. In the words of the court it was observed thus:-

"[15] It is this bedrock principle of copyright that mandates the law's seemingly disparate treatment of facts and factual compilations. "No one may claim originality as to facts." *Id.*, § 2.11[A], p. 2-157. This is because facts do not owe their origin to an act of authorship. The distinction is one between creation and discovery: the first person to find and report a particular fact has not created the fact; he or she has merely discovered its existence. To borrow from Burrow-Giles, one who discovers a fact is not its "maker" or "originator." 111 U.S., at 58. "The discoverer merely finds and records." *Nimmer* § 2.03[E]. Census-takers, for example, do not "create" the population figures that emerge from their efforts; in a sense, they copy these figures from the world around them. Denicola, *Copyright in Collections of Facts: A Theory for the Protection of Nonfiction Literary Works*, 81 Colum. L. Rev. 516, 525 (1981) (hereinafter Denicola). Census data therefore do not trigger copyright because these data are not "original" in the constitutional sense. *Nimmer* [p*348] § 2.03[E]. The same is true of all facts -- scientific, historical, biographical, and news of the day. "They may not be copyrighted and are part of the public domain available to every person." *Miller*, *supra*, at 1369. [16] Factual compilations, on the other hand, may possess the requisite originality. The compilation author typically chooses which facts to include, in what order to place them, and how to arrange the collected data so that they may be used effectively by readers. These choices as to selection and arrangement, so long as they are made independently by the compiler and entail a minimal degree of creativity, are sufficiently original that Congress may protect such compilations through the copyright laws. *Nimmer* §§ 2.11[D], 3.03; Denicola 523, n. 38. Thus, even a directory that contains absolutely no protectible written expression, only facts, meets the constitutional minimum for copyright protection if it features an original selection or arrangement. See *Harper & Row*, 471 U.S., at

547. Accord *Nimmer* § 3.03." (Emphasis Supplied)

89. Thereafter, the court proceeded to observe in para 18 that the copyright in the factual compilation is thin and the subsequent compiler remains free to use facts contained in another's work to aid in preparing and competing work so long as he does not copy the selection and the arrangement done by the previous author. It was observed thus:-

"[18] This inevitably means that the copyright in a factual compilation is thin. Notwithstanding a valid copyright, a subsequent compiler remains free to use the facts contained in an another's publication to aid in preparing a competing work, so long as the competing work does not feature the same selection and arrangement. As one commentator explains it: "No matter how much original authorship the work displays, the facts and ideas it exposes are free for the taking The very same facts and ideas may be divorced from the context imposed by the author, and restated or reshuffled by second comers, even if the author was the first to discover the facts or to propose the ideas."Ginsburg 1868."(Emphasis Supplied)

90. Again, the US Supreme Court in Feist (Supra) acknowledged the idea expression dichotomy limits the scope of protection in fact based works by confining its counter only to reproduction right and not extending to the performance of the facts contained in the said work. This has been explained in para 20 in the following manner:-

"[20] This Court has long recognized that the fact-expression dichotomy limits severely the scope of protection in fact-based works.

More than a century ago, the Court observed: "The very object of publishing a book on science or the useful arts is to communicate to the world the useful knowledge which it contains. But this object would be frustrated if the knowledge could not be used without incurring the guilt of piracy of the book." Baker v. Selden, 101 U.S. 99, 103 (1880). We reiterated this point in Harper & Row:

"No author may copyright facts or ideas. The copyright is limited to those aspects of the work -- termed 'expression' -- that display the stamp of the author's originality.

"Copyright does not prevent subsequent users from copying from a prior author's work those constituent elements that are not original -- for example . . . facts, or materials in the public domain

-- as long as such use does not unfairly appropriate the author's original contributions." 471 U.S., at 547-548 (citation omitted)."

91. Lastly, the court has also laid down the test relating to scope of protection in the cases relating to compilations of work which as per the court is selection, coordination and arrangement of facts and the said selection, coordination and arrangement should be done in such a way so as to render whole of the work as original. This has been explained by the court in the following words:-

"[39] The key to the statutory definition is the second requirement. It instructs courts that, in determining whether a fact-based work is an original work of authorship, they should focus on the manner in which the collected facts have been selected, coordinated, and arranged. This is a straightforward application of the originality requirement. Facts are never original, so the compilation author can claim

originality, if at all, only in the way the facts are presented. To that end, the statute dictates that the principal focus should be on whether the selection, coordination, and arrangement are sufficiently original to merit protection.

[40] Not every selection, coordination, or arrangement will pass muster. This is plain from the statute. It states that, to merit protection, the facts must be selected, coordinated, or arranged "in such a way" as to render the work as a whole original. This implies that some "ways"

will trigger copyright, but that others will not. See Patry 57, and n. 76. Otherwise, the phrase "in such a way" is meaningless and Congress should have defined "compilation" simply as "a work formed by the collection and assembly of preexisting materials or data that are selected, coordinated, or arranged." That Congress did not do so is dispositive. In accordance with "the established principle that a court should give effect, if possible, to every clause and word of a statute,"

Moskal v. United States, 498 U.S. 103, 109-110 (1990) (internal quotations omitted), we conclude that the statute envisions that there will be some fact-based works in which the selection, coordination, and arrangement are not sufficiently original to trigger copyright protection."

92. From the reading of Feist (Supra), it is clear that the position of law starting from Baker (Supra) uptill Feist (Supra) remains the same and consistent when it comes to confer protection in relation to fact based works or the works which are derived from pre-existing data, scientific principles or arts which is to identify the limits of protection by finding out what is an idea in a given case and what is an expression by asking the question as to where the originality in copyright sense resides. The originality in copyright sense would mean the hard work, labour and skill extended truly by author in relation to creativity and not in relation to innovation done in respect of deriving some principle or method.

93. Post Feist (Supra) decision, there are number of cases which have been decided by the US Court in respect of similar principle. The said decisions of the courts remained consistent in accordance with Feist (Supra) and the rule of law laid down in Baker (Supra).

94. After understanding the rule of law laid down in Baker (Supra) and Feist (Supra) decision, it is beyond the cavil of any doubt that in cases relating to literary work describing useful arts, science or based upon pre-

existing data and facts, the copyright shall be extended only to the manner of description of the said art principles or facts in the language employed by the author and it is substantial copying by the infringer and not in the facts in generality.

95. After having understood Feist (Supra) decision and rule of law in Baker (Supra) it requires no further elaboration of the said principle of law stated above but still it is pertinent to point out that

recently the Court of Appeal in UK in the year 2007 in a case titled as *Baigent & Leigh vs. The Random House Group Limited*, (2007) FSR 24 has also reiterated the similar principle by stating that though the historical research takes time, effort and skill to collect material for a book but the said time, skill and effort do not make the pre-existing facts in the history copyrightable and the only expression of an idea in the form of language in which work is composed along with selection arrangement and compilation of the research material is protected and not a historical research in itself.

96. The case of *Baigent* (Supra) was concerning the copyright infringement alleged by the plaintiff against the famous book writer Dan Brown in his book titled as *Da Vinci Code* wherein it has been alleged that book contained certain portion of historical research done by the plaintiff in relation to the life history of Jesus Christ according to which he was married to Mary Magdalene and she also had a child of Jesus Christ in her womb when she fled away from Jerusalem to France where there is an evidence of offspring of Jesus Christ available in history. It has been alleged that the said facts narrated by the defendants in its famous book are reproduction of the expression of an idea created by the plaintiff in its literature. The English Court of Appeal countering the said allegation observed thus:-

"156 The literary copyright exists in HBHG by reason of the skill and labour expended by the claimants in the original composition and production of it and the original manner or form of expression of the results of their research. Original expression includes not only the language in which the work is composed but also the original selection, arrangement and compilation of the raw research material. It does not, however, extend to clothing information, facts, ideas, theories and themes with exclusive property rights, so as to enable the claimants to monopolise historical research or knowledge and prevent the legitimate use of historical and biographical material, theories propounded, general arguments deployed, or general hypotheses suggested (whether they are sound or not) or general themes written about."
(Emphasis Supplied)

97. After reading the judgment of *Baigent* (Supra) decided by the court of appeal, it is clear that the copyright protection accorded to the fact based works is limited only to language employed in respect of describing the incidents in the work and also the selection, arrangement and compilation of data and not in the historical facts itself and the said principle again is a reiteration of rule of law in *Baker* (Supra) and *Feist* (Supra) extending the said principle to historical works.

98. The overall effect of the elaborated discussion done above is that whenever the protection on the premise of copyright is sought for in relation to books and literature describing the useful art, principle, historical fact or events or mode of performing ancient exercise or any other process for that matter, the copyright protection shall vest in the language employed to describe in the art in the book, the selection and arrangement of the facts or Asanas and their presence in the sequential manner in the book wherein the hard work, skill, labour has been expended by the master in doing so and the reproduction right to this shall be available exclusively to the master or persons deriving title from him. However, the protection shall not be extended to include the monopoly right over the

performance of the said Asanas of Yoga or Pranic Healing on the strength of the manner of the expression as stated in book as doing the same would be giving the monopoly right to the art or technique itself which is available in public domain from time immemorial which is also evident from the books available on record authored by Swami Ramachakra since 1906.

99. Even assuming the argument of the plaintiff is to be correct that there exists certain kind of novelty in the Modern Pranic Healing which as per the plaintiff is far removed from traditional Pranic Healing, still the protection available under the realm of the copyright is confined to the substantial copying of the language employed in the books authored by the master or the manner of explanation of Asanas, pictorial content contained in the book, arrangement and selection of contents and its setting thereof and not in the Asanas of Pranic Healing or performance of Pranic Healing Exercise following the law laid down in Baker (supra), Fiest (supra), Baigent (supra). This is due to the reason that even if there exists any novelty in such expression of the idea, the said novelty is not a sine qua non for conferring copyright and the copyright vests on the basis of originality. The said originality in the copyright sense as indicate would imply the hard work, skill, judgment extended by the author towards creativity which emanate from author and not in innovative sense. The novel processes, methods, principles, manner of performing the art or exercise are all the realm of the Patents and not the copyright. Therefore, without testing the novelty in any appropriate art or technique and giving the monopoly over the performance art or exercising techniques which are apparently preexisting in the ancient history of India would be a serious intrusion in the Public domain. Thus, even if any kind of novelty exists in such Pranic Healing Asanas, the copyright in book cannot encompass such kind of protection in the manner sought for by the plaintiff.

100. It can also be argued simultaneously the Yoga as an art or technique is not prima facie patentable, thus rejecting the copyright claim would be rendering the plaintiff as remediless. The said argument would also not be correct in as much as what is not patentable cannot as a matter of necessary consequence becomes copyrightable. The grant of no protection over the art described in the book as against the manner of the description in the form of language etc is due to the separate reasons available in Copyright law including the applicability of idea expression dichotomy principle which sets out the boundaries between the idea and expression. Therefore, the ouster of the art or technique or method from the realm of the protection has really no connection with that of the Patent as such. The grant of the patent to such useful arts, methods in relation to novel inventions is an additional reasoning which prevents the subject matter to be copyrightable because the said subject may overlap with patent. That by itself does not mean that what is not patentable will become copyrightable. This is also applicable to historical facts, as the historical facts are neither copyrightable and cannot be patentable also.

101. It is further pertinent to mention that the plaintiffs have relied upon the decision of Open Source Yoga Unity vs. Bikram Choudhury, 74 U.S.P.Q.2D (BNA) 1434 decided by the District Court of North California in the year 2005, wherein the court accepted the contention of the plaintiffs that the 26 Yoga asanas described in the literature are compilations within the meaning of the law and proceeded to pass interim order against the defendants restraining them from performing the Yogas Asanas conducted by Bikram Chaudhury by observing the following:

"Thus, copyright law provides that while functional and public domain material remains free for all to use, a compilation of that material may nonetheless qualify for copyright protection if the compiler can demonstrate a sufficient level of creativity in the selection and arrangement of the elements in the compilation. It is against this backdrop that Choudhury's claims must be evaluated....."

"..... Thus, OSYU has provided no persuasive authority that a compilation of yoga asanas cannot be protected under the copyright laws in the same manner as other compilations. The court, while recognizing, and even agreeing that application of the law of compilations to yoga asanas appears to violate the spirit of yoga, has been unable to locate any authority that precludes such application. Therefore, if the trier of fact determines that a sufficient number of the individual yoga asanas are arranged in a sufficiently creative manner, copyright protection for the yoga sequence would be available.

....Nonetheless, even under a thin copyright, Choudhury may properly enjoin exact or near-exact duplications of his yoga sequence, if the routines taught by plaintiffs are "substantially similar" to Choudhury's, and thus infringing."

102. I have gone through the reasoning stated in the judgment of Open Source Yoga Unity (supra) decided by the District court of North California. I find that the reasoning contained in the judgment of District Court is legally flawed due to the following reasons:

a) The District court in Open Source (supra) though quoted Fiest (supra) decision of Supreme Court of US passed in 1991 which clearly describes the scope and the extent of the protection available to the compilations containing the facts in details overlooks the observations of its own court in Fiest (supra) and proceeds to arrive at the hasty finding that the copyright sequences in Yoga are protectable if they qualify the test of sufficient level of creativity. The said finding is legally incorrect in view of the reasoning and observations contained in Fiest (supra) which clearly enunciates the law that in the cases where the protection is sought for on the premise of compilation, the copyright is very thin and the originality in such cases has to be traced in to the hard work, skill and labour done in selecting, arranging the sequences or facts contained in compilation and not on the facts itself.

Thus, there cannot be copyright which can be conferred on facts stated in the compilation even if they are new or pre-existing which is also evident from the principle of Baker (supra). The district court going contrary by conferring monopoly to Yoga sequences on the premise of compilation is not legally correct finding.

b) The District court in Open source (supra) also no where goes into the detailed discussion of the literary works describing the historical events, processes, exercises available in ancient times and the scope of protection to be provided to them by applying idea expression dichotomy, the jurisprudence of which is emanated from US itself, the district court by ignoring the same and not

indulging in the discussion which has been done above has clearly flawed in its approach in arriving at the finding giving protection to the Yoga sequences and Asanas.

103. In addition to aforementioned reasoning stated above, even the copyright office of US has realized the problem area of conferring protection to Yoga Asanas and sequences on the grounds of Compilation. The Copyright office in US has issued a statement of policy dated 22nd June, 2012 pursuant to this decision of Open Source Yoga Unity (supra) clarifying the position in law relating to compilation copyright protection. The said clarification of policy includes the observations contained in *Fiest* (supra) and the scope of protection in compilation copyright laid down in the said case by the US Supreme Court. The contents of the said policy reads as under:

"The Copyright Office is issuing a statement of policy to clarify its examination practices with respect to claims in "compilation authorship," or the selection, coordination, or arrangement of material that is otherwise separately uncopyrightable. The Office has long accepted claims of registration based on the selection, coordination, or arrangement of uncopyrightable elements, because the Copyright Act specifically states that copyrightable authorship includes compilations. 17 U.S.C. 103.

The term "compilation" is defined in the Copyright Act: A "compilation" is a work formed by the collection and assembling of pre-existing materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. 17 U.S.C. 101 ("compilation"). This definition's inclusion of the terms "preexisting material" or "data" suggest that individually uncopyrightable elements may be compiled into a copyrightable whole. The legislative history of the 1976 Act supports this interpretation, stating that a compilation "results from a process of selecting, bringing together, organizing, and arranging previously existing material of all kinds, regardless of whether the individual items in the material have been or ever could have been subject to copyright." H.R. Rep. 94-1476, at 57 (emphasis added).

Viewed in a vacuum, it might appear that any organization of pre-existing material may be copyrightable. However, the Copyright Act, the legislative history and the Supreme Court's decision in *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 346 (U.S. 1991), lead to a different conclusion.

In *Feist*, interpreting the congressional language in the section 101 definition of "compilation," the Supreme Court found protectable compilations to be limited to "a work formed by the collection and assembling of pre-existing material or data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship." *Feist* at 356, quoting 17 U.S.C. 101 ("compilation") (emphasis by the Court). The Court stated:

The purpose of the statutory definition is to emphasize that collections of facts are not copyrightable per se. It conveys this message through its tripartite structure, as

emphasized above by the italics. The statute identifies three distinct elements and requires each to be met for a work to qualify as a copyrightable compilation: (1) The collection and assembly of pre-existing material, facts, or data; (2) the selection, coordination, or arrangement of those materials; and (3) the creation, by virtue of the particular selection, coordination, or arrangement, of an "original" work of authorship * * *.

Not every selection, coordination, or arrangement will pass muster. This is plain from the statute. * * * [W]e conclude that the statute envisions that there will be some fact-based works in which the selection, coordination, and arrangement are not sufficiently original to trigger copyright protection. Feist, 499 U.S. at 357."

An example that has occupied the attention of the Copyright Office for quite some time involves the copyrightability of the selection and arrangement of pre-existing exercises, such as yoga poses. Interpreting the statutory definition of "compilation" in isolation could lead to the conclusion that a sufficiently creative selection, coordination or arrangement of public domain yoga poses is copyrightable as a compilation of such poses or exercises. However, under the policy stated herein, a claim in a compilation of exercises or the selection and arrangement of yoga poses will be refused registration. Exercise is not a category of authorship in section 102 and thus a compilation of exercises would not be copyrightable subject matter. The Copyright Office would entertain a claim in the selection, coordination or arrangement of, for instance, photographs or drawings of exercises, but such compilation authorship would not extend to the selection, coordination or arrangement of the exercises themselves that are depicted in the photographs or drawings. Rather such a claim would be limited to selection, coordination, or arrangement of the photographs or drawings that fall within the congressionally-recognized category of authorship of pictorial, graphic and sculptural works."

(Emphasis Supplied)

104. In view of the afore noted clarification of the policy issued by the copyright office in US, it is clear that the position of law laid down in Fiest (supra) is still the good law and the copyright office shall not register Yoga sequences as such unless they fall within the realm of the works as defined in US Statute as well as the scope of the protection shall also vary in such cases appropriately. The compilation as defined in US statute does not cover within its ambit, exercises and Yoga Asanas and the same is also unregistrable under the law. All this supports the reasoning which I have given above by conducting the detailed discussion on the scope of the protection above.

105. It is further noteworthy to mention that pursuant to the issuance of the clarification policy by the US copyright office, the District court of Central California has decided yet another case of the same plaintiff Mr. Bikram Chaudhary in relation to the copyright claim made for Asanas of Yoga in the case titled as BIKRAM'S YOGA COLLEGE OF INDIA, L.P. v.

EVOLUTION YOGA, LLC, 105 U.S.P.Q.2D (BNA) 1162, decided on 14th December 2012. In the said case, the District court has revised the position in law relating to protection of exercises and yoga premised on copyright claim taking into the clarification policy issued by the copyright office of US. The District court observed thus:

"But Plaintiffs assert that the copyrights cover the Sequence. (Opp'n

9.) That is, anyone performing the Sequence, as taught by Choudhury's books and videos, commits copyright infringement. But this argument is tenuous--facts and ideas within a work are not protected; only an author's expression of them is. *Shaw v. Lindheim*, 919 F.2d 1353, 1356 (9th Cir. 1990). The Sequence is a collection of facts and ideas. 4 There is a distinction between a creative work that compiles a series of exercises and the compilation of exercises itself. The former is copyrightable, the latter is not. See *Feist*, 499 U.S. at 357 ("Facts are never original, so the compilation author can claim originality, if at all, only in the way the facts are presented."). (Emphasis supplied) The Sequence--Choudhury's compilation of exercises and yoga poses (and not the book or videos depicting the compilation)--is merely a procedure or system of exercises. Regardless of the categories enumerated in § 102(a), copyright protection does not "extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work." 17 U.S.C. § 102(b). According to the Copyright Office, a "compilation of yoga poses may be precluded from registration as a functional system or process in cases where the particular movements and the order in which they are to be performed are said to result in improvements in one's health or physical or mental condition." 57 Fed. Reg. 37605, 37607 (June 22, 2012). Choudhury admits that the Sequence helps to prevent, cure, and alleviate disease. UF 19-22. The Court can only conclude that the Sequence is a system or process that is not copyrightable subject matter under § 102(b)."

(Emphasis Supplied)

106. It has been argued by the plaintiffs in the case of *Bikram's Yoga* (supra) that the court should give little deference to the policy clarification issued by the Copyright office in US. The District court negating the contention observed thus:

"Plaintiffs argue that the Court should give little deference to the Copyright Office's Statement of Policy because the Copyright Office did "not produce records explaining the recent shift or even identify those records so that the Court could determine the legitimacy of the Copyright Office's grounds for doing so." (Opp'n 14, 16.) But under *Skidmore*, an administrative agency's interpretation merits deference given (1) its specialized experience, broader investigations, and information available to the agency; and (2) the value of uniformity in administrative and judicial interpretations of a statutory scheme. *Skidmore v. Swift & Co.*, 323 U.S. 134, 139, 65 S. Ct. 161, 89 L. Ed. 124 (1944). The Supreme Court has long recognized that "considerable weight

should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations." *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984). And other courts have generally given weight to the interpretation of a statute by the Copyright [*11] Office. *Cablevision Sys. Dev. Co. v. Motion Picture Ass'n of Am., Inc.*, 836 F.2d 599, 609, 266 U.S. App. D.C. 435 (D.C. Cir. 1988)."

(Emphasis Supplied)

107. It is thus clear that the position in law which has been discussed above starting from Baker's case, Fiest Publication uptill the authorities in UK discussing idea expression dichotomy is correct exposition of law which is also evocative from the view revisited by the District court of California in the case of Bikram's yoga (supra) decided taking into consideration the clarification policy issued by the copyright office in US. Therefore, the plaintiff in the instant case cannot be heard to say that the protection to performance of Pranic Healing techniques can be accorded on the basis of the copyright claim in the book describing, illustrating and compiling the exercises or Asanas of Pranic Healing.

PROTECTION OF ASANAS OF PRANIC HEALING AS DRAMATIC WORK

108. Now, the only limb of argument in support of the copyright claim in relation of performance of Asanas of Pranic Healing which is left over is the claim that the Asanas of Pranic Healing are the works of choreography as prescribed under the head of Dramatic work under the provisions of the Copyright Act. The defendant to counter this submission vehemently argued that there is no foundation which has been laid in the pleadings qua the protection of the Asanas of Pranic Healing as dramatic work and the court should therefore reject this argument straightway as afterthought.

109. I have gone through the submissions advanced by the learned counsel for the parties in relation to the protection of Asanas of yoga or Pranic healing as dramatic works under the provisions of the Copyright Act, 1957.

110. For the purposes of discussion, it is relevant to reproduce the provision of Section 2 (h) of the Copyright Act, 1957 relating to dramatic works in order to understand what constitutes a dramatic work under the provisions of the Copyright Act. The said provision reads as under:

"(h) dramatic work"" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include a cinematograph film;"

111. From the mere reading of Section 2 (h) of the Act, it is clear that the definition of the dramatic work is inclusive one and therefore may include the works of the nature prescribe under the provisions of the Act. The consequence of the said inclusive definition would result in the right holders like plaintiff to argue that the Asanas of Yoga or Pranic Healing is akin to choreography if

the same is written in the form of script and thus if there is no voice or song along with the dance, it is may similar to that of Pantomime or dance.

112. Again on mere reading of the provision of Section 2 (h) of the Act, it may seem that the Asanas of Yoga or Pranic Healing if written may be included within the realm of the dramatic work. But on careful understanding of the concept of the dramatic work as to what sort of the works are protected within the ambit of the dramatic work and after studying the pre-requisite requirements for calling any work as dramatic work, it may be concluded that the arts and exercises like Yoga, Pranic Healing Technique or daily routine exercises though appear to be choreographic work but they are as a matter of fact not a choreographic work.

113. In order to comprehend as to what sort of the works are covered within the ambit of the Dramatic works as provided in the copyright law. Some guidance is necessary from the English authorities. In this context, Copinger & Skone James on Copyright (Fourteenth Edition by Kevin Garnett M.A., Jonathan R. James, MA. LLB, Gillian Davies, Ph.D., 1999 Edition, London, Sweet & Maxwell) which is leading authority on the subject has given fair amount of commentary which may be useful for the purposes of the present discussion. The learned author discusses first what sort of the works are protected as dramatic works and thereafter proceeds to observe that the requirement of the fixation and certainty of the subject matter is one of the thrust of the dramatic work but the same are not applicable to the cases where there is a reasonable doubt as to the certainty of the subject matter in relation to performance of the same and the examples of such kind of activities are stated to be sport activities and news items. The learned author observes as under:

"3-24 What constitutes a dramatic work: capability of performance. It is implicit from the structure of the 1988 Act that a dramatic work is distinguishable from other works. The Act further makes it clear that what makes a work a dramatic work, rather than a literary work, may be added or removed, so that a literary work can be converted into a dramatic work, and vice versa. However, the present definition, which is essentially the same in this respect as that in the 1911 and 1965 Acts, does not seek to define what is this feature which makes a work a dramatic work, merely stating that it includes a work of dance or a mime. It is suggested that the essential feature of a dramatic work, as the term implies, is that it is capable of being physically performed. However, not all works which are capable of being performed are dramatic works. It is possible, in one sense, to perform a literary work (for example, by reciting a poem) , or a musical work (for example, by singing a song) or an artistic work (for example, by creating a tableau vivant with human actors), but that possibility does not make such a work a dramatic work. To constitute a work a dramatic work something more is necessary than mere capability of performance in this sense. It is suggested that the work must have been created for the purpose of being performed, such purpose being a matter to be deduced from the form and nature of the work." (Emphasis Supplied) Furthermore, it is thought that the intended performance must be one which involves action. Works of dance and mime clearly predicate action in their performance, but a work consisting of words intended to be spoken or sung, would not, it is suggested, be a dramatic work unless

the performance of the words is to be accompanied by action. Thus, a work which was intended to be sung by a singer in character costume but without action would not, it is thought, be a dramatic work. Similarly, the assemblage of a scene to be viewed or to be subject of a photograph, even if incorporating human actors, does not constitute a dramatic work, as it lacks the necessary element of action. For the same reason backdrops and scenic arrangements produced as the setting in which a play is to be performed do not themselves constitute, nor are part of, a dramatic work.

3-26 Elements or features of a dramatic work. The elements or features which may make a work a dramatic work are many and varied, and in the case of an obvious example of a dramatic work, such as a play or a screenplay, will be readily identifiable as the dialogue and the acting directions, usually found in the stage directions. However, in order for a work to constitute a dramatic work there must be sufficient certainty of its subject matter. In the case of a play or a screenplay, this presents little problem, since what knits the separate incidents together so that they can be performed as an entity is the structure of the work, or the plot, which comprises the setting, the characters, and their inter-relationship and development. In the case of subject matter which does not fall into any of the obvious types of dramatic work, however, this requires not only that there should be identifiable with sufficient certainty sufficient elements or features in such subject matter which are of a dramatic nature in the sense discussed above, but also that those features or elements should be sufficiently linked or connected so as to be capable of performance. This ultimately turns on the facts of the particular case, but in applying this test it has been held that a sports game did not constitute a choreographic work (and therefore was not a dramatic work), even though parts of the game were intended to follow a pre-determined plan. Similarly, it has been held that news and current affairs programmes comprising video clips, interviews and discussion, lacked the choreography required to constitute them dramatic works. This has usually been the basis on which formats for television programmes have failed to qualify as dramatic works."

(Emphasis Supplied)

114. The summary of the observations made by the learned author relating to scope of the protection of dramatic work is that for a work to be called as a dramatic work has to be the one which is capable of physically performed or accompanied by action. The other requirement for a work to be called as dramatic work is fixation of the matter in the form of writing or otherwise which means certainty of incidents as a predetermined plan. Where there exists a reasonable doubt as to complete certainty of the performance of the work in the manner conceived by the author or writer, in such cases, the work falls short of the requirement of fixation or certainty of the performance and therefore cannot be called as dramatic work. Such instances of doubtful nature of certainty include sport games, news presentations, aerobics and by necessary implication also include other exercises, daily routines, Yoga and Pranic Healing techniques. Thus, by applying the test enunciated and well settled by the authorities in England for the determining the work as a dramatic work, it can be said that prima

facie the Asanas of Yoga or Pranic Healing do not fall within the ambit of the dramatic work.

115. Incidentally, the similar conclusions have been arrived at by US Copyright office when the clarification policy has been issued by the Copyright in US that the daily routines including Yoga exercises and their sequences of Asanas are not covered within the realm of the dramatic works. The said reasoning is consistent with the analysis made in the preceding paragraphs of this discussion. Furthermore, in later of case of Bikram's Yoga (supra) decided by District court in California on 14th December, 2012, the said district court explicitly negated the contention that the Asanas of Yoga are protected as dramatic works by observing on similar lines. The District court observed thus:

"But Plaintiffs contend that the Sequence is at least copyrightable as a pantomime or a choreographic work because the Sequence consists of "significant gestures without speech." 1 Nimmer § 2.07[A] at 2-67; (Opp'n 14.) However, Congress contemplated copyright protection for dramatic works to be something significantly more than what Plaintiffs offer here:

"Congress has stated that the subject matter of choreography does not include "social dance steps and simple routines." H.R. Rep. 94-1476 at 54 (1976). A compilation of simple routines, social dances, or even exercises would not be registrable unless it results in a category of copyrightable authorship. A mere compilation of physical movements does not rise to the level of choreographic authorship unless it contains sufficient attributes of a work of choreography. And although a choreographic work, such as a ballet or abstract modern dance, may incorporate simple routines, social dances, or even exercise routines as elements of the overall work, the mere selection and arrangement of physical movements does not in itself support a claim of choreographic authorship. 77 Fed. Reg. 37605, 37607 (June 22, 2012).

Thus, preferable forms of pantomimes or choreographic works-

-ones that satisfied the fixation requirement for copyrights--are ones recorded in either the Laban system of notation or as a motion picture of the dance. 1 Nimmer § 2.07[C] at 2-70. Choudhury's copyrighted works are not either of those. Further, the Sequence of 26 yoga poses hardly seems to fall within the definition of a pantomime or a choreographic work because of the simplicity of the Sequence and the fact that it is not a dramatic performance. (Emphasis Supplied) And as explicitly explained by the Copyright Office, compilations of exercises--specifically yoga exercises--are not copyrightable:

An example that has occupied the attention of the Copyright Office for quite some time involves the copyrightability of the selection and arrangement of pre- existing exercises, such as yoga poses. Interpreting the statutory definition of "compilation" in isolation could lead to the conclusion that a sufficiently creative selection, coordination or arrangement of public domain yoga poses is copyrightable as a compilation of such poses or exercises. However, under the policy stated [*13] herein,

a claim in a compilation of exercises or the selection and arrangement of yoga poses will be refused registration. 77 Fed. Reg. 37605, 37607 (June 22, 2012). (Emphasis Supplied)

116. In view of the above discussion, it can be said that the plaintiffs claim in the instant case too that Pranic Healing techniques are in the alternative protected as dramatic works under the provisions of the Copyright Act, 1957 prima facie appears to be untenable and the protection on the said count cannot be accorded towards the performance of the Asanas relating to Pranic Healing techniques.

117. Admittedly, some delay has happened for pronouncing the orders in pending applications. It was due to delay in filing of written submissions and further when the said submissions were examined, it transpired that certain suggestions were made during the course of hearing with regard to publish, distribute, reproduce or sell books written by Master, but in the written submissions, the said issue was dealt with by defendant Nos.2 and 3 on merit. Thus, the matter was listed for clarification on 9 th December, 2013. Both defendants took time to take instructions from their respective clients and if necessary affidavit would be filed. The matter was adjourned to 9th January, 2014. Learned counsel appearing on behalf of defendant No.2 states that order be pronounced on the basis of pleadings and submissions filed by the defendant No.2. But the defendant No.3 has filed an affidavit of Capt. K.V. Kunhikrishnan who is the Vice Chairman and Trustee of defendant No.3 and gave an undertaking on behalf of defendant No.3 that the defendant No.3 has no intention to publish, distribute, reproduce or sell books written by Master including audio and video forms, CDs and to issue certificates in the name of Master except intellectual property right owner and in future, the course, books, review, practice, sessions and nurturing sessions conducted by defendant No.3 would be based purely on the material available in the public domain and/or material which is licensed to usage to the defendant No.3 by the owner of IPR.

118. To sum up the prima facie conclusions arrived at the discussions which I have made so far relating to copyright claim raised by the plaintiff are:

a) The copyright may exist in the language employed in the book, the narration of events and incidents prescribed therein in the manner done by the master and the sequential arrangement contained therein and the reproduction right or right to issuance of the copies available to the master or the person claiming to deriving title from them.

b) The copyright in books, CDs and trade literature cannot be extended to include the exclusive right provided to master or plaintiffs to perform such Asanas of Yoga or implementing the art or Pranic Healing techniques prescribed in the books and CDS etc.

c) The techniques of the Pranic Healing also do not cover within the ambit of the dramatic work as provided under the provisions of the Copyright Act, 1957.

119. In view of the said prima facie conclusions, let me now deal with case of the parties as per the facts of the present case.

a) So far as the plaintiffs claim of copyright in relation to the books, trade literature, CD Roms is concerned, though the defendants dispute the said claim on manifold reasons stated in the written statements filed by them, However, all the defendants have stated during the course of arguments that at this interim stage they do not intend to reproduce the said works or using the said materials which are material reproduction of the plaintiff's copyrighted books except defendant No.1 who has stated that she had jointly authored 9 book titles with the master and is accordingly entitled to use the said works in the same manner as that of the master. Therefore, excepting the defendant No.1, the case of whom I will deal hereinafter, all the other defendants can be conveniently restrained temporarily from using the literary works including books, their titles which are material reproduction of the plaintiffs works as claimed in the list of the works filed by the plaintiffs as Annexure A to the plaint.

b) Plaintiffs claim of copyright in relation to performance of the Asanas of Modern Pranic Healing is prima facie untenable in view of the reasoning contained in the discussion mentioned above wherein the claim of the copyright in respect of book cannot be extended to the art or technique described in the book.

c) The similar claim of the plaintiffs copyright in respect of performance of the Asanas on the premise of the dramatic work is prima facie unsustainable and no prima facie case in this respect has been made out by the plaintiffs.

d) The copyright claim of the plaintiffs in respect of the performance of the Asanas of Pranic Healing has been resisted by the defendants by contending that the said Asanas lack originality in as much as the concept of the Pranic Healing finds mentioned in the books which are predated and published prior to that of the books of the master including book of Swami Ramachakra since the year 1906 and others. The said challenge as to originality is further countered by the plaintiff by contending that there is a difference between the traditional Pranic Healing and Modern Pranic Healing. I have gone through the contents of the books relied upon by the defendants in order to raise such challenge as to originality. After going through the same, it can be said that prima facie, it appears that the techniques of Pranic Healing finds mentioned in the books shown by the defendants. Thus, the challenge raised by the defendants as to the originality quotient to resist the copyright claim is seemingly prima facie credible. However, it is a disputed question of fact in view of the plaintiffs response of difference between the Modern Pranic Healing and traditional Pranic Healing. The plaintiffs are to prove the same in trial. I may point out here that the finding as to the lack of originality is additional reasoning to support the finding as to prima facie non tenability of the copyright claim in the performance of Pranic Healing. This is due to the reason that the analysis done by me above clearly indicates that whether the compilation contained in the book is of novel facts or non novel facts, the important point to be borne in mind is that the copyright shall vest in the manner of description contained in the work like the language employed in the work, selection and arrangement of the incidents and their sequence and shall not extend to performance. Therefore, the novelty or lack of originality of the facts is though essential but not the whole basis of

my finding as this is more of an idea expression problem.

e) The contention of the defendant No.1 and other defendants that they are acting under the separate titles for one reason or other either as licensee or as an independent trust need not require determination at this stage in view of my finding that the copyright claim of the plaintiffs do not extend to the performance of Asanas of Yoga. In that view of the matter, the question of the defendants separate entitlements to impart Pranic Healing techniques is disputed question of fact and can be postponed until trial.

f) The reliance of the plaintiffs on the judgment of Supreme Court in the case of Academy of General Education, Manipal (supra) in order to demonstrate the performance of the dramatic work is protectable and the dance is included within the realm of dramatic work is not applicable to the instant case as no one is disputing that the dance cannot be protected as dramatic and also the performance right is not included when it comes to protecting dramatic works. I have arrived at prima facie finding that Pranic Healing techniques or routine exercises are not covered within the ambit of dramatic works and thus the question of the right to restrain their performance does not arise in the instant case. The right of performance is separately curtailed due to idea and expression problem when it comes to protection of literary works. So both way, the exclusive right to perform or impart or to do Pranic Healing techniques in practice cannot be given solely to the plaintiffs.

g) The argument of the plaintiffs by demonstrating some 13 new Asanas invented by the master and hence they are protectable is also meritless in view of my finding that the novelty of the art described in the book or literary work does not confer any copyright on the art or facts described therein. Thus, the said argument of novelty also does not aid the case of the plaintiffs.

h) Similarly, the defendants have made submissions as to non availability of the deed of assignment in favour of the plaintiffs or complete devolution of title in favour of plaintiffs due to which the plaintiffs cannot assert their right against the defendants. Prima facie, I have found that there is no right of the plaintiffs qua the performances of the Asanas of Pranic Healing Techniques and so far as the books are concerned, the defendants (except defendant no. 1 to the extent of the books co-authored by her) have made the statement that they do not intend to use the trade literature, CDs and books which are reproduction of the master. Under these circumstances, the question as to deed to assignment and devolution of title in favour of the plaintiffs at this juncture becomes inconsequential for the purposes of deciding the present application.

i) The contention of the defendants that the Pranic Healing is part of traditional knowledge of the country also requires the evidence to be led by both the sides as to whether actually Pranic Healing has been emanated from the traditional knowledge of this country. Prima facie, the literature produced on record suggests so but the conclusive finding on the said aspect can be arrived after the evidence is led by the competent person in the field of the art as well as making in depth enquiry after the trial. Suffice it to say that the plaintiffs claim on the copyright at the interim stage can be decided without going into this question in view of my findings arrived at above.

120. These are the main contentions which have been raised by the parties in relation to the copyright claim. The question of comparison of the Master's books and literatures and defendant's literature does not arise in this case as the defendants except the defendant No.2 have made the undertaking that they do not intend to reproduce books and the literature of the Master in material form in the manner owned by the Master so that it may not infringe the copyright of the plaintiff. Only the plaintiffs have tried to compare the works incidents wise. However, the defendant No.2 did not satisfy the court on this aspect. The only plea taken by defendant No.2 is that there is divesting intellectual property rights which includes copyrights of the Master. The plaintiffs deny the said plea, it is thus disputed question of fact and no prima facie view can be formed on the basis of pleadings and material placed on record except to observe that tenabilities of the said plea would be examined in trial. The same cannot be accepted at this stage.

121. The defendant No.1 in order to resist the copyright claim of the plaintiffs in the literary work/books contend that she had co-authored 9 books as mentioned in the submissions recorded above and therefore she is entitled to use the said literature as co-author of the book. The reasoning given by defendant No.1 in respect of the said claim of the co-authorship is that she was the transcriber of the books authored by the master and she had taken notes from the lectures given by the master and thereafter compiled them and edited the books authored by the master. It has been argued that the master has also acknowledged the said fact in his books about the kind of the efforts made by the defendant No.1 in order to compile and edit the 9 books. Counsel for the defendant No.1 submitted that she is entitled to use the said literature as co-author of the books.

122. Learned counsel for plaintiffs in order to substantiate the submission also relied upon the judgment of *Najma Heptulla v. Orient Longman Ltd.*, AIR 1989 Del 63.

123. Learned counsel for plaintiffs refutes the said contention by arguing that mere fact that the defendant No.1 is a mere transcriber/editor would not make any difference in the authorship of the work and the copyright in the said book vests with the Master and no one else.

124. I have examined the submission advanced by the learned counsel for the plaintiff and defendant No.1 with respect to the claim of co-authorship by the defendant No.1 in respect of 9 books as mentioned above. I am of the view that before moving further, it is for me to first deal with the concept of joint authorship in detail as provided under the provisions of the Copyright Act, 1957.

125. The Copyright Act, 1957 defines the expression work of joint authorship under Section 2 (1) (z) of the Act. The said definition reads as under:

"(z) "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors. From the mere reading of the section 2 (z) of the Act, it is apparent that for the purposes of any work to be called as a work of joint authorship, the necessary prerequisites which are required to be satisfied are as under:

- a) That the work has been produced by the collaboration of two or more authors
- b) In which the contribution one author is not distinct from the contribution of other author."

If these ingredients are satisfied, then one may term the work as a work of joint authorship. Now, what is nature of contribution which is required from the author in such work and what are tests to determine such contribution at the level of authorship or otherwise are the questions which are required to be looked into in certain detail for which little guidance is necessary from English authorities in UK containing the similarly worded provision.

126. In this respect it would be appropriate to quote Laddie, Prescott & Vitoria on The Modern Law of Copyright and Designs , 2011 Edition Lexis Nexis where the said concept of Joint authorship has been dealt with in great detail. The learned Author observes that there are three ingredients to be established for the work to be called as a work of joint authorship which are collaboration, non distinction of the contribution from one and other and third and last is creative input. In the words of the learned Author, it has been observed thus:

Joint authors "3.97 A work of joint authorship is defined in s 10(1) of the CDPA 1988 as a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from the contribution of the other author or authors. Accordingly, it appears that there are three requirements which must be fulfilled to make someone a joint author of a literary, dramatic or musical work. First, a joint author must collaborate with the other author(s) in the production of the work. It is submitted that subsequent authors will not result in a work of joint authorship. However, the existence of collaboration must be a question of fact and degree.

(Emphasis supplied) Thirdly, the joint author must provide a significant creative input. In other words, a joint author must contribute a significant part of the skill and labour protected by copyright. It may be helpful to consider two questions; first, whether the alleged author has contributed the right kind of skill and labour; and secondly whether his contribution was big enough. In the case of a literary work, since copyright subsists in the written expression of ideas, a joint author must participate in the writing and share responsibility for the form of expression in the literary work. Therefore, although a joint author is not necessarily required to push the pen, a direct responsibility for what appears on paper is necessary. This requirement has been described as 'something which approximates to penmanship'. (Emphasis supplied)

127. From the reading of the above excerpt from the book of Modern Law of Copyright, it can be said that the three essential ingredients are required to be established for any work to be termed as work of joint authorship. It is also seen that not necessarily the contribution of joint author should coincide with that of the other author, but the contribution should be something which approximates to penmanship which show the skill, labour expended towards the creativity having a role to play in the work considering the nature of the work produced by the two authors.

128. Let me now evaluate the case set up by the defendant No.1 upon the aforementioned tests provided by the author and see whether for prima facie purposes, the said three requirements are qualified or not.

129. It is first necessary to reproduce the assertions made by defendant no. 1 in support her claim as to the joint authorship. The relevant assertions made in the written statement are reproduced hereinafter:

".... Moreover, the Answering Defendant compiled and edited seven books of Golden Lotus Sutra of Master Chao Kok Sui on seven different titles which were copyrighted in the year 2003 and 2004 after compilation of notes taken by her from the lectures given from time to time by Master. In the said books, the Master has acknowledged the work of the answering defendant for compiling the aphorism of the said books for the past nine years. The titles of the said books of Golden Lotus sutra are as follows...."

(Emphasis Supplied) ".....The above said work of the Defendant no. 1 itself shows that she was associated with Master and taking notes of the lectures delivered by the said master since about 1994. The long association has been unequivocally acknowledged and recognized by the said master. Further, the defendant no. 1 was the principal architect in publishing the said books. It is evident from one of the said book namely "inspired Action" that the desire and principal objectives of the said Master were to propagate and spread the teachings of Pranic Healing and no one should monopolise such teaching. The right is non exclusive. The said Master along with the defendant no. 1 had also founded the "planetary peace Movement" in the year 1998. This only goes to show that the defendant no. 1 was closely associated with the Master in development the Pranic Healing courses. The Defendant no. 1 transcribed, compiled and edited two more books of Master on Pranic Healing namely 1. The Original of Modern Pranic Healing and Arhatic Yoga and 2. The Existence of God is self evident and all these Master....."

(Emphasis Supplied)

130. From the reading of the aforementioned assertions made by the defendant No.1 in her written statement, it is clear that there are averments to the effect that the defendant No.1 was associated with the master, her association also went on to contribute her participation in 9 books authored by the master which clearly indicates towards the collaboration or jointness with which work was conducted. The averments in the written statement also proceed to state that defendant No.1 had contributed towards the taking down notes from the lectures of the master, compiling them and providing to the master, the contribution also proceeds to state that she had transcribed the works for the master and thereafter compiled and edited the work. All these averments indicates towards the skill, labour and judgment which has been expended by the defendant No.1 which was not merely ordinary but towards creativity which is a kind of responsibility not distinct from that of the author and the said contribution cannot be said to be merely lopsided but signalling towards her contribution to the penmanship and the essence of the authorship by writing, compiling and editing. It can therefore cannot be said that the prima facie, the averments qua the claim of joint authorship

are missing and rather three essentials of the joint authorship are clearly pleaded and indicating towards such joint authorship.

131. In response thereto, the plaintiff has in the rejoinder filed by the plaintiffs to the reply to the interim application wherein the plaintiffs admit the said position by contending as under:

"It is admitted that the defendant No.1 compiled and edited seven books of Golden Sutra of Master Choa Kok Sui on seven different titles. It is clarified that all the seven books were mere collection of the teachings of the master and all the copyright so obtained in the year 2003 and 2004 on the books were in the name of the Master. It is stated that the merely compiling a book by collecting the teachings of Master does not gives right to Defendant no. 1 to claim ownership of the works of the Master or the institution of Pranic Healing. It is admitted that the Master has acknowledged the work of the Defendant no. 1 for compiling the aphorism of the said books for the past nine years. It is not the case of the plaintiffs that the Defendant no. 1 was associated with the Master. It is however denied that the Defendant no. 1 was the principal architect in publishing the said books....."

132. From the reading of the aforementioned averments made in the rejoinder, it is clear that the plaintiffs admit the association of the defendant No. 1 with the master, they also admit that the defendant No.1 compiled and edited the books of the master, they also admit the fact that the master acknowledge the said fact in his book and lastly the plaintiffs also inform that the nature of the books are of compilation of the teachings of the master. Thus, there are clear admissions on the part of the plaintiffs on defendant No. 1 towards the basis of her claim as a joint author except by mere denial of the consequence which is that given the admissions done by the plaintiffs, same may not result in making her joint author of the work. The plaintiffs continue to state in the written submissions that the defendant No.1 is a transcriber who simply put the master's words from his lectures into written form along with help of the team of people, without changing any of the words of the master. The Golden Lotus sutra are merely a compilation of the extracts of the Masters lectures and the words and preachings enunciated by the master. There is no active intellectual collaboration involved. On this basis, the plaintiff contends that this court should reject the claim of the defendant No.1 as a joint author.

133. As seen above that the three essential ingredients of the joint authorship are clearly pleaded and borne out of the assertions made by the defendant No.1 in her written statement to which, there are clear admissions in the rejoinder and on the contrary the plaintiffs merely take the plea that the said contribution is not vital enough to ascribe joint authorship to the defendant No.1

134. It has already been deduced by me after quoting Modern law of copyright that the intellectual contribution should be in the sense of contribution towards the creativity in copyright sense which is the hardwork, skill and labour expended in the creativity having role to play in the work considering the very nature of the work. If the plaintiffs state that the Golden Lotus Sutras produced by the defendant No.1 are merely a compilation of the extracts from the Master's lectures and the defendant No.1 contributed nothing intellectually when she penned down the lectures of the master,

compiled in the form of compilation and edited in the form of book, then it passes human comprehension as what sort of the contribution shall suffice for an author in the work of the compilation when compiling, editing and penning down the lectures are not considered such contribution. It appears to me on prima facie basis that the plaintiffs have been failed to satisfy that the defendant No.1 has no intellectual contribution towards creativity in copyright sense. Prima facie, I find that if the work is of compilation of lectures, then the acts like preparation of lectures by penning down, transcribing them, compiling them and editing them are surely vital enough to signal hard work, labour and skill towards the creativity as the compiling, preparing of lectures, transcribing them are the essence of the work only. Therefore, on the basis of this prima facie finding, the defendant can exercise her rights in the said 9 books wherein she claims to have contributed with the master in authorship. The plaintiff is at the liberty to prove anything to the contrary in the trial.

135. So far as the rest of the books authored by master and other trade literature, CD Roms etc are concerned, the defendant No. 1 in her supplementary affidavit filed through her power of attorney holder namely Rajiv Bhargava filed on 7th February, 2012, it is said that the defendant No. 1 has not published any of the copyrighted books, manuals of the master and she intends to utilize the copyrighted works of the master only for teaching purposes of conducting the workshop. The said statements made by the defendant No.1 through her attorney are accepted and on that basis the defendant No.1 shall not reproduce the said books in material form and shall also not sell or distributed the books, CDs, manuals and other trade literature of the master in any manner. It is made clear that the said interim order shall exclude from its purview the use of the 9 books for which the defendant No.1 is permitted to exercise her rights.

136. In relation to the residual part of the statement made in the affidavit of Mr. Bhargava that defendants intends to utilize the said works for teaching purposes, this court cannot give any such blanket permission at this stage, the nature of infringement shall be determined by the court on case to case basis. Suffice it to say that there is no interim order which this court is passing on the performance of the Pranic Healing techniques and its imparting in any manner in practice. The parties may infer such prima facie findings as per their understanding on the subject and considering the nature of the work undertaken by them.

PLAINTIFFS CLAIM OF TRADE MARK IN THE EXPRESSION PRANIC HEALING

137. Now, I shall proceed to decide the case of the plaintiffs in respect of the claim of the trade mark infringement as alleged by them. It has been argued that the plaintiffs are the registered proprietors of the trade mark PRANIC HEALING and the titles comprising the expression "PRANIC HEALING" as essential features in several classes. The said list of the trade marks owned by the plaintiffs is shown below :

S. No.	Trade Mark	Name of the owner	Class	Date of registration	Goods
1.	Pranic Healing	Samson Choachuy 21/10A, Ram Villa, Craig	L. 16	08.11.2001	Pranic Healing books, Brochures, Periodicals, Printed matters, Publication,

		Park, Layout, M.G. Road, Bangalore- 560001			instructional and teaching materials, carry bags, lett heads, visiting cards, book included in Class 16
2.	Pranic Healing	Samson L. 41 Choachuy (A Phillipine National) #59, Cordillera Street, Quezon city, Philippines. Merchant & Service Providers.	11.04.2005		Imparting education and other related servic arranging and conducting of conference, seminars, trainings and workshops, educational servic instruction servic practical train publication of books and texts, organization educational competitions, organization of exhibitions for educational purposes, radio and televis programmes, publication of electronic books journals on line all includ in Class 41.
3.	Advanced Pranic Healing	Samson L. 41 Choachuy (A Phillipine National) #59, Cordillera Street, Quezon city, Philippines. Merchant & Service Providers.	11.04.2005		Imparting education and other related servic arranging and conducting of conference, seminars, trainings and workshops, educational servic instruction servic practical train publication of books and texts, organization educational competitions, organization of exhibitions for educational purposes, radio and televis programmes, publication of electronic books journals on line all includ in Class 41.
4.	Master Choa Samson Kok Sui Choachuy Pranic Healing Philippine	L. 41 (A National) #59, Cordillera Street, Quezon city, Philippines. Merchant &	11.04.2005		Imparting education and other related servic arranging and conducting of conference, seminars, trainings and workshops, educational servic instruction servic practical train

Service Providers.

publication of books and

texts, organization
educational competitions,
organization of exhibitions
for educational purposes,
radio and televis
programmes, publication of
electronic books
journals on line all includ
in Class 41.

- | | | | | |
|----|---|-------------|------------|---|
| 5. | Yoga Vidya Samson
Pranic Healing Choachuy
Foundation Philippine
National) #59,
Cordillera Street,
Quezon city,
Philippines.
Merchant &
Service Providers. | L. 41
(A | 03.11.2005 | Imparting education and
other related servic
arranging and conducting
of conference, seminars,
trainings and workshops,
educational servic
instruction servic
practical train
publication of books and
texts, organization
educational competitions,
organization of exhibitions
for educational purposes,
radio and televis
programmers, publication of
electronic books
journals on line, productio
and sound recordings on
audio cassettes, tapes, dis
(including CD-ROM and
CD) all included in Class |
| 6. | All India Yoga
Vidya Pranic
Healing Choachuy
Foundation Philippine
National) #59,
Cordillera Street,
Quezon city,
Philippines.
Merchant &
Service Providers. | L. 41
(A | 03.11.2005 | Imparting education and
other related servic
arranging and conducting
of conference, seminars,
trainings and workshops,
educational servic
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publication of books and
texts, organization
educational competitions,
organization of exhibitions
for educational purposes,
radio and televis
programmers, publication of
electronic books |

journals on line, production
and sound recordings on

audio cassettes, tapes, di
(including CD-ROM and
CD) all included in Class

- | | | | | | |
|----|---------------------------------------|---|-------------|------------|---|
| 7. | World Pranic
Healing
Foundation | Samson
Choachuy
Philippine
National)
#59,
Cordillera Street,
Quezon city,
Philippines.
Merchant &
Service Providers. | L. 41
(A | 03.11.2005 | Imparting education and
other related service
arranging and conducting
of conference, seminars,
trainings and workshops,
educational service
instruction service
practical train
publication of books and
texts, organization
educational competitions,
organization of exhibitions
for educational purposes,
radio and televis
programmers, publication of
electronic books
journals on line, production
and sound recordings on
audio cassettes, tapes, dis
(including CD-ROM and
CD) all included in Class |
| 8. | Pranic Healing | Samson
Choachuy
Philippine
National)
#59,
Cordillera Street,
Quezon city,
Philippines.
Merchant &
Service Providers. | L. 41
(A | 05.10.2005 | Imparting education and
other related service
arranging and conducting
of conference, seminars,
trainings and workshops,
educational service
instruction service
practical train
publication of books and
texts, organization
educational competitions,
organization of exhibitions
for educational purposes,
radio and televis
programmes, publication of
electronic books
journals on line included i
Class 41. |
| 9. | Pranic Energy
Healing | Samson
Choachuy | L. 41
(A | 05.10.2005 | Imparting education and
other related service |

	Philippine National) Cordillera	#59, Street,		arranging and conducting of conference, seminars, trainings and workshops,
	Quezon Philippines. Merchant Service Providers.	city, &		educational service instruction service practical traini publication of books and texts, organization educational competitions, organization of exhibitions for educational purposes, radio and televisi programmes, publication of electronic books a journals on line included in Class 41.
10.	Yoga Vidya Samson Pranic Healing Choachuy company incorporated under the laws of the Philippines) Cordillera Street, Quezon city, Philippines. Merchant & Service Providers.	L. 41 (A	11.04.2005	Imparting education and other related service arranging and conducting of conference, seminars, trainings and workshops, educational service instruction service practical traini publication of books and texts, organization educational competitions, organization of exhibitions for educational purposes, radio and televisi programmes, publication of electronic books a journals on line included in Class 41.

138. It has been alleged by the plaintiffs that the plaintiff being the registered proprietor of the trade mark comprising the expression PRANIC HEALING can prevent any third party misuse of the trade mark PRANIC HEALING. It has been argued that the trade mark PRANIC HEALING has acquired secondary significance vis-a-vis the plaintiffs due to its long standing use by the plaintiffs.

139. The defendants on the other hand argued that the expression PRANIC HEALING is publici juris and as such no monopoly can be claimed on the said basis. It has been argued that there is no valid deed of assignment in favour of the plaintiffs in order to show title over the trade marks and thus the plaintiffs are estopped from claiming any trade mark infringement. It has been argued that

the Pranic Healing as an expression cannot acquire any secondary significance qua the plaintiffs being generic expression. The defendants relied upon the material they have placed on record including the books and literature filed to challenge the originality to show that the expression Pranic Healing is the name of the concept or technique which is one of the facet of Yoga and has been part of the traditional knowledge of India.

140. I have considered the rival contentions of the parties on the aspect of the trade mark infringement and have also considered the material available on record. On going through the material available on record, it is apparent that the expression Pranic Healing has been used by Swami Ramachakra in his book as back as in the year 1906 prior the books and titles of the Master. The said Book of 1906 describes Pranic Healing as a concept derived from Prana which has been taken from Pranayam of Yoga and the said concept mainly means utilising the inherent energy prana or energy of life in all beings for self-healing. The said term Pranic Healing has been written prominently in the chapters of the book published more than a century ago by another Swami. The said book has also been relied by the defendants to attack the aspect of originality in the copyright claimed by the plaintiff. It is thus evident that it is not the master or the plaintiffs who have coined the term Pranic Healing and the same has been originated from somewhere else or probably from the public domain.

141. Section 18 of the Trade Marks Act clearly provide that any person claiming to be a proprietor of the trade mark can secure the trade mark registration and apply for the same. It is however required to be mentioned that the said claim of the proprietorship made by the plaintiff has to be truthful in as much as that it is the plaintiff who is the owner of the trade mark by adopting a trade mark which is inherently distinctive or the mark which is capable of distinguishing the goods and services of the one person from that of another. The trade marks which have secured by the plaintiffs in India are all secured post the year 2000 as is evident from the list. If the expression Pranic Healing was the name of the art or technique of Yoga in the year 1906 finding place in the books in the field of Yoga, it is prima facie appears to be highly doubtful as to how the said expression PRANIC HEALING is either inherently distinctive or for that matter capable of distinguishing the goods of one person from that of another. Having not made a truthful statement as to proprietorship of the mark PRANIC HEALING by the plaintiffs, the plaintiffs have secured the registration of the expression PRANIC HEALING from the Registrar of the trade mark without informing about the correct proprietorship of the mark applied for on the date of the application. The said act of withholding the information or making incorrect claim of the proprietorship of the mark in legal parlance is termed as committing fraud upon the register.

142. It is established law that in an action before the civil court relating to infringement proceedings, the validity of the trade mark cannot be questioned more so at the prima facie stage. But, it cannot also be lost sight of that the registration is merely a prima facie proof of validity by virtue of Section 31 of the Act. There is always a rebuttable presumption available under the law in such cases where the circumstances attending the same speaks to the contrary, the court can at any stage draw inference to the contrary even in cases wherein there shall be prima facie presumption as to validity. (Kindly see the judgment of Division bench of this court in the case of Marico Ltd. Vs. Agro Tech Foods Limited; 2010 (44) PTC 736 (Del.) wherein this court observed in the context of lack of

distinctiveness in the following terms:

"A trademark is ordinarily used in relation to goods of a manufacturer. A trademark can be registered but ordinarily registration is not granted if the mark falls under sub-sections 1(a) to 1(c) of Section 9. The proviso however, provides for entitlement to registration although ordinarily not permissible under Sections 9 (1)

(a) to (c), provided that the mark has acquired a distinctive character as a result of its use prior to registration or is otherwise a well known trademark. Registration is only prima facie evidence of its validity and the presumption of prima facie validity of registration is only a rebuttable presumption." (Emphasis Supplied)

143. The reading of the aforesaid observations would show that the court in an infringement proceeding would proceed to enforce the trade mark when it prima facie appears to the court that it is valid one. Normally, such presumption is implicit by virtue of Section 31 of the Act, however if any contrary material is informed to the court which indicates that the registration has secured by ignoring the mandatory provisions of the Act. The court may in such cases draw an inference as to invalidity for prima facie purposes if not conclusively and proceed to deny the discretionary relief of interim injunction to the party even though the appropriate tribunal to try the proceedings relating to cancellation is trade mark registry or IPAB. By drawing such inferences, this court time and again even maintained an infringement action against the registered proprietor holding that for prima facie purposes the mark of the defendant is invalid.

144. Applying the said proposition to the instant case, it can be seen that the expression PRANIC HEALING on the date of the application for the registration was prima facie non distinctive and was the name of the art or technique of doing exercise which was a facet of Yoga. The expression was not capable of distinguishing the services of the plaintiff from others due to its wide spread use in the field dating back from centuries ago. Thus, the registration of the expression PRANIC HEALING attracts serious objections under the provisions of Section 9 of the Act relating to lack of distinctive character. Furthermore, the plaintiff or the applicant has secured the registration by making false claim as to proprietorship in the trade mark registration which prima facie vitiates the registration. Thus, this court can conveniently draw prima facie inference that the registrations obtained by the plaintiffs for the mark PRANIC HEALING are inconsequential. Prima facie, it appears to the court that it becomes generic name and cannot be protected being known as name of concept of Yoga at present. Even the Master was not the proprietor of the said expression "PRANIC HEALING", hence at this stage, the plaintiffs are not entitled to claim the monopoly of the said words.

145. Therefore, prima facie no case has been made out by the plaintiffs for the infringement of the trade mark as the expression Pranic Healing is incapable of performing the function of the trade mark and the trade mark registration secured by the plaintiff is prima facie inconsequential. Accordingly, the court cannot proceed to grant interim injunction as prayed for by the plaintiffs on the strength of prima facie invalid registrations. So far as the secondary significance is concerned, once it is seen that the expression Pranic Healing has a wide spread use prior to the plaintiffs coming into picture, no amount of expenditure or investment can lead to distinctiveness of such an

expression which is the name of the art or technique which has its roots embedded in ancient history of India can lead to secondary meaning identifying any singular proprietor like the plaintiffs. Accordingly, the trade mark infringement and passing off claims of the plaintiff on the premise of the use of the expression PRANIC HEALING by the defendants are prima facie not made out.

INJUNCTION

146. Finally, I shall now proceed to discuss the principles governing the grant of interim injunction which are prima facie case, balance of convenience and irreparable loss and test the case of the plaintiffs on the same. The plaintiffs have failed to make out any prima facie case for the grant of injunction in relation to infringement of trade mark, passing off and the infringement of copyright qua the performance of the Asanas of Pranic Healing under the copyright. The balance of the convenience is of course is in favour of the defendants in absence of the any prima facie case of copyright infringement in relation to pranic healing techniques, concepts or any exercises of Yoga and Asanas and trade mark infringement and irreparable damage shall also ensue to the defendants if the plaintiff is granted the interim injunction in its favour without establishing a prima facie right over the trade mark and copyright.

147. The only prima facie case which has been made out by the plaintiff is towards the reproduction right of the books and other literature or issuance of copies or distribution of certificate by the defendants. The defendants have made the statement during the course of hearing (except 9 books for which rights have been claimed by the defendant No.1) they do not intend to replicate the literature, brochures, CDS Roms etc of the plaintiff which may cause infringement in the manner of expression by way of language or sequential incidents contained in the books and other literature. The defendants have further stated that they will not affiliate themselves with Master by issuing any certificate containing the name of the master or any way associate their institutes with the Master while running their training courses. Thus, the balance of the convenience and irreparable loss so far as these reliefs are concerned are in favour of the plaintiffs. The plaintiffs are therefore entitled to injunction restraining reproduction or distribution or selling of the copies of the books and literature etc. as per the directions given below subject to continuance of use of 9 books by the defendant No.1 as mentioned in the directions.

148. The directions as per the prima facie conclusions arrived at under the various heads of the discussions done above can be summarized as under:

- a) The defendants, their agents, partners, directors, trustees or any one of them acting on their behalf directly or indirectly are temporarily restrained during the pendency of the proceedings from reproducing the contents of the books and the trade literature, brochures, CD Roms, manuals in the manner used by the Master in his books, literature and other material or copying the material in material or substantial form sequentially or incident wise which may cause infringement of the copyright in the said works and from selling, distributing, offering for sale any such books, CD Roms, recordings of master courses, brochures and other literary work authored by the Master or using the same at the time of teaching or imparting

training of Modern Pranic Healing or Pranic Healing in their training programmes, workshop and also from issuing the certificate for conducting their training courses which contains the name of the Master namely Master Choa Kok Sui or use any material or write up which may suggest affiliation of the defendants with that of Master Choa Kok Sui in relation to their training programmes run in their training institutes and foundations.

However, they are free to print, publish any book, printed material, brochures and certificates on the basis of material available in public domain which do not infringe the copyright of above of the Master.

b) An order is passed that defendant No.1 is at liberty to exercise her rights over the 9 books stated to be co-authored by her during the pendency of the proceedings. The said 9 titles are :

Achieve the Impossible (The Golden Lotus Sutra on Spiritual Business Management) Beyond the Mind (The Golden Lotus Sutra on Spiritual Business Management) Compassionate Objectivity (The Golden Lotus Sutra on Character Building) Creative Transformation (The Golden Lotus Sutra on Spiritual Practice) Experiencing Being (The Golden Lotus Sutra on Life) Inspired Action (The Golden Lotus Sutra on Life) Possible Miracle (The Golden Lotus Sutra on Pranic Healing) The Origin of Modern Pranic Healing and Arhatic Yoga The Existence of God is self Evident

c) And subject to condition (a), the defendants are free to perform the Asanas of Pranic Healing or Modern Pranic Healing techniques or impart training, practice, sessions, teachings, conduct workshops, in their respective institutes on Pranic Healing or Modern Pranic Healing of the master without using the literature of the plaintiffs or master as the plaintiffs have failed to establish any prima facie copyright claim over the performance of the art or techniques Pranic Healing be it under the head of compilation as a literary work or as a dramatic work within the meaning of the copyright Act.

149. The interim order dated 14th September, 2011 is modified by substitution of the aforementioned directions in place of the ones granted earlier.

150. All applications I.A. No.14617/2011, I.A. No.18553/2011, I.A. No.20143/2011, I.A. No.20144/2011, I.A. No.20167/2011, I.A. No.20762/2011, I.A. No.448/2012 and I.A. No.15808/2012 are accordingly disposed of.

151. These are tentative findings which have no bearing when the matter shall be decided at the final stage after recording the evidence.

152. No costs.

(MANMOHAN SINGH) JUDGE JANUARY 10, 2014