

KABC170001422025



**IN THE COURT OF LXXXV ADDL. CITY CIVIL & SESSIONS
JUDGE, AT BENGALURU (CCH-86) (Commercial Court)**

THIS THE 1st DAY OF JUNE 2026

PRESENT:

**SRI.ARJUN. S. MALLUR. B.A.L.LL.B.,
LXXXV ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

Com.OS.No.40/2025

BETWEEN:

**M/S Pathways Foundation,
355 E Erie St, Chicago, Illinois 60611,
United States Of America.
Rep By Its President And Chief
Administrative Officer Ms. Nancy Paridy**

: PLAINTIFF

(Represented by Sri/Smt. Apabharana K M, Advocate)

AND

**Mr. Arpit Roy,
B114 Abhee Lakeview,
Serenity Layout,
Sarjapur Main Road,
Bangalore-560 035.
dude.arpit@gmail.com, arpit.roy@icloud.com**

: DEFENDANT

(Represented by Sri/Smt. Pradnya Gadre, Advocate)

Date of Institution of the suit	09.01.2025		
Nature of the suit (suit on pronote, suit for declaration & Possession, Suit for injunction etc.)	Suit for Recovery of Money.		
Date of commencement of recording of evidence	19.01.2026		
Date on which judgment was pronounced	01.06.2026		
Total Duration	Year/s 01	Month/s 04	Day/s 23

(ARJUN. S. MALLUR)
LXXXV Addl.City Civil & Sessions Judge,
Bengaluru.

J U D G M E N T

Suit for recovery permanent injunction restraining the defendant and persons claiming under him or through him infringing the plaintiff's exclusive rights to publish and communicate the literary modules, videos and other resources through its website www.pathways.org and its mobile application "Baby Milestones App" by copying, reproducing, displaying, uploading, downloading, exhibiting, commercializing or in any manner communicating and direct the defendant to pay a sum of

Rs.2,00,00,000/- as punitive damages for the acts of infringement committed by copying, reproducing, displaying, uploading, downloading, executing, commercializing the plaintiff's literary modules, videos and other resources contained in its website www.pathways.org and its mobile application Baby Milestones App.

2. The case of the plaintiff in brief is as under:-

The plaintiff is a non profit organization based at Chicago, Illinois having its head office at USA. The plaintiff operates in the field of pediatric development and has been involved in the said field for over 35 years with a vision to empower parents for understand and encourage baby's development and to keep them on track or catch potential delays early. For the said purpose the plaintiff provides free, trusted resources which every parent is fully empowered to support their child's development and take advantage of their child's neoplasticism at the earliest age. Plaintiff also aims to ensure children are provided with a holistic learning experience at a early age and offers various didactic resources to parents and other caregivers of infants from the age group of 0-3 months till

4 to 6 years. The details, materials and resources created and offered by the plaintiff are presented in the form of modules containing original literature and content covering various aspects of the child's development through its first 6 years, videos that explain the activities that the parent or caregiver of the child may perform with the child in enabling its development at various stages, games that enable the parent or caregiver of child to playfully involve the child in its growth and development. The plaintiff publishes and provides its proprietary modules, videos, photographs and show step by step description of various processes and developments of the child and literature in relation thereto free of charge to the general public through its mobile application Baby Milestones App and website www.pathways.org. The resources so provided by the plaintiff are meticulously researched, curated, developed and approved by various professional experts in the field of physical and occupational pediatric therapy and speech language pathologists on the basis of their experience in the profession and research material available to them. Thus the plaintiff is the owner of the copyright in these materials and resources.

(a) It is further the plaintiff's contention that over the

years, the plaintiff has earned tremendous goodwill and reputation on account of highly specialized and interactive resources offered by it through its website and mobile application. These resources are accessed by thousands of viewers on an average per day and the videos of the plaintiff has been viewed over 30 million times and in India particularly it has been accessed and utilized by more than 8 million users. For the purpose of protecting its intellectual property from competitors and unauthorized third parties the plaintiff has duly incorporated the copyright notices in the resources by putting all the viewers on notice of its copyright and has declared that all copyright in respect of the resources provided to the website and app are vested only with the plaintiff and that the resources can be accessed by a given user only after agreeing to the terms of use contractually binding themselves with a strict clause that prohibits use of the resources for competitive purposes. Such being the case plaintiff recently came to know that the defendant has brazenly copies each and every single resources offered by the plaintiff through its website and mobile application and made used of the same in his mobile application named "Baby Development: Milestones and Baby Steps: Baby Development" which were available

for download on the app store of Apple Inc. The defendant has verbatim copy pasted the videos and literature created and curated by the plaintiff pertaining to various stages of the child's growth. It is alleged that the defendant has brazenly copied each and every single resource from the plaintiff's website and mobile application and deliberately defaced the plaintiff's logo/watermark on their videos and overlaid his mark/logo which amounts to abuse of the plaintiff's proprietary rights apart from erasing their right of patency over the said works. When the plaintiff provided its resources and videos free of charge to the public the defendant has illegally and unlawfully copied the resources and is charging a premium for the users to access, watch and download the said resources. The defendant by charging the fee in US Dollars is targeting not only the Indian users but also the users abroad by committing theft of the plaintiff's resources and is unjustly gaining himself.

(b) On coming to the knowledge of the defendant's actions the plaintiff issued copyright strike against the defendant publication on youtube.com to the defendant channel Baby Steps. On issuing of the copyright strike the

videos uploaded by the defendant were immediately removed from youtube.com and the youtube channel of the defendant has also been taken down being not available for public viewing. The defendant through his email dated 25.01.2024 wrote to the plaintiff contending that it is act of copying plaintiff resources was an oversight and promised that he would remove all the videos from the youtube channel. From the said act of the defendant it is clear that he had made use of the plaintiff's resources without the plaintiff's consent. Thereafter plaintiff issued a legal notice dated 29.01.2024 informing the defendant about his act of deliberate infringement of the copyright in his apps and called upon the defendant immediately cease and desist from using the plaintiff's proprietary materials, take down erase, remove and delete the defendant's mobile applications all the copyrighted materials of the plaintiff on its applications and also issue an undertaking in writing that henceforth the defendant would not use or deal in any manner the plaintiff's proprietary materials. The plaintiff also initiated proceedings for taking down the defendant's mobile applications from Apple Inc which is still pending closure. The defendant to the said notice replied vide email dated 31.01.2024 admitting having used the

plaintiff's proprietary and copyrighted materials and agreed to completely remove all the resources of the plaintiff from the platforms hosted by him. The plaintiff issued a rejoinder dated 14.02.2024 enclosing a draft of undertaking requiring the defendant to sign the same and send it back to the plaintiff. The defendant was called upon to get the undertaking executed on a stamp paper duly notarized and send it back to the plaintiff which the defendant did not comply for the reasons best known to him. It is submitted that though the defendant claims have removed all the infringing videos from the mobile application he continues to use the other resources and audios and games on its mobile application Baby Development Milestones. The plaintiff issued a joinder notice dated 11.03.2024 calling upon the defendant to take note of the infringement of the plaintiff's copyright materials and ensure complete remove or deletion of all the copyrighted materials of the plaintiff from all the mobile applications of the defendant. In spite of the said notice the defendant refused to comply with the same and falsely claimed that the materials contained in the app is of the older version and in the newer version there is no materials belonging to the plaintiff being shown. It is submitted that even today the defendant's app Baby

Development Milestones contains the infringing materials copied from the plaintiff's website and mobile application. It is submitted that the defendant do not possess any right for use of the copyrighted resources of the plaintiff without its consent and knowledge and the defendant has been commercially exploiting the same by unjustly enriching himself by displaying the plaintiff's resources on the mobile app for a user fee and thereby unjustly enriching himself. It is submitted that the defendant has deliberately and willfully infringed the plaintiff's ownership of copyright in the resources provided through its website and mobile apps and though it is not possible to ascertain the actual damage the plaintiff is ascertaining its infringement of copyright at Rs.2,00,00,000/-. Hence the suit.

3. The defendant filed the written statement contending that the suit of the plaintiff is not maintainable as the plaintiff has not approached the Court with clean hands and it is totally misconceived and do not survive for consideration. The defendant contends that there is no cause of action for the suit as all the infringing content has been permanently removed. It is submitted that on 23.01.2024 the youtube channel acting on a copyright

take down request issued by pathway.org terminated the said channel which was also conveyed to the defendant. Further the Baby Development Milestones and Baby Steps: Baby Development App did not host or store any videos but it merely embedded the youtube video links (URLs) for users to view content directly from the youtube. Once the youtube channel of the defendant was removed on 23.01.2024 all embedded videos contained in the app also became unavailable. It is submitted that the alleged infringing contents has been fully removed as on 23.01.2024 and therefore absolutely there was absolutely no cause of action for the present suit. Defendant submits that on 23.01.2024 he voluntarily removed mobile application Baby Development Milestones app from the App store which is confirmed by the Apple Inc through its email dated 25.01.2024 stating that the application has been taken down from all the territories of the developer. The said mail has also been marked to the plaintiff putting the plaintiff in notice about the same. Likewise the app of Baby Steps: Baby Development came to be removed by Apple Inc on 03.06.2024. It is submitted that the plaintiff was fully aware that the infringing content was no longer publicly available but deliberately has filed this suit only to wrongfully harass the defendant. It is submitted that

the defendant is a young entrepreneur and developer with a passion for technology and social welfare and has created series of Apps which has been developed only as a hobby with goal of providing values to the society and not for any commercial purposes. It is submitted that the Apps Baby Development Milestone and Baby Steps: Baby Development were developed by the defendant only for educational purposes and they did not generate any revenue. Though the App included a section for paid content it never contained any content. Further the App which was developed on the No-Code platform by default contained the pricing in US Dollars but never any price was fixed for downloading any youtube videos or URLs from the said App. The defendant in good faith had created content for the benefit of parent and caregivers and has not made any commercial or financial gains. It is further submitted that defendant had engaged an independent freelancer to assist in development of the application who has incorporated certain contents belonging to the plaintiff for educational purposes. On coming to know about the same the defendant has taken immediate corrective measures. It is submitted that the defendant upon receiving the email sent by the plaintiff for taking down the youtube channel has voluntarily taken

down all the Apps and removed all the materials. The defendant in fact reached out to the plaintiff through email dated 25.01.2024 accepting the copyright notice and expressing apologies for unintentional violation and requested the plaintiff to retract the copyright notice and assured the plaintiff that all disputed contents had been removed. It is further submitted that inspite of defendant's compliance the plaintiff served a cease and desist notice dated 30.01.2024 calling upon the defendant to take down the mobile Apps even though by the the mobile Apps had already been removed. The defendant also admits receipt of the rejoinder mail dated 14.02.2024 wherein the plaintiff had called upon the defendant to execute an undertaking on a non judicial stamp paper by notarizing the same. However as the defendant was located in a remote location outside India he could not get the undertaking executed on a non judicial stamp paper and notaries. It is submitted that the plaintiff despite being fully aware that the Apps had already been taken down by the defendant, the youtube also been taken down still with a malafide intention issued another notice dated 11.03.2024 to which a suitable reply has been sent through email dated 04.04.2024. It is submitted that the plaintiff has alleged continuous infringement without

providing any proof of the same and despite the defendant repeatedly calling upon the plaintiff to provide proof of the infringement no evidence has been shared with the defendant. In this regard the several mails were sent to which the plaintiff remained unresponsive. It is submitted that the defendant has taken all reasonable steps to comply with the copyright laws and inspite of it the plaintiff has made baseless allegations of infringement by issuing baseless notices without any substance and on these grounds defendant seek for dismissal of the suit with exemplary costs.

4. Based upon the pleadings, the following issues have been framed:

ISSUES

- 1) Whether the plaintiff proves that the defendant had indulged in infringing the plaintiff's exclusive copyrights to publish and communicate the literary modules, videos and other resources contained in its website www.pathways.org and mobile application Baby Milestones App?
- 2) Whether the plaintiff is entitled for a sum of Rs.2.00 crores from the defendant as punitive damages for infringement of plaintiff's copyright?

- 3) Whether the plaintiff is entitled for relief of permanent injunction and damages as prayed?
- 4) What order or decree?

5. The authorized representative of the plaintiff has examined herself as PW-1 and has got marked documents at Ex.P.1 to P.10. The defendant has examined himself as D.W.1 and has got marked documents at Ex.D.1 to D.30.

6. Heard the learned counsels appearing for both sides. Counsel for the plaintiff has also filed his written arguments. Memo with citations have been filed by both sides. Perused the entire material on record.

7. My answer to the above issues are as under:-

Issue No.1: **In the Negative**

Issue No.2: **In the Negative**

Issue No.3: **In the Negative**

Issue No.4: As per final order for the following.

REASONS

8. ISSUE Nos.1 to 3 :- These issues are interlinked with each other and to avoid repetition of facts and evidence

they are taken up together for answering.

The authorized representative of the plaintiff examined herself as P.W.1 and got marked documents at Ex.P.1 to P.10. Ex.P.1 is the power of attorney executed in favour of P.W.1. Ex.P.2 is the printout of the plaintiff's website containing the description of the modules and resources offered by the plaintiff. Ex.P.3 is the printout of the email dated 25.01.2024 under which the defendant has expressed his regret for having posted the resources and modules belonging to the plaintiff on its youtube channel and undertaking to take down the same forthwith. Ex.P.4 is the cease and desist notice dated 29.01.2024. Ex.P.5 is the email dated 31.01.2024 wherein the defendant has informed the plaintiff that the youtube channel which hosted the video has been terminated , the Baby Development Milestone App has been removed. Ex.P.6 is the rejoinder to the cease and desist notice dated 14.02.2024 which is appended with an undertaking requiring the defendant to execute on a non judicial stamp paper and notarize the same duly. Ex.P.7 is the reply sent by the defendant to the said rejoinder wherein he has attached an undertaking duly signed on 16.02.2024 informing that because of his location in a remote place he is unable to get it executed on a stamp paper and get

is notarized. Ex.P.8 is the screenshots of the Apps set to have still containing the videos and resources of the plaintiff even after the notice being issued. Ex.P.9 is the email dated 11.03.2024 annexing the legal notice sent to the defendant. Ex.P.10 is the certificate under Sec.63 of BSA 2023

9. P.W.1 has been cross examined by the defendant and in the course of cross-examination P.W.1 admits that the youtube channel and two mobile applications run by the defendant are the subject matter of this dispute and also deposes that during September 2024 there was an additional application released by the defendant which is not pleaded in the plaint. P.W.1 also admits youtube having terminated the channel run by the defendant. P.W.1 further deposes in the cross-examination that the mobile applications of the defendant was brought to her notice by a person from India. Further in the cross-examination P.W.1 deposes that apart from the plaintiff's website and mobile applications the users can also access the plaintiff's videos on the youtube platforms. Further in the cross-examination he has deposed that she has not visited the server of the defendant and also deposes that the application of the defendant Baby Steps:

Baby Development has been accessed by her in September 2024 and further deposes that she is not aware as to what are the services that were being provided by the defendant in his apps and she is also not able to say how much is the actual damage caused because of the defendant using the Apps containing the plaintiff's resources and modules. She further deposes that the applications run by the defendant has been taken down by Apple Corporation from all its territories and deposes that there is one more application which continues to infringe plaintiff's right. However there is no pleading at all with the said additional application.

10. Against the evidence of the plaintiff the defendant examined himself as D.W.1 reiterating the averments made in the written statement and has got marked documents at Ex.D.1 to D.30. Ex.D.1 is the take down notice of youtube channel dated 23.01.2024. Ex.D.2 is the screenshot showing the URL not being available on the youtube channel for viewing. Ex.D.3 is the screenshot of the youtube URLs being used on the Baby Development Milestone and Baby Steps: Baby Development app run by the defendant. Ex.D.4 is the screenshot regarding removal of the Baby Development Milestone App on 23.01.2024.

Ex.D.5 is the confirmation issued by the Apple Inc through email dated 25.01.2024 regarding removal of baby development milestone app from all the territories similar is the email dated 03.06.2024 at Ex.D.6 for removal of the Baby Steps: Baby Development App. Ex.D.7 is the screenshot regarding the Baby Development Milestone App being available for free. Ex.D.8 to D.12 are the copies of the emails sent by the plaintiff to defendant and vice versa all dated 25.01.2024, 27.01.2024, 29.01.2024 and 31.01.2024. Ex.D.13 is the email dated 10.02.2024 by plaintiff to Apple Inc copy being marked to defendant not to close the Baby Steps : Baby Development App. Ex.D.14 is the email of the plaintiff dated 12.02.2024. Ex.D.15 is the boarding pass of the defendant traveling to a island in Spain. Ex.D.16 is the legal notice dated 11.03.2024 issued by the plaintiff. Ex.D.17 is the email dated 04.04.2024 which contains the reply given by the defendant to the plaintiff's legal notice. Ex.D.18 to D.30 are all printouts of the emails that has been exchanged between plaintiff and defendant also marked a copy to Apple Inc dated 04.04.2024, 08.04.2024, 09.04.2024, 21.04.2024, 23.04.2024, 08.06.2024, 10.06.2024, 11.06.2024, 28.06.2024, 10.07.2024, 12.07.2024, 04.06.2024 and 05.06.2024.

11. Defendant is also subjected to cross-examination and in the cross-examination he deposes that the Baby Development Milestone and Baby Steps: Baby Development Apps were developed in 2023 and he was being assisted by one freelancer whose name he does not know and the information in the Apps were loaded through No-Code platforms using drag and drop method. He has deposed that he has not created any content but made use of the information which was publicly available in the public domain and he has only shared information which was already in the public domain for anyone to access. Further in the cross-examination he deposes that subsequent to 23.01.2024 no content was available in the Baby Steps: Baby Development App. He has further deposed that from 23.01.2024 till 03.06.2024 Baby Steps: Baby Development Apps was not available for downloading on the App Store. He had denied the suggestion in the cross-examination that the signature on the undertaking enclosed with the reply notice is not his signature. In fact there is no pleadings by the plaintiff to the effect that the undertaking does not contained the actual signature of the defendant. Further in the cross-examination defendant denies the suggestion that he only removed the Baby Development Milestone Apps as it was

free but did not remove the Baby Baby Steps: Baby Development Apps as it was being charged and he was being benefited out of it.

12. It is the specific allegation that the defendant in his apps Baby Development Milestone and Baby Steps: Baby Development has clandestinely copied the research materials, modules and videos available on the plaintiff's app and website www.pathways.org and hosted the same in his apps and thereby has blatantly infringed the plaintiff's copyright. There is no dispute as regards the defendant having run the Apps Baby Development Milestone and Baby Steps: Baby Development. The plaintiff at the first instance had issued the notice through email dated 25.01.2024 enclosing the cease and desist notice putting defendant in notice of the alleged infringement. This has been replied under the email dated 25.01.2024 by the defendant wherein he has acknowledged the plaintiff's videos being hosted on his app and youtube channel and he has also informed the plaintiff that immediately those videos have been taken off and in fact the youtube channel itself had blocked the channel run by the defendant. This is also an admitted fact. The defendant further contents that subsequent to

the cease and desist notice sent by the plaintiff he has informed the plaintiff that the youtube run by him has been taken down and likewise the apps Baby Development Milestone and Baby Steps: Baby Development have also been taken down. This is evident from the document produced at Ex.D.4 and D.6 which discloses that the Baby Development Milestone and Baby Steps: Baby Development Apps has been removed by the Apple from all its territories. The said confirmation mails has been marked as a copy to the plaintiff also which is evident from Ex.D.5 and D.6. The various emails exchanged between plaintiff and defendant of which a copy is also marked to the Apple Inc which are marked as Ex.D.18 to D.30 clearly enumerates that after the cease and desist notice being issued by the plaintiff the youtube channel run by the defendant has been blocked and so also the apps run by the defendant has been taken down completely. The present suit is filed on 09.01.2025. The email at Ex.D.5 and D.6 would indicate that Baby Development Milestone has been removed by the Apple Inc from its territories on 25.01.2024 and likewise the Baby Steps: Baby Development App being removed on 03.06.2024 from all its territories. Subsequent to 03.06.2024 to substantiate that the defendant continue to

infringe the copyrighted resources, modules and videos of the plaintiff on his apps no cogent and satisfactory evidence is before the Court. The plaintiff has produced the screenshots of the defendants mobile application at Ex.P.8 and on going through the same though it contains the screenshots hosted on the apps developed by the defendant and the apps run by the plaintiff none of them carries the date in order to infer that there has been a continuous infringement of the plaintiff's copyrights even after the cease and desist notice. On the other hand nearly 6 months to filing the suit the apps have been taken down from the App Store by Apple Inc which is evident from the documents produced at Ex.D.5, D.6 and the email correspondences at Ex.D.18 to D.30. P.W.1 in the course of her cross-examination deposes that apart from the two apps of the defendant there was one another app which contained the infringed materials belonging to the plaintiff. She further deposes that the said app was still in force. For proper appreciation I deem it just and proper to reproduce the relevant portion of the cross-examination of P.W.1 which reads as under:

If it is suggested that both the applications of the defendant has been taken down by the Apple Corporation from all its territories I say that they have taken down 2 applications and one more application which continues to infringe the plaintiff right. Apart

from the affidavit there is no other document produced with respect to the existence of the third application.

13. The said answer given in the cross-examination clearly manifest that except the self servicing affidavit of P.W.1 there is no other material or evidence on record to conclude that there has been another app run by the defendant which continued to show the materials belonging to the plaintiff being infringed by the defendant.

14. The learned counsel for the plaintiff in the course of his argument would vehemently contend that by issuance of the mail at Ex.P.3 the defendant has categorically admitted infringing the materials, resources and videos belonging to the plaintiff. The defendant on the other hand in the course of his evidence deposes that no content was created and hosted on the apps and he had only hosted the URLs containing the youtube links for accessing the plaintiff's material. To substantiate the same he has produced the printout of the screenshots at Ex.P.3 which indicates that only the URLs hosted on the youtube channel being hosted in the Baby Development Milestone and Baby Steps: Baby Development Apps. Further P.W.1 in para 5 of the cross-examination clearly

deposes that no videos of the plaintiff is found on the B Baby Steps: Baby Development application but the text used by the plaintiff is the same as that is found in the defendant application. The texts which are found in the defendant application though may correspond to what that has been found in the plaintiff's pathways.org app nevertheless they are not unique but are generic in nature which anybody can easily accessed to and also of common usage. Moreover the plaintiff has not produced any evidence before the Court with regard to the texts involved in the apps also being duly copyrighted in its favour. Therefore under such circumstances merely because the defendant had copied the texts used by the plaintiff in its app and pasted the same on to his apps would not amount to infringement of the registered copyright marks or registered copyrights of the plaintiff. As regards the screenshot at Ex.P.8 with respect to the alleged infringement as already mentioned above it does not contain the date on which it is done and in so far as hosting the videos it is evident that only the URL links are hosted which anybody can access by clicking upon it and regarding the texts there is nothing material on record to infer that they have been copyrighted in favour of plaintiff. Hence the contention of the plaintiff that the

defendant has resorted to infringing the plaintiff's exclusive copyright to publish and communicate literary modules, videos and resources contained in its app www.pathways.org cannot be sustained.

15. The learned counsel for the plaintiff in the course of his arguments has placed reliance on the following decisions:

1. (1924) ILR 48 Bom 308,(PC) Macmillan and Company Limited vs K and J Cooper, wherein it is observed as under:

To constitute a true and equitable abridgment, the entire work must be preserved in its precise import and exact meaning, and then the art of abridgment is an exertion of the individuality employed in moulding and transfusing a large work into a small compass, thus rendering it less expensive and more convenient both to the time and use of the reader. Independent labour must be apparent, and the reduction of the size and work by copying some of its parts and omitting others confers no title to authorship, and the result will not be an abridgment entitled to protection. To abridge in the legal sense of the word is to preserve the substance, the essence of the work in language suited to such a purpose, language substantially different from that of the original. To make such an abridgment requires the exercise of mind, labour, skill and judgment brought into play, and the result is not merely copying.

2. AIR 1961 Madras III, C Cunnaiah and Co. by partners vs. Balaraj and Co. by partners, wherein it is observed as under:

It is well established that, in order to obtain copyright production for literary, domestic, musical and artistic works, the subject dealt with need not be original, nor the ideas expressed be something novel. What is required is the expenditure of original skill or labour in execution and not originality of thought.

"A copy is that which comes so near to the original as to suggest that original to the mind of every person seeing it. "Applying this test, where the question is whether the defendant's picture is a copy or a colourable imitation of the plaintiff's picture the degree of resemblance between the two pictures, which is to be judged by the eye, must be such that the person looking at the defendant's picture must get the suggestion that it is the plaintiff's picture. One picture can be said to be a copy of another picture only if a substantial part of the former picture finds place in the reproduced .It is well settled that an infringement could only come into existence where the defendant's work was taken from the plaintiffs work. In deciding this question, there need not be an exact reproduction to support the inference that the defendant's work was taken from the plaintiffs work. Indeed, every intelligent copying must introduce a few changes; It is impossible to lay down any rule which could serve as a useful test of what constitutes a copy or colourable limitation. At all events, it is much easier to arrive at what does not than to define what does constitute the proper test" of copying Or colourable limitation of one work in another.

3. AIR 1955 Mad 391, V Govindan vs. E M Gopalakrishna Kone and another, wherein at paragraphs 14, 15 and 17 it is observed as under:

Para 14: It is clearly recognised that all these books are capable of having copyright in them. In law books and books of" the above description, the amount of 'originality' will be very small," but that small amount is 'protected by law', and no man is entitled to steal or appropriate for himself the result of another's brain, skill or labour even in such works.

Para 15: relying on it must show that he went to the common source from which he borrowed, employing his skill, labour and brains and that he did not merely do the work of the copyist.

Para 16: In modern complex society, provisions have to be made for protecting everyman's copyright, whether big or small, whether involving a high degree of originality, as in a new poem or picture, or only originality at the vanishing point, as in a law report.

4. AIR 1961 Madras 114, Associated Publishers (Madras) Ltd., vs. K Bashyam alias 'Arya' and another, wherein it is observed as under:

To constitute original artistic work neither original thought nor original research is essential and the standard of originality required is a low one. It is original skill or labour in execution, and not originality of thought which is required. It is difficult to state any principle upon which the standard is based and to state the precise amount of the knowledge labour

judgment or skill or taste which the artist must bestow upon his composition in order to acquire a copyright.

It is impossible to lay down any rule which could serve as a test of what constitutes a copy or colourable imitation. In order to constitute infringement there should be direct or indirect use of those features of the plaintiff in which copyright subsists. It is unusual for an infringement to consist of an exact reproduction of the whole of the plaintiff's work. Consequently it is difficult to be precise as to the amount of copying or degree of resemblance necessary to constitute infringement. Our conclusion must depend in the words of Lord Herschell, really on the effect produced upon the mind by a study of the picture, and of that which is alleged to be a copy of it or at least of its design.

Section 6(1) in general terms confers on the owner of the copyright the remedy by way of damages as maybe conferred by the law for the infringement of a right. Copyright is a right of property and any injury caused to such right will give rise to a claim for damages. Section 7 deals with the remedies based on detinue and conversion. It is twofold in its scope. It gives the right to the owner of the copyright to take proceedings for the recovery of the possession of all the infringing copies. It also confers on him a right to take proceedings in respect of the conversion of such copies. The foundations of the claim under Sections 6 and 7 respectively are fundamentally different. Damages under Section 6 are claimed for infringement of copyright which is an incorporeal right in property. If damages are claimed under Section 7, it is on the basis of conversion of goods, which are deemed to be the property of the plaintiff.

In the assessment of damages there should not be overlapping. The claims under Section 6 and Section 7 must be distinctly put forward in the plaint.

5. AIR 1967 Madras 381, The Daily Calender Supplying Bureau, Sivakasi, Vs. The United Concern, wherein at it is observed as under:

For the purpose of infringement of copyright, an exact reproduction or copy is not necessary. What is essential is to see whether there is reproduction of substantial part of the picture. There can be no test to decide what a substantial part of a picture is. As long as the mind is able to form on an examination of the two pictures that basically and in substance one is a reproduction of the other. The further modifications or variations will not alter the effect of such infringement. There might be and there will be obvious differences deliberately introduced to avoid a possible change of infringement. A bad copy does not cease to be a copy. If the court, on a consideration of all the relevant circumstances and a comparison of the plaintiff's picture and the infringing picture comes to the conclusion that the defendant's picture was consciously copied from the work of the plaintiff, that would be sufficient to hold that copyright is infringed.

6. 1995(35) DRJ 335, Burlington Home Shopping Pvt. Ltd., vs. Rajnish Chibber and another, wherein at para 12 it is observed as under:

Para 12: From the above statement of the authorities and the trend of judicial opinion it is clear that a compilation of addresses developed by any one by devoting time, money labour and skill though the

sources may be commonly situated amounts to a 'literary work' wherein the author has a copyright.

7.(2008) 1SCC 1, Eastern Book Company and others vs. D.B. Modak and another, wherein it is observed as under:

The copyright protection finds its justification in fair play. When a person produces something with his skill and labour, it normally belongs to him and the other person would not be permitted to make a profit out of the skill and labour of the original author and it is for this reason the Copyright Act, 1957 gives to the authors certain exclusive rights in relation to the certain work referred in the Act. The object of the Act is to protect the author of the copyright work from an unlawful reproduction or exploitation of his work by others. Copyright is a right to stop others from exploiting the work without the consent or assent of the owner of the copyright. A copyright law presents a balance between the interests and rights of the author and that of the public in protecting the public domain, or to claim the copyright and protect it under the copyright statute. One of the key requirements is that of originality which contributes, and has a direct nexus, in maintaining the interests of the author as well as that of public in protecting the matters in public domain. It is a well-accepted principle of copyright law that there is no copyright in the facts per se, as the facts are not created nor have they originated with the author of any work which embodies these facts. The issue of copyright is closely connected to that of commercial viability, and commercial consequences and implications.

Copyright is purely a creation of the statute under

the 1957 Act. What rights the author has in his work by virtue of his creation, are defined in Sections 14 and 17 of the Act. These are exclusive rights, but subject to the other provisions of the Act. In the first place, the work should qualify under the provisions of Section 13, for the subsistence of copyright. Although the rights have been referred to as exclusive rights, there are various exceptions to them which are listed in Section 52.

For copyright protection, all literary works have to be original as per Section 13 of the Act. Broadly speaking, there would be two classes of literary works : (a) primary or prior works: These are the literary works not based on existing subject- matter and, therefore, would be called primary or prior works; and (b) secondary or derivative works: These are literary works based on existing subject-matter. Since such works are based on existing subject-matter, they are called derivative work or secondary work.

The Copyright Act is not concerned with the original ideas, but with the expression of thought. Copyright has nothing to do with originality or literary merit. Copyrighted material is that what is created by the author by his own skill, labour and investment of capital, maybe it is a derivative work which gives a flavour of creativity. The copyright work which comes into being should be original in the sense that by virtue of selection, co-ordination or arrangement of pre-existing data contained in the work, a work somewhat different in character is produced by the author. To claim copyright in a compilation, the author must produce a material with exercise of his skill and judgment which may not be creativity in the sense that it is not novel or non- obvious, but at the

same time it is not the product of merely labour and capital.

16. I have carefully gone through these decisions and the ratios laid down in these decisions are with respect to what would amount to an infringement of copyright and how the Courts have to conclude as to whether there is an infringement of the copyright or not and what are all the measures that has to be employed by the Courts while concluding that there was an infringement of a copyright. All these decisions mainly deal with infringement of copyright related to the literary works. Such is not the circumstances in the present case where the plaintiff alleges that the modules, resources and videos found on its App has been blatantly copied by the defendant and posted on his apps. It is already brought out from the evidence that the defendant has not created any content which is similar to the content available on the plaintiff's App but on the other hand he has only posted the URL video links run on the youtube channel which is available for public domain. This fact is also admitted by P.W.1 in her cross-examination. Hence these decisions relied upon by the learned counsel for the plaintiff would not in any manner support his arguments.

17. On the other hand the learned counsel for the defendant has also placed reliance upon the following decisions:

1. (1978) 4 Supreme Court Cases 118, R.G.Anand vs. Delux Films and others, wherein with respect to test of determination of infringement of the copyright it is observed as under:

The relevant law relating to copyright may be stated as follows:

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

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

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

impression that the subsequent work appears to be a copy of the original.

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

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

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

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

2. 2016 SCC Online Del 6382, Myspace Inc vs. Super Cassettes Industries Ltd.

3. (1995) 5 Supreme Court Cases 545, Gujarat Bottling Co. Ltd., and others vs. COCA COLA Co. and

others.

4. (2006) 5 Supreme Court Caser 282, Seema Arshad Zaheer and others vs. Municipal Corpn. Of Greater Mumbai and others.

18. In these decisions the principles governing the grant of discretionary relief of injunction has been laid down by the Apex Court which are all the guiding principles to be borne in mind while exercising the discretion of granting injunctive reliefs.

19. Upon considering the evidence placed on record there is no hesitation to hold that the plaintiff has failed to prove that there has been continuous infringement of its copyrights with respect to publishing and communication of literary modules, videos and resources contained in its website by the defendant by hosting the same on his apps. In fact the defendant immediately on coming to know about the copyright strike notice sent to the youtube by the plaintiff has taken down all the videos and has infact taken down the apps. Subsequent to 03.06.2024 whether there had been infringement of the plaintiff's copyrighted videos and resources no credible evidence is led before the Court. Hence under these circumstances

following the observations made by the Hon'ble High Court and Apex Court in the decisions cited above there is no hesitation to hold that the plaintiff has utterly failed to prove infringement of its copyrighted resources and videos by the defendant.

20. Apart from seeking the relief of injunction the plaintiff is also seeking awarding of punitive damages. It is the contention of the plaintiff that the defendant after copying the videos of the plaintiff posted the same in app for which he was charging a fee from the user and thereby he is unjustly enriched himself at the cost of the plaintiff and therefore he is liable to pay punitive damages at the rate of Rs.2 crores. To substantiate the said contention the plaintiff has produced screenshot of the defendant app which is marked as Ex.P.8 and no wherein in the said screenshot there is any mention regarding the user being required to pay certain fees for making use of the said videos. This is infact pleaded in the plaint but to substantiate the same no evidence is forthcoming before the Court. The plaintiff having failed to prove infringement on part of the defendant of its copyrighted resources and videos would not be entitled for any damages much less punitive damages. To substantiate that the defendant has

unjustly enriched himself at the cost of the plaintiff no cogent and satisfactory evidence is lead before the Court. There is no iota of document before the Court by the plaintiff or anything is elicited in the cross-examination of D.W.1 to infer that by way of a infringement of the plaintiff's copyrighted videos and resources and hosting the same on his apps the defendant has unjustly enriched himself so as to become liable for punitive damages. The learned counsel for the plaintiff in support of his arguments has placed reliance upon the following decisions:

1. AIR 1959 Rajasthan 169, Lachhman vs. Pyarchand and others.

2. ILR (2007) II Delhi 976, Microsoft Corporation vs. Ms. K Mayuri and others.

3. Judgment of a District Court at Delhi in CS(COMM) 711/2022, Press Trust of India Ltd., vs. News Hub.

4.2007 SCC Online Del 1973, Microsoft Corporation vs. Rajendra Pawar and others.

21. I have carefully gone through the above cited decisions which are with respect to award of punitive damages in cases of infringement of copyrights and

trademarks. These decisions would have supported the contention of the plaintiff had the Court concluded that there was infringement on part of the defendant by which he has unjustly enriched himself.

22. The learned counsel for the defendant has placed reliance upon judgment of Hon'ble Delhi High Court in ***2014 SCC Online Del 490, Hindustan Unilever Limited vs. Reckitt Benckiser India Limited***, wherein it has been observed that punitive damages are not a substitute for proof of loss and cannot be granted independently without first establishing entitlement to general damages. In the present case it is already observed that the plaintiff has miserably failed to prove infringement on part of the defendant and in such circumstances awarding punitive damages much less general damages will not arise at all. Moreover no cogent evidence is before the Court to infer that the defendant in any manner has enriched himself unjustly by infringing the plaintiff's copyrighted resources and videos so as to make him liable to pay punitive damages.

23. The plaintiff having failed to substantiate with cogent and satisfactory evidence regarding the infringement of

the plaintiff's copyrighted resources, modules and videos by the defendant on his apps, the plaintiff would not be entitled for the relief of injunction as prayed and consequently the plaintiff would also not be entitled for punitive damages as sought. Hence the plaintiff would not be entitled for any of the reliefs as claimed and accordingly, I answer **Issue No.1 to 3 in the Negative.**

24. ISSUE No.4:- For the aforesaid reasons, I pass the following.

ORDER

Suit of the plaintiff is **dismissed with costs.**

Draw decree accordingly.

Office to send soft copy of the judgment to respective parties on their email if furnished.

[Dictated to the Stenographer Grade-III, transcribed by her, corrected and signed by me then pronounced in the Open Court, dated **this the 1st day of June 2026**]

(ARJUN. S. MALLUR)
LXXXV Addl.City Civil & Sessions Judge,
Bengaluru.

ANNEXURE

**LIST OF WITNESSES EXAMINED ON BEHALF OF
PLAINTIFF:**

PW-1	Ms. Nancy Paridy
------	------------------

**LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE
PLAINTIFF**

Ex.P.1	Printout of the SPA executed in favour of PW.1
Ex.P.2	Printout of the plaintiff's website
Ex.P.3	Printout of the email dated 25.01.2024
Ex.P.4	Copy of the cease and desist notice dated 29.01.2024
Ex.P.5	Printout of the email dated 31.01.2024 in response to the above notice
Ex.P.6	Printout of the email dated 14.02.2024 with respect to rejoinder along with draft undertaking
Ex.P.7	Printout of the email dated 14.02.2024 with undated undertaking issued by the defendant
Ex.P.8	Printouts of the screenshots of defendants mobile application
Ex.P.9	Printout of the email dated 11.03.2024 issuing rejoinder to the defendant
Ex.P.10	Certificate U/Sec.63(4)(C) of BSA 2023 with respect to the above documents

**LIST OF WITNESSES EXAMINED ON BEHALF OF THE
DEFENDANT**

DW-1	Mr. Arpit Roy
------	---------------

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE DEFENDANT

Ex.D.1	Copy of the takedown notice of the you-tube channel from YouTube.com dated 23.01.2024. (Page 26 - 28)
Ex.D.2	Copy of the screenshot of the URL's unavailable on the YouTube channel for viewing. (Page 29)
Ex.D.3	Copy of the screenshot of the YouTube URLs being used on the 'Baby Development Milestone' app and 'Baby Steps: Baby Development' app for viewing. (Page 30 - 31)
Ex.D.4	Copy of the screenshot for removal of the 'Baby Development Milestone' app on 23.01.2024. (Page 32)
Ex.D.5	Copy of Apple's confirmation email dated 25.01.2024 for removal of the 'Baby Development Milestone' app from all territories. (Page 33)
Ex.D.6	Copy of the email dated 03.06.2024 for removal of the 'Baby Steps: Baby Development' app from al territories. (Page 34)
Ex.D.7	Copy of the screenshot showing that the 'Baby Development Milestone' app was available for free. (Page 35)
Ex.D.8	Copy of an email dated 25.01.2024 from defendant to plaintiff. (Page 36)
Ex.D.9	Copy of an email dated 25.01.2024 from

	plaintiff to defendant. (Page 37)
Ex.D.10	Copy of an email dated 27.01.2024 from defendant to plaintiff. (Page 38)
Ex.D.11	Copy of the Cease-and-Desist Notice dated 29.01.2024 issued by plaintiff. (Page 39 - 46)
Ex.D.12	Copy of defendant's response via email dated 31.01.2024 to the Cease-and-Desist notice. (Page 47)
Ex.D.13	Copy of the email dated 10.02.2024 from plaintiff to Apple and CC to defendant not to close the 'Baby Steps: Baby Development' app. (Page 48)
Ex.D.14	Copy of plaintiff's email dated 12.02.2024 to defendant. (Page 49)
Ex.D.15	Copy of the boarding pass of the defendant travelling to a remote island in Spain. (Page 50)
Ex.D.16	Copy of the legal notice dated 11.03.2024 from plaintiff to defendant. (Page 51 - 56)
Ex.D.17	Copy of the reply via email dated 04.04.2024 from defendant to the plaintiff's legal notice dated 11.04.2024. (Page 57)
Ex.D.18	Copy of email dated 04.04.2024 between plaintiff, defendant and Apple. (Page 58)
Ex.D.19	Copy of email dated 08.04.2024 between plaintiff, defendant and Apple. (Page 59)
Ex.D.20	Copy of email dated 09.04.2024 between plaintiff, defendant and Apple. (Page 60)
Ex.D.21	Copy of email dated 21.04.2024 between plaintiff, defendant and Apple. (Page 61)
Ex.D.22	Copy of email dated 23.04.2024 between

	plaintiff, defendant and Apple. (Page 62)
Ex.D.23	Copy of email dated 08.06.2024 between plaintiff, defendant and Apple. (Page 63)
Ex.D.24	Copy of email dated 10.06.2024 between plaintiff, defendant and Apple. (Page 64)
Ex.D.25	Copy of email dated 11.06.2024 between plaintiff, defendant and Apple. (Page 65)
Ex.D.26	Copy of email dated 28.06.2027 between plaintiff, defendant and Apple. (Page 66)
Ex.D.27	Copy of email dated 10.07.2024 between plaintiff, defendant and Apple. (Page 67)
Ex.D.28	Copy of email dated 12.07.2024 between plaintiff, defendant and Apple. (Page 68)
Ex.D.29	Copy of email dated 04.06.2024 from defendant to Apple. (Page 69)
Ex.D.30	Copy of email dated 05.06.2024 from defendant to Apple. (Page 70)

(ARJUN. S. MALLUR)
LXXXV Addl.City Civil & Sessions Judge,
Bengaluru.