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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 1503 OF 2014
IN
SUIT (L) NO. 629 OF 2014

Techlegal Solutions Pvt. Ltd. ...Plaintiffs
Versus
Mrs. Genelia Ritish Deshmukh & 7 ors. ...Defendants

Mr. Shyam Dewani, *i/b M/s. Dewani & Associates, for the Plaintiffs.*
Ms. Padmaja Dholakia, *with Ms. Sujata Melekar, i/b M/s. Dholakia Law Associates, for Defendants No. 1 and 5.*
Mr. Kunal Parekh, *i/b M/s. Thakore Jarivala & Associates, for Defendants No. 3 and 8.*
Mr. V.R. Dhond, *Senior Advocate, with Mr. Chirag Modi & Mr. Ashok Purohit, i/b M/s. Ashok Purohit & Co., for Defendants No. 4 and 6.*

CORAM: G.S. PATEL, J
DATED: 3rd July 2014

PC:-

1. Heard. This is an application for urgent ad-interim reliefs moved after notice. The Plaintiff seeks to restrain the Defendants from releasing a Marathi film under the title "**Lai Bhaari**". The Plaintiff claims that this phrase or expression is the Plaintiff's

registered trade mark and that the Plaintiff is a prior user of this mark.

2. I have heard Mr. Dewani, learned counsel for the Plaintiffs and Mr. Dhond, learned senior counsel for Defendants No. 4, 6 and 7, Ms. Dholakia, learned advocate for Defendants No. 1 and 5, and Mr. Parekh, learned advocate for Defendants No. 3 and 8. I have considered, too, the material produced by Mr. Dewani, as also Mr. Dhond.

3. For the reasons that follow, I am unable to agree with Mr. Dewani or to accept his submission. Indeed, in my view this entire action is thoroughly misconceived. The expression or phrase over which the Plaintiff claims proprietary, statutory and common law rights is a common and colloquial phrase in Marathi. On the material before me, I have found that the Plaintiff also does not have any proprietary rights in the phrase itself; at best, these rights may exist only in an Internet domain name of which the phrase is a part.

4. The Plaintiff claims that some time in 2010, it launched a social network in Marathi with a domain name "**laibhaari.com**". This, the Plaintiff claims, rapidly become popular and acquired several subscribers. There is little by way of evidence to substantiate this other than reference to other websites and television programmes. Mr. Dewani drew attention to a Wikipedia entry about this site; that is hardly authoritative, no matter how popular it is or how widespread its use may be. Wikipedia is a multilingual, web-based, free-content encyclopedia-style service. It

is freely editable, and entries in its are made collaboratiely by volunteers who, for the most part, remain anonymous. Except in certain limited cases, as Wikipedia says about itself, anyone with Internet access can write and make changes to Wikipedia articles and entries. It is entirely possible for a person to make an entry about his or her own service, product or, for that matter, himself or herself.

5. What the Plaintiff lays claim to is, after all, a web-based service, a social network. There are established methods of assessing the success of any such enterprise. In the plaint, no information is made available even about the expenditure incurred on the design, operability, algorithms, structures and other essential aspects that go into the making, hosting and operating of such a service. There is no evidence of any independent audit of usage, traffic, page views, or any of the other metrics normally used to gauge the success of any web based service.

6. In essence, the Plaintiff claims that it has a complete monopoly on the expression *lai bhaari*. This is not an expression coined by the Plaintiff. It cannot be. It is a very old, well-known and established colloquial expression in Marathi, its etymology possibly in one of the coastal dialects. It has a known meaning: excellent, very good or very important. It is used in several contexts to convey this.

7. The Plaintiff claims to have obtained registration of the trade mark laibhaari. The documents annexed to the plaint show otherwise. Exhibit “J” to the plaint is a registration certification for

“लईभारी.कॉम”, i.e. Lai Bhaari-dot-com written in Devnagari. It is dated 1st November 2010. It is in respect of a very narrow or niche range of services in Class 38 described thus

“SOCIAL NETWORKING SERVICES, AUDIO AND VIDEO BROADCASTING SERVICES OVER THE INTERNET, NAMELY UPLOADING, POSTING, SHOWING, DISPLAYING TAGGING AND ELECTRICALLY TRANSMITTING INFORMATION, AUDIO AND VIDEO CLIPS, PROVIDING ACCESS TO INFORMATION, AUDIO AND VIDEO VIA WEBSITES, ONLINE FORUMS, CHAT ROOMS AND BLOGS OVER THE INTERNET, PROVIDING ONLINE CHAT ROOMS AND ELECTRONIC BULLETIN BOARDS FOR TRANSMISSION OF MESSAGES AMONG USERS IN THE FIELDS OF GENERAL INTERESTS. ALL BEING INCLUDED IN CLASS 38”.

8. The registration is, clearly, not of the expression Lai Bhaari, but of laibhaari.com, two very different things. I must note that when the Plaintiff ventured further afield and attempted a rather more ambitious registration of the expression “lai bhaari”, they met opposition from the Registry. That application is yet pending.

9. What Plaintiff claims is that since they now have some self-proclaimed popularity (I am compelled to say this for want of any persuasive material on record), they, therefore, have a right to restrain any person using the phrase or expression *lai bhaari* in any context. It is common ground that the Defendants do not propose a rival website or service using this expression at all. The Defendants are producing a Marathi-language motion picture using this

common, colloquial phrase in the title. That film is ready for release on 11th July 2014.

10. I do not think that it is possible in these circumstances to accept Mr. Dewani's submission that the registration of his client's domain name, laibhaari.com gives his client proprietary rights in the common Marathi expression *lai bhaari* across all classes, products and range of activities. The consequence of that submission is far too wide, and far too dangerous. That is not the mandate of intellectual property protection laws. By an extensive of that reasoning, over a period of time, the entirety of a language would be choked. Every title of every work of literature, theatre or cinema, every piece of dialogue in a film would, conceivably, be hit with claims of trade mark (or copyright) infringement. What Mr. Dewani's submissions postulate, in the context of this claim, is the beginning of the end: a form of censorship and the gagging of speech and expression. If this claim is allowed, there is absolutely no limit to what will then be prohibited. Every language occupies its own universe. Each has its integrity, its special grace, power, style, cadences, variations, dialects and patois. The language of our state is no exception. It is part of our culture and our tradition. Trade mark infringement claims cannot be allowed to still the tongue of an entire populace, even in the slightest. One of the tests postulated in assessing such claims is to balance the private and personal rights claimed against a larger public interest. On this test, too, the Plaintiff must fail.

11. Mr. Dewani, relies on the decision of the Supreme Court in *M/s. Satyam Infoway Ltd. vs. M/s. Sifynet Solutions Pvt. Ltd.*,¹ and in particular paragraph 9, to urge that a domain name has all the trappings of a proprietary mark. What this submission overlooks, as Mr. Dhond quite rightly points out, is that the dispute in that case was about the domain name Sify, an artificial word in which the plaintiff claimed rights. Mr. Dewani's claim is altogether different: he seeks exclusive rights over a phrase commonly and frequently used by a very large swathe of this State's people in quotidian speech and communication.

12. Mr. Dewani also relies on the decision of the Supreme Court in *Mahendra and Mahendra Paper Mills Ltd. vs. Mahindra and Mahindra Ltd.*² This was a case in passing off. The present suit before me makes out no case in passing off whatever. In paragraph 15, the Supreme Court held:

"15. This question has been considered by different High Courts and this Court in umpteen cases from time to time. On analysis of the principles laid down in the decisions, certain recognised parameters relating to the matter have emerged. Without intending to be exhaustive some of the principles which are accepted as well settled may be stated thus: that whether there is a likelihood of deception or confusion arising is a matter for decision by the Court, and no witness is entitled to say whether the mark is likely to deceive or to cause confusion, that all factors which are likely to create or allay deception or confusion must be considered in combination; that broadly speaking, factors creating

¹ AIR 2004 SC 3540

² AIR 2002 SC 117

confusion would be, for example, the nature of the market itself, the class of customers, the extent of the reputation, the trade channels, the existence of any connection in course of trade, and others.”

13. The Supreme Court considered the well settled law on the subject, from *Amritdhara Pharmacy v. Satya Deo Gupta*.³ in 1963 to *Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd.*⁴ in 2001. The Supreme Court decision in *Mahendra & Mahendra* does not, in my view, have any application to the facts of the present case. What Mr. Dewani invites me to do is to expand well beyond the realms of what is legally possible, and well beyond anything the Supreme Court contemplated, the parameters of such protection. In *Mahendra & Mahendra* the Supreme Court found that the respondent’ corporate name Mahindra & Mahindra had, over a period of several decades, acquired such distinctiveness and secondary meaning that there was a unique association of certain products with that company, and that company alone. The original defendant (the Appellant before the Supreme Court) adopted the name Mahendra & Mahendra as its corporate name. It had yet to start any business. The Supreme Court held that in such a case there was no doubt that the business and activities of the appellant would be confused as those of the respondent. Critical to that decision was the Supreme Court’s finding as a matter of fact that the Respondent, Mahindra & Mahindra had, over a considerable period of time, acquired certain proprietary rights in common law in its corporate name. In the present case, there is no factual material at all on which any such opinion can legitimately be formed.

³ AIR 1963 SC 449

⁴ AIR 2001 SC 1952

14. To the contrary, Mr. Dhond points out that not only is the phrase commonly used in everyday speech, writing and communication, and that the Plaintiff cannot possibly want to injunct all use of the phrase, but that it has been used even in the online media and in several contexts for the last several years. The Plaintiff, who now lays claims such zeal in protecting its so-called proprietary rights, has done absolutely nothing in regard to these other uses of the same phrase. For instance, a Marathi Television Channel called 9X Jhakaas launched a new show with the same name *lai bhari* (phonetically identical and missing only one vowel in transliteration) in 2012. The Plaintiff did nothing. There is a music CD available since 1995 that uses the same phrase. The Plaintiff has not once objected. There are restaurants in Pune and Kolhapur that use the same name. The Plaintiff's silence is deafening. What Mr. Dewani says is that his client will now move against all other users of this phrase. That is too little too late. That particular horse has long since bolted.

15. The requirements for the grant of an interim or an ad-interim injunction must be made out irrespective of whether the action is brought in respect of a trade mark, copyright or for any other purpose: a strong *prima facie* case, irretrievable injury or prejudice and balance of convenience. I do not believe that the Plaintiff has made out even the slightest vestige of anything approaching a *prima facie* case. There is no possible injury to the Plaintiff. There is no question of any balance of convenience being in the Plaintiff's favour. None of the well-established tests for infringement have been satisfied. The Plaintiff has absolutely no proprietary or statutory rights in the phrase "lai bhaari", no matter how spelled.

16. Ad-interim injunction is refused.
17. Affidavit in reply to be filed and served on or before 31st July 2014. Rejoinder, if any, to be filed and served on or before 21st August 2014. No further affidavits without leave of the Court.
18. Defendants to file and serve their respective written statements by 8th August 2014. List the suit for framing issues on 27th August 2014.
19. Notice of motion to be listed for hearing and final disposal on 27th August 2014.
20. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)