

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
NOTICE OF MOTION NO.2945 OF 2009  
IN  
SUIT NO.2083 OF 2009

Genx Entertainment Ltd. .. Plaintiff  
Versus  
Zee News Ltd. .. Defendant

Mr.Virag Tulzapurkar, Senior Advocate with Mr.Vinod Bhagar, Punit Jain, Dhiren Karania i/b. G.S.Hegde and V.A.Bhagat for plaintiff  
Mr.Janak Dwarkadas, Senior Advocate with Sumit Raghani i/b. PDS Legal for defendant.

CORAM : S.C.DHARMADHIKARI, J.

Reserved on : 21<sup>st</sup> August 2009

Pronounced on : 25<sup>th</sup> September 2009.

P.C.:

1] Heard Mr.Tulzapurkar, learned Senior Counsel for plaintiffs and Mr.Dwarkadas, learned Senior Counsel for defendants. With their consent and since extensive arguments have been canvassed, the motion

itself is taken up and disposed of finally.

2] This is a suit for perpetual injunction against the defendant, by itself, its Directors, servants, agents and all those connected with it from in any manner undertaking any telecast or broadcast through rediffusion or any other means including advertising or using in any manner whatsoever in relation to its game show and/or quiz show and/or reality show as telecast on television named and marked “DADAGIRI UNLIMITED” or any trademark deceptively similar containing the mark “DADAGIRI” by itself or in combination with any other words deceptively similar to the plaintiffs trademark.

3] The notice of motion is for interim reliefs in terms of this final relief.

4] The plaintiffs and defendants are both companies engaged inter alia in the business of producing movies, T.V. Broadcasting and related activities. The plaintiffs operate two satellite channels in India known as UTV Bindhas and UTV Bindhas Movies.

5] It is the case of the plaintiffs based upon the above averments that they aired their reality cum game show “Dadagiri” for the first time in May 2008 and the same continues till date. The show targets present generation youth and, therefore, it was an instant hit with the audience, according to plaintiffs. The show was popular and the name Dadagiri is associated with the plaintiff and none else. Recently the plaintiffs have come out with a sequel to this reality game show titled Dadagiri (July 2009) with the same name and title. It is the case of the plaintiffs that the said word and name Dadagiri has come to be distinctive of and is identified with its services and the same name has acquired a secondary meaning co-related with the service offered by them on Television. The plaintiffs claim very wide viewer ship. The attempt is to demonstrate that the trademark Dadagiri has come to be associated with the plaintiffs’ services and it has also been used by them on promotional materials. In para 8 of the plaint, the plaintiffs claim that they have registered the word Dadagiri as a Registered Trademark dated 30<sup>th</sup> May 2008 in Class 18 and this registration is valid, subsisting and in force. Further, they have registered this word as a trademark that is valid, subsisting and in force

in relation to class 35 as well. Thereafter, the plaintiffs have given a list of registration applications of the mark “Dadagiri” which are being processed in relation to various classes.

6] In these circumstance, they are contending that the marks having been registered, they are entitled to exercise rights on that basis. It is rightful promoter of the said trade mark and has exclusive right to use the same in service for which it is registered and/or is to be registered. They have also registered this title with the Association of Motion Pictures and TV Program producers, which is a parent body of TV programme producers, undertaking title registration. The plaintiffs have contended that this is a widely used and promoted trademark and the plaintiff has spent huge sums on its publicity and advertisement. They have generated revenue to the tune of Rs.2 Crores and they have spent total amount in excess of Rs.4 Crores only on publicity and advertisement of its trademark “Dadagiri”.

7] The sequel to this show has also been launched on 11<sup>th</sup> July 2009 and it is also immensely popular generating wide viewer ship, including

coverage in the State of West Bengal and among Bengali speaking public.

8] Thus, the tremendous goodwill and reputation with regard to this reality game show telecast on television has been asserted and it is alleged that in or around last week of February 2009, the plaintiff learnt that the defendant is likely to telecast on its Zee Bangla TV channel, a Bengali Quiz show "Dadagiri" which is likely to feature former captain of Indian Cricket Team, Mr.Saurav Ganguly. Plaintiffs caused a cease and desist notice to be issued to the defendants calling upon them to restrain from undertaking and use or telecast the said show. The plaintiffs did not receive any reply to this Notice but in April 2009, they learnt that the defendants are shortly telecasting a reality show with the same title and, therefore, through Advocates, they addressed a notice. It is stated that the defendants and plaintiffs have over the years shared cordial relations with each other and, therefore, they had also by a e.mail dated 8<sup>th</sup> June 2009 called upon the Programme Head of Zee Bangla Channel to cease and desist from using the mark complained of. Their have been e.mails which have been referred to in para 15 of the plaint and it is stated that although the title of the defendants' quiz show in Bengali is

“Dadagiri Unlimited”, the word “Unlimited” is mentioned in small font in English script. This is deliberately done to circumvent the plaintiffs’ claim. Malafides are evident in the manner of the representation of the impugned mark, wherein the word ‘Dadagiri’ is written in Bengali language in bold letters whereas the English word “unlimited” is written in small miniscule and unobtrusive font. According to plaintiffs, the adoption of the impugned mark is undertaken deliberately with full knowledge of the plaintiffs’ rights and after the cease and desist notice, the defendants cannot claim any equities. The defendants have not been given any authority, permission or consent to use the impugned name/mark. The use of the impugned mark is without due cause, fraudulent and in grave violation of the plaintiff’s statutory and common law rights. Paras 17 and 18 of the plaint are based on the concepts recognised by Trademarks Act, 1999 and it is urged that the use and adoption of the deceptively similar trademark in relation to the same services by the defendants is dishonest and appears to have been taken in bad faith. Based upon the aforesaid allegations and claiming rights on the basis of registration that relief of permanent injunction and other reliefs have been claimed.

9] The notice of motion is moved for interim reliefs which are in furtherance of the final reliefs. It is supported by affidavit of Ms.Ekta Kanade, Associate Vice President – Legal of the plaintiffs, who has annexed the certificate of Registration to her further affidavit. She has filed two affidavits and in the second affidavit, she has annexed the certificate of registration for the trademark “Dadagiri” in Class 41.

10] Mr.Tulzapurkar, learned Senior Counsel appearing for plaintiffs contended that the plaintiffs are entitled to temporary injunction as prayed. He submits that a perusal of the Annexures to the plaint would indicate that the attempt is to copy the mark. Mr.Tulzapurkar has invited my attention to Annexure A to the plaint. He has also invited my attention to Annexure B and more particularly page 27. He has then invited my attention to page 30 of the plaint and contended that the word “Dadagiri” has been used as a registered trade mark in relation to services relating to distribution and advertisement of cinematographic films, DVDs, VCDs, CDs, Audio and Video CDs, audio and video cassettes and other electronic disc formats, organisation of exhibition of various forms

of films for commercial or advertising purposes being services included in class 35. He has then contended that broadcasting and telecasting of Cinematographic films in theaters, studios, multiplexes as also TV and Video Advertisement and documentary films and serials, production of cinematographic films being services included in class 41 are also covered by the Registration Certificate issued in favour of the plaintiffs by Trademark Registry. He submits that on the strength of this so also on the basis of the certificate issued by the Association of Motion Pictures and TV programme Producers dated 2<sup>nd</sup> September 2008, it is clear that the TV serial bearing name Dadagiri with the typical way of lettering is associated with none else than the plaintiffs. He submits that plaintiffs exclusive right to use the said word mark in relation to the services is absolute. That the reputation and popularity is immense is substantiated by the revenue generated. Further the investment in the project/ TV show on Bindass Channel is enormous as is evident by the publicity and other materials. In these circumstances and cashing on to the popularity of the name of the plaintiffs' game show which has already completed its first part and now is into second part, the defendants have deliberately started a quiz show on their Bengali channel with the same title. Had it not been



for the plaintiffs' title and mark, it would not have been the title for the defendants' quiz show. It may be that the quiz show is in Bengali language and is to be aired on Zee Bangla channel but it is evident from the fact that even in West Bengal, the plaintiff's show Dadagiri is immensely popular and enjoys wide viewership therein together with other parts of India. Therefore, it being telecast on the Bangla channel is not of much significance. On the other hand, it shows that even for the Bangla channel programme which is targetted at the Bengali speaking audience, the defendants deliberately chose the name "Dadagiri" and have advertised their programme in such a manner as would confuse the viewer public. The font and the manner in which the word has been written indicates that the attempt is to copy plaintiffs' mark. Mr.Tulzapurkar has invited my attention to pages 266 to 288 of the plaint paperbook and has contended that a prima facie case has been made out and, therefore, this Court should grant interim injunction as prayed.

11] In support of his submissions, Mr.Tulzapurkar has placed strong reliance upon the following decisions:-

- (a) A.I.R. (38) 1951 Bombay 147 (C.N.30c.) (James Chadwick & Bros. Ltd. Vs. The National Sewing Thread Co., Ltd.)
- (b) 1994 (I) PLR Pg.1 (Schering Corporation & Ors. Vs. Kilitch Co. (Pharma) Pvt.Ltd.)
- (c) 2004 (24) PTC 226 (Bom) (DB) (Bal Pharma Ltd. Vs. Centaur Laboratories Pvt.ltd. And Anr.)
- (d) PTC (suppl)(1) 175 (SC) ( Ruston & Hornsby Ltd. Vs. Zamindara Engineering Co.)
- (e) 2008 (36) PTC 53 (Bom) (Zee Entertainment Enterprises Ltd. Vs. Gajendra Singh & Ors.)

12] On the other hand, Mr.Dwarkadas, learned Senior Counsel appearing for the defendants submits that the suit is false, frivolous and vexatious. Although, no affidavit in reply has been filed by the defendants, on the plaint averment itself, it is apparent that the suit is filed to prevent the defendants from airing their TV quiz show viz., Dadagiri Unlimited on Zee Bangla Channel. The attempt is to prevent the defendants from airing their programme and forcing them to change the title thereof. He submits that the programme is to be aired on Bangla

channel. The programme is intended to cover Bengali speaking audiences. The programme is intended to cash on the popularity of Mr.Saurav Ganguly, who is also known as Dada in West Bengal. The game show is quiz oriented and has no comparison with TV serial/ show of the plaintiffs, with identical name. He submits that a closer look at the plaint averments would demonstrate that there is no basis for plaintiffs claim in law. Mr.Dwarkadas has contended that the Trademark Act, 1999 is not intended to apply in such cases at all. Mr.Dwarkadas submits that the mark has to be registered in relation to goods and services. In the present case, the plaintiff has been carrying on business in the name and style of Genx Entertainment Ltd. He submits that the plaintiffs themselves have set out in the plaint that they are part of UTV Group of Companies which is engaged, inter alia, in the business of providing content production services, producing movies, TV broadcasting, offering interactive gaming and news media. Plaintiffs operate its two satellite channels in India known as UTV Bindass and UTV Bindass movies, which show youth centric entertainment programmes and movies respectively. Mr.Dwarkadas submits that there cannot be any statutory or common law right in the title of a quiz show. He submits that the said

show on the TV channel is not an independent service. It is not “goods” either. The service that is provided is by UTV Group of Companies of which plaintiff is a part. The service is of production of movies, TV broadcasting and related services. The word “Dadagiri” is just a title of a TV show/ serial. He submits that its registration allegedly cannot be seen as something exclusive to the plaintiffs. He submits that the word “Dadagiri” is a common word. It means bullying and “throwing ones weight around”. There is nothing special in this word and it is of common usage. Even if it is a title of a film or TV show, does not mean that it is an exclusive trademark in relation to the goods and services. Therefore, such word which is commonly used and several films and programmes with that name having been aired till date would go to show that the plaintiffs cannot claim any rights therein. When they cannot claim any rights therein in law, then, there is no question of the certificates produced enabling them to protect the word “Dadagiri”. He submits that the provisions relating to infringement and passing off would, therefore, be completely inapplicable. The whole foundation or basis of the suit being untenable in law, the application for interim relief/ injunction must be dismissed.

13] Mr.Dwarkadas has taken me through each of the certificates, copies of which are annexed to the plaint and contended that the word mark “Dadagiri” is registered in relation to the goods and services. The goods in Class 18 are leather and imitation and goods made of these materials etc. He submits that the plaintiffs are not manufacturing any goods, much less leather goods. The next registration is pertinent to the goods falling in class 28 which also are not manufactured or produced by the plaintiffs. Third registration is in relation to services relating to distribution and advertisement of Cinematographic films (Class 35). These are services included in class 36. The plaintiff is just a part of UTV group of companies which is providing services of production and airing of TV serials, producing movies. He submits that the main business is of producing movies, TV broadcasting etc. In such circumstances, registration of the mark Dadagiri in relation to the services contemplated by class 35 cannot be of any assistance to the plaintiffs. They have admittedly not produced any movie by the name “Dadagiri”. Further, their channel is also not known as Dadagiri. Admittedly, they are trading in the name and style of UTV Motion Pictures and UTV Bindass

Channel. These words are not adopted or copied by the defendants. Further, the plaintiffs are not the manufacturers of clothings and leather goods. They may be dealing in cinematographic films and TV channels and airing TV programmes on their TV channel but as pointed out none of these services can be registered in the name and style "Dadagiri". Even the word and label mark may have been registered but they must be seen in the context in which the act defines them. That is an aspect which is relevant and material. Mr.Dwarkadas has invited my attention to the averments made by the plaintiffs in paras 17 and 18 of the plaint and has contended that plaintiffs are not entitled to any interim reliefs as they have failed to make out a prima facie case. In any event, the plaintiffs themselves have pointed out that correspondence is going on from February 2009. There is no urgency which would compel the plaintiffs to obtain any prohibitory order and injunction against the defendants. For all these reasons, the motion be dismissed.

14] With the assistance of Mr.Tulzapurkar and Mr.Dwarkadas, I have perused the plaint and the annexures thereto. I have also perused the relevant provisions of the Trademarks Act, 1999 and the decisions

brought to my notice.

15] The Trademark Act, 1999 is an Act to amend and consolidate the law relating to trademarks to provide for registration and better protection of trademark for goods and services and for prevention of the use of fraudulent marks. The Trademark Act was earlier known as Trade and Merchandise Marks Act, 1958. The competent Legislature amended it bearing in mind the developments in trading and commercial practice, increasing globalisation of trade and industry, the need to encourage investment flows and transfer of Technology, need for simplification and harmonisation of trade mark management system. In addition to registration of trademark for goods, the Act now provides for registration of trademark for services.

16] In the definitions, the word “deceptively similar” is defined in section 2(h). It means that the mark is deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion. The word “goods” is defined to mean anything which is the subject of trade or manufacture. The word “mark” is defined thus:-

“2(m): “Mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof.”

It is the inclusive definition and includes device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods etc. However, what is material for our purpose is the concept of registration. The term “Registration” is defined in Section 2(t) to mean Register of Trademarks and Registered is defined in section 2(u) to mean Registration under this Act. The Registered Proprietor is defined in section 2(v) to mean a person for the time being entered in the register as proprietor of the trademark. The word “service” is defined in section 2(z) and reads thus:-

“2(z): “Service” means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or



commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising”

16] The word Trade mark is defined in section 2(a)(b) and reads thus:-

“2(z)(b): “Trademark” means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and -

(i) *In relation to Chapter XII (other than section 107), a registered trademark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as*

*proprietor to use the mark; and*

*(ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark.”*

17] A combined reading of these definitions would indicate that a mark which is capable of being represented, graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours etc. and a mark used or proposed to be used for the purpose of indicating or to indicate a connection in the course of trade between the goods or services, as the case may be and some person having the right, either as proprietor or by way of permitted user to use the mark whether with or without any indication of the identity of that person, and includes

a certification trade mark or collective mark is a Trademark. The Trademark is thus a mark used in relation to goods or services so as to indicate a connection between the goods or services and some person having the right to use the mark.. This definition may not be seen along with the definition of the term “service” which means service of any description which is made available to potential users and includes the provisions of service in connection with business or commercial matters. Number of activities are included therein and it is not disputed that Entertainment, Amusement, conveying of news or information and advertisement is a service. The term well known trademark is also defined in section 2(zg). As far as Registration and conditions for registration are concerned, the provisions of Chapter II are clear. The Act in section 7 states that Register shall classify goods and services as far as may be in accordance with the international classification of goods and services for the purpose of registration of trade marks. Section 9 sets out absolute grounds for renewal of registration. Sub-section 1 thereof states that the trademarks, which are devoid of any distinctive character that is to say not capable of distinguishing the goods or services of one person from those of another person which consists exclusively of marks or

indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service which consists exclusively of marks or indications which have become customary in the current language or in the bonafide and established practices of the trade shall not be registered. There are relative grounds of refusal of registration and those are also set out in Section 11. It is equally true that as a condition for registration, it is not necessary that the trade mark is well-known to the public at large in India.

18] Ultimately, the Act is for registration of Trademark and for the purpose of registration, classification of goods and services is provided for. The term mark includes a label, name, word. However, one must make a distinction between the term “mark” and “trademark”. The trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours and when used in relation to service, it should

indicate a connection in the course of trade between the service and some person having the right either as proprietor or by way of permitted user, to use the mark without any indication of the identity of that person and includes a certification trade mark or collective mark.

19] In the judgement reported in 138 (2007) Delhi Law Times 312, a learned Single Judge of Delhi High Court was considering the question as to whether a film with the name “Nishabd” can be released by the first defendant as the plaintiff has exclusive right over the said title. He had already produced a movie with title “Nishabd”. Thus, the case was of a film of the plaintiff which had already won critical and popular acclaim and the allegation was that its name is being copied by the first defendant malafide. This is the attempt to usurp plaintiffs’ rights over the title Nishabd. After factual narration in para 3 and while referring to the prayers and the arguments of both sides, the learned Single Judge then discussed the law on the subject. In para 10, he refers to the fact that the case is relating to alleged misappropriation of a title. The case is not of any usurpation of the work of plaintiff by the defendants. The plot and storyline of two films is altogether different and there is no semblance of

similarity between the two. It is the title given to the Literary or Entertainment work which alone was subject matter of consideration. Referring to the American courts views, it has been held by the learned Judge in para 12 that title alone of a literary work cannot be protected by copyright law. Copying of the title alone and not the plot, characterisation, dialogue, song etc. is not the subject of copyright law.

20] Legal protection for literary titles lies in the field of trademark and unfair competition and the learned Judge, thereafter, refers to the types of titles. He has then observed that TV serials which run into hundreds of episodes and made in series. He has given several illustrations in para 14. The learned Judge says that titles of single literary work had enjoyed trademark protection, but in order to be entitled to protection, it is necessary to prove that such a title has acquired secondary meaning. With regard to titles or series of books, periodicals or newspapers, they are registrable as trademarks and series titles enjoy the said protection as usual trademark. But with regard to single literary work, the assumption is that it must have acquired the secondary meaning and is capable of associating itself with a particular work or source, the question of

likelihood of confusion of source, affiliation, sponsorship or connection in the minds of potential buyers/ users would arise and this aspect has been considered by the learned Single Judge in details in the latter part of the judgement.

22] In the case before me, an attempt is to show that the word “Dadagiri” is the word mark of plaintiffs exclusively associated with them. Upon careful perusal of the plaint, it is clear that what is emphasised is the presence of UTV Software and Communications Ltd., UTV Group of Companies. What is emphasised is two satellite TV Channels, UTV Bindass and UTV Bindass Movies. The plaintiff is telecasting programmes, Games and Reality show which aim to target ordinary Indian youth through these two satellite TV channels. They are owned by the plaintiff which is a UTV Group of companies. It is not the case of plaintiffs that the word UTV Bindass and UTV Bindass Movies, is copied. What they are projecting is that for the last two years, the UTV Bindass TV channel aired numerous shows and one successful reality show broadcasted is titled “Dadagiri”. Now, the title Dadagiri is stated to be the mark, registered as a trademark. The word mark registration is in

relation to goods in class 18. The registration of the wordmark Dadagiri in relation to these goods is admittedly of no assistance and not even pressed before me.

23] Similarly, the registration of the word mark is in relation to the class 28 which are also goods such as Games and Playthings, Balloons, toys etc. Once again, this is in relation to goods and, therefore, rightly not pressed into service.

24] The registration then pressed into service is in relation to class 35 which is at page 30. It deals with service relating to distribution and advertisement of cinematographic films, DVDs., CDs., Lds., Audio CDs., etc. Once again the services that are presently in issue are not in relation to distribution and advertisement of cinematographic films, DVDs., etc.

25] One more thing that is worth noticing is that the plaintiffs are not alleging that the concept of their programme Dadagiri which is aired on their channel is copied. The contents thereof are not in issue. It is not the case of the plaintiff that the plot, storyline has any similarity with that of



the defendants' programme "Dadagiri Unlimited". Admittedly, plaintiffs' programme is consisting of college going youth. It is a game show which gives four contestants a chance to re-live the first day of their college life by surviving quintessential bullies in three rounds. It is in relation to these three bullies and their activities that the word "Dadagiri" has been used as title of this show. The concept is outlined in para 5 of the plaint and what is urged that the programme which is to be aired on the Zee Bangla TV channel is a Bengali quiz show. Thus, conceptually the programmes are not identical. The content is also not identical, although both programmes may be targeted and aimed at youth viewers.

26] Thus, the registration of the word mark Dadagiri in relation to some of the services of the plaintiffs can be said to be of no assistance inasmuch as there is no dispute that both plaintiff and defendants are distinct TV channel companies. Their names are not identical. The business activities may be identical but in relation to the defendants the viewer ship also is not claimed to be as wide as that of the plaintiff. It is restricted to Bengali speaking people. It is not the case of plaintiff that their channel name is in any way copied. It is their case that one of the

programmes which is aired on their T.V. Channel has a title Dadagiri and it is that title which is copied. I fail to understand as to how these averments can be of any assistance to the plaintiffs for alleging infringement of their trade mark Dadagiri, even if it is assumed to be a word mark capable of being registered under the Trademarks Act, 1999. The word Dadagiri is used in relation to the concept or the contents of TV show title Dadagiri aired on UTV Bindass TV channel of the plaintiffs. The defendants are using the said title because the Anchor of their quiz show Mr.Saurav Ganguly, ex-captain of Indian Cricket Team, is known as Dada/ elder brother in West Bengal. Apart from this fact that the word “Dadagiri” is registered in relation to goods which are admittedly not the business activities of either of the parties, assuming that it is capable of being registered by the plaintiffs as a word mark in relation to their services, yet, mere usage of that word as title of TV show/programme can by no stretch of imagination be made the subject matter of an action of infringement of the word mark by the plaintiffs.

27] It is urged that the title of the plaintiffs’ film before the Delhi High Court “Nishabdh” was not registered as a trade mark and, according to

Mr.Tulzapurkar, therefore, this decision is distinguishable and of no assistance to Mr.Dwarkadas. Mr.Tulzapurkar has also invited my attention to the fact that a further affidavit has been filed by the plaintiffs, a copy of which has been duly served on the defendants, wherein the word mark “Dadagiri” is registered in class 41. He submits that class 41 pertains to services relating to entertainment and exhibition of cinematographic films and his special emphasis is on the words “all medias and motion picture Television”. This also cannot be of any assistance assuming that the defendants have not disputed the contents of the affidavit or the registration certificate. The channel of the plaintiffs is not known as “Dadagiri” channel. The channel has a distinct name and Dadagiri is only title of one of the shows that is aired on the plaintiff’s channel. This word is also undisputedly of common usage. In such circumstances, how the certificates can be of any assistance, when they are in relation to the services of TV, is not clear to me at all. I am not entering into the controversy as to whether the word mark Dadagiri is capable of being registered or not. I am proceeding on the basis that it is so capable but its registration as a word mark must be in relation to services rendered in the aforementioned class. Merely because the title of

a particular show or programme on the plaintiff's channel is Dadagiri, then, these registration certificates cannot be the basis for claiming the interim reliefs.

28] In the aforesaid circumstances and facts peculiar to this case, I am of the view that the plaintiffs have failed to make out a prima facie case. Once there is no prima facie case made out warranting grant of interim injunction and finding that the programme/ show on television channel of plaintiffs and that of the defendants is even conceptually not identical, then, balance of convenience is also not in favour of the plaintiffs. There is no question of them suffering any irreparable loss or injury either. For these reasons, the interim injunction cannot be granted.

29] The decision brought to my notice by Mr.Tulzapurkar on the question of delay need not be referred as the principles set out therein are well settled. The question of delay would arise only if I am satisfied that a prima facie case is made out. In such circumstances, the decision of Delhi High Court in the case of Bal Pharma Ltd. Vs. Centaur Laboratories Pvt.Ltd and Anr. (supra) is distinguishable.

30] As far as the decision of the Supreme Court in the Ruston & Hornsby Ltd. Vs. Zamindara Engineering Co. reported in PTC (Suppl)(1) (175) is concerned, there the use of word mark “Ruston” was deceptively similar to plaintiffs registered mark. In that case, the question was manufacturing and sale of diesel internal combustion engine and their parts and accessories. Ruston & Hornsby, the appellant before the Supreme Court was manufacturing these goods. Respondent was carrying on business of manufacture and sale of diesel internal combustion engines and their parts. The appellant was registered proprietor of the registered trademark “Ruston”. The respondent was manufacturing and selling diesel internal combustion engines under the Trademark Rustam. It is in this factual backdrop and relying upon the provisions of Trademarks Act, 1940 that the Supreme Court made the observations in paras 5 and 6 which have been relied upon by Mr.Tulzapurkar. However, their application must be seen in the peculiar backdrop of each case. There, the registration was in relation to goods and finding that the marks were deceptively similar and likely to cause confusion, that the injunction as prayed for came to be granted. Such is

not the case before me.

31] Finally, the decision of the learned Single Judge (S.J.Vazifdar, J) reported in 2008 (36) PTC 53 (Zee Entertainment Enterprises Vs. Gajendra Singh and Ors) must be seen in the backdrop of the facts. There, the suit was filed claiming perpetual injunction restraining the defendants from infringing plaintiffs' copyright in the literary work and cinematographic film embodying the game show titled "Antakshari" being broad cast on television channel Zee, since September 1993. The defendant No.3 broadcasted television game show "Antakshari Great Challenge".

32] The action was based on the Copyright Act. The plaintiff claimed copyright insofar as the contents and the idea of the particular show. That is evident from the questions framed by the learned Judge in para 14 and particularly, Question (III). Thus, finding that prima facie the copyright is established and that the defendants copied the contents and presentation of the TV game show, that the learned Judge made the observations in paras 133 to 135 which are relied upon before me. The

passing off action cannot be restricted to the goods and was, therefore, extended to such shows but essentially after concluding that the contents and presentation has been copied.

33] This decision is also of no assistance to Mr.Tulzapurkar as it is not the case of the plaintiffs before me that the contents and presentation of the shows in question is identical.

34] No other decision is necessary to be referred to. In such circumstances and finding that a prima facie case has not been made out, that I have no alternative but to hold that there is no substance in this motion. It is accordingly dismissed with no orders as to costs.

(S.C.DHARMADHIKARI, J)