

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

% **Order delivered on: 17th November, 2015**

+ **CS(OS) 681/2012**

TATA SONS LIMITED & ANR Plaintiffs
Through Mr.Achuthan Sreekumar, Adv.

versus

ANIKET SINGH Defendant
Through Defendant is *ex parte*.

CORAM:

HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The plaintiffs have filed the present suit for permanent injunction restraining infringement of right to privacy, right to publicity, damages, passing off etc.
2. The plaintiff No.1 Company, Tata Sons Ltd. instituted the suit and was signed by Mr. V. Gurumoorthi, the duly Authorized Signatory of plaintiff No.1 Company. The Power of Attorney and the Board Resolution issued in favour of Mr. V. Gurumoorthi to sign and verify the pleadings as well as institute the present suit on behalf of Plaintiff No.1 Company is exhibited as Ex. PW-1/1 and Ex. PW- 1/2 respectively.
3. The plaintiff No. 2 Mr. Cyrus Pallonji Mistry, has signed the plaint who is the Chairman of plaintiff No.1 Company who was the Deputy Chairman of the said Company at the time of institution of suit. Mr. V. Gurumoorthi is the Authorized Signatory of plaintiff No. 2 and is authorized by virtue of a 'letter of authority' dated 12th March, 2012,

executed in his favour by plaintiff No. 2. The said original letter of authority is filed and exhibited as Ex. PW-1/3.

4. The plaintiffs have filed the documents which are printouts of computer maintained records as well as printouts from the internet relied upon by the plaintiff Witness in his evidence by way of affidavit, the same are supported by affidavit of an 11th expert under the relevant provisions of the Indian Evidence Act, 1872 and the same have been exhibited as Ex.PW2/A.

Averment as per Plaint

5. Plaintiff No.1, Tata Sons Limited (which expression shall include its predecessors in business and tide, including its sister concerns) is a company duly incorporated under the Indian Companies Act, 1913 having its registered office at Bombay House, 24 Homi Mody Street, Mumbai 400 001 and also conducts business at Jeevan Bharti Building, 10th Floor, Tower 1, 124 Connaught Circus, New Delhi 110 001.

6. Plaintiff No.1 is one of India's most trusted business houses and the name/ trademark TATA, derived from the surname of the founder Jamsetji Nusserwanji Tata, is a household name synonymous with excellence in several fields of business activity. The plaintiff No.1 Company has referred the documents namely Ex. PW 1/4 and Ex. PW 1/5 evidencing its business activities within the territorial jurisdiction of this Court.

7. Plaintiff No.1 Company, established in the year 1917 as a body corporate, is the promoter and the principal investment holding company of the House of TATA. That Plaintiff No.1 is one of India's oldest, largest and best-known business conglomerates with over 100 major operating companies, 32 of which are listed on the stock exchange and have a 3 combined market capitalization of about \$126.68 billion (as on July 2nd, 2015) and a shareholder base of about 4 million. The Tata companies have employed over 580,000 people

worldwide. The TATA name has been respected in India for 140 years for its adherence to strong values and business ethics.

8. The enterprises promoted by the plaintiff No.1 and its subsidiaries and associates have laid the foundation in the industrial core sector, pioneering textiles, iron and steel, power, chemicals, hotels and automobile industries in India. Keeping pace with the changing global scenario Tata companies branched out into computers and computer software, electronics, telecommunications, financial services, mutual funds, tea etc.

9. The House of TATA with a value of over \$15 billion has been named as the top and the most valuable Indian brand for the year 2015 by Brand Finance, India. Further, the TATA brand has also been ranked 34th by Brand Finance, (an independent company focused on the management and valuation of brands) in its Global 500 Finance Report dated March 2014. For the year 2009, the plaintiff No.1 was ranked as the world's 11th most reputed company according to a study compiled by United States based Reputation Institute.

10. The following documents would establish the goodwill and reputation associated with the plaintiff No.1 Company have already in the present proceedings and the same be kindly referred to:

- (i) A copy of message dated 18th July, 1998 from the then Prime Minister of India, Shri. A.B. Vajpayee on the 93rd Birth Anniversary of Late Shri. J.R.D. Tata and the same is marked as Mark M.
- (ii) A copy of an extract from the Encyclopedia Britannica on TATA and the TATA GROUP and the same is as marked as Mark N.
- (iii) A copy of the write-up dated 24th May, 2009, titled "T for trust" appearing in 'The Week' magazine acknowledging the

- plaintiff as the world's 11th most reputed company and the same is exhibited as Ex.- PW1/8.
- (iv) Copy of the original book titled "TATA - The Evolution of a Corporate Brand" by Morgen Witzel and the same is exhibited as Ex.- PW 1/9.
 - (v) Copy of the February 2011 (Special Issue) of the magazine 'FORTUNE' (India Edition) and the same is exhibited as Ex.- PW 1/10.
 - (vi) Copy of the original compendium on the financial highlights of the Plaintiff Company and its group companies and the same is exhibited as Ex.-PW1/11.
 - (vii) Copy of the original brochure of the plaintiff Company that contains a comprehensive overview of the activities and history of the plaintiff Company and its sister concerns and the same is exhibited as Ex.-PW 1/12.

ABOUT CYRUS PAILLONJI MISTRY (PLAINTIFF NO.2)

11. Mr. Cyrus Pallonji Mistry (Plaintiff No.2), born on 4th July, 1968. The entities controlled by him own 18.5% of the share capital of the plaintiff No.1 Company.

12. On 23rd November, 2011, plaintiff No.2 was appointed by plaintiff No.1 Company as its Deputy Chairman. At the time of inception of the instant suit, plaintiff No. 2 was the Deputy Chairman of the plaintiff No.1 Company and Mr. Ratan Tata was its Chairman. Thereafter, on Mr. Ratan Tata retiring as the Chairman of the plaintiff No. 1 Company, plaintiff No. 2 took over its reins as Chairman on 29th December, 2012.

13. Plaintiff No.2, studied at Cathedral and John Connon School in Mumbai. He graduated from Imperial College, London with a BE Degree in Civil Engineering. Plaintiff No. 2 also holds a Master of Science Degree in Management from London Business School. He is a

fellow of the Institution of Civil Engineers and is also the proud recipient of the Alumni Achievement Award from London Business School. Plaintiff No. 2 also serves as the co-chairman of the India US CEO Forum addition to being a member of the Presidential CEO Advisory Board of the Massachusetts Institute of Technology.

14. Plaintiff No.2 has been a Director of the plaintiff No.1 Company since August 10, 2006. In addition to being Chairman of the plaintiff No.1 Company, plaintiff No.2 is also the Chairman of some of the major Tata group companies including Tata Steel Limited, Tata Motors Limited, Tata Consultancy Services Limited, Tata Power Company Limited, The Indian Hotels Company Limited, Tata Global Beverages Limited, Tata Chemicals Limited, Tata Industries limited and Tata Industries and Tata Teleservices Ltd.

15. Plaintiff No.2 was earlier the Managing Director of the Shapoorji Pallonji Group. Under his leadership, Shapoorji Pallonji's construction business grew into a billion dollar enterprise, evolving from pure-play construction to execution of complex projects in the marine, oil and gas and rail sectors, across a number of international geographies.

16. Plaintiff No.2 was responsible for launching the infrastructure development vertical in the Shapoorji Pallonji Group in 1995 with a 106 MW power project in Tamil Nadu, followed by the development of India's largest biotech park near Hyderabad in partnership with the Andhra Pradesh government. The infrastructure vertical has also developed two large road projects totaling an investment of USD 550 million.

17. The following documents relating to plaintiff No.2 are filed in order to establish his laudable and glorious achievements as well as stand testimony to his pioneering and path breaking ideas and innovations which have revolutionized the modern business environment:

- (i) Printouts from various websites on the internet and in particular from the website plaintiff No.1 pertaining to Mr.Cyrus Pallonji Mistry (Plaintiff No.2). The same is exhibited as Ex.- PW1/13.
- (ii) Printout from the Wikipedia page indicating the particulars of Cyrus Pallonji Mistry (Plaintiff No.2). The same is exhibited as Ex.- PW 1/14.
- (iii) Printout of the business profile of Cyrus Pallonji Mistry (Plaintiff No. 2) as appearing on the website of the plaintiff No.1. The same is exhibited as be exhibited as Ex.-PW-1/15.
- (iv) Printout of the business profile of Cyrus Pallonji Mistry (Plaintiff No. 2) as appearing on the website of India Today. The same is exhibited as Ex.- PW 1/16.
- (v) Printout of the business profile of Cyrus Pallonji Mistry (Plaintiff No.2) as appearing on the website of India TV. The same is exhibited as Ex.-PW 1/17.
- (vi) Printout of the business profile of Cyrus Pallonji Mistry (Plaintiff No.2) as appearing on the website of Media Marketing More. The same is exhibited as Ex.- PW1/18.
- (vii) Printout of the business profile of Cyrus Pallonji Mistry (Plaintiff No.2) as appearing on the website of Live Mint. The same is exhibited as Ex.- PW 1/19.
- (viii) Printout of the business profile of Cyrus Pallonji Mistry (Plaintiff No.2) as appearing on the website of Financial Express. The same is exhibited as Ex.-PW 1/20.

THE DEFENDANT

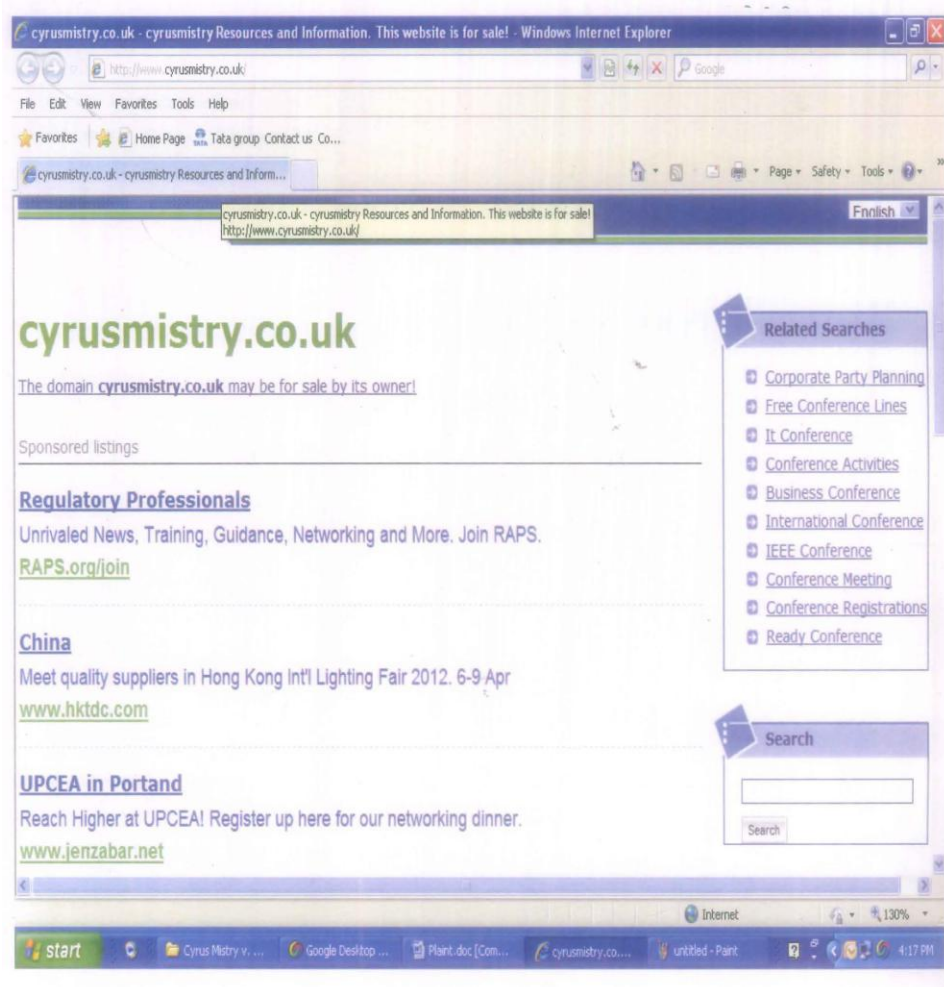
18. The defendant herein is the owner/Registrant of the impugned domain names:

- i) www.cyrusmistry.co.uk; and
- ii) www.cyrusmistry.co

The 'who is' search results of the domain name www.cyrusmistry.co.uk and www.cyrusmistry.co have already been filed and the same have been exhibited as Ex.-PW 1/21 and Ex.- PW 1/22 respectively.

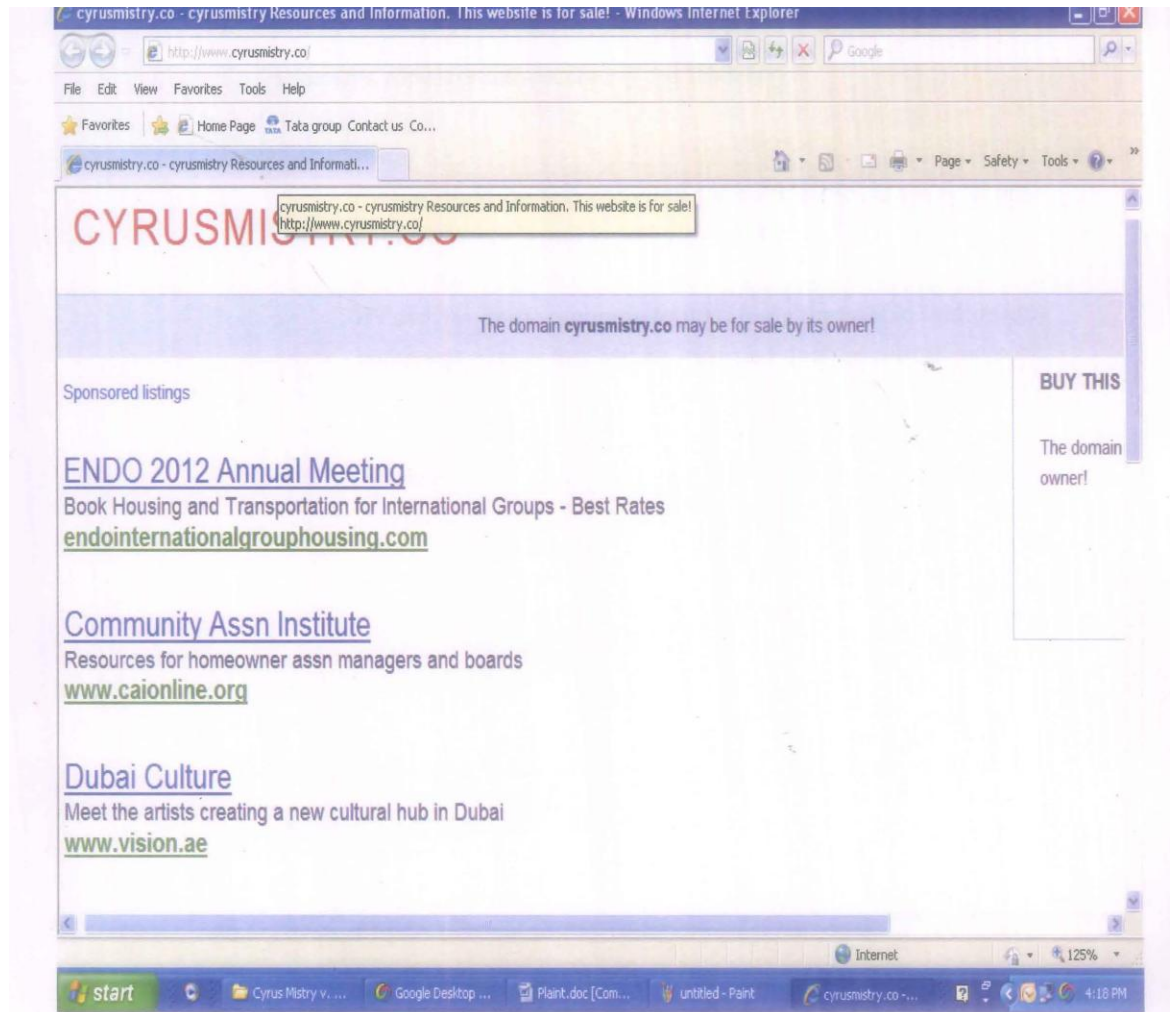
19. Before filing of the suit if one was to visit the web-site www.cyrusmistry.co.uk, a message appeared stating that 'the domain name is for sale.' A printout of the above message has been filed separately in the present proceedings and the same has been exhibited as Ex.-PW-1/23.

20. A screen shot of the said message, as was appearing on the website, originally hosted on the impugned domain name www.cyrusmistry.co.uk is reproduced as under:



21. Similarly the webpage located at the other impugned domain name i.e. www.cyrusmistry.co when accessed before the filing of the suit also bore a similar message stating that the '**domain name is for sale**'. A printout of the above message has been filed in the instant proceedings and the same has been exhibited as Ex.-PW 1/24.

A screen shot of the said message, as was appearing on the website, originally hosted on the impugned domain name www.cyrusmistry.co is reproduced as under:-



22. The said domain names were created on 20th December, 2011 just about a month after the plaintiff No.1 officially made the public announcement of the appointment of Mr. Mistry (the Plaintiff No. 2),

as its Deputy Chairman and that Mr. Mistry would take over from Mr. Ratan Tata as Chairman, in December,2012.

23. On 4th February, 2012, the defendant addressed an email to the plaintiffs representatives stating the following:

"Dear Sir,

I have been getting inquiries for selling the domain names www.cyrusmistry.co and cyrusmistry.co.uk and I am the owner of the domain names.

If I sell the domain names to third party and not to tata group company. I think it might be misused and the brand value of tata group compromised, since the individual in now deputy chairman of tata group.

Therefore I request you to kindly contact me for the domain names.

Thanking you

Aniket Singh
singhaniket@hotmail.com
+919903015800"

The printout of the above mentioned email has already been filed in the present proceedings and the same is exhibited as Ex. PW-1/25.

24. A mere perusal of the defendant's email dated 4th February, 2012 illustrates the following:

- i. The defendant was well aware that his act of registering the impugned domain names is illegal and infringing.
- ii. The impugned domain names if not transferred and registered in favour of the plaintiffs can be misused and can prove detrimental to the immense goodwill and reputation associated with the plaintiffs.

On a plain and simple reading of the email dated 4th February, 2012 as addressed to the plaintiffs' representative by the defendant

clearly brings to the fore, the "threatening tone" of the defendant. The underlying tenor of the email is a manifestation of the ulterior motive of the defendant to extort money illegally and unfairly from the plaintiffs.

25. Sometime during February, 2012, the plaintiffs brought the defendant's illegal and infringing activities to the notice of their advocates.

26. The plaintiffs' advocates with the intention of amicably resolving the matter addressed a legal notice to the defendant pursuant to which the plaintiffs' advocates also spoke with the defendant over the telephone. It is pertinent to note that initially the defendant orally agreed to transfer the impugned domain names to the plaintiffs, however despite the assurance, the defendant chose not to reply to the plaintiffs, inspite of repeated reminder letters and telephone calls on behalf of the plaintiffs, who thereafter were left with no option but to file the suit.

27. The malafide intent of the defendant is further rendered evident from the fact that when the plaintiffs' advocates somehow got in touch with the defendant over the telephone requiring him to transfer the impugned domain names to the plaintiffs, the defendant maintained a non-committal stance. Defendants cited extremely flimsy technical reasons for not transferring the impugned domain names to the plaintiffs. The printouts of the legal notice along with the reminders sent to the defendant have been filed and the same have been exhibited as Ex. PW- 1/26. The continuous illegal use of the name by the defendant would amount to infringement of rights of the plaintiffs.

28. After the present suit was initiated, the defendant addressed yet another letter dated 9th May, 2013 to the plaintiffs' advocate offering to sell the impugned domain names valuable consideration. The said letter in original is filed and the same is exhibited as Ex. PW-1/27.

29. It is apparent on the face of record and evidence produced that the name Cyrus P. Mistry, being the personal name of the plaintiff No.2, immediately gets associated with the plaintiff No.2 and no one else. Plaintiff No. 2's name carries enormous goodwill and reputation and is exclusively associated with him. In public perception, therefore, whenever the name of Mr. Cyrus Mistry is mentioned, it is immediately identified and related solely and wholly with plaintiff No. 2.

30. India has finally begun to address the multi-dimensional concept of Personality Rights. The increase in the number of high-value endorsement deals being signed by famous personalities signifies that tremendous value is attached to such endorsements. It is therefore evident that if such commercial value in a personality is appropriated by persons like the defendant who are not authorized to do so, then the said personality, i.e. Mr. Mistry, the plaintiff No. 2, should be granted the right to sue for such embezzlement.

31. In case the defendant is allowed to piggyback on the enormous goodwill and reputation associated with the well-known personal name of plaintiff No. 2, Cyrus P Mistry. The damage caused to the immense goodwill and reputation of the plaintiff No.2 is insurmountable in view of the fact that the reputation of Mr. Mistry has spread in record time, which the defendant deliberately and in an unauthorized manner is seeking to usurp.

32. Thus, it is evident that the defendant has registered the impugned domain names with the mala-fide and ulterior motive of holding the Plaintiffs to ransom and thereafter with the evil intention of extorting huge amounts of money from the plaintiffs. The said malpractice shall never be allowed by this court. As the defendant was using the well-known personal name of the plaintiff No.2 as part of the impugned domain names with the mala-fide and ulterior motive to induces the consumer and members of trade to falsely believe that he

has a direct nexus or affiliation with the plaintiff or the House of TATA or he has been granted a license to use the well-known personal name of the plaintiff No.2 or the business of the defendant has been endorsed by the plaintiffs.

33. Such acts of the defendant amount to invasion of the right to publicity/privacy rights of Mr. Mistry, as well as passing off in right to protect his name, persona or anything emanating out of these as enshrined in Article 21 of the Indian Constitution.

34. it is a well settled position of law as has been upheld in a catena of judgments and judicial pronouncements of this Court as well as of the Supreme Court that trademark law today extends to cover the Internet and that domain names deserve protection just like trademark and that personal names forming apart thereof constitute no exception. The same is necessary in order to prevent cyber- squatting or trafficking or trading in domain names or marks, involving well-known trademarks/personal names.

35. The learned counsel for the plaintiff has referred the following judgments:-

- a) ***Arun Jaitley v. Network Solutions Private Limited***, 181 (2011) DLT 716.
- b) ***DM Entertainment Pvt. Ltd. v Baby Gift House***, passed in CS (OS) 893 of 2002 decided on 29th April, 2010.
- c) ***Titan Industries Limited v. Ramkumar Jewellers***, 2012 (50) PTC 486.

36. On the face of it, the name "Cyrus P. Mistry" falls within the category of personal names that besides being a personal name has attained a distinctive indicia, connotation, character or identity of their own. Therefore, the said name due to its peculiar nature and distinctive name coupled with it gaining popularity in several fields,

has become a 'well-known personal name', enabling plaintiff No.2 to restrain others from using his name unjustifiably, in addition to his personal right to sue them for the misuse of his name.

37. Earlier the plaintiff's suit was titled as Tata Sons Ltd. & Mr. Cyrus Mistry v. Dharmendra; CS (OS) No. 2963 of 2011. This Court has passed an Order of *ex-parte ad interim* injunction against the Defendant restraining the defendant from infringing the publicity/privacy and other rights of the plaintiffs. The matter was decreed thereafter by the defendant agreeing to suffer a decree of permanent injunction and the domain name in issue was eventually transferred to the plaintiffs.

38. The loss and damage incurred by the plaintiffs is also on account of loss of reputation and goodwill of the plaintiffs/its Chairman (i.e. Plaintiff No. 2), companies promoted by him in the market. The Defendant is blatantly and illegally capitalizing on the strength of use of the well-known personal name of plaintiff No. 2 i.e. Mr. Cyrus P. Mistry for the purposes of making illegal profit and gain.

- (i) As it is difficult to quantify the monetary extent of losses, the plaintiffs base their claim of damages on the following factors:
The defendant's act of registration of the impugned domain names and thereafter trying to sell the same to the plaintiffs for exorbitant amounts by holding the plaintiffs to ransom;
- (ii) Not amicably settling the matter with the plaintiffs when the plaintiffs through their advocates approached the defendant to have the matter settled well before the instant suit was filed;
- (iii) Possible damage that would have been caused to the plaintiffs/its Chairman (i.e. the Plaintiff No. 2)/its promoted companies' enormous reputation and goodwill in the event the defendant would have uploaded objectionable or derogatory

content on the said domain names as the plaintiffs have no control whatsoever over the activities of the defendant;

- (iv) The name of the plaintiff No. 2, i.e. Cyrus P. Mistry being a well-known and popular name and the illegal/infringing activities of the defendant leads to dilution of the well known persona attached to the name of an eminent business tycoon i.e. Cyrus P. Mistry, the plaintiff No. 2;
- (v) The defendant's activities dilute and diminish the overall distinctiveness, effectiveness and prestigious connotations associated with the well-known personal name of the Plaintiff No. 2 i.e. Cyrus P. Mistry;
- (vi) Loss of reputation, which is being diluted as the defendant No.1 has no control over the plaintiffs illegal/infringing activities;
- (vii) Exemplary and punitive damages may be awarded since there is a flagrant violation by the defendant of the rights of the plaintiff No.2 so as to set an example which may act as a deterrent to others, who may intend to indulge or are indulging in similar activities. Such flagrant violation may be inferred from, inter alia, the fact that that the defendant appear to be a habitual offenders (as even after repeated attempts by the plaintiff to settle the matter, the defendant did not settle the same), the use of the well-known personal name i.e. Cyrus P. Mistry is without any due cause, the nature of the infringing act, reasonable knowledge of the illegal nature of such violation subsisting in a person skilled in the concerned trade, and continuance of the violation despite such knowledge. The acts of the defendant fulfill the abovementioned criterion and leave no doubt as to the intentional and flagrant violation of the plaintiff No. 2's rights.

39. Counsel for the plaintiffs submits that let the punitive damages or token amount of compensation be granted in favour of the plaintiffs for charity purpose. The defendant in the matter is *ex-parte*. The evidence of the plaintiffs has gone unrebutted. No evidence has been produced by the defendant.

40. It is now well settled by this Court starting from ***Time Incorporated vs. Lokesh Srivastava & Anr.***, 2005 (30) P.T.C. 3(Del) wherein this Court had rightfully observed that "Courts dealing in actions for infringement of trademarks, copyrights, patents etc., should not only grant compensatory damages but also award punitive damages with a view to discourage and dishearten law breakers who indulge in violation with impunity out of lust for money, so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be unable to pay punitive damages also, which may spell financial disaster for them." The Court also stated that Courts should make its endeavor to deprecate dishonesty especially to discourage law-breakers who wilfully absent themselves from Court. The Court awarded Rs.5 lacs punitive damages in addition to 5 lac already awarded as compensatory damages.

41. This Court has granted both exemplary and punitive damages against the Defendants in *ex-parte* matters of similar nature. In ***Hero Honda Motors Ltd. v. Shree Assuramji Scooters***, (125 (2005) DLT 504), this Court that punitive damages should be awarded to the Plaintiff in cases where the defendant deliberately chooses to stay away from Court proceedings as not doing the same would result in encouraging wrong-doers to evade suit proceedings. This Court stated that "A party who chooses to not participate in court proceedings and stay away must, thus, suffer the consequences of damages as stated and set out by the plaintiff. The figure of Rs.5 lac as damages can hardly be said to be astronomical keeping in mind the nature of

deception alleged by the plaintiff which not only causes direct loss to the plaintiff, but also affects the reputation of the plaintiff by selling sub standard goods in the market where the public may be deceived in buying the goods thinking the same to be that of the plaintiff. There is a larger public purpose involved to discourage such parties from indulging in such acts of deception and, thus, even if the same has a punitive element, it must be granted."

42. In **Microsoft Corporation v. Rajendra Pawar & Anr.**, 2008 (36) PTC 697 (Del.) decided on 27th July, 2007, this Court held that "it has now become a trend of sorts, especially in matters pertaining to passing off, for the defending party to evade court proceedings in a systematic attempt to jettison the relief sought by the plaintiff. Such flagrancy of the defendant's conduct is strictly deprecatory, and those who recklessly indulge in such shenanigans must do so at their peril, for it is now an inherited wisdom that evasion of court proceedings does not de facto tantamount to escape from liability. Judicial process has its own way of bringing to tasks such erring parties whilst at the same time ensuring that the aggrieved party who has knocked the doors of the court in anticipation of justice is afforded with adequate relief, both in law and in equity. It is here that the concept of awarding punitive damages comes into perspective." This Court and granted a relief of Rs.2 lac as compensatory damages and a sum of Rs.3 lac as punitive/exemplary damages as well as damages on account of loss of reputation and goodwill of the plaintiffs. The plaintiffs were also awarded fifty thousand as costs of the suit.

43. For the aforesaid reasons, the plaintiffs are entitled to the punitive compensation/costs of suit/counsel fee for a sum of Rs.5 lac and against the defendants. The said amount on receipt shall be deposited with the Delhi High Court Library Fund.

44. In light of the submissions on merit by passing the decree for permanent injunction, it is also directed that the impugned websites www.cyrusmistry.co.uk and www.cyrusmistry.co are to be transferred in favour of the plaintiff No.2 who is also Chairman of plaintiff No.1 Company. The plaintiffs be permitted to take all necessary steps to effectuate such transfer.

45. Decree be drawn accordingly.

(MANMOHAN SINGH)
JUDGE

NOVEMBER 17, 2015