

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**INTERIM APPLICATION (L) NO.28817 OF 2021
IN
COMM. IP SUIT (L) NO. 28812 OF 2021**

Endemol Shine Nederland Producties B.V. & Ors. ...Applicants
(Org. Plaintiffs)

In the matter between:

Endemol Shine Nederland Producties B.V. & Ors. ...Plaintiffs
Versus

Angel Singh aka Lucky Trading as
999 Productions & Ors. ...Defendants

.....
Mr. Hiren Kamod, Advocate a/w Mr. Prem Khullar, Mr. Vaibhav Keni
and Ms. Neha Iyer, Advocates i/b Legasis Partners for the Plaintiffs
Mr. Lalit Sharma and Ms. Doyel Sengupta Mattoo, representatives of
the Plaintiffs.

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CORAM : B.P. COLABAWALLA, J.
DATE : 10th DECEMBER, 2021

P.C.:

1. The Plaintiffs seek to move without notice to the Defendants for the reasons set out in paragraph 59 of the Plaint. This is an action for infringement of the Plaintiffs' registered trade marks, copyrights combined with a cause of action for passing off. Mr. Kamod, Ld. Advocate for the Plaintiffs, submitted that since leave under Clause XIV of the Letters of Patent (Bombay) to combine the cause of

action for passing off with the cause of action for infringement of trade marks and copyrights is not obtained, the Plaintiffs are presently only pressing for reliefs in respect of infringement of trade marks, copyrights and shall press for the relief of passing off after obtaining such leave. Mr. Kamod tenders an additional affidavit dated 10th December 2021 to bring on record certain documents showing that the Defendants conducted auditions even in Ludhiana on 5th December, 2021.

2. It is stated that the Plaintiffs form part of the Endemol Shine Group, which is one of the biggest global content creators, producers and distributors with a portfolio of international hits including Big Brother, Black Mirror, Broadchurch, Bron/Broen, Deal or No Deal, etc. It is stated that the Endemol Shine Group is the world's largest independent producer of television and digital content with more than 120 production companies in 20 countries. Endemol Shine Group works together with more than 280 channels, digital platforms and licensees worldwide. It is stated that every year, the Endemol Shine Group produces more than 61,000 hours of content in 50 different languages spread across the genres of entertainment, reality, game shows, comedy, drama, soap, sports, informative, animation and feature films.

3. It is stated that one of the most popular reality shows of Plaintiff No.1 is 'Big Brother' which was created by it in the year 1998 in its home country, i.e., Netherlands and launched in 1999 where it was first made available to the public. The said show had a unique, never seen before format where the contestants had to live in an isolated house, were filmed 24/7 and try to avoid eviction on the basis of public voting, competing for a cash prize to be awarded to the final survivor. It is stated that the said show was an instant hit among the masses and generated extremely high TRPs. It is stated that the said show became so popular that Plaintiff No.1 produced several seasons of 'Big Brother' in Netherlands. The Plaintiff No.1 is the first owner of the copyright subsisting in the format / content production bible of the 'Big Brother' which qualifies as the Original Literary Work under the Copyright Act, 1957. It is stated that the Unique Elements set out in paragraph 9 of the plaint when put together along with other elements mentioned in the Production Bible create the unique and novel format of the Plaintiffs' show and the format is licensed as copyright protected format by the Plaintiff Nos.1 and 2 for creation of various regional versions of the show. It is stated that though the said Production Bible is confidential in nature, the said Unique Elements and the format/concept of the

Plaintiffs' show can be easily discerned by general public who watch the Plaintiffs' show. It is stated that the TV show Big Brother became so popular that the Plaintiff No.1 through the Plaintiff No. 2 licensed the format 'Big Brother' to various entities across the world to make their own cinematograph film adaptations of the Production Bible of 'Big Brother'. Till date, adaptations / TV shows based on the Plaintiff No.1's said Production Bible have been telecast in approximately 43 countries worldwide.

4. It is stated that as per the practice, Plaintiff No.2 licenses the right to produce a local language version of the Format to a Broadcaster and the Broadcaster in turn appoints the Plaintiff No.3 for production of that language version of the format. It is stated that the said Programme is produced under the Plaintiffs' strict instructions / supervisions for valuable consideration and at the instance of the Plaintiffs. It is stated that the said Programme embodying the Bigg Boss show also qualifies as cinematograph film in the meaning provided to the said expression under the Copyright Act, 1957. The said Programme is an adaptation of the literary works comprised in the said Production Bible and the Plaintiffs are the owner of the copyright in the said Programme as also the underlying work, viz., the said Production Bible on the basis of

which the said Programma is made.

5. It is stated that the Plaintiff No.3 launched the first season of its TV show 'Bigg Boss' in November 2006 and the said TV show was an instant hit and generated extremely high TRPs. It is stated that since the format of the show is unique, one of its kind and never seen before on Indian television, the viewership of the show increased continuously. Due to the high demand and popularity of 'Bigg Boss' in India, till date, the Plaintiff No.3 has produced fifteen seasons of the TV show in India. It is stated that initially, 'Bigg Boss' was a show that aired in Hindi language. However, the same acquired popularity throughout India, due to which, the Plaintiffs decided to produce and broadcast it in regional languages also. It is stated that the Plaintiff No.3 has launched Bigg Boss in Marathi, Telegu, Kannada, Tamil, Malayalam and Bengali languages, with each variant of the show enjoying massive TRP's that is reflective of the wide range of viewership enjoyed by the said Bigg Boss show.
6. It is stated that the Plaintiff No.3 is the registered proprietor of the word mark "**BIGG BOSS**" bearing registration No.3107475 in Class 41. Printouts from the official website of the Trade Marks Registry of the online status and registration certificate of Plaintiff No.3's

said trade mark are at Exhibit B to the plaint. It is stated that the Plaintiff No.1 is the registered proprietor of the word mark and label mark BIG BROTHER. Printouts from the official website of the Trade Marks Registry of the online status and registration certificates of the Plaintiff No.1's said trade mark registrations bearing Nos.1267730 and 1267732 both in Class 41 are at Exhibits "C" & "C-1", respectively, to the plaint. It is stated that a unique and consistent component featuring across the various seasons of the Plaintiff No.3's Bigg Boss TV show, is the device of an eye which is symbolic of the character Bigg Boss on the show. It is stated that the Plaintiff No.3's 'Bigg Boss' TV show prominently uses a unique device of eye in each season. It is stated that the device of eye is found not only in respect of the Plaintiff No.3's 'Bigg Boss' TV show, but also features in some form or other in the Plaintiff No.1 and the Plaintiff No.2's 'Big Brother' TV shows around the world. It is stated that the device of eye has always been one of leading, essential and prominent feature of all the Bigg Boss formative marks and has come to be exclusively associated / identified with the Plaintiff No.3's show. It is submitted that Plaintiff No.3 has kept the device of eye constant in the labels adopted for the regional shows as well. It is stated Plaintiff No.3 has applied for and secured registrations of various labels / Bigg Boss Formative

Marks of which the device of eye forms one of its leading, essential and prominent feature in class 41, as per details set out in paragraph 18 of the plaint. Copies of online status and/or registration certificates in respect of the above-mentioned trademarks are at Exhibits-“B-1” to “B-32” to the plaint.

7. It is stated that the TRP ratings of the Plaintiff No.3's show, global fan base and high viewership also establish the immense goodwill and recognition vested in the Plaintiffs' said trade marks Big Brother, Bigg Boss, Bigg Boss Formative Marks and Bigg Boss show which are the subject matter of suit. The TRP's as recorded for various seasons are set out in paragraph 22 of the plaint. It is stated that the Bigg Boss show with its Unique Elements has gained substantial repute and goodwill worldwide and particularly in India. It is stated that the format contained in the said Production Bible, including the Unique Elements stated in paragraph 9 of the plaint are exclusively associated by general public at large with the Plaintiffs and their Bigg Boss show and any other show with the same / deceptively similar format, by whatever name / title and whatever language, will be associated by the public-at-large with the Plaintiffs' show “Big Brother”/ “Bigg Boss”. It is stated that the shows “Big Brother” and “Bigg Boss”, as such have attained such

reputation worldwide that the trade mark Big Brother, Bigg Boss and Bigg Boss Formative Marks are exclusively associated with the Plaintiffs and their respective shows and any unauthorized use of the same or any marks which are identical with and/or deceptively similar to the said trademarks of the Plaintiffs by a third party who is not a permitted party / without the permission of the Plaintiffs is bound/likely to cause confusion and deception. It is stated that by virtue of such long and extensive use as well as promotion, the Plaintiffs have acquired valuable rights including common law rights in the format of the Bigg Boss show and its Unique Elements. It is stated that any content whether a literary work or dramatic work or cinematograph film based on a format or concept similar to the Plaintiffs' 'Big Brother' or 'Bigg Boss' show is bound to cause confusion and deception in the public.

8. According to the Plaintiffs, on 14th November 2021, they learnt from their industry sources about an advertisement / audition poster for audition for a show titled "999 The Bigg Boss Jammu" ("**Impugned Show**") wherein members of public were invited to come for audition for the Impugned Show at Nyssha Lounge, Jammu on 14th November, 2021 between 12 noon and 3 p.m. Images of the audition poster are reproduced in paragraph 29 of

the plaint and at Exhibit “E” to the plaint. It is stated that the Plaintiffs immediately appointed an investigator to conduct an investigation about the Defendants and the same revealed that at the center of the audition poster is the Defendant No.1 - Angel Singh, on the left is Defendant No.2 - Ayaan Gupta trading as The Décor who is managing the Impugned Show and on the right is Defendant No.3 - Mohit Sharma, who is an actor and co-organizing, actively participating and promoting the Impugned Show. It is stated that the Defendants are using the impugned

marks BIGG BOSS JAMMU,  and the impugned

device of eye  which are identical with and/or deceptively similar to the Plaintiffs’ Big Brother, Bigg Boss, Bigg Boss Formative Marks.

9. It is stated upon conducting a search on the internet, the Plaintiff No.3 found the Defendants’ Instagram page / account under the Impugned Name / Mark ‘Bigg Boss Jammu’, which revealed that the Defendants had already conducted their first round of auditions in Chandigarh on 7th November, 2021 and in Jammu on 14th November, 2021. Photographs of few Instagram posts made on

the page of Bigg Boss Jammu which bear the Impugned Marks are at Exhibit F to the plaint. It is stated that all the three Defendants are promoting the Impugned Show through their personal social media handles/accounts. Printouts of screenshots of some of the posts uploaded by the Defendants on their personal Instagram accounts/handles which bear the Impugned Marks are at Exhibit G to the plaint. It is stated that the Plaintiff No.3 also came across several videos on YouTube where the Defendants have given interviews and have admitted and explained in detail how they are going to produce the Impugned Show Bigg Boss Jammu which is based on Plaintiffs' Bigg Boss show, which the Defendants' refer to as "*Bollywood ka Bigg Boss*". It is stated that in the said videos, the Defendant No.1 himself admits that the concept / format of their Impugned Show is based on Plaintiffs' Bigg Boss show which is hosted by Salman Khan.

10. It is stated that the blatant violation of Plaintiffs' rights in their Bigg Boss show / said Programme can be gathered from Defendant No.1's statement in one such video that "***Agar Bollywood Bigg Boss bana sakta hai toh Jollywood kyun nahi Bigg Boss Jammu bana sakta***" which loosely translates into *if Bollywood can make Bigg Boss, why can't Jollywood make Bigg Boss Jammu*". It is stated

that in another video, while giving an interview to a news channel the Defendant No.1 accentuates that his intention is to compete with “*Bollywood ka Bigg Boss*”, i.e., the Plaintiffs’ Bigg Boss Hindi show. It is stated that in another video, the Defendant No.1 also states that in the Impugned Show, there will be 24 contestants comprising of 10 celebrities (influencers, entrepreneurs, activists) and 10 commoners with X factor and 4 shall be verified accounts with a blue tick on social media. Copies of the Defendants’ videos available on YouTube and Facebook are at Exhibit H to the Plaintiff. A brief description of the content in each such video and the link to the videos are reproduced in paragraph 32 of the plaintiff. Video 1 to Video 7 and a transcript of the relevant portions of the videos are at Exhibit I to plaintiff. It is stated that even the theme song used by the Defendants in respect of the Impugned Show is nearly identical with the theme song used by the Plaintiffs in respect of the Bigg Boss show and the link to the same is at paragraph 34 of the plaintiff. It is stated that the Defendant No.2 in the past produced and hosted a chat show “*Coffee with Ayaan*” in July 2021 which was modelled on the famous show Koffee with Karan hosted by Karan Johar for many seasons for Star TV and the Defendant No.1 was a guest on the said show. Exhibit L to the plaintiff contains a copy of the said episode and the relevant excerpts of the conversation

between the Defendant Nos.1 and 2 are translated and reproduced in paragraph 35 of the plaint.

11. It is stated that the Plaintiffs' investigator went to the Defendants' Nyshha Lounge to gather more information about the audition for the Impugned Show and learnt that the Defendant No. 1 had organized auditions for the Impugned Show where interested people could submit a form that could be purchased on the spot for Rs.500. A copy of the audition form sold by the Defendants is at Exhibit M to the plaint. It is stated that whilst the Plaintiffs were waiting to receive the formal investigation report, the Plaintiff No. 3 received a call from one Mr. Tanish Bhatt who said that he was in the business of film production and was shocked to learn from his industry sources and acquaintances that a few people were conducting auditions for the Impugned show "*Bigg Boss Jammu*" which seems like a fake show and is being produced outside of the knowledge of Mr. Afaq Gadda, who is the Nodal Officer at Film Facilitation Office (FFO) under NFDC which acts as a single-window facilitation and clearance mechanism that eases filming in India. It is stated that on 16th November, 2021, the Plaintiff No.3 also received an email from one Ms. Kiana Singh with the subject line "*Complaint against Fake bigboss auditions and fooling public*"

in jammu” informing about the Impugned show and how the Defendants were taking money from interested contestants for participating on the show. A copy of the said email received from Ms. Kiana Singh is at Exhibit N to the plaint.

12. It is stated that the investigators submitted their report to the Plaintiffs on 4th December, 2021 and the same is at Exhibit O to the plaint and the findings of the said report are at paragraph 39 of the plaint. It is stated that the said report confirmed that the Defendants were indeed carrying out auditions for the Impugned Show 'Bigg Boss Jammu' which not only infringes the Plaintiffs' rights in their Big Brother, Bigg Boss and Bigg Boss Formative Marks, but also the copyright in the Bigg Boss Show, said Production Bible and said Programme. It is stated that a bare perusal of the Defendant No.2's Instagram page, reveals that he sells/used to sell counterfeit/replicas of clothes, shoes, watches, bags of expensive designer brands and a few screenshots to support the same are at Exhibit P to the plaint. It is stated that posts on the Defendant No.2's Instagram, the aforesaid show "Coffee with Ayaan" and the Defendant No.1's interviews make it clear that the Defendants are habitual offenders and are no strangers to violation of third-party intellectual property rights who are working in

collusion for the Impugned Show.

13. Mr. Kamod submitted that the similarity/identity between the Impugned show and Plaintiff No.3's Bigg Boss show is not a mere coincidence or honest/bona fide and is rather intentional. He submitted that the Defendants in their interviews to local news channels have admitted that "*Bigg Boss Jammu is based on the Big Boss Bollywood*". He submitted that the Defendants are using marks which are identical with and/or deceptively similar to the Plaintiffs' said Big Brother, Bigg Boss and Bigg Boss Formative Marks, with the intention of impressing upon the public at large that the proposed Impugned Show is affiliated to Plaintiffs' Bigg Boss show / said Programme. He submitted that by use of the Impugned Marks/ parts thereof, in their audition / participation / entry form, sign boards and promotional material, the Defendants have tried to make the Impugned Show look as a legitimate licensed version of Plaintiffs' Bigg Boss show. He submitted that from the investigation report and interviews given by Defendants, the features of the Defendants' Impugned Show as set out in paragraph 42 of the plaint appear to be a reproduction/copy of the Plaintiffs' Bigg Boss show on the basis of which Plaintiffs' said Programme is made. He submitted that in view of the admission of

the Defendants that the Impugned Show is inspired from Bigg Boss show and the fact that they acknowledged the Plaintiffs' rights in the trade marks Big Brother, Bigg Boss and Bigg Boss Formative Marks of the Plaintiffs, they cannot therefore feign ignorance of the prior and superior rights of the Plaintiffs in the Plaintiffs' said Production Bible, Bigg Boss shows, said Programme and the trade marks Big Brother, Bigg Boss and Bigg Boss Formative Marks. He submitted that the Defendants are misleading the public at large for their own benefit. He submitted that aforesaid acts of the Defendants amount to infringement of trademarks, copyright and passing off.

14. Mr. Kamod submits that given the facts of the present case, this is a fit case for grant of an ex-parte injunction, in view of the fact that young unsuspecting contestants and public at large are being deceived by the Defendants. He submitted that in case a notice is issued to the Defendants, there is a high possibility and risk that the Defendants may destroy or hide all incriminating evidence proving their infringing activities including the illegal use of the Plaintiffs' trade marks Big Brother, Bigg Boss and Bigg Boss Formative Marks and their show Big Brother / Bigg Boss show / said Programme. Further, considering the fact that the Defendants

have been collecting money from the unsuspecting contestants, the Defendants may, if notice is given to them, destroy/hide the documents/material and/ or alter, amend or destroy their books of accounts and records showing showing the total number of contestants who have been deceived by the Defendants till date and the amount of monies which have been fraudulently collected by the Defendants. He submitted that the gamut of the illegal activities/scam of the Defendants can only be ascertained if the ad-interims reliefs are granted without notice to the Defendants. He submitted that in order to protect the Plaintiffs' rights and also to protect the members in the industry and the general public from being deceived or confused, it is necessary that the interim and ad-interim reliefs are granted to the Plaintiffs without notice to the Defendants.

15. I have heard the submissions in detail and perused the record. The material produced before me, *prima facie*, shows that the Plaintiffs are the proprietors of the marks BIGG BOSS, BIG BROTHER / Bigg Boss Formative Marks. *Prima facie*, there is no manner of doubt that the rival marks / name / device of eye are identical and/ or deceptively similar to each other. The rival marks / name / device of eye are reproduced herein below:

PLAINTIFFS' MARKS	DEFENDANTS' MARK
<p>BIGG BOSS</p>	<p>BIGG BOSS JAMMU</p>
	
	

Poster of the Impugned Show



I am of the opinion that the similarity between the rival marks / name / device of eye cannot be a matter of co-incidence. *Prima facie*, it is clear that the Defendants have adopted the Impugned marks dishonestly with a view to ride upon the goodwill and reputation of the Plaintiff's Big Boss marks. The unique features of the Plaintiff's format and the literary work in the production bible can be discerned easily from the Plaintiff's show. From the documents annexed to the Plaint, the Impugned Show clearly appears to be a copy of the Plaintiff's show 'Big Brother' / 'Big Boss' show / said Programme, including the underlying works therein. The acts of the Defendants are nothing but a systematic attempt to come as close as possible to the Plaintiffs' trade marks / show / programme, so as to deceive the public or somehow associate the impugned mark and show with the Plaintiffs. I agree with the submissions of Mr. Kamod that the Defendants are misleading the public at large for their own benefit. The contestants who are willing to pay money and participate in the Defendants' show are quite likely to believe that they are participating in an authentic franchise of the Plaintiffs' show BIG BROTHER / BIGG BOSS – when in reality, all such proceeds are directly meant to benefit the Defendants. The

members of the trade and public, who are acquainted with the Plaintiffs' Big Brother / Bigg Boss Show / said Programme, upon coming across the Defendants' Impugned Show with the Impugned mark, are likely to be confused and/or deceived into believing that the Defendants' Impugned Show is of the Plaintiffs and/or is originating from the Plaintiffs and/or is authorized by the Plaintiffs and/or is connected in the course of the trade with the Plaintiffs. The additional affidavit dated 10th December 2021 tendered by Mr. Kamod today shows that the Defendants conducted auditions for the Impugned Show even in Ludhiana on 5th December, 2021 where a large number of people turned up for giving auditions. This must immediately stop. In the circumstances, an overwhelming prima facie case for infringement of trade mark and copyright is made out by the Plaintiffs. The balance of convenience also lies in favour of the Plaintiffs and unless the reliefs as prayed for are not granted, the Plaintiffs will suffer irreparable loss, harm and injury.

16. In view of what is stated in paragraph 59 of the Plaint and in view of the above, I am satisfied that the object of granting the following reliefs would be defeated if notice of this application is given to the Defendants. There shall accordingly be an ad-interim order in

terms of prayer clauses (a), (c), (e) and (f) of the Interim Application, which read as follows:

(a) That pending the hearing and final disposal of the suit, the Defendants, by themselves, their servants, agents, licensees, franchisees, partners, proprietors or anyone claiming through, under or by them and / or otherwise be restrained by a temporary order and injunction of this Hon'ble Court from infringing the Plaintiffs' registered trademarks bearing registration nos.3107475, 1502494, 2009137, 2204126, 2392879, 2586515, 2760855, 2804507, 2884720, 3068247, 3068261, 3232658, 3268928, 3599927, 3685009, 3685011, 3786551, 3786613, 3860162, 3891198, 3919123, 3957877, 3983451, 4187678, 4198477, 4234549, 4290507, 4319390, 4628698, 4628705, 4647492, 4845933, 4864076, 1267730 and 1267732 or any of them, all in class 41 by the use of the impugned mark



/ name BIGG BOSS JAMMU, or



Impugned Device of Eye, and/or any other mark/name identical with and/or deceptively similar to the Plaintiffs' registered trademarks bearing registration nos. 3107475, 1502494, 2009137, 2204126, 2392879, 2586515, 2760855, 2804507, 2884720, 3068247, 3068261, 3232658, 3268928, 3599927, 3685009, 3685011, 3786551, 3786613, 3860162, 3891198, 3919123, 3957877, 3983451, 4187678, 4198477, 4234549, 4290507, 4319390, 4628698, 4628705, 4647492, 4845933, 4864076, 1267730 and 1267732 or any of them, all in class 41 and/or any other mark/name containing any of the leading, essential and prominent features of the registered trademarks of the Plaintiffs in respect of the business of providing services in relation to entertainment, cultural activities, production of events, television programs/shows or any other services which are similar/ cognate / allied

/ complimentary to the same or in any manner whatsoever;

(c) That pending the hearing and final disposal of the suit, the Defendants, by themselves, their servants, agents, licensees, franchisees, partners, proprietors or anyone claiming through, under or by them and / or otherwise be restrained by a temporary order and injunction of this Hon'ble Court from infringing the Plaintiffs' exclusive copyright in the show 'Big Brother' / Bigg Boss show and / or the said Programme (any or all episodes therein) including the underlying works and/or the said production bible by making, publishing, broadcasting, adapting, making any cinematograph film, communicating to the public, copying or dealing in any manner with the Impugned Show or any other work which is a reproduction of the Plaintiffs' 'Big Brother' and / or Bigg Boss show and / or said Programme including the underlying works therein and/or the said Production Bible or substantial parts thereof and / or in any other manner whatsoever;

(e) That pending the hearing and final disposal of the suit, the Defendants, by themselves, their servants, agents, licensees, franchisees, partners, proprietors or anyone claiming through, under or by them and / or otherwise be restrained by a temporary order and injunction of this Hon'ble Court from exploiting, conducting auditions for, telecasting, publicizing or continuing to telecast the Impugned Show 'Bigg Boss Jammu' in any manner whatsoever;

(f) That pending the hearing and final disposal of the suit, the Defendants, by themselves, their servants, agents, licensees, franchisees, partners, proprietors or anyone claiming through, under or by them and / or otherwise be ordered and directed to take down all advertisements, YouTube commercials, promotional material, hoardings, signages and call back all flyers, posters,

entry/participation forms and all such other material bearing the Impugned Marks.

17. Mr. Kamod, the learned Counsel appearing on behalf of the Plaintiff/Applicants stated that he is not pressing for the appointment of a Court Receiver at this stage. He submitted that this matter now be kept on 22nd December, 2021 for further ad-interim reliefs and he shall serve a copy of this order on the Defendants and also intimate to them the next date of hearing.
18. In these circumstances, list the above matter along with Clause XIV Petition on 22nd December, 2021.
19. The advocates for the Plaintiffs shall serve a copy of this order along with the papers and proceedings of the above Suit and the Clause XIV Petition on the Defendants on or before the next date. The service can be effected by the Speed Post as well as via email.
20. This ad-interim order shall continue until 23rd December, 2021.
21. All parties to act on an authenticated copy of this order digitally signed by the Personal Assistant /Private Secretary/Associate of this Court.

(B. P. COLABAWALLA, J.)