



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO.6546 OF 2023
IN
COMMERCIAL IP SUIT (L) NO.6543 OF 2023



M/s. ARG Outlier Media Pvt. Limited ... Applicant / Plaintiff
Vs.
Rayudu Vision Media Limited ... Respondent / Defendant

Mr. Nikhil Sakhardande, Senior Advocate a/w. Mr. Amit Jamsandekar, Mr. Prathmesh Kamat, Mr. Zueb Cutlerywala and Mr. Vikram Kamat i/b. Phoenix Legal for Applicant / Plaintiff.


Mr. Sharan Jagtiani, Senior Advocate a/w. Mr. Hiren Kamod, Mr. Abhijeet Deshmukh, Mr. Aatir Saiyed, Ms. Surabhi Agarwal, Mr. Prem Khullar i/b. Khurana & Khurana for Respondent / Defendant.

CORAM : **MANISH PITALE, J.**
Reserved on : 27th JUNE, 2023
Pronounced on : 01st SEPTEMBER, 2023

ORDER :

. The applicant / plaintiff is seeking interim reliefs in this application in the context of its registered device mark . It is the case of the plaintiff that the defendant, by using its mark  in or about January 2023, has infringed upon the registered device mark of the plaintiff, thereby giving rise to the cause of action of filing the suit and the present application. The plaintiff initially stated a list of device marks and word marks in respect of which the plaintiff had obtained registration, but when the defendant pointed out that in respect of some of the marks, applications for registration were still pending, the plaintiff sought amendment of the plaint. This Court granted permission for amendment, as a consequence of which, the prayers in the present application are being pressed on the basis of amended pleadings.


2. The defendant filed its reply affidavit, as also an additional affidavit and the plaintiff filed its rejoinder affidavit, as a consequence of which, the pleadings were completed and the application was taken up for hearing and disposal.


3. The plaintiff has stated in its plaint that it was incorporated on 02.08.2016 and it owns and operates news channels 'Republic TV', 'Republic Bharat' and 'Republic Bangla'. The plaintiff claims to have earned immense goodwill in a short period of time and that it is one of the leading news channels viewed in India as well as globally. The plaintiff has stated that in addition to having its own TV channels, it also owns Facebook pages, Twitter handles and YouTube channels, details of which are given in paragraph 6 of the plaint. The details of the domain names belonging to the plaintiff are given in paragraph 8 of the plaint. The plaintiff has given details of its registered trademarks, being device marks, in paragraph 10 of the plaint. It is specifically stated that the aforementioned device mark  was registered in Class 41, on 15.05.2019, dating back to the date of the application i.e. 10.09.2018, as also in Class 38 on 17.05.2019, dating back to the date of the application i.e. 10.09.2018.

4. The plaintiff has stated that it engaged a Canadian based broadcast design and real-time graphics agency for creating the said device mark, on the basis of an agreement dated 05.01.2017 and that the plaintiff paid service fees in that regard to the tune of USD 300,000. As per the agreement, the plaintiff is the sole and absolute owner of the said device mark. Copies of the services agreement executed between the plaintiff and the said Canadian based agency are placed on record. It is submitted that the banners and hoardings pertaining to launch of news channel Republic TV of the plaintiff were installed in as many as 60

cities around the time when the channel was launched in May, 2017. It is stated that the plaintiff incurred expenses of over Rs.6.01 crores for advertisement and publicity, apart from spending about Rs.57 crores in setting up the Republic TV news channel. The plaintiff has given details of its viewership on various platforms to support its claim of having earned immense goodwill from the time the aforesaid channel was launched in the year 2017. On this basis, the plaintiff claims proprietary rights in the said device mark and also asserts tremendous goodwill earned over the years after May, 2017.

5. It is claimed that on or about 04.02.2023, while accessing the internet, the plaintiff became aware of YouTube channel by the name

'RTV' having its handle as @RTVNewsNetwork with the logo . On further enquiries, the plaintiff came to know that the same was owned and maintained by the defendant herein and upon further enquiries, the plaintiff became aware about the fact that the defendant was maintaining multiple YouTube channels like, RTV Entertainment, RTV Life, RTV Plus, RTV Andhra Pradesh etc. The plaintiff found that the defendant was disseminating news in Telugu language through the said YouTube


channels and that its logo  was being used in all such broadcasts. The plaintiff found that the said logo, being used by the defendant, was deceptively similar to that of the registered device mark of the plaintiff and hence the plaintiff was constrained to make further enquiries. It was found that the defendant had applied for registration of the said logo / device mark with the Registrar of Trademarks under Classes 38 and 41 on 04.01.2023, although till about 31.01.2023, the channels of the defendant had been operating under the name and style of 'RED TV'. According to the plaintiff, from 01.02.2023, the defendant suddenly started using the said infringing device mark and displayed the same in

all its publications, videos and news broadcasts. The plaintiff also learnt that the defendant was in the process of seeking appropriate permissions from the Ministry of Information & Broadcasting for Up-linking and Down-linking of Satellite Television Channels, thereby indicating that the aforesaid device mark of the defendant would be used for Satellite Television News Channels by the defendant.

6. In this backdrop on 07.02.2023, the plaintiff was constrained to issue a cease and desist notice to the defendant. Since the defendant did not stop using the said device mark, the plaintiff was constrained to file the present suit and the application for interim reliefs. By referring to and relying upon the extensive documents filed with the plaint and the application for interim relief, as also the rejoinder affidavit, the plaintiff has pressed for interim reliefs against the defendant, in aid of reliefs sought in the plaint i.e. a permanent injunction restraining the defendant from using the aforementioned device mark, which according to the plaintiff, is deceptively similar and hence, infringes upon the registered trademark of the plaintiff. Pleadings pertaining to alleged passing-off by the defendant are also found in the plaint.

7. The defendant appeared before this Court and filed its affidavit in reply denying the allegations made by the plaintiff. The defendant asserts that its device mark, when compared with that of the plaintiff is distinct and not even a *prima facie* case of deceptive similarity is made out by the plaintiff. The defendant claims that the correct status of the applications for registration of device marks of the plaintiff has not been stated before this Court and therefore, in the reply affidavit, the defendant has given details of certain other applications made on behalf of the plaintiff before the Registrar of Trademarks, some of which pertain to applications that are presently opposed, some being objected and others being refused by the Registrar.

8. The defendant has stated that it was incorporated on 08.04.2005, thereby indicating that it is not a fly-by-night operator and that over a period of time, the defendant has established itself as a business house for entertainment, engaged in providing services like, news and current affairs TV channels, motion pictures, entertainment activities on radio and television, animation production studio etc. The defendant has confirmed the fact that it has applied before the Ministry of Information and Broadcasting for up-linking and down-linking in the context of its news and current affairs TV channel RTV in Telugu, English and other languages in digital mode. It is submitted that such an application has been recently renewed. The defendant has then stated about the logos used earlier and that in April 2021, the defendant started using the name and logo 'Prime9News'. It is stated that the said mark was registered in the name of one Samhitha Broadcasting Private Limited and the same was being used by the defendant with permission of the said Samhitha Broadcasting Private Limited.

9. It is stated by the defendant that in the first week of January 2022, the said Samhitha Broadcasting Private Limited informed the defendant that the said permission was being withdrawn from April 2023, and in this backdrop, the defendant created its own new device mark i.e. 

10. The defendant has pleaded in its affidavit in reply that it has been using the mark 'RTV' much prior to the plaintiff even coming into existence. The defendant has then denied the allegations made by the plaintiff regarding dishonest use. It is submitted that a bare comparison of the two marks would show that there is no *prima facie* case of deceptive similarity made out by the plaintiff. Upon amendment of plaint, the defendant filed an additional affidavit in reply alleging that since in the original plaint, the plaintiff had suppressed relevant

information from this Court, on the ground of suppression, this Court may not exercise discretion in favour of the plaintiff in the present application for interim reliefs.

11. On completion of pleadings, the application was taken up for hearing.

12. Mr. Nikhil Sakhardande, learned senior counsel appearing for the applicant / plaintiff relied upon the pleadings placed on record on behalf of the plaintiff and submitted that the defendant dishonestly adopted its device mark from January 2023, only with an intention of riding upon the immense goodwill earned by the plaintiff. Reliance was placed on the viewership of the news channels of the plaintiff in India and globally, emphasizing upon the reputation, business and goodwill earned by the plaintiff from the time its channel 'Republic TV' was launched in May 2017. The learned senior counsel referred to the pleadings pertaining to the manner in which the services of the aforesaid agency of Canada were engaged by the plaintiff by paying valuable consideration. It was submitted that registration of the trademark (device mark) of the plaintiff, dating back to 10.09.2018 itself granted statutory protection to the plaintiff and as per the law laid down by the Supreme Court in the case of *Midas Hygiene Industries (P) Ltd. Vs. Sudhir Bhatia*, (2004) 3 SCC 90, in such cases of infringement, injunction must follow. Reliance was also placed on the judgement of the Supreme Court in the case of *Renaissance Hotel Holdings INC. Vs. B. Vijaya Sai*, (2022) 5 SCC 1, wherein the Supreme Court relied upon the said judgement in the case of **Midas Hygiene Industries (P) Ltd. Vs. Sudhir Bhatia** (*supra*) and further laid down that injunction must necessarily be granted when it appears *prima facie* that the adoption of the impugned mark is dishonest.

13. By referring to the pleadings in the reply and the additional reply filed on behalf of the defendant, the learned senior counsel submitted

that there was no explanation forthcoming from the defendant as to why it suddenly decided to use the impugned device mark from February 2023, particularly when it was earlier using distinct and different device marks specified in paragraph 8 of the reply affidavit. The learned senior counsel for the plaintiff relied upon the statements made on behalf of the defendant itself as to the manner in which it was using its mark RTV i.e. Rayudu TV since the year 2005 and emphasized that the sudden shift to the impugned device mark was only with the intention of illegally riding over the immense goodwill of the petitioner in its registered device mark.


14. Reliance was placed on the judgement of the Supreme Court in the case of *Kaviraj Pandit Durga Dutt Sharma Vs. Navaratna Pharmaceutical Laboratories*, **AIR 1965 SC 980**, to contend that the plaintiff having registration of its device mark gave it statutory protection and vindicated its exclusive right to use the device mark, without the same being infringed upon by deceptively similar marks, like the impugned device mark being used by the defendant.

15. The learned senior counsel for the plaintiff then proceeded to compare the two marks and stated that in terms of the settled position of law, a comparison of the two device marks, taken as a whole, clearly demonstrated that the impugned device mark of the defendant is deceptively similar and that, it has the tendency of confusing the viewer. It was emphasized that since the device marks / logos in news channels are always shown at the right top corner of the screen, in the present case, a viewer, upon finding the impugned device mark of the defendant on the screen, would, in all likelihood, believe that the news channel is that of the plaintiff in Telugu language. Reliance was placed on Division Bench judgement of this Court in the case of *Hiralal Parbhudas Vs. Ganesh Trading Company*, **AIR 1984 Bom 218**, particularly paragraph

5 thereof. Reliance was also placed on judgement of the Delhi High Court in the case of *Cable News Network INC. Vs. CTVN Calcutta Television Network Pvt. Ltd.*, judgement and order dated **28.04.2023** passed in **CS (Comm) 309/2021**. The said case pertained to the CNN news channel, which was granted interim reliefs against the defendant channel using the logo 'CN'. The tests applied by the Delhi High Court were relied by the learned senior counsel for the plaintiff to claim that in the present case, the plaintiff was entitled to grant of interim reliefs.

16. It was submitted that during the course of arguments, it was argued on behalf of the defendant that if the claim of the plaintiff was that the leading and essential feature of its device mark was the alphabet 'R' with red colour in the backdrop, the registration itself could be said to be *prima facie* unsustainable or weak and in this backdrop, reliance was placed on Full Bench judgement of this Court in the case of *Lupin Limited Vs. Johnson and Johnson*, (2015) 1 Mh.L.J. 501 (FB). It was submitted that there were no pleadings placed on record on behalf of the defendant to raise such a claim. The learned senior counsel for the plaintiff specifically relied on paragraphs 55 to 59 of the said Full Bench judgement, to contend that there was absolutely no allegation of the registration of the device mark of the plaintiff being fraudulent, and therefore, the said contention of the plaintiff was wholly unsustainable. It was further submitted that it could not lie in the mouth of the defendant that registration of the device mark of the plaintiff could not be granted as it used the alphabet 'R' with red colour, simply for the reason that the defendant itself has applied for registration of its own device mark in the very same classes i.e. classes 38 and 41. In order to support the said proposition, the learned senior counsel for the plaintiff relied upon judgement of this Court in the case of *Franco Indian Pharmaceuticals Pvt. Ltd. Vs. Corona Remedies Pvt. Ltd.*, 2021 SCC OnLine Bom 13932.

17. It was further submitted that when the defendant relied upon Section 34 of the Trademarks Act, 1999, it necessarily admitted that its device mark was identical or nearly resembling the registered trademark of the plaintiff in relation to the very same services provided by the plaintiff. By placing reliance on judgement of this Court in the case of *Kamat Hotels (India) Limited Vs. Royal Orchid Hotels Limited*, **2011 (4) Mh.L.J. 71**, the learned senior counsel for the plaintiff submitted that the defendant could not then turn around and claim that there was no deceptive similarity between the two device marks.

18. The learned senior counsel for the plaintiff then compared the two device marks and stated that alphabet 'R' written in a specific manner within a box with red colour in the backdrop, was unique and that the defendant adopting the impugned device mark from February 2023, with similar depiction of the alphabet 'R' also in red background in a box, was enough to show that a strong *prima facie* case was made out on behalf of the plaintiff for grant of interim reliefs. It was submitted that merely because the defendant has shown the alphabets 'RTV' at the bottom of the impugned device mark would not assist the defendant in resisting interim reliefs, for the reason that while comparing the two marks, the Court should not emphasize on the dissimilarities. It was further submitted that 'RTV' could also give an impression to the viewer that it pertained to Republic TV, which is indeed the channel of the plaintiff using the registered device mark .

19. It was further submitted that reliance placed on behalf of the defendant on Sections 9 and 11 of the said Act was misplaced, for the reason that such considerations are relevant in opposition proceedings and not in the present proceedings, which pertain to the defendant resisting interim reliefs against the registered device mark of the

plaintiff. Reliance was also placed on Section 21 of the Act as regards the rights conferred upon registration and Section 29(2)(b) of the Act to claim that in the present case, the plaintiff has been able to show a strong *prima facie* case of infringement, as also passing-off against the defendant. On this basis, the plaintiff claimed interim reliefs against the defendant.

20. On the other hand, Mr. Sharan Jagtiani, learned senior counsel appearing for the defendant submitted that the contentions raised on behalf of the plaintiff were misconceived and that merely because the device mark of the plaintiff had been registered, it could not *ipso facto* lead to the Court granting interim reliefs. It was strenuously urged that the stand taken on behalf of the plaintiff in the plaint and then in the rejoinder affidavit indicated contradiction, perhaps because even the plaintiff was aware that it could not claim exclusivity in the alphabet 'R'. It was submitted that the depiction of the alphabet or capital letter 'R' in the device mark of the plaintiff is unremarkable, ordinary and commonplace. The device mark does not depict the capital letter 'R' in any stylized manner and using red colour in the backdrop cannot lead to exclusivity in favour of the plaintiff. In that regard, the learned senior counsel for the defendant invited attention of this Court to device marks / logos of various news channels, which invariably use red colour in the backdrop.

21. It was submitted that single letters or alphabets as trademarks or device marks in the context of trademark law are considered as 'weak marks', and that, variation shown by the defendant in stylization can be enough to resist interim reliefs. Much emphasis was placed on the need of stylization when single letters were the basis or the central and essential feature of a trademark / device mark. In the absence of any stylization, according to the learned senior counsel appearing for the

defendant, the simple depiction of a single letter or an alphabet could not become the basis of registration for claiming exclusivity of use.


22. It was further submitted that a proper appreciation of the pleadings of the plaintiff on record would show that it failed to establish the essential feature of its device mark; it could neither be a single letter or alphabet R as depicted in the device mark nor its placement in a box with red colour and a dot at the bottom of the single letter or alphabet. It was claimed that the nature of the device mark of the plaintiff was inherently weak and consequently, the level of protection available was diminished. In support of the said contentions, the learned senior counsel for the defendant relied upon the Commentary “*The Modern Law of Trade Marks*”, 5th Edition, by Morcom, Roughton and St. Quintin, as also the judgement of the General Court of European Union for Intellectual Property matters in the case of *L’Oréal Vs. European Union Intellectual Property Office* rendered on **09.11.2022**; *Super Cassettes Industries Limited Vs. Union of India*, **2010 SCC OnLine Del 1652**, *People Interactive (India) Private Limited Vs. Vivek Pahwa*, **2016 SCC OnLine Bom 7351**, *Three-N-Products Private Limited Vs. Emami Limited*, **2009 (41) PTC 689 (Cal)** and judgement of the Supreme Court in the case of *J. R. Kapoor Vs. Micronix India*, **1994 Supp (3) SCC 215**.

23. It was submitted that in the said judgement of Calcutta High Court in the case of **Three-N-Products Private Limited Vs. Emami Limited** (*supra*), it was also observed that the right of the owner of a device mark is, loosely speaking, somewhat similar to copyright. On this basis, the learned senior counsel for the defendant again asserted the aspect of stylization when single letter or alphabet is the essential feature of a device mark.

24. The learned senior counsel for the defendant further submitted that if the plaintiff claims that its use of the said registered device mark

has acquired distinctiveness and secondary meaning, it would necessarily be a matter for trial. At this stage, particularly when the plaintiff itself claims to have got the device mark designed in the year 2017 and registered with effect from the year 2018, on proposed to be used basis, it would be a matter for trial and no interim relief could be granted at this stage. Reliance was placed on order of this Court in the case of *PhonePe Private Limited Vs. Resilient Innovations Private Limited*, **2023 SCC OnLine Bom 764**, **People Interactive (India) Private Limited Vs. Vivek Pahwa** (*supra*), and judgement of the Delhi High Court in the case of *Phonepe Private Limited Vs. EZY Services*, **2021 SCC OnLine Del 2635**.

25. The learned senior counsel appearing for the defendant vehemently denied that the defendant had dishonestly adopted its device

mark . It is submitted that the device mark of the defendant is distinct with 'R' being written in a stylized manner, there being no vertical line and its depiction being closer to the rupee sign in Devanagari script i.e. '₹'. It is further submitted that the device mark of the defendant being used from January - February 2023, specifically has the alphabets 'RTV' at the bottom signifying Rayudu TV, which has been in existence since the year 2005, for which documents have been placed on record. On this basis, it was emphasized that there was no question of any dishonesty on the part of the defendant. On the aspect of red colour, it was submitted that the same is a primary colour and apart from it being used in the backdrop of almost all news channels, the plaintiff was not entitled to claim any exclusivity in the said colour. It was submitted that the plaintiff's case was not that of having used a unique combination of colours and that, in any case, as to whether use of red colour had the effect of the plaintiff acquiring distinctiveness or secondary meaning, would still be a matter for trial.

26. As regards the contention raised on behalf of the defendant by relying upon Section 34 of the said Act, the learned senior counsel for the defendant submitted that the same was put forth only as an alternative submission, while specifically denying that there is any deceptive similarity in the two marks. According to the defendant, such alternative pleas can certainly be taken by the defendant and it cannot be said that as a consequence of having taken such a stand, the defendant stood estopped from arguing that the two device marks are clearly distinct and there is no deceptive similarity.

27. In this backdrop, the learned senior counsel for the defendant compared the two device marks as a whole and he submitted that in the light of the stylized depiction of the alphabet 'R' in the device mark of the defendant, there was no question of deceptive similarity with the registered device mark of the plaintiff. In any case, it was submitted that the device mark of the plaintiff being based on a single letter or alphabet was weak in its nature. In that sense, the Full Bench judgement of this Court in the case of **Lupin Limited Vs. Johnson and Johnson** (*supra*) was invoked on behalf of the defendant and it was submitted that if the principles laid down therein are correctly applied, interim reliefs deserve to be denied. It was submitted that the said Full Bench judgement was being invoked only because the plaintiff claimed exclusivity in its device mark on the basis that the alphabet 'R' being simply depicted without any stylization could also be the basis of registration and hence absolute protection for grant of interim reliefs.

28. On this basis, the learned senior counsel appearing for the defendant submitted that the present application deserved to be dismissed.

29. In the light of the rival submissions and the material on record, this Court is of the opinion that the prayer for interim reliefs made on

behalf of the plaintiff needs to be examined on the basis of the position of law and the manner in which it would be applicable to the peculiar facts of the present case.

30. There can be no doubt about the fact that when deceptive similarity is alleged on behalf of the plaintiff, the two marks are required to be compared as a whole and the well-established tests for making such comparison are to be applied. This Court in the case of **Hiralal Parbhudas Vs. Ganesh Trading Company** (*supra*) held as follows:-

“5. What emerges from these authorities is (a) what is the main idea or salient features, (b) marks are remembered by general impressions or by some significant detail rather than by a photographic recollection of the whole, (c) overall similarity is the touchstone, (d) marks must be looked at from the view and first impression of a person of average intelligence and imperfect recollection, (e) overall structure phonetic similarity and similarity of idea are important and both visual and phonetic tests must be applied, (f) the purchaser must not be put in a state of wonderment, (g) marks must be compared as a whole, microscopic examination being impermissible, (h) the broad and salient features must be considered for which the marks must not be placed side by side to find out differences in design and (i) overall similarity is sufficient. In addition indisputably must also be taken into consideration the nature of the commodity, the class of purchasers, the mode of purchase and other surrounding circumstances.”



31. In order to apply the said test, the case of the plaintiff in the context of its registered trademark / device mark assumes importance. It is significant that the plaintiff has specifically stated in the rejoinder affidavit that it is not asserting a monopoly over the single letter or alphabet ‘R’ *per se* or the red and white colour combination *per se*. Thus, even according to the plaintiff, neither the single letter / alphabet ‘R’ nor the red and white colour combination can be said to be the central and / or essential feature of the registered device mark of the plaintiff. In such a situation, the case of the plaintiff can be supported if it is able to *prima facie* show that the depiction of the single letter or

alphabet 'R' in its device mark is in some manner unique or stylized and hence, distinctive. If these features *prima facie* become evident from the registered device mark of the plaintiff, they form the basis for comparison with the impugned device mark of the defendant.

32. It is to be noted that the defendant specifically relies upon stylization and the manner in which the single letter or alphabet 'R' is depicted in its device marks. The defendant also emphasizes upon the presence of the alphabets 'RTV' in a blue background at the bottom of the device mark.

33. The comparison between the two marks, as a whole, needs to be undertaken by applying well-established test as laid down in paragraph 5 of the judgement in the case of **Hiralal Parbhudas Vs. Ganesh Trading Company** (*supra*) quoted hereinabove.

34. The rival device marks are as follows:-

Plaintiff's registered mark	Defendant's mark
	

35. A perusal of the registered device mark of the plaintiff shows that it consists of a single letter or alphabet 'R' with a dot inside a box in red and white combination of colours. This Court is of the opinion that *prima facie*, the depiction of the single letter or alphabet 'R' in the device mark of the plaintiff is a simple depiction of the alphabet 'R' in capital and there does not appear to be any form of stylized depiction of the same. Although an attempt was made on behalf of the plaintiff to claim that the thickness of the vertical line of the alphabet 'R' is distinctive, *prima facie*, this Court is not convinced with the said claim. *Prima facie*, there does not appear to be any distinctiveness or unique feature in the manner in which the alphabet 'R' is depicted in the

registered device mark of the plaintiff. Similarly, the combination of red and white colour in the device mark can also not be termed as a distinctive or unique feature placing exclusivity on its use by the plaintiff. There is substance in the contention raised on behalf of the defendant with material on record that the device marks / logos of almost all news channels use the combination of red with some colour or the other.

36. If that be so, reading the specific stand taken on behalf of the plaintiff in its rejoinder affidavit at paragraph 12 that it is not asserting monopoly over either the letter or alphabet 'R' *per se* or the red and white combination *per se* demonstrates that the plaintiff is unable to make out a strong *prima facie* case in its favour. As opposed to this, a perusal of the impugned device mark of the defendant shows that the single letter or alphabet 'R' has been depicted in a stylized manner, where the vertical line is completely missing and the depiction is closer to the rupee sign in Devanagari script i.e. '₹'. The said depiction indeed has red colour in the backdrop, but the alphabets 'RTV' are specifically stated in a blue strip at the bottom of the device mark. The defendant has placed material on record to indicate that RTV, being Rayudu TV, has existed since the year 2005 and it is based on the name of the owners of the said business entity.

37. In such a situation, this Court finds that the plaintiff has not been able to make out a strong *prima facie* case in its favour of deceptive similarity upon comparison of the two device marks as a whole. This Court is conscious of the fact that dissimilarities cannot be emphasized upon, yet while comparing the two device marks as a whole, classic test of likelihood of confusion in the mind of a viewer of average intelligence and imperfect recollection has to be applied. This Court finds that the plaintiff has not been able to make out a *prima facie* case

that upon finding the impugned device mark / logo of the defendant on the right top corner of the screen, there is likelihood of confusion in the minds of the viewers that the channel they are watching is that of the plaintiff. In this regard, the defendant is justified in placing reliance on judgements in the cases of **L'Oréal Vs. European Union Intellectual Property Office** (*supra*), **Super Cassettes Industries Limited Vs. Union of India** (*supra*), **People Interactive (India) Private Limited Vs. Vivek Pahwa** (*supra*), **Three-N-Products Private Limited Vs. Emami Limited** (*supra*) and **J. R. Kapoor Vs. Micronix India** (*supra*).

38. There is substance in the contention raised on behalf of the defendant, by placing reliance on the judgement of the Calcutta High Court in the case of **Three-N-Products Private Limited Vs. Emami Limited** (*supra*), that the right of the owner of a device mark is somewhat similar to copyright. It is necessary to appreciate that when device marks are being compared and particularly when the central feature of the device mark is a single letter or alphabet, the manner in which it is depicted, including the aspect of stylization, assumes significance and it takes the matter closer to the concept of copyright. It cannot be denied that in such set of facts, the stylization applied to a single letter or an alphabet is required to be appreciated while considering as to whether the impugned device mark can be said to be even *prima facie* deceptively similar to the registered device mark or mark of the plaintiff. On the aforesaid touchstone, in the present case, the plaintiff falls short of making out a *prima facie* case in its favour for grant of interim reliefs.

39. It is in this sense that the defendant has relied upon the Full Bench judgement of this Court in the case of **Lupin Limited Vs. Johnson and Johnson** (*supra*). It is specifically submitted on behalf of the defendant that if the plaintiff claims that the single letter or alphabet,

with its backdrop and colour combination are the essential features of its device mark, the very registration of such a device mark where the alphabet 'R' has been simply depicted in capital, *prima facie*, could be said to be doubtful. In the present case, the said Full Bench judgement is not invoked by alleging fraud on the part of the plaintiff. Nonetheless, *prima facie*, unsustainable nature of registration of such a mark is highlighted on behalf of the defendant.

40. In this context, a perusal of the Full Bench judgement of this Court in the case of **Lupin Limited Vs. Johnson and Johnson** (*supra*) shows that despite there being a strong presumption in favour of the plaintiff due to registration of its mark, at the interlocutory stage, the Court has the jurisdiction to examine as to whether *prima facie* the trademark / device mark of the plaintiff could have been registered. The Full Bench judgement specifically lays down that a 'low threshold prima facie case' is not sufficient to refuse interim injunction in a suit for infringement. If the defendant is able to show to the Court, without embarking upon a detailed enquiry, that the registration granted in favour of the plaintiff is illegal or shocks the conscience of the Court, interim injunction can be refused. In the present case, particularly in the light of the stated case of the plaintiff that it is neither claiming monopoly in the single letter or alphabet 'R' nor in the colour combination of red and white *per se*, as also in the light of the fact that the depiction of the alphabet 'R' in the registered trademark of the plaintiff does not *prima facie* appear to be distinctive or stylized in any manner, on the other hand appearing to be a simple depiction of the alphabet 'R' in capital and no more, this Court can consider refusing interim reliefs despite the device mark of the plaintiff being registered. To that extent, the defendant is justified in relying upon the aforesaid Full Bench judgement of this Court in the case of **Lupin Limited Vs. Johnson and Johnson** (*supra*).

41. As regards dishonest adoption of the impugned device mark by the defendant, this Court is satisfied on the basis of material on record that the defendant being incorporated in the year 2005, and the name of its channel / proposed channel 'RTV' being based on Rayudu Television, it cannot be said that the defendant identifying its channel as RTV amounts to dishonest adoption. There is sufficient material placed on record by the defendant to indicate the manner in which it started using RTV in its earlier logos, much prior in point of time, as the plaintiff admittedly came into existence only in the year 2017. The defendant has placed on record its earlier device marks / logos as depicted in paragraph 8 of the reply. The domain names being used by the defendant much prior in point of time also indicate that RTV was being used by the defendant from an earlier point of time.

42. Much emphasis is placed on behalf of the plaintiff on the assertion that the defendant appears to have stopped using its device marks / logos as specified in paragraph 8 of the reply, having adopted the name and logo 'Prime9News' and then suddenly shifted to the impugned device mark sometime in January / February 2023. So long as the defendant has placed sufficient material to reach a *prima facie* finding that it has been using the alphabets 'RTV' for its channel, merely because the defendant shifted to the impugned device mark in January / February 2023, it cannot be said to be a recent or dishonest adoption. The contention of dishonest adoption, in this context, is necessarily intertwined with the basic allegation made on behalf of the plaintiff that there is deceptive similarity between the two marks. As noted hereinabove, the plaintiff has failed to make out a *prima facie* case in that regard, and therefore, even the contention pertaining to dishonest adoption on the part of the defendant fails.

43. In such a situation, the plaintiff could still have been able to make

out its case of entitlement to interim reliefs if, on the face of it, it was able to demonstrate that its device mark has already acquired distinctiveness and secondary meaning or significance. On the basis of material on record, which includes the admitted position that the plaintiff came into being in the year 2017 and its device mark was registered on 'proposed to be used basis' in the year 2018, the aspect of its device mark having acquired distinctiveness and secondary meaning, in the facts and circumstances of the present case, would be a matter for trial. In the facts and circumstances of the present case, the defendant is justified in relying upon judgement of this Court in the case of **PhonePe Private Limited Vs. Resilient Innovations Private Limited** (*supra*) and the judgement of the Delhi High Court in the case of **Phonepe Private Limited Vs. EZY Services** (*supra*).

44. The plaintiff claims that since the defendant relies upon Section 34 of the said Act to resist the prayers for interim relief in the present application, it has conceded to the position that there is deceptive similarity between the two device marks. It is emphasized on behalf of the plaintiff, by placing reliance on judgement of this Court in the case of **Kamat Hotels (India) Limited Vs. Royal Orchid Hotels Limited** (*supra*), that the very essential requirements of applicability of Section 34 of the said Act demonstrate that the defendant proceeds on the basis that its mark is identical with or nearly resembling the trademark / device mark of the plaintiff. There can be no quarrel with the proposition laid down in the judgement of this Court in the case of **Kamat Hotels (India) Limited Vs. Royal Orchid Hotels Limited** (*supra*), as the ingredients of Section 34 of the said Act have been elaborated therein. But, merely because the defendant has raised the said contention, as an alternative plea while resisting interim reliefs, it cannot be said that the defendant has conceded to deceptive similarity between the two device marks and hence, it cannot be heard to say that on a

comparison of the two device marks, the plaintiff has failed to make out a *prima facie* case. It is a settled position of law that the defendant is permitted to take alternative pleas, which may appear to be contradictory, but that in itself cannot estop the defendant from attacking the case of the plaintiff on merits. Therefore, there is no substance in the aforesaid contention raised on behalf of the plaintiff.

45. In the light of the discussion hereinabove, reliance placed on behalf of the plaintiff on judgements of the Supreme Court in the case of **Kaviraj Pandit Durga Dutt Sharma Vs. Navaratna Pharmaceutical Laboratories** (*supra*), **Midas Hygiene Industries (P) Ltd. Vs. Sudhir Bhatia** (*supra*) and **Renaissance Hotel Holdings INC. Vs. B. Vijaya Sai** (*supra*) cannot take its case any further. Similarly, reliance placed on the judgement of this Court in the case of **Franco Indian Pharmaceuticals Pvt. Ltd. Vs. Corona Remedies Pvt. Ltd.** (*supra*), can be of no avail to the plaintiff for the reason that even if the defendant has applied for registration of its device mark, also in classes 38 and 41 before Registrar of Trademarks, it cannot be said that having applied for the same, it cannot resist grant of interim reliefs to the plaintiff. This is evident from the nature of submissions made on behalf of the defendant, emphasizing upon the stylized manner in which the single letter or alphabet is depicted in the device mark of the defendant along with alphabets 'RTV' depicted at the bottom in a blue strip.

46. The plaintiff is also not justified in relying upon judgement of Delhi High Court in the case of **Cable News Network INC. Vs. CTVN Calcutta Television Network Pvt. Ltd.** (*supra*) because in the said case, injunction was granted in favour of the plaintiff by emphasizing upon the way in which the defendant had copied the stylized manner of writing the alphabets 'C' and 'N', joined at the bottom. It was found that this style was copied in the impugned mark. But, the facts of the present

case are clearly distinguishable, as noted hereinabove.

47. An attempt was made on behalf of the plaintiff to contend that reliance placed on judgement of the General Court of European Union for Intellectual Property matters was misplaced because the said proceeding concerned opposition to registration of trademark. But, this Court is of the opinion that the said judgement can be referred to, only for the limited aspect of necessity of stylization highlighted on behalf of the defendant in situations where single letter or alphabet is the central and essential feature of a device mark.

48. This Court has compared the two device marks as a whole, which are depicted hereinabove, and it is found that applying the tests evolved through various judgements of Courts, it cannot be said that the plaintiff has made out a strong *prima facie* case in its favour to hold that the impugned device mark of the defendant is deceptively similar to the registered device mark of the plaintiff. Since the plaintiff has failed to make out a *prima facie* case in its favour, no enquiry is warranted on the aspects of balance of convenience and the grave and irreparable loss that the plaintiff might suffer in the absence of interim reliefs.

49. In view of the above, this Court finds no merit in the present application and accordingly, it is dismissed.

(MANISH PITALE, J.)

Minal Parab