
(2002) 03 DEL CK 0049

In the Delhi High Court

Case No : IA 8883 of 2001 in Suit No. 1970 of 2001

Anil Gupta and Another

APPELLANT

Vs

Kunal Dasgupta and Others

RESPONDENT

Date of Decision : 06-03-2002

Acts Referred:

Citation : (2002) 4 AD 390 : AIR 2002 Delhi 379 : (2002) 97 DLT 257

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Kapil Sibal, Pravin Anand and Binny Kalra, for the Appellant; Ashok H. Desai and Dushyant A. Dave, Anil Menon, Suchitra Chitale and Manmohan Singh, for the Respondent

Judgement

Vijender Jain, J.—plaintiff no. 1 is a media consultant. plaintiff no. 2 is a company duly incorporated under the Companies Act, defendant no. 1 is the Chief Executive Officer of defendant no. 2-Soni Entertainment Television, defendant no.3 is a company incorporated under the laws of Singapore, which is the principal holding company of defendant no. 2, defendant no.4-UTV Ltd. is a television production house having its regd. office at Mumbai.

2. It has been claimed that plaintiff has got very good reputation in his field of activities and has introduced commercial sponsored programme of Doordarshan and has been associated with Serials such as "Buniyad", "Rajni" etc. and the first telefilm "Janam". He has been the founder member and convener of the Indian Broadcasters Association. The plaintiff set up a company in the year 1995 called "A to Z Entertainment Pvt. Ltd.", which was later renamed as "Taal India Communications Pvt. Ltd."- plaintiff no. 2.

3. It is the case of the plaintiff that in the year 1996, plaintiff conceived the idea of producing a reality television programme containing the process of match making to the point of actual spouse selection in which real everyday ordinary persons would participate before a TV audience. Mr. Sibal, learned senior counsel for the plaintiffs has contended that plaintiff devised a unique and novel concept

for a TV show in which it would be the prerogative of a woman to select a groom from a variety of suitors. The plaintiff decided to name the concept "Swayamvar" knowing that a large number of people would associate the name with the idea of a woman selecting a groom in a public fora and that would create the necessary instantaneous recall and recognition of mythological swayamvar in the minds of a large number of people and give the programme a head-start. The aforesaid concept titled "Swayamvar" was disclosed in early 1997 by the plaintiff to his wife and one Mr. K. Chandrasehkar. plaintiff applied for registration after developing the concept as a literary work under the Copyright Act. The work was registered and a certificate was issued in favor of the plaintiff on 17th December, 1997. Some of the essential elements of the programme as contained in the copyright concept note was to the following effect :

1. A real life entertainment program about a real life situation.
2. A half-hour long, proposed studio-based television show, also flexible enough and capable of being shot outdoors for longer stretches of time.
3. Providing the thrill of matchmaking.
4. Specifically, providing a platform for marriageable girls to select a spouse from an array of suitors.
5. Parents of the girl and suitors to be associated with the entire process.
6. The participating eligible men to be selected/short-listed by the producers prior to the show.
7. Producers will ensure that there is no duplicity or foul play.
8. Mediation by mature, articulate, vibrant anchorwoman.
9. Empowerment of women by promoting secular and progressive spouse selection.

4. plaintiff no.1 disclosed this concept to one Sanjoy Roy in 1997 to involve his production house called Teamwork Films Pvt. Ltd.

5. It is the case of the plaintiff that in May/June, 1998, the plaintiff spoke to defendant no.1 and plaintiff along with his son Samir Gupta went to see defendant no.1 in Mumbai and gave one page concept note of Swayamvar to the defendant, who gave an enthusiastic response to the idea of Swayamvar. Defendant no.1 further asked the plaintiff to give a detailed presentation of the same by end of July 1998. Mr. Sibal has contended that concept note give by the plaintiff to said defendant at the said meeting was a disclosure in utmost confidentiality which is the usual practice in the industry. The second meeting took place in defendant no.1's office with the plaintiff. Mr. Sanjoy Roy, Ms. Manika Berry, Samir Gupta were also present in the meeting. In that meeting defendant no.1 asked Ms. Raveena Raj Kohli, then head of programming of defendant to join them. (There is some dispute with regard to the presence of

Ms. Raveena Raj Kohli with which I will deal later.) The plaintiff team described the concept of Swayamvar, highlighting its salient attractions as world's first unique real life entertainment television series, that would be studio based with video snapshots used for introduction. The concept contained selection of a spouse by a woman from ardent suitors conforming to certain criteria to be specified by the woman, shortlisting of potential grooms and parents would be involved in the process. The programme would create a family oriented, sensitive entertainment and would be mediated by a vibrant, mature, articulate, anchorwoman. It has been averred in the plaint that the plaintiff informed the defendant that he had registered his concept and the same was copyrighted. On that day, the plaintiff further elaborated the programme structure and format, divided into segments for easy implementation in the presentation made to the defendants as follows :

1. Specifically designed questionnaire to be distributed by producer and channel to elicit all personal details with photos.
2. Computerized matching of the data for selection of participants and audio visual clips of the participants.
3. Exchanging candidate's personal details to help selection and short-listing for the show.
4. Set of reflect images and symbols of marriage celebration.
5. Help of astrologers, marriage counsellors, psychologists, etc. in the selection process in the studio.
6. Anchor to talk about marriage and roles played by man and woman.
7. Marriage related games and rituals to be included.

6. It was contended by Mr. Sibal that when the plaintiff conceived the idea of Swayamvaar, reality television show in match making in spouse selection as such had not appeared on television anywhere in the world. Therefore, the concept of a real life reality television show revolving around marriages and matchmaking was first of its kind as there was no known precedent. It is the case of the plaintiff that the plaintiff also approached Doordarshan about the real life reality TV show revolving around marriages in early 2000. It is the case of the plaintiff that another meeting was fixed for 30th October, 2000 at the defendants' office at Mumbai where plaintiff went with Mrs. Urmila Gupta, his wife, Samir Gupta, his son and Mr. Vinod Khanna and on the defendants' side defendant no.1 and their newly appointed head of programming Ms. Rekha Nigam were present. In the said meeting, plaintiff handed over to defendant a letter dated 28th October, 2000 which contained proposal for five programme including "Swayamvar". The said letter also accompanied a brief concept note containing the essential details and proposed format of "Swayamvar". After the said meeting defendants asked the plaintiff to give a detailed presentation at the earliest.

7. Another meeting was held on 10.11.2000 between defendants and Mrs. Urmila Gupta, Samir Gupta, wife and son of the plaintiff, who gave a power-point presentation to the large team of the executive of the defendants. The printed version of the presentation and an internal discussion document dated 4.11.2000 which has been prepared by the plaintiff's said representatives were also handed to the defendants officers after the presentation. It was contended before me that the representative of the plaintiff also imparted under strict condition of confidentiality and in good faith the following :

1. Increase in show duration from half an hour to a one-hour format.
2. Introduction of high value rewards, prizes, gifts, etc. in the form of "Streedhan".
3. Creation of devices such as games and situations, rituals connected with marriage, to high ten audience/viewer involvement and interest.
4. Selection process using matrimonial bureaus, web sites, dial-in in addition to direct applications.
5. Video tests and grooming of participants, designer costumes, etc. in line with popular trends.
6. Promotion and marketing of "Swayamvar" as India's first ever reality TV show.
7. How to handle reservations of the potential participants including option of opting out anytime during the show.
8. The show limited to the engagement. Marriage at couple's convenience.

8. It was contended that defendant by its e-mail dated 10.11.2000 sent by Ms. Rekha Nigam after the presentation showed enthusiasm of the defendants about plaintiff's proposal for Swayamvar as they had inter alias requested for some more details on logistical timelines.

9. It was the case of the plaintiff that plaintiff saw an article in the financial Express, Mumbai Edition, dated 18.7.2001 titled "Camera, Lights, Shehnai !....SONY TV to play Matchmaker". The said article informed that defendant no. 2 was due to launch a big budget reality show which would provide a platform for matchmaking. The report indicated that it would be like a Swayamvar or a marriage bureau on Television. It is the case of the plaintiff that this article and other article which appear subsequently in the newspaper as well as internet uncannily replicate the information confidentially disclosed by the plaintiff to the defendants during their meetings and presentations. When the plaintiff came to know in August, 2001 that defendant no. 2 is going to launch a TV reality show "Shubh Vivah", plaintiff wrote a letter dated 7.8.2001 to the defendant to clarify as to what this reality show Shubh Vivah was and then a legal notice was sent to the defendant dated 13.8.2001. The defendant replied the said legal letter by stating that what they are making was not a copy of Swayamvar and also took the stand that they have made the plaintiff aware in

their meeting held on 30.10.2000 that defendants were in the process of producing a programme based on the same theme.

10. It was contended by Mr. Sibal that the copyright was for creative, unique and novel TV reality programme to conduct a real life matchmaking show by giving girls the opportunity, with mediation by an anchor person, to choose a husband of their own choice from a line-up of the suitors in the presence of parents in the studio. The plaintiff has sought copyright in developed production of his concept and the format of his unique match making show which was brought to the attention and domain of the defendants first in August, 1998 and again in October and November, 2000. It was contended that the proposed TV programme of the defendants Shubh Vivah launched by defendant according to Times of India, Delhi Edition dated 31.8.2001 gives the following primary characteristics :

1. A Studio based reality television show.
2. On the subject of match making.
3. Providing a platform to young women to choose a spouse from a short list of potential suitors.
4. Mediation by a celebrity anchorwoman.
5. Involvement of parents of the girl and suitors.
6. Enabling selection of spouse through various devices.
7. Rewarding the couple after Swayamvar is concluded.
8. Selection process through matrimonial bureau, etc.
9. Empowerment of woman through giving her power of selection.
10. Giving of gifts to the engaged couple as "Streedhan".
11. Mr. Sibal then contended that taking the plaintiffs' time and developed concept of real life TV show of spouse selection and subsequent reproduction of the same in the format of proposed TV show by the defendants titled Shubh Vivah amounts to infringement of plaintiffs' copyright. It was contended that when plaintiff has submitted its programme proposal for consideration, the same was done on the understanding that the broadcaster will either accept it or reject it. Therefore, the defendants by using the said information imparted to it in strict confidence by the plaintiff breached the confidence reposed by the plaintiff in them. The essential confidential aspects of the plaintiff's concept and programme which were not in public domain or common knowledge according to counsel for the plaintiff are as follows :

- (a) Reality TV - this is itself was unique because it had not happened before;
- (b) Spouse selection, and not merely matchmaking (i.e. marriage, not just a

dating show).

(c) One person would have the power to select, not both.

(d) That it would be the woman deciding, which is a role reversal.

(e) Adoption of the name "Swayamvar" for instant recall and recognition, however with fundamental differences from the notion of a "swayamvar" as familiarized to the populace through epic like "Ramayana" and "Mahabharata" namely -

i) In these stories, swayamvar is confined only to "raj samaj" or royalty.

ii) The selection of a "var" was based on the fulfillment of a predetermined task, such as an act of bravery, hence there was no "choice" vested in the woman in the strict sense.

12. It was contended that by misappropriating the concept of the plaintiffs' programme of Swayamvar and announcing of the making of the programme on similar lines, the defendants have inflicted huge losses and damage to the commercial potential of the plaintiffs programme by luring away potential advertising sponsors. plaintiff had contended that plaintiff has made out a prima facie case for grant of injunction because if once plaintiff has submitted a scenario or concept for TV reality show in case of breach of confidence the defendants should be restrained from showing Shubh Vivah till the plaintiffs launch their first ever reality show on Doordarshan. It was contended that balance of convenience is also in favor of the plaintiffs and if defendants are allowed to telecast their TV Serials Shubh Vivah which has been pirated from the concept developed by the plaintiff, it would amount to robbing of plaintiff of its novelty. Mr. Sibal has contended that novelty/originality in an idea can be derived from the application of human ingenuity to well known concepts.

13. He has further contended that novelty/originality may consist in a significant twist or slant to a well-known concept, which takes it out of the public realm. In support of his contention, Mr. Sibal has cited *Talboot v. General Television Corpn.* (1981) RPC 1 . Quoting the *Law of Trade Secrets* by Robert Dean at page 115, Mr. Sibal contended that a self-evident solution for some problem may be novel once it is recognised. The novelty is in recognising the solution.

14. It was further contended before me that for an idea/concept to be a subject matter of confidential communication it must have at least some attractiveness as a television programme and should be capable of being realised in actuality. On the basis of aforesaid submissions, Mr. Sibal argued that concept of Swayamvar as evolved by the plaintiff was capable of being used for commercial exploitation as a reality show for match making on television programme and, Therefore, that confidential communication which the plaintiff had given to the defendant has been breached by the defendant by making Shubh Vivah a reality show based on match making, Therefore injunction be issued by this Court. Mr. Sibal has also contended that breach of trust or confidence give a broader right

then breach of copyright. Ideas and information which has been acquired by the defendants under confidentiality and if the defendants acts and makes a reality show on the basis of the concept and format supplied by the plaintiff, in such circumstances it would be a breach of good faith on the part of the defendant to exhibit or telecast any show and defendants cannot take recourse of any pretext or excuse for doing so and in such eventuality the Court may restrain the defendants by granting an injunction. Mr. Sibal has contended that law of confidence deals with not only written formats, it may be something which is given to other persons as oral communications. To buttress his arguments Mr. Sibal has cited Copinger and Skone James on Copyright at page 721/722

15. Another contention which has been urged before me by Mr. Sibal was that there is no requirement that the idea should always be developed to its fullest synopsis. He has contended that in certain cases the criteria is made by a short unelaborated statement of an idea as in the present case the format and concept was the only requirement of developing the reality show on television and nothing else was required, no further details was to be given and in support of his arguments, he has relied upon *Fraser v. Thames Television* (1983) All ER 101 . He has contended that there is no force in the arguments of the defendants that as the concept was disclosed to defendants and other producers that disclosure comes under public domain. Mr. Sibal has contended that disclosure of some information cannot be defeated by the plea that there were other people in the world who knew the concept or the format about the reality show besides the defendants and in support of his arguments, he placed reliance on *Franchi v. Franchi* 1967 RPC 149 . Learned counsel then contended that springboard doctrine will come into play as the concept of *Swayamvar* as a TV reality show is the result of the work done by the plaintiff as he has used his brain and thus produced a result which can only be produced by somebody who goes through the same process. He placed reliance on *Saltman Engg. v. Campbell Engg.* (1948) 65 RPC 203 and contended that defendant cannot be unjustly enriched on the basis of the concept evolved by the plaintiff as the defendant must be placed under special disability in the field of competition to ensure that he does not get an unfair start. He placed reliance on *Terrapin v. Builders Supply Co.* 1967 RPC 375 . Mr. Sibal then contended that the defendant has obtained information in confidence and they cannot be allowed to use it as a springboard for activities detrimental to the plaintiff who first conceived, evolved, presented and made the format and the concept of first reality show of *Swayamvar* and cited *Seager v. Copydex Ltd.* (1967) RPC 349 . Mr. Sibal then contended that if the confidential information is going to be used in competition with the plaintiff, the same is not merely a matter of compensation in terms of money and damages alone are not adequate remedy and, Therefore, on that score the defendants be restrained from showing *Shubh Vivah* based on the concept and format of the plaintiff.

16. On the other hand, Mr. Ashok Desai, learned senior counsel for the defendants has contended that the concept of *Swayamvar* was in public domain. It was further contended that if the concept was registered as a copyright, no

injunction can be granted as after submission of the concept to the copyright authorities the same was in public domain. It was further contended that there is no averment in the plaint that whatever was narrated to the defendants was confidential. It was contended that inconsistent stand has been taken by the plaintiff. It was contended that what was given to the defendants was a very vague and rough preliminary note which neither can amount to any work nor original work and certainly no presentation was given to the defendants. It was contended by learned counsel for the defendants that onus was on the plaintiff to have identified that whatever information was supplied to the defendants was confidential. The onus is again on the plaintiff to prove that defendants were guilty of breach of confidentiality. It was further contended that it was for the plaintiff to prove that on account of unauthorised use of that information the plaintiff has suffered some losses or the said information was to the detriment of the plaintiff. Vociferous plea was raised by the defendants that there was no originality in the concept of the plaintiff. In any event of the matter it was contended before me by the defendant that first meeting took place in 1998, later on the same concept was given to the Doordashan. Therefore, the plaintiff cannot be allowed to monopolise the concept which is in public domain. It was further contended that the plaintiff has not come to this Court at the earliest opportunity as the plaintiff has come to know that the defendant was going to start their own TV reality show Shubh Vivah in May, 2001 and they filed the present suit only in September, 2001. Mr. Desai has further contended that no copyright exist in a subject matter or theme of historical or mythological belief. Mr. Desai also contended that plaintiff cannot claim any copyright in an idea. What was contended before me by Mr. Desai was that plaintiff had only a vague idea of treating the concept and there cannot be any copyright in said vague idea. In support of his contention, he has relied on R.G. Anand Vs. Delux Films and Others, , Supreme Court observed as under :

"Thus, on a careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge:

1. There can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.
2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal limitation of the copy-righted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendants is guilty of an act of piracy.

3. One of the surest and the safest test of determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however apart from the similarities appearing the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case-law discussed above.

7. Where however the question is of the violation of the copyright of stage play by a film producer or a director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, wider field and a bigger background where the defendants can be introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved."

17. It was contended by Mr. Desai that in the written statement in para 9, it has been contended by the defendants that concept note was not a confidential document and there was on confidentiality in such disclosure as per usual practice in the industry. It was contended by Mr. Desai that in para 16 of the written statement, the defendant has taken the plea that the concept was only a bare first draft and no detailed programme or concept at any point of time was given or disclosed to the defendants. Mr. Desai took pain to state that the defendants programme does not have the following primary characteristics as alleged by the plaintiff :

1. Providing a platform to young women to choose a spouse from a short list of potential suitors.
2. Involvement of parents of the girl and suitors.
3. Enabling selection of spouse through various devices.
4. Rewarding the couple after Swayamvar is concluded.
5. Selection process through matrimonial bureau, etc.

6. Empowerment of women through giving her power of selection.

7. Giving of gifts to the engaged couple as "Streedhan".

18. It was further contended that a studio based reality TV show on the subject matter of match making, mediation by a celebrity anchor woman cannot be called unique or novel by an stretch of imagination. It was contended that confidentiality and communication cannot hold water if the same are under public domain.

19. It was further contended by Mr. Desai that as stated in para 14 and 15 of the plaint, no concept note was sent by the plaintiff along with the latter dated 20.10.2000. What was contended before me by learned counsel for the defendants is that a communication was sent by the plaintiff to present five sets of concepts in which Swayamvar was at Serial no.4. However, pages 78, 79 and 80 were not sent to the defendant. It was contended by Mr. Desai that even the notice dated 13.8.2001 sent by the lawyers of the plaintiff did not mention about the meetings of 31st August, 1998 or handing over the concept note in the said meeting. It was contended by Mr. Desai that even if one sees Annexure A along with letter dated 28.10.2000, the concept note was for Doordarshan and not for the defendants. Pointing out inconsistency in the stand of the plaintiff in the plaint it was argued that it was contended that concept was developed by the plaintiff in 1998 as the plaintiff could not travel to Mumbai for presentation in end July, 1998, however, from the affidavit filed by Sanjoy Roy (which is at page 213), Sanjoy Roy has nowhere stated in the affidavit that the developed the concept till 2000.

20. It was further contended that even prior to 1996, there were several shows in existence outside India having similar theme of matchmaking on TV such as in the United Kingdom: "Mr. & Mrs.", broadcast on ATV between 1964 and 1988, and broadcast on UK during the 1990"s; "Love at First Sight" broadcast on Sky since 1990; "Blind Date" broadcast on ITV since 1995, amongst others and even otherwise, the process of selecting groom from a variety of suitors is a traditional concept, rooted in Indian tradition, mythology and there was nothing novel or unique about it. As a matter of fact, defendant denied that in the meeting in August, 1998, Sanjoy Roy was present.

21. Mr. Desai contended that in the affidavit filed by Mrs. Urmila Gupta, wife of plaintiff no.1 (in para 7 at page 41 of the paper-book), it has been contended that the husband of Urmila Gupta does not have enough fund to develop the concept Swayamvar. Therefore, to say that the concept was developed and handed over in August, 1998 to the defendant was contrary to the affidavit filed by Urmila Gupta.

22. It was contended by Mr. Desai that as the concept was disclosed to others and that amounts disclosure made by the plaintiff to the world, now it is not possible for plaintiff to get an injunction restraining the defendants from disclosing what was in common knowledge and in support of his contention, he

has relied upon *O. Mustad & Son v. Dosen & Anr.* 1963 RPC 41 as well as *Franchi & Ors. v. Franchi and Ors.* 1967 RPC 149 . It was further contended before me by Mr. Desai that plaintiff has miserably failed to state as to what was the information which the plaintiff relied to be confidential and in what way it was handed over in confidence to the defendant. plaintiff has also failed to prima facie show that the information which was supplied to the defendants was to be treated as confidential and the same was disclosed or the said information was used for making Shubh Vivah. In support of his contention, Mr. Desai has cited *CMI-Centre for Medical Innovation GMBH & Anr. v. Phytopharma PLC* (1999) FSR 235 . Distinguishing the case of *Talbott v. General Television* (supra) cited by counsel for the plaintiff, Mr. Desai contended that in that case pilot script was sent to the defendant, whereas in the present case no pilot script was sent to the defendant. It was further contended that the prayer for grant of interlocutory injunction cannot be granted by this Court as the very existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain till they are established at the trial on evidence and in support of his contention, he has relied upon *Wander Ltd. and Another Vs. Antox India P. Ltd.*, , where Supreme court observed as under :

"The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The court also in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted."

23. It was contended that defendants have made many episodes whereas the plaintiff has yet to commence making any episode and, Therefore, interlocutory injunction cannot be granted against the defendants and in this connection he has cited *Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd.*, . Mr. Desai also contended that the Court has to take into consideration that when breach of confidence is alleged and an action has been brought, in such a case the Court has to see that the same is not to oppress and harass the competitors and, Therefore, full and proper particulars of all the confidential information as to when and to whom was given and in the absence of pleadings in the plaint, Court may not grant an interlocutory injunction against the defendants and in support of his contention, he has cited *Ocular Sciences Ltd. & Anr. v. Aspect Vision Care Ltd. & Ors.* (1997) RPC 289 .

"The rules relating to the particularity of pleadings apply to breach of confidence actions as they apply to all other proceedings. But it is well recognised that breach of confidence actions can be used to oppress and harass competitors and ex-employees. The courts are Therefore careful to ensure that the plaintiff gives full and proper particulars of all the confidential information on which he intends

to rely in the proceedings. If the plaintiff fails to do this the court may infer that the purpose of the litigation is harassment rather than the protection of the plaintiff's rights and may strike out the action as an abuse of process"

24. On the basis of aforesaid arguments it was contended by Mr. Desai that no injunction be granted in favor of the plaintiff.

25. I have given my careful consideration to the arguments advanced by learned counsel for the parties. At this stage, the question for consideration before me is as to whether the idea conceived by the plaintiffs of producing a reality TV programme is a novel concept and same could be protected. Secondly whatever information, concept or presentation imparted by the plaintiff to the defendant was confidential. Thirdly, whether the defendant may be permitted to launch its proposed TV programme Shubh Vivaah which is allegedly based on the concept of swayamvar conceived by the plaintiff and if I agree with the above submission of the plaintiff what kind of injunction plaintiff is entitled to.

26. Apart from the pleadings, the meetings as claimed by the plaintiff in its plaint, dated July, 1998, 10.11.2000 and 30.11.2000 have not been denied by the defendants. It was also not denied that a theme of a programme proposed by the plaintiff was revealed to the defendant in the meeting held in July, 1998 as would be borne out from the reply of the legal notice by counsel for the defendants (which is at page 100 of part II file). In the same paragraph counsel for the defendant has also conceded that a formal representation was also made by the plaintiff in November, 2000. As a matter of fact, by way of para 4 of the said reply what plaintiff was made to understand was that the Shubh Vivaah to be launched by the defendants was not going to be anything like Swayamvar which was conceived by the plaintiff. The stand of the defendant is that they have developed their own concept, format of an independent programme titled Shubh Vivaah which was traced from the concept of ancient Indian concept of Swayamvar and the defendants have not taken or used any of theme, concept, thoughts and writing of the plaintiff.

27. In the modern day, when the small screen has taken over the earlier means of mass communication like radio, idea/concept/script of a broadcaster has wider potentiality of capitalising revenue and if that idea/concept or script is not protected then in a given case, a person who has conceived an idea to be translated into the reality TV show which could be key to its success with audience then channels with their enormous resources could always be in a better position to take the idea/theme/concept from any author and then develop at their own end and the original author of the concept will be left high and dry. In appropriate cases interlocutory injunction may be issued restraining such breach of confidentiality of the theme, concept or scripts otherwise it would be catastrophic for the television industry. One has to bear in mind that persons who create an idea/concept or theme which is original, laws must ensure that such like people are rewarded for their labour. A concept for reality show on

television was given to the company, which in this case is the defendants. Creator provides raw material to the entertainment industry, themes or concepts originates from the person who has conceived the same, protection is vital for the functioning of the industry. Otherwise authors of the ideas who are individuals, their ideas can be taken by the broadcasting companies or channels owning companies and the persons who has conceived the same, would be robbed of its labour. But at this stage, I have to find out from the records as to what is the admitted case of the parties as evidence has not been led and the suit is at preliminary stage.

28. From the admitted pleadings of the parties, the following meetings took place between the parties:

1. Meeting of July, 1998.
2. Meeting of 31st August, 1998.
3. Meeting of 30th October, 2000
4. Meeting/presentation of 10th November, 2000
5. Meeting of 23rd & 24th May, 2001

29. An idea per se has no copyright. But if the idea is developed into a concept fledged with adequate details, then the same is capable of registration under the Copyright Act. The novelty and innovation of the concept of the plaintiff resides in combining of a reality TV show with a subject like match making for the purpose of marriage. The Swayamvar quoted in Indian mythology was not a routine practice. In mythology, we have come across broadly understood only two swayamvars, one in Mahabharat where the choice was not left on the bride but on the act of chivalry to be performed by any prince and whosoever succeeded in such performance got the hand of Draupdi. Similarly, in Ramayana choice was not left to the bride but again on performance of chivalrous act by a prince who could break the mighty Dhanusha (bow). Therefore, originality lies in the concept of plaintiff by conceiving a reality TV programme of match making and spouse selection by transposing mythological swayamvar to give prerogative to woman to select a groom from variety of suitors and making it presentable to audience and to explore it from commercial marketing. Therefore, the very concept of matchmaking in view of concept of the plaintiff giving choice to the bride was a novel concept in original thought capable of being protected.

30. The concept note was given to the defendant on 31st August, 1998 prior to which the defendants have admitted receipt of a summary/concept note of swayamvar at the meeting in July, 1998. It was also admitted that the presentation was made on 10th November, 2000. If the concept, format and structure which were the key elements of the plaintiff's proposal, the same has been received by the defendant, it cannot be said that defendants were not aware of the salient feature of the concept and the format of the plaintiffs match making TV reality show. There is no denying of the fact that from July, 1998 to

April-May, 2001, the concept of the plaintiff was discussed and was under consideration by the defendants and, Therefore, if the defendants have gone public on their proposed launch of the programme Shubh Vivaah and if the same is based on the concept of swayamvar, defendants cannot be permitted to reap the fruit of the labour put in by the plaintiff. In television industry, it matters as to who has gone first, one the reality show is televised on the television, the same comes within the purview of public domain and anybody else can take up the same concept and launch their own television programme. Curiously, in the affidavit filed by defendant No. 1 on behalf of defendants 1 to 4, the defendant has taken inconsistent stand. Whereas in para 98 at page 140 of part II file, it has been mentioned that Raveena Kohli was not present at the meeting on 31st August, 2000 as alleged by the plaintiff, however careful reading of para 10 of the same affidavit would show that presence of Raveena Kohli in the said meeting was admitted by the defendants. From the perusal of the para 9 of the said affidavit of the defendants, even the delivery of concept note has been admitted. What has been denied was that the concept note was not intended to be a confidential document. As a matter of fact, the stand taken by the defendant that no concept of the treatment of programme reality show Swayamvar was given, is contrary to the documents filed on record. There are two documents (at page 81-82 of part II file) sent via Fax/Email, which are to the following effect. The same has not been denied by the defendants:

"Via Fax/Email

6th November, 2000

Ms. Rekha Nigam

Sr. Vice President ,

(Production & Programming)

Sony Entertainment

Television India Ltd.

23, Shah Indl. Estate,

Andheri (W)

Mumbai

Dear Rekha,

It was a great pleasure to have met you along with Kunal on Monday 30th October.

I am enclosing a copy of my letter to Kunal regarding the presentation on "Swayamvar", which we will be making on 4 p.m. on Friday 10th November.

In case, you would like any inputs on some of the other concepts too, please let

us know at the following fax and email."

We look forward to meeting you and the team.

Thanking you,

With regards,

Your sincerely,

Sd/-

Anil Gupta"

"Via Fax/Email

6th November, 2000

Mr. Kunal Das Gupta,

C.E.O.

Sony Entertainment

Television India Ltd.

23, Shah Indl. Estate,

Andheri (W)

Mumbai

Dear Kunal,

I would like to thank you for meeting Vinod Khanna, Urmila, Samir and myself at your office on Monday 30th October, 2000 along with Rekha Nigam.

As discussed at the meeting and later confirmed by your office, we shall be making a presentation on the updated concept and treatment of the programme "Swayamvar", which, I had discussed with you over a year back with Sanjoy Roy of Teamwork Films.

I have since then fine-tuned the concept incorporating elements we feel, have great potential. Please let me know at the following fax and email if you need any other inputs for the presentation which we will make on Power Point.

We look forward to meeting you and your team on Friday, November 10th at 4 p.m.

With regards,

Your sincerely,

sd/-

Anil Gupta"

31. In the affidavit filed by defendants none of these letters have been denied. What was argued was that full format and structure was not given. Even if I assume that typed copy of the note was not received by the defendants, the defendants had shown power point presentation in November, 2000 and same has been admitted by the defendants.

32. In *Fraser v. Thames Television* (supra) it was observed by the Court:

"I accept that to the capable of protection the idea must be sufficiently developed, so that it would be seen to be a concept which has at least some attentiveness for a television programme and which is capable of being realised as an actuality. But I do not think this requirement necessitates in every case a full synopsis. In some cases the nature of the idea may require extensive development of this kind in order to meet the criteria. But in others the criteria may be met by a short unelaborated statement of an idea. In *Talbot's* case itself I do not think the detailed submission added very much of substance to the idea which is set out in one sentence."

33. When an idea or concept has been developed to a stage that it could be seen to be a concept which has some attractiveness so as to get an audience on a television programme and could be realised as an actuality then the concept is capable of being the subject of confidential communication.

34. Now let me deal with another submission of Mr. Desai that even if we assume that there was a concept developed by the plaintiff, the same was in public domain. In *Talbot v. General Television Corporation* (supra) it was held:

"I am satisfied that what was called the "commercial twist", or the particular slant, of the plaintiff's concept (or idea) does give it a quality which takes it out of the realm of public knowledge....

.....

.....In My opinion the situation then (i.e. on 7 October 1976) was that the plaintiff had "a saleable proposition" which had as its kernel the valuable concept of a programme which had the intent of exposing the lives of successful people..... In my opinion, not only was the text of the submission made available in confidence, but the kernel of the concept, whether it was conveyed in writing or orally, was also made available in confidence."

35. The Law of Trade Secrets by Robert Dean take into consideration that the word "novel" is sometimes used simply to mean previously unknown but its more common meaning is that of inventiveness, or that of the information is unique, akin to "manner of manufacture". Whether it is described as originality or novelty or ingenuity or otherwise, there must be some product of the human brain which suffices to confer a confidential nature upon the information. The novelty is in recognising the solution.

36. In *Fraser v. Thames Television* (supra), it was held:

".....But I do not think this requirement necessitates in every case a full synopsis. In some cases the nature of the idea may require extensive development of this kind in order to meet the criteria. But in others the criteria may be met by a short unelaborated statement of an idea."

37. I do not find any force in the arguments advanced by the defendants that as the concept note was also given to Doordarshan, they were not under the obligation to maintain confidentiality or the concept note having been given to other prospective broadcasters, the defendants was under no obligation to treat the same in confidentiality. In *Franchi and Ors. v. Franchi and Ors.* (supra) it was held:

"Clearly a claim that the disclosure of some information would be a breach of confidence is not to be defeated simply by proving that there are other people in the world who know the facts in question besides the man as to whom it is said that his disclosure would be a breach of confidence and those to whom he has disclosed them."

38. The concept developed and evolved by the plaintiff is the result of the work done by the plaintiff upon material which may be available for the use of anybody but what makes it confidential is the fact that the plaintiff has used his brain and thus produced a result in the shape of a concept and if defendant is allowed to show their own reality show based on the concept originally conceived by the plaintiff, it will be allowing the defendant to use that concept and to reap the fruit of the labour of the plaintiff. In such kind of cases the defendant must be placed under special disability in the field of competition to ensure that he does not get an unfair start.

39. In *Terrapin v. Builders Supply Co.* (supra) it was held:

"As I understand it, the essence of this branch of the law, whatever the origin of it may be, is that a person who has obtained information in confidence is not allowed to use it as a spring-board for activities detrimental to the person who made the confidential communication, and spring-board it remains even when all the features have been published or can be ascertained by actual inspection by any member of the public. The brochures are certainly not equivalent to the publication of the plans, specifications, other technical and know-how. The dismantling of a unit might enable a person to proceed without plans or specifications, or other technical information, but not, I think, without some of the know-how, and certainly not without taking the trouble to dismantle. I think it is broadly true to say that a member of the public to whom the confidential information had not been imparted would still have to prepare plans and specifications. He would probably have to construct a prototype and he would certainly have to conduct tests. Therefore, the possessor of the confidential information still has a long start over any member of the public. The design may be as important as the features. It is, in my view, inherent in the principle upon which the *Saltman* case rests that the possessor of such information must be

placed under a special disability in the field of competition, in order to ensure that he does not get an unfair start; or in other words, to preclude the tactics which the first defendants and the third defendants and the managing director of both of those companies employed in this case."

40. I also find force in the arguments of counsel for the plaintiff that if the said confidential information is going to be used in competition with the plaintiff, it is not merely a matter of compensation in terms of money.

41. Therefore, when the meetings took place in July, 1998, 31st August, 1998 where the concept of swayamvar was given and the meeting of 30th October, 2000 and the power presentation by the plaintiff on 10th November, 2000 it cannot be said that the concept with its format was not in the knowledge of the defendants and if the same was in the knowledge of the defendants, the defendants were under no obligation to treat the same with confidentiality. The stand taken by the defendant that it was Rekha Nigam who also has prepared her own idea of match-making show as per para 59 of the affidavit of the defendant, raises a strong inference that the second concept was derived from the first. Prior to filing of the affidavit in this case by the defendant which was filed on 31st October, 2001, there is nothing on record to show that Rekha Nigam had already prepared her own idea of matchmaking show. To my mind this simply is an afterthought. It was also somewhere in middle of 2001, the defendants started the idea of having their own reality TV show. It cannot be said that the idea and the concept and the structure of matchmaking was in public domain as was contended before me by learned counsel for the defendants. Nothing was filed on record as to what were the Serials "Mr. & Mrs.", "Love at First Sight", "Blind Date" broadcasted in 1964, 1988 and 1990s, by the defendants.

42. In R.G. Anand v. Delux Films and Ors. (supra) it was observed by the Supreme Court:

.....

.....

Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copy-righted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

.....

.....

43. From the bare reading of parameters laid down by the Supreme Court it is evident that when the idea is developed and even if there are similarities, substantial fundamental aspect of the mode of expression adopted in the copyright work and the defendants work is literal imitation to the copyright work with some variations, it would amount to violation of the copyright. Although the stand of the defendants before me is that they do not want to disclose as to what is the concept and the format and the structure of Shubh Vivaah, the TV reality show which they are planning to televise and of which several episodes have been shot.

44. With the rejoinder, the plaintiff has filed Annexure UG 15, wherein it has been reported:

".....this show is scheduled to go on air in October. Shubh Vivah which marks Madhuri Dixit's TV debut, will usher on to Indian television the first-ever reality TV show.

.....A cutting edge programme, Shubh Vivaah will bring together prospective brides and grooms. Madhuri will play cupid/ match-maker, she will discuss what each participant is looking for in a life partner, their family backgrounds interests, etc. which will enable the host to introduce them to the right partners. If they click, wedding bells will follow."

45. Similarly in the same material, the plaintiff has placed Indian Television Report, which is as under:

"Sony is not talking - the UTV-produced show has prospective brides and grooms being introduced to each other. They discuss their backgrounds, their families, what they are interested in and what they look for in a marriage partner. If a couple hit it off they will actually get married. Off the show, that is."

46. Besides this the plaintiff has filed his own affidavit as well as the affidavits of Mrs. Urmila Gupta, Sanjoy Roy where it has been stated that the key elements of the format of the defendants' programme Shubh Vivaah are as under:-

1. applicants for the show send in their photos and CVs and personal information like their preferences, likes, dislikes, etc.
2. the applicants are then short-listed.
3. each segment has one girl who has to choose from five boys
4. she asks a few questions which are posed to the five boys
5. their answers are shown to the girl and she short-lists three of them
6. she and her family then meet the three boys and their families
7. interaction happens and the girl shortlists one boy
8. girl and boy then meet and interact and take a decision to marry or not

9. if they marry within a year, they are sponsored a honeymoon and are given prizes

47. Defendants have not controverted the aforesaid affidavits. The affidavit was initially filed by the aforesaid persons. Affidavits in rebuttal of Rekha Nigam, Raveena Raj Kohli who were working with the defendants, were not filed in this court, which does not give credence, prima facie, to the defense taken by the defendants.

48. In view of the discussions above when concept note as well as power presentation was admitted to have been received by the defendants, it cannot be said that the defendants were under no obligation to maintain confidentiality. The argument of the defendants that once the concept was registered under the Copyright Act the same came under public domain, cannot be sustained in the eyes of law. As a matter of fact, when the concept is registered, the same is protected from public domain. Therefore, the defendants cannot be permitted to launch its proposed TV programme Shubh Vivah if the same is based on the concept of Swayamvar conceived by the plaintiff. It would have been easier for this Court if the salient features of Shubh Vivah would have been disclosed by the defendants before this Court. What has been disclosed before this Court by the defendants is that the defendants are not providing a platform to young woman to choose spouse from a shortlist of potential suitors, there is no involvement of parents of the girls and the suitors, reward to the couple after swayamvar is concluded or involvement of selection process through matrimonial bureau or giving of gifts to the engaged couples as streedhan. What is important to note is that Shubh Vivah is based on thrill of matchmaking about real life situation. Shubh Vivah based on concept of spouse selection in any form as a reality TV show cannot be permitted as that has been conceived by the plaintiff at the first instance. To depict match making in the form of a reality TV show or spouse selection, is the theme of the concept. How it is done, who plays as anchor person, gifts are given or not, may be the various elements which may differ but if Shubh Vivah is based on match making process to be televised on the TV as a real life drama, defendants cannot reap the fruits of labour put in by the plaintiff in this regard.

49. Lastly, what kind of injunction the plaintiffs are entitled to. plaintiffs cannot get an injunction in perpetuity in the concept. plaintiff can also not get an injunction till the decision of the suit because if the plaintiffs are entitled to transmit their programme Swayamvar on the television after televising the same, the concept will be in public domain.

50 The plaintiff has prima facie proved that the defendants were aware of the concept of swayamvar and if injunction is not granted then the defendants will launch its own TV Serial Shubh Vivah which will also televise match making and if that is permitted, it will be giving premium to the defendants and robbing of the plaintiff of his work. Balance of convenience is also in favor of grant of injunction and if injunction is not granted, the injury sustained by the plaintiffs, may be

difficult to be measured in terms of money.

51. Therefore, I restrain the defendants, their agents from transmitting or enabling the transmission by television of the programme entitled "Shubh Vivah" or any other programme or transmission whatsoever having its subject or theme of match making for a period of four months from the date of the order. If the plaintiffs are not in a position to transmit on television its programme entitled "Swayamvar" within a period of four months, defendants shall be at liberty to transmit its programme Shubh Vivah after expiry of four months. In case the plaintiff launches its programme "Swayamvar" within a period of four months from the date of the order, the defendants are further restrained from transmitting or showing or exhibiting or televising its programme "Shubh Vivah" or any other programme having its subject or theme of match making for a further period of two months. This further period of two months is given so that the plaintiffs will have a head start by televising its episodes for two months. Nothing said in this order shall be an expression of opinion on the merit of the case.

52. Application is disposed of accordingly.

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53. List this matter for further proceedings before appropriate Court according to Roster on 22.3.2002.