

(2015) 05 BOM CK 0074

In the Bombay High Court

Case No : Notice of Motion (L) No. 490 of 2015 in Suit (L) No. 176 of 2015

Jyoti Kapoor and Others

APPELLANT

Vs

Kunal Kohli and Others

RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:

Copyright Act, 1957 — Section 16

Citation : (2016) 1 ALLMR 239 : (2015) 6 BomCR 54 : (2015) 63 PTC 347

Hon'ble Judges : S.C. Gupte, J

Bench : Single Bench

Advocate : Sharan Jagtiani and Rahul Ajatshatru i/b. Anand and Anand, for the Appellant; V.V. Tulzapurkar, Senior Advocate, Farhan Dubhash, V.M. Hegde, R. Rajpal and Saijo Mathew instructed by Singh and Singh and Malhotra and Hegde, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.C. Gupte, J.—This suit is a breach of confidence action. It also alleges infringement of copyright. The gist of the Plaintiffs' case is that the 1st Plaintiff is the author and first owner of copyright in the original literary work, being the script and screenplay for a film, "R.S.V.P", which was disclosed in circumstances of confidence to the 1st Defendant, and he made unauthorized use of the same to produce a film, "Phir Se", without the Plaintiffs' consent. The Plaintiffs seek an interlocutory injunction against release of the film "Phir Se", complaining of both breach of confidence and infringement of copyright, though what was chiefly argued at the bar was the case of breach of confidence.

2. The 1st Plaintiff is a film and screen writer by profession. In or around 2010, she claims to have conceptualized the plot and story line of a new and original story for a film and commenced working on an original screenplay for a romantic comedy under a working title "R.S.V.P". The 1st Plaintiff initially registered the synopsis of the story containing the plot and the story line of "R.S.V.P" with Film Writers Association ("FWA"), Mumbai in the year 2010. After developing the first

draft of the screenplay in 2011, the 1st Plaintiff registered the same with FWA. So also, after fully developing the same with changes and modifications, she registered the final version of the screenplay with FWA in 2012. The 1st Plaintiff, thereafter, through a talent agency, M/s. Tulsee Productions Pvt. Ltd., which pitches authors of films to production houses, approached the 1st Defendant for production of a cinematograph film based on the screenplay of "R.S.V.P". The 1st Defendant is a film director of repute, who is also a director of the 2nd Defendant, a film production house. After some preliminary correspondence in that behalf, vide an email dated 19 January 2013, the complete screenplay of "R.S.V.P" was shared by M/s. Tulsee acting as the 1st Plaintiff's agent with the 1st Defendant, who liked the same and offered to meet the 1st Plaintiff for further discussions. On 21 January 2013, the two met, when the 1st Defendant offered to acquire the rights to make a cinematograph film of "R.S.V.P" screenplay. The 1st Plaintiff and the 1st Defendant, however, could not reach an agreement in that behalf and the negotiations failed. The first Plaintiff, thereafter, pitched the original screenplay of "R.S.V.P" to the 2nd Plaintiff, who is another production house. The 2nd Plaintiff agreed to produce the feature film. A formal agreement dated 13 June 2014 was entered into between the Plaintiffs. The 2nd Plaintiff, thereafter, started working on the film. At that stage, the Plaintiffs came across news articles about the 1st Defendant's new film to be launched under the title "Phir Se". From the excerpts of interview of the 1st Defendant, the Plaintiffs realized that the 1st Defendant had utilized the 1st Plaintiff's screenplay / script for making his movie. Thereupon, a complaint was filed by the 1st Plaintiff with FWA of plagiarisation and infringement of her copyright in the original screenplay of "R.S.V.P". The 1st Plaintiff also sent a cease and desist notice to the 1st Defendant. On the Plaintiff's complaint, FWA constituted a panel of experts to review and compare the rival screenplays / scripts of "Phir Se" and "R.S.V.P". A complaint was also filed by the 2nd Plaintiff before Indian Motion Pictures Producers Association ("IMPPA"). A Joint Dispute Settlement Committee of IMPPA and FWICE (Federation of Western India Cine Employees) issued a letter dated 8 November 2014 to the 1st Defendant, asking him to stop all shooting till the matter was resolved. On 25 November 2014, FWA gave a ruling in favour of the 1st Plaintiff, observing inter alia that on a careful consideration of the opinions of their esteemed experts and also taking into account the fact that the 1st Defendant had heard the 1st Plaintiff's script before completing his script, the various points of similarity referred to in its ruling suggest that the 1st Defendant's work was definitely influenced by the 1st Plaintiff's work intentionally or unintentionally and that there was accordingly a violation of the 1st Plaintiff's rights. As for the IMPPA-FWICE Committee's deliberations, the 1st Defendant refused to sign any arbitration agreement, claiming that he was not the producer of the infringing film "Phir Se". Contrary to his assurance to the Joint Committee, the 2nd Defendant, however, did not disclose the name of the producer. On the other hand, in a suit filed by the 1st Defendant before the Bombay City Civil court at Dindoshi, the 1st Defendant identified himself as a co-producer and director of the film "Phir Se". Based on

this conduct, FWICE issued a "non-cooperation directive" to the members of film industry against the 1st Defendant. It appears that thereafter, a different set of script of his film "Phir Se" was submitted by the 1st Defendant to the Joint Committee of IMPPA-FWICE. The matter, however, appears to have remained unresolved at the hands of the Joint Committee. In the meantime, the Defendants appear to have gone ahead with the making of the film "Phir Se". In the premises, the Plaintiffs have approached this Court inter alia for a permanent injunction against release of the Defendants' film "Phir Se".

3. The application is opposed by the Defendants on several grounds. The Defendants mainly submit that the 1st and 3rd Defendants had commenced the work on the script of their feature film "Phir Se" prior to meeting the 1st Plaintiff and there was no question of their being influenced by the Plaintiff's script. They submit that the film "Phir Se" is not an infringing copy of, or using, the screenplay or script of "R.S.V.P.". The Defendants point out various dissimilarities between the respective screenplays of "Phir Se" and "R.S.V.P.". It is submitted that the setting, the treatment and the climax of the film "Phir Se" are completely different from "R.S.V.P.". On the other hand, such similarities in the plot, characters or dramatic conflict as are to be found in the two, are not attributable to the use of the confidential information shared by the 1st Plaintiff with the 1st Defendant, but are based on public knowledge or what is available in public domain and over which the Plaintiffs cannot claim any right. The Defendants even deny that the screenplay of "R.S.V.P." is a "novel plot". They submit that there have been several films based on the theme of "R.S.V.P.".

4. For the purposes of this application, I have mainly considered the facts of the case in the light of the law of breach of confidence, which, as will be presently noticed, is distinct from the law of infringement of copyright. In fact, our copyright law, Section 16 of the Copyright Act, 1957, expressly recognizes that though no person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the Copyright Act, 1957, that does not imply abrogation of "any right or jurisdiction to restrain a breach of trust or confidence". Thus, whilst copyright is now a pure statutory right and does not exist apart from the statute, the common law rights concerning breach of trust or confidence are very well available to a plaintiff. There are essential differences between the two rights, namely, the statutory right of protection of copyright and the common law right of protection of trust or confidence. As Copinger and Skone-James on Copyright explain, "Copyright law is, in essence, concerned with the negative right of preventing the copying of physical material existing in the field of literature or the arts." It is, therefore, an essential ingredient of every copyright action that the plaintiff must first establish a work in permanent form in which alone he can claim copyright. Once he shows such work in permanent form, it is the expression of an idea or a plot in such form, which is accorded copyright protection and not the idea or plot itself. But the right of protection of trust or confidence is a totally different specie of rights. The cause of action of the

plaintiff in a breach of confidence action is succinctly stated by Lord Greene, M.R., in *Saltman Engineering Co. Ltd. Vs. Campbell Engineering Co. Ltd.*¹ as follows :

" If a defendant is proved to have used confidential information, directly or indirectly obtained from the plaintiff, without the consent, express or implied, of the plaintiff, he will be guilty of an infringement of the plaintiff's rights".

After quoting this statement of the law, Lord Denning in *Seager Vs. Copydex Ltd.* (1967) 2 A.H.E.R. ALL ENGLAND LAW REPORTS C.A. 415 added the following :

"To this I add a sentence from the judgment of ROXBURGH, J., in *Terrapin, Ltd. vs. Builders' Supply Co. (Hayes), Ltd., Taylor Woodrow, Ltd. and Swiftplan, Ltd.* (2), which was quoted and adopted as correct by ROSKILL, J., in *Cranleigh Precision Engineering Co.Ltd. vs. Bryant* (3) :

"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 springboard for activities detrimental to the person who made the confidential communication, and springboard it remains even when all the features have been published or can be ascertained by actual inspection by any member of the public."

The law on the subject does not depend on any implied contract. It depends on the broad principle of equity that he who has received information in confidence shall not take unfair advantage of it. He must not make use of it to the prejudice of him who gave it without obtaining his consent. The principle is clear enough when the whole of the information is private."

Protection of confidence, thus, in fact is a broader right than the proprietary right of a copyright. This Court, in *Beyond Dreams Entertainment Pvt. Ltd. Vs. Zee Entertainment Enterprises Ltd.*² explained this particular aspect thus (para 7) :

"Whereas there can be no copyright in an idea or information per se, if the idea or information has been sufficiently formed and has been acquired by a person under such circumstances that it would be a breach of good faith to publish or use the same without authority from the person from whom it has been so acquired, the Court may in an appropriate case protect the idea or information by granting an injunction. The two rights naturally have different incidents. Whereas the copyright is good against the world at large, sharing of confidence casts a duty only on the recipient of the information or idea to maintain confidentiality and not publish or use the same without the authority of the originator."

Thus, whereas the copyright in a published work protects the expression of an idea or plot, in the case of breach of trust or confidence, the idea or plot itself, if sufficiently developed, is entitled to protection if the plaintiff has established his right, namely, the fact of his having communicated the confidential information containing such developed idea or plot to the defendant, which the defendant is

enjoined not to use without the authority of the plaintiff. Such unauthorized use includes even a springboard use of the confidential information unauthorizedly.

5. The elements or constituents of a claim for protection of confidence, which are recognized by all leading authorities on the point, are culled out by this Court in *Beyond Dreams Entertainment* (supra) thus (para8) :

" There are three important elements of such a claim for protection of confidence. Firstly, it must be shown that the information itself is of a confidential nature. Secondly, it must be shown that it is communicated or imparted to the defendant under circumstances which cast an obligation of confidence on him. In other words, there is a relationship of confidence between the parties. Thirdly, it must be shown that the information shared is actually used or threatened to be used unauthorizedly by the Defendants, that is to say, without the licence of the Plaintiff."

6. In the facts of the present case, the contest is on the first and third elements, namely, the confidential nature of the information and its unauthorized use by the Defendants. That the information was communicated by the 1st Plaintiff to the 1st Defendant in circumstances of confidence, is not disputed by the Defendants. What they, however, submit is that to claim confidential nature, the information must be "novel" and not something which is already public knowledge or within public domain. Secondly, it is submitted that there is neither copy nor use by the Defendants of the information communicated by the 1st Plaintiff. Let us test each of these two aspects.

7. Before we consider the rival submissions in this behalf, we may briefly indicate the two rival screenplays, namely, the final version of the screenplay of "R.S.V.P." produced by the Plaintiffs with their plaint and the about to be completed film "Phir Se" (which is in an advanced stage of completion, though not fully ready), which was produced for the viewing of this Court. This would enable us to compare the two works and then answer the pertinent questions arising in the matter in the light of such comparison. The two screenplays are outlined below:

(A) R.S.V.P.:

The story or the plot:

The movie starts with glimpses of the first marriage of the two protagonists, Mona and Rishi, -the grand weddings, excitement and lavish spending on the pretext: "Marriage happens but once". The two are now divorced. Post divorce, the male lead, Rishi, is shown having casual filings, whilst the woman is looking only for a right match on the internet and avoids men who just want to have "fun". The two then meet on an internet website. A series of dates and meetings follow, during which the two get to know each other and like each other. They in particular find qualities in each other which they would want to see in their spouses. They decide to get married. In the run up to the marriage, the mother / grandmother irritates the male lead. Nevertheless they go ahead with the

preparations. They actually draw up a pre-nuptial agreement; they do not want to take chances this time around. Whilst the female lead wants a proper wedding, the man would rather have it low key and actually cold shoulders the idea of a grand wedding. The woman loathes the second hand treatment to the marriage ceremony. Finally, the female lead develops cold feet and cancels the wedding. The two get on with their respective lives. The man is actually engaged. In the meantime, the girl meets the man's father and in the incidents that follow, realizes that she actually loves the male protagonist, goes ahead to intervene in the second wedding of the man and wins him back.

The key elements of "R.S.V.P.":

The first is the premise a romantic comedy about two divorcees trying to come to terms with the consequences of their respective divorces and their journey to find love in each other. The second is the particular slant of them coming together, liking each other and then breaking due to doubts, going their individual ways and finally realizing their love for each other and coming together. The third is the backdrop stories of what went wrong in their respective marriages a dominating mother in law and a husband who treated her like a doormat bringing the lady's marriage to an end, whilst a greedy gold digging wife bringing about the collapse of the male lead's marriage. The fourth is about the treatment to the lead characters. The male lead is a well to do professional, courteous but also flirtatious, is liberal and broad minded, and ready to start a casual relationship soon after his divorce. The female lead, on the other hand, who is also a successful professional, is not interested in any casual relationship but looks for companionship and children, is worried about the biological clock ticking away. In fact, she rejects many suitors who think "divorced women" are readily accessible compared to unmarried women. When the two protagonists meet, they actually discover in each other qualities that they would want in their partners. The fifth is the particular point of conflict. After the two protagonists are engaged to marry, the break happens due to their unwillingness to adjust the second time, and having little patience this time around. The actual point of break comes due to lack of enthusiasm or making a cold affair of the second wedding on the part of the male lead. The female lead realizes this whilst watching a well dressed bridal mannequin in a showroom. It is then the female lead who cancels the wedding. Even amongst the supporting cast, the father of the lady is supportive to her, whilst the mother/grandmother is the awkward element which irritates both protagonists. The sixth is the climax when these two protagonists once again come together after separately leading their lives for a while, during which time they discover that they actually love and care for each other.

Phir Se:

The story or the plot:

The script of this film is also of romantic comedy genre, where the two lead

protagonists have had failed marriages. They meet at an art gallery and interact with each other on several occasions, actually through a common friend, who is the girlfriend of the male lead and an acquaintance of the female. They eventually fall in love, but develop differences over the marriage ceremony and the mismatch between their respective parents, the female lead's family being traditional whilst the male lead's being a gay couple. The girl develops doubts and breaks off the marriage. The two protagonists try to lead their separate lives, but finally realize that they love and care for each other and come together.

The Key Elements:

Most of the key elements of the screenplay of "R.S.V.P." are to be found in this film. But there are further key elements. One is the gay parents of the male protagonist and the "cake world" narrative used and interspersed between episodes, which actually is an alternative narrative, which leads on the story of the film.

8. Now, in the light of this material, can it be said that, what is purportedly used in the Defendants' film from the Plaintiffs' screenplay is "novel" or "confidential" as understood by this branch of law. Dr. Tulzapurkar submits that the concept or subject of a second marriage between two divorcees cannot be either a subject matter of copyright or indeed, even the law of confidence. A story based on the theme of two divorcees meeting, falling in love, deciding to get married, hesitating as the day approaches and getting second thoughts, calling off the marriage only to realize later that they actually like each other and cannot stay apart and finally making the cut as a married couple is not "novel". "Novelty" or "originality" of an idea or work of art or literature does not imply that it should not have been derived from what is already available as public knowledge. The maker of the work or originator of the idea may very well use what is already available in public domain and yet by using his brain, produce a result which can only be produced with such use of brain. Anyone, to produce such result, must undertake a similar exercise. Lord Green, M.R., in *Saltman Engineering Co. Ltd. Vs. Campbell Engineering Co. Ltd.*³ noted the principle as follows:

"The information, to be confidential, must, I apprehend, apart from contract, have the necessary quality of confidence about it, namely, it must not be something which is public property and public knowledge. On the other hand, it is perfectly possible to have a confidential document, be it a formula, a plan, a sketch, or something of that kind, which is the result of work done by the maker upon materials which may be available for the use of anybody; but what makes it confidential is the fact that the maker of the document has used his brain and thus produced a result which can only be produced by somebody who goes through the same process."

In other words, the novelty depends on the outcome of combining the constituent elements in a unique manner or with a unique slant. The constituent elements themselves may not be new or may even be commonplace. There is an

illuminating passage in *Coco Vs. A.N. Clark (Engineers) Ltd.* (1969) R.P.C. Chancery Division No.2 pg.41 to the following effect:

"Something that has been constructed solely from materials in the public domain may possess the necessary quality of confidentiality: for something new and confidential may have been brought into being by the application of the skill and ingenuity of the human brain. Novelty depends on the thing itself, and not upon the quality of its constituent parts. Indeed, often the more striking the novelty, the more commonplace its components."

Our Court in *Zee Telefilms Ltd. and Film and Shot and Another Vs. Sundial Communications Pvt. Ltd. and Others*, (2003) 5 BomCR 404 : (2003) 3 MhLj 695 : (2003) 27 PTC 457 quoted in this behalf the observations of Hirst J. in *Fraser Vs. Thames Television Ltd.* (1983) 2 ALL E.R. 101 which are to the following effect:

"Unquestionably, of course, the idea must have some significant element of originality not already in the realm of public knowledge. The originality may consist in a significant twist or slant to a well-known concept (see *Talbot's case*). This is, I think, by analogy, consistent with the statements in *Saltman's case* and *Coco's case* that novelty in the industrial field can be derived from the application of human ingenuity to well-known concepts."

9. Now, applying these tests, it clearly appears that the combination of individual elements or constituents in this case creates a new romantic comedy genre film material out of the screenplay of "R.S.V.P.". The personality types of the two protagonists, their individual responses to their respective divorces, the individual focuses of their respective quests for new partners, the approach of the society towards them as divorcees, that is to say, the approach towards the male divorcee versus the approach towards the female divorcee, the finding of respective qualities which they would like in their partners in each other, their refusal to take chances the second time around, their coming together and later developing doubts, the break of the marriage by the female lead, and the realization of both the protagonists of their fondness for each other during their separation, and their final coming together are all known or even commonplace individual components, but it is their unique combination which lends "novelty" or "uniqueness" to the material. Let us also sound a note of caution here. This novelty or uniqueness as a work of art or literature has little to do with artistic or literary merit. There must be something in the design, organization or execution of the work, which shows that the work is not a copy of some other work or even a reproduction of a previous work with, say, minor improvements. Once it is found to be "new" in this sense, it is capable of being protected both as copyright and confidence. Looked at in this light, the screenplay/script of "R.S.V.P." can be appropriately termed as "novel" or "unique" so as to merit recognition as "confidential information".

10. The next question is, whether there is any use of this confidential information

by the Defendants. This by far is the most difficult question which the Court has to address in all such cases. There are various aspects, however, which commend themselves for consideration of the Court. There could be direct evidence of use in some cases, for example, oral testimony of an employee of the defendant who actually saw the information being used by the defendant or even documentary evidence. Secondly, there may be presence of some significant fingerprint of the plaintiff's work, in the form of some unique situations or combination of elements, also to be found in the defendant's work. Thirdly, there may be circumstances to show that it was unlikely that the defendant could have, around the time he did, on his own come to the same combination of key elements or similarities. These aspects can be brought out more fully at the trial, but at an interlocutory stage, the Court has to see if there is an arguable case on these aspects. Insofar as the degree of satisfaction required at the interim stage is concerned, the courts have made a distinction between the existence of the right (impairing of confidential information to the defendant) and its infringement by the defendant. Mr. Justice Megarry in the *Coco* case (*supra*) puts it thus :

"The degree of satisfaction required by the court in an application for interlocutory relief is defined by Goff, J. in *Harman Pictures N.V. v. Osborne* [1967] 1 W.L.R. 723 at 738. There must be a strong *prima facie* case as to the existence of the right but, for infringement, it is necessary to show simply a *prima facie* case and a reasonable likelihood of success at the trial. The governing consideration for the court, subject to the balance of convenience, is the preservation of the status quo as it was before the infringement."

It is also important to remember that the use of the material by the Defendant need not be dishonest or even deliberate. It is sufficient if the circumstances of the case show that there could even be an unintentional use of the material by the Defendant.

11. Considered in this light, the Plaintiffs seem to have an arguable case that the 1st Defendant actually used or caused to be used the screenplay / script of "R.S.V.P." shared with him by the 1st Plaintiff, for producing the film "Phir Se". The essential elements of the screenplay / script of "R.S.V.P.," which I have referred to above, appear to have been used in the Defendants' film "Phir Se". The uncanny similarities of characteristics of the protagonists of the two films, the denouement of the overall plot, with dramatic conflict faced by the protagonists in the light of their individual personalities and the approach of the society and people around them to their divorces, their quest for partners, their coming together only to develop doubts, later, then drifting apart and once again coming together in both the scripts or screenplays makes an arguable case in favour of the Plaintiffs that the material entrusted to the 1st Defendant in circumstances of confidence was actually used by the Defendant. The two works, viewed in the backdrop of the fact that in close proximity with the making of the film "Phir Se", the 1st Plaintiff actually shared the final version of the screenplay of "R.S.V.P." with the 1st Defendant and that the 1st Defendant's script of "Phir

Se" came to be registered after such sharing, support the Plaintiffs' case that the similarities between the two scripts / screenplays are not based on pure chance or fortuitous circumstance or the Defendants having worked on independent sources of common or public knowledge for making of the film "Phir Se". No doubt, there are other elements which also form part of the key elements of the film "Phir Se", such as the gay parents of the male protagonist and the resultant dramatic or comic situations of the film and also the parallel narrative of the "cake world" used by the Defendants. But with all these dissimilarities, and differences in expression, the use of the essential elements of the screenplay of "R.S.V.P." still impinges upon the Plaintiffs' right to have the trust or confidence protected. The Defendants, at any rate, clearly appear to have used the kernel of the plot or the story contained in the confidential information as a springboard for working around the material and coming up with their film "Phir Se". Even such use, from the point of view of the law of protection of trust or confidence, is nevertheless unauthorized.

12. No doubt, it is open to the Defendants to show at the trial the Defendants' sources which were actually used to construct the screenplay and script of the film "Phir Se". It is open for them to show by oral testimony or otherwise that their film "Phir Se" is the product of original work. It is open for them to show how and when they actually concluded the work on their screenplay without recourse to the 1st Plaintiff's screenplay. But at this prima facie stage, the Court has to go by the material on record and see if the Plaintiffs have a reasonably arguable case on infringement of their rights by the Defendants. As I have noted above, this Court does find that the Plaintiffs have such a case. In that case, the injunction must follow.

13. Even the balance of convenience is clearly in favour of the Plaintiffs. This is not a case where we are considering infringement of the Plaintiffs' rights to a published work. We could have possibly considered damages as adequate remedy in that case. Here is a case where the Plaintiffs' work is unpublished and in fact, based on this unpublished work, the Plaintiffs themselves are in the process of making a cinematograph film. It is quite clear to my mind that once the Defendants are permitted to exhibit and distribute their film "Phir Se", whatever novelty is there in the Plaintiffs' screenplay and script of "R.S.V.P." will be altogether lost. It is difficult in such a case to work out the damages suffered by the Plaintiffs. In fact, such damages would be irretrievable and not capable of being compensated in money. In that view of the matter, the only remedy for the Plaintiffs is to secure an interim injunction restraining the Defendants from releasing the offending film.

14. Accordingly, there will be ad-interim injunction in terms of prayer clause (a) of the Notice of Motion.

15. This order disposes of the ad-interim application of the Plaintiffs. Conscious of the fact that an ad-interim order, which operates for some length of time, seriously affects the context of, and contemporary advantages to, a film, I have

heard the matter extensively, even on law, and have dealt with the controversy at length. I am at the same time conscious that some further aspects, such as the sources and materials used by the Defendants for their movie "Phir Se", the actual making up of the screenplay of the movie "Phir Se" based on such sources and materials, and the actual teamwork which led to the making of its screenplay, on which only rudimentary material is placed before this Court at this ad-interim stage, merit further consideration at the final hearing of the Motion.

16. Further and detailed replies, if any, be filed by the Defendants to the Notice of Motion within a period of four weeks from today. Rejoinder, if any, within two weeks thereafter. Place the Notice of Motion for hearing on 1 July 2015.

17. At this stage, learned Counsel for Defendant Nos. 1 and 2 makes an offer to deposit a sum of Rs.30 lakhs in court so as to avoid an injunction. The Plaintiffs are not agreeable to the suggestion. For the reasons, which I have already set out in the order, and also having regard to the fact that the damages or even a fair estimate of them is yet to be ascertained, it is not possible to admit of a monetary compensation at this stage. The application for withholding of ad-interim injunction by accepting a monetary deposit is, therefore, rejected.

1Vol.LXV (No.9) September 18th, 1948 Reports of Patent, Design, and Trade Mark Cases

2NM (L) No.785/2015 in Suit (L) No.251/2015 decided on 25 March 2015

3Vo.LXV No.9 SEPTEMBER 18TH 1948 REPORTS OF PATENT, DESIGN, AND TRADE MARK CASES PAGE 203