
(1997) 04 DEL CK 0021

In the Delhi High Court

Case No : I.A. No. 20 of 1997 in Suit No. 10 of 1997

King Features Syndicate Inc. and Others

APPELLANT

Vs

Sunil Agnihotri and Others

RESPONDENT

Date of Decision : 11-04-1997

Acts Referred:

Citation : (1997) 04 DEL CK 0021

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Shri Arun Jaitley, Sh. C.M. Lal and Ms. Dahlia Sen Oberoi, for the Appellant; Sh. Ajay Sahni and Sh. H.P. Singh, for the Respondent

Judgement

K. Ramamoorthy, J.—The plaintiffs have filed this suit claiming the following reliefs :-

"A. The defendant be restrained by a permanent injunction from :

I. releasing the television Seriall, cinematograph film or any other such production, entitled "Phantom" and/or "Betaal";

II. making any television Seriall, cinematograph film or any other production which infringe the copyright of the plaintiffs;

III. using in respect of its television Seriall or in any other manner whatsoever, any name or likeness of a character from the plaintiffs comic book "The Phantom" or the story-line contained therein or in any other manner passing off its television Seriall as having some connection with the plaintiffs;

B. The decree for a mandatory injunction be passed against the defendants to hand over the plaintiff, the pilot tape and all tapes and other metrices whatsoever which contain the infringing recordings of the plaintiff's works.

C. A degree for damages for Rs. 5,00,500/- be passed against the defendants and in favor of the plaintiffs.

D. Costs of the suit be awarded in favor of the plaintiffs;

2. In is 20/97 plaintiffs have asked for an injunction praying the following relief :

"A. The defendant be restrained by a interlocutory injunction from :

I. releasing the television Seriall, cinematograph film or any other such production, entitled "Phantom" and/or "Betaal";

II. making any television Seriall, cinematograph film or any other production which infringe the copyright of the plaintiffs.

III. using in respect of its television Seriall or in any other manner whatsoever, any name or likeness of a character from the plaintiffs' comic book "The Phantom" or the story-line contained therein or in any other manner passing off its television Seriall as having some connection with the plaintiffs.

B. An order for a mandatory injunction be passed against the defendants ordering them to hand over the plaintiffs, the pilot tape and all tapes and other metrices whatsoever which contain the infringing recordings of the plaintiff's works."

3. The main grievance of the plaintiffs against the first defendant is that (1) there has been an infringement of copyright in the artistic work of Pantham character; (2) There has been infringement of copyright of the plaintiffs in the literary work including the story line inter play between characters, the sequence of events, circumstances and instances and the comic book called the Pantham; (3) The first defendant has been passing off his Television Seriall as and for the Television Seriall of the plaintiffs by using the title, characters and other features which to make a complete picture and is attempting to cause confusion among the members of the public, in particular, the children who views these pictures by the great interest.

4. The case of the first defendant in short is that no doubt at the first instance he was inspired by the work of the plaintiff's projecting Phantom but subsequent to the notice and communication from the plaintiffs he had been very careful and he had not copied any of the works of the plaintiffs and if a person views the films the effect of the two films would be known and that would vindicate the case of the first defendant.

5. The learned Counsel for the parties after great industry and research made their submissions supported by a catena of decisions with skill and ability within the time schedule and they could highlight their points of view with ability and aplomb. I must place on record that the learned Counsel confined their submissions to the core of the issues and I was greatly benefited and I could reflect on their submissions without any difficulty.

6. The case of the plaintiffs briefly stated is that plaintiff No. 1, King Features Syndicate, Inc. is owner of the copyright in the well-known comic character. The Phantom, which is well known as "The Ghost Who Walks". The Phantom is a

fictional character and the copyright in the story line (literary and dramatic work) and the drawings and the likeness of The Phantom and its other characters (artistic work) vests with the first plaintiff. By virtue of the International Copyright Order, 1991, the provisions of the Copyright (Amendment) Act, 1994 are applicable to the work of the first plaintiff. The second plaintiff Hearst Corporation, USA owns the trade mark and licensing rights in "The Phantom". The name Phantom and the character of Phantom are subject matter of trade marks registrations. The said name and the character have been registered in countries including the U.S.A., Australia, Austria, Argentina, Canada, China, Egypt, Finland, France, Great Britain, Germany, Hong Kong, Indonesia, Italy, Japan, S. Korea, Malaysia, Norway, Phillipines, Portugal, South Africa, Saudi Arabia, Singapore, Spain, Sweden, Switzerland, Thailand, U.A.E., Uruguay and Venezuela. The main projection of the case of the plaintiff is in the following terms :-

"The Phantom, character is a costumed hero who has no special superpowers, but has indepth knowledge of the jungle and its animals and human inhabitants and is quick on the draw and has a good upper-cut. The story-line revolves around the legend that keeps villains at bay - he is the Ghosh who has been walking for 400 years. The story-line starts from Africa when the first Phantom was washed up on a remote shore of the fictional country of Bengala. A skull cave, a wife named Diana, a white horse and a wolfhound, jungle tribes, monkey postmen and pygmies are some of the prominent features and characters of the comic book and which are very closely related to and have become associated with "The Phantom".

According to the plaintiffs the Comic strips of "The Phantom" have been a major success among the reading public all over the world. The first plaintiff through its licensees have also manufactured a number of goods including toys and other like goods in which "The Phantom" and other characters which form part of the story-line, have been used. The second plaintiff Hearst Entertainment Inc., which is a wholly owned subsidiary of plaintiff No. 2 recently produced an animated television series entitled "Phantom 2040. That has been a success. The copyright of the Television series vests with Hearst Entertainment Inc. This motion picture has been released in several parts of the world including U.S.A., Australia, Hong Kong, Malaysia, New Zealand, Phillipines, Singapore, Taiwan, Thailand; South Africa, Finland, Sweden, Colombia, Brazil, Dominican Republic, Mexico, Panama, Trinidad, and Australia. Furthermore, the film is due to be released in other parts of the world including the United Kingdom, Germany, Argentina, Chile, Peru, Uruguay, Turkey and Croatia by the end of 1996 or beginning of the year 1997.

7. The plaintiffs would state that the comic books featuring "The Phantom" have been available in India since the past many decades. The Phantom is also available in Hindi under the name "Betaal" which is nothing but Hindi equivalent of "The Phantom". Some of the Indian Publications in which comic strips of "The Phantom" have been appearing for a long time in India, the details are given as

under :-

				Publication	Year
				Malayala Manorama	
(Kerala)	1963	Bombay Samachar	(Bombay)	at least since	1976
The Hitavada		(Nagpur)	at least since	1979	
Naya Bharat		(Nagpur, Bhopal, Raipur, Bilaspur			
Jabalpur, Indore, Gwalior)	1959	Ananda Bazar Patrika	(Calcutta)	1958	
Prajavani		(Bombay)	1972	Sudha	(Bangalore)
					1979

All these publications have been made under the licenses from the plaintiffs. The Phantom has become exclusively associated with the plaintiffs and only with the plaintiffs. It is asserted by the plaintiffs that "each comic strip published by the plaintiff or with the authority or license of the plaintiff the world over has a clear notice informing members of the public that the copyright vests in plaintiff No. 1 and that the worldwide rights are reserved." The plaintiffs referred to the Screen Channel dated 12-1-1996 from which the plaintiffs had come to know that the first defendant had adopted the plaintiff's character and the concept being fully aware of the copyright laws. The first defendant has gone on record with the statement "Copyright in our country, means the right to copy, and to copy freely". The first defendant has also gone on record saying that "The Court case will only fetch me tremendous publicity and it would not harm him too much". By letter dated 18-4-1996 the plaintiffs issued a letter to the first defendant to "immediately cease and desist from any development, production, or other use of "The Phantom" or any of the characters of other material thereof. A reminder was sent on 30-4-1996. By letter dated 18-5-1996 the first defendant admitted that he was producing a Seriall entitled "Betaal" but he denied the claim of the plaintiffs. The first defendant stated in the reply that entire story, concept, character and the ideas of the Seriall "Betaal" are mine and they are not based on any other story or on the comic strip "The Phantom". By letter dated 11-6-1996 the plaintiffs requested a copy of the story of the television Seriall by the first defendant. On 27-6-1996 the first defendant enclosed a copy of the script and the script was in Hindi language. In the edition of Sunday Review dated 30-6-1996 the Times of India published an article entitled "The Phantom of the soap opera". In the narrative of the news article, some of the similarities of the between the television Seriall of the first defendant and the Phantom comic strips of the plaintiffs were discussed. In the news article the first defendant had stated :-

"It was inspired by the Phantom, I admit. When I first read those comics I used to wonder who no one was making a film about them because they had all the elements of a good film - love, action, adventure and an exotic atmosphere. But now that I am making it I've created my own story and my own themes."

On 2-7-1996 the plaintiffs again requested the first defendant not to exploit the Phantom of the plaintiffs. The plaintiffs received a letter dated 6-8-1996. Again by letter dated 8-8-1996 the plaintiffs warned the first defendant that they would

not permit the violation of the rights by the first defendant. The plaintiffs received a letter dated 8-10-1996 from the first defendant. On 18-10-1996 wrote to the first defendant that the first defendant was attempting to infringe their rights. The first defendant sent a copy of the pilot episode of "Betaal". Viewing of the pilot episode of the "Betaal" would prove the case of the plaintiffs. According to the plaintiffs, the characters, locations, persons, titles and logos are being used by the first defendant, the making and telecast of the Serial "Betaal" of the first defendant through the second defendant would amount to gross infringement of the plaintiff's rights.

8. The first defendant filed the written statement repudiating the claim of the plaintiffs. Apart from raising the point relating to the competency of the plaintiffs to file the suit and proper representation of the plaintiffs in the suit, the first defendant had stated the name Vetā/Betaal is a well known mythological name in India which has been in existence for more than 900 years and the plaintiffs have no exclusive right to use the said name. The name Phantom is not the original idea of the plaintiffs. The first defendant has stated :-

"In fact, to the own showing of the plaintiffs, the author Mr. Lee Falk was inspired by a story published in the New York Journal by the name "Yellow Kid" and it is from here Mr. Lee Falk adopted the idea. Moreover, the mask dress of the character of Phantom was also an inspiration from a ballet which Mr. Lee Falk saw during those days. Even the word Phantom originated as a purely descriptive expression meaning "ghost" around which the story revolved. Needless to mention that even today both children and adults are fascinated by Ghost stories which invariably are surrounded in mystery and magic. For this reason no exclusive right subsists in this regard with the plaintiffs and the present suit is not maintainable. It would not be out of place to mention that the story of the answering defendant also revolves around a ghost, magic and fantasy and as under law an idea not being copyrightable, the answering defendant is well within its rights to adopt the said idea and develop the same in his own original expression."

In the preliminary submissions, the first defendant had stated :-

"A. that Vetā/Betaal is a Sanskrit Classic and is available in five versions.

B. The earliest version of Vetā/Betaal is preserved in Sanskrit "Bharat Katha Manjari" written by Semendra, who belonged the earlier part of 11th century AD.

C. The second version of Vetā/Betaal is preserved in Katha Sarit Sagar written by Somdev, who belonged the later part of 11th century AD.

D. The other three remaining versions of Vetā/Betaal belong to the earlier part of 15th century i.e. 1487 AD and 16 & 17th century adapted, translated or re-written by Shivdas, Vallabhdas & Jambhaldutt respectively.

E. It was the period when classical Sanskrit was giving way to more popular spoken languages like Apabhraṃśa and Pāśāchi. In this period of

transition - Sanskrit classic Vetāl/Betaal passed into Folklore.

F. The last composer of Vetāl/Betaal was written by a legendary Jambhaldutt, who belonged to the later part of 16th century and earlier part 17th century.

G. Another reference of Vetāl/Betaal is available in famous Prachin Bharatiya Sanskriti Kosh from the Vedic Period to 12th century. This compilation was done by Dr. Hardev Bahari of Allahabad University and this reference book of utmost authenticity and has been published by Vidya Prakashan Mandir, New Delhi-110002. The reference of Vetāl/Betaal appears in this Classic at page 368 where it is clearly mentioned that Vetāl/Betaal is a kind ghost and its stories are available in the Indian Historical Books in Vedas and Puranas. It is also further mentioned that there are two kinds of Vetāl/Betaal one is Rudra Vetāl and another is Agni Vetāl. In this very para, Vetāl/Betaal is connected with Kind Vikramaditya. The next word in this very collection/Dictionary says that the word Vetāl Pachisi which means a collection of folklore, and also gives reference of 25 questions to be asked by King Vikramaditya to Vetāl and also reference to the famous Jambhaldutt.

H. Another reference appears in Pauranik Kosh authored by Rama Prasad Sharma. The reference of word Vetāl/Betaal appears on page 477 and the definition of Vetāl/Betaal as given in Pauranik Kosh is a person who belongs to a Ghost race and who used to live in the cremation ground. (This has been the inspiration of the answering defendant proposed tele Serial). The very next word is Vetāl Janani and the definition is mother of Kumar Karthikeya. Thus it is apparent that Kumar Karthikeya being brother of Lord Ganesh and Devi Parvathi, wife of Lord Shiva being the mother of Vetāl/Betaal.

I. Another Dictionary by the title Bhasha Shabdha Kosh by Dr. Ram Shankar Shukla Rashal, the first edition of this Dictionary was published in the year 1936, and at page 1159, it says that Vetāl/Betaal means a person from the Ghost race and door keeper of Lord Shiva. Similarly at page 1165 the word Vetāl/ Betaal appears again showing the meaning guard; gate-keeper of Lord Shiva and a person from the Ghost race.

J. Similarly another Hindi dictionary published by Diamond Publications at page 784 shows that the word Vetāl/Betaal meaning gatekeeper of Lord Shiva and a person from the Ghost race.

K. Similarly another series of books have been brought out by Greenland Publications, 4425 Nai Sarak, Delhi-110006 that the name Vikram Aur Vetāl and the said book was and is in circulation from time immemorial.

L. A Tele-Serial is directed by the famous Ramanand Sagar was telecasted the same in 26 Episodes on Doordarshan over three years back under the title Vikram Aur Betaal.

M. Another Book Betaal Paichisi has been published and on the second page, it is clearly mentioned that Betaal Paichisi are stories of folklore and are prevalent

since ancient times. It further goes on to mention the said stories were earlier in Sanskrit at the time King Mohd Shah of Delhi there were various poets and literary figures, who were living on those days of poet with the name Sorath read the story to the king in such a beautiful manner with king being impressed, ordered the story to be translated in Braj Bhasa. Gradually the story became so famous and Lord Wellesley, the then Governor General of India ordered for translation of the story into common Hindi language. At that time in the year 1803, Hindi Poet Shri Lalu Lalji translated the Betaal/Vetal in Hindi.

N. Similarly Sudhal Mishra also translated in Hindi and Mir Amman of Merrut translated the same in Urdu language. They translated various Folklore in the commonly spoken languages those Folklore contains Vikram Aur Vetal, Kissa Tota Maina, Hatim Tai, Taramati Ki Kahani and many others which are legendary characters.

These translations were made in the year 1803 and were maintained in the Fort Williams College, Calcutta under the directions of Lord Wellesley.

O. The Book Vetal Pancavimsati written & edited by Mr. NA Gore, MA, Dip Lib, University of Poona was written in 1947 and published in 1952 that the name Vetal Pancavimsati of Jambhaldutt. The introduction of this clearly shows that Jambhaldutt has written 25 tales of Vetal titled Vetal Pancavimsati which are available in 5 Sanskrit versions. The said versions have already been explained above by the defendants and the said book relates back to some where the 15th/16th century.

P. Thus it is apparent that Vetal/Betaal is a legendary name and title of Indian history and civilization and since it originates from the Vedic period and goes into mythological period and then becomes the part of Indian Folklore & folk story re-written in simple Hindi and Urdu in the year 1803 and was kept in Fort Williams College, Calcutta for the benefit of English Officers, who wanted to come in contact with the Indian society and its mythology."

Therefore, according to the first defendant he has not committed infringement of the copyright of the plaintiffs nor is he guilty of passing off. The registered mark 2040 Phantom is totally different from the character portrayed by the first defendant. The first defendant is not aware any production of television Serial entitled "Phantom 2040". The first defendant is aware that M/s. Paramount Pictures have released a motion picture under the name Phantom and a view of the said motion picture and the pilot episode of the first defendant would show that the claim of the plaintiffs is totally unfounded. The first defendant denies that Baitaal is equivalent to Phantom in Hindi. It is stated by the first defendant that use of the title Vetal by the plaintiffs and/or licensees assuming to be true but without admitting it, they have been de minimis and of no legal consequences. About the press publication it is stated by the first defendant.

"In reply to para 10 of the plaint, it is submitted by the defendants that the said article so published by the Magazine Screen Journal is a distorted one.

Subsequently on 20th December 1996, another article was published by the same magazine on page 17 stating that Betaal is not Phantom. Shri Sunil Agnihotri comes clean on issue of copyright. The defendants, herein have clearly stated that he had met. The Hearst Corp and was able to convince them that this project was entirely different from the Phantom Comic Strips. It is further stated by Shri Agnihotri in the interview "Sunil blames a section of the press for the misunderstanding. Some irresponsible journalists described; as one of the most expensively short Serials being made and referred to it as Phantom when the points out it was actually titled Betaal. "Just because my Serial is set in the jungles and also has a horse, dog and bird, does not mean I am making Phantom. He further goes on saying that it is his character and created by him. Shri Agnihotri, the defendant No. 1 in regard to the lead character in his proposed Serial wearing a masked body suit clearly explains that most comic characters including Superman & Batman also appears in similar body suits. The defendants further submit that the news article so published in the Screen Channel of January, 1996 is a distorted one."

I do not want to deal further with the averments in the written statement because the allegations referred to by me above would suffice for the disposal of the interlocutory application.

9. In the replication, the plaintiffs would deny what is stated by the first defendant in paragraph 8 of the written statement about Mr. Lee Falk. In paragraph 8 of the replication, it is stated thus :-

"The averments made in paragraph 8 are wholly irrelevant and are denied. It is denied that the story line, the dress and/or the name "The Phantom" is not original. It is denied that Mr. Lee Falk was inspired by any story published in the New York Journal by the name "Yellow Kid" and that Mr. Falk adopted the idea from any such story. It is denied that the mask dress was inspired from a ballet. It is further denied that "The Phantom" is a purely descriptive expression. The plaintiffs have no objection if the first defendant uses "Ghost" as the title of its television Serial, or the name of its character. It is denied that the television Serial of the first defendant is an original expression of the first defendant. The first defendant has given statements to the effect that a project based on the plaintiff's character "The Phantom" has been his dream project and that he has "borrowed" the plaintiff's "character and concept". The first defendant has stated that he has been impressed by the character even as a young child and has gone on record stating that his Serial is based on the "Ghost Who Walks". This itself is a clear admission that the first defendant has copied. In fact, the first defendant has been so brazen about copying that he has actually gone to the press stating that "copyright in our country means the right to copy And to copy freely", which is exactly what the first defendant has done. The first defendant's own documents show that the main character in the first defendant's Serial "wears a body-suit and mask just like the Phantom of the picture books."

It is asserted in the replication that it is not only the idea but the manner of

expression of the idea, as indeed the total concept and feel of the plaintiff's comic books which has been copied by the first defendant. The plaintiffs have also filed an affidavit by Mr. Gulshan Rai, who is stated to be the Joint Managing Director of M/s. Diamond Comics P. Ltd. He has stated in the affidavit that M/s. Diamond Comics has been publishing comic books of the Phantom for more than 10 years. According to the affidavit of the deponent the title "Betaal" is very closely associated with the plaintiffs and if television Seriall entitled "Betaal" is telecasted in India, the viewing public is likely to think that the Seriall is based on Phantom. The affidavit is dated 25-3-1997. The deponent of the affidavit has given the approximate sales of books since 1990 to 1996 in the following terms :-

					Year	Quantity	Sold	
(Approximate)					1990			
3,00,000	1991	3,20,000	1992	3,28,000	1993	3,95,000	1994	4,05,000
1995	4,15,000			1996				4,39,000

10. On 26-3-1997 the learned senior Counsel for the plaintiffs Mr. Arun Jaitley submitted that the following similarities and differences could be seen which are relevant for deciding the copyright infringements :-

"1. The main character in the defendant's Seriall is called Betaal which is the Hindi equivalent of Phantom. Betaal wears a masked body suit identical to that of The Phantom. The purple body hose, with striped blue and black underpants, high boots, eye mask, two guns on either side of the hip, striped cuffs, have been copied entirely. Subsequently, the defendant changed the color from purple to black (exactly as in black and white comics of the plaintiff). Betaal wears a swastika symbol on his belt buckle instead of the skull on the belt buckle of The Phantom. (The peace sign of The Phantom Worn on his ling resembles the swastika).

2. Betaal lived in a full cave identical to that of The Phantom. The skull cave has now been substituted by a bat cave after objections were raised by the plaintiffs and the defendant sought legal opinion.

3. Betaal rides a white horse and has a German Shepherd dog, a bird (vulture/eagle), and a chimpanzee, exactly as in the plaintiff's comics, where the Phantom rides a white horse (Hero/Toofan), has a wolf (Devi/Shera) (which looks exactly like a German Shepherd dog), a Falcon (Flaka), and a chimpanzee (Chee Chee).

4. The settings in both are of a jungle, the people of the jungle, are tribals and the tribals are oppressed by villains (poachers) and the main character is their saviour. The Jungle is called Dongralu in the defendant's Seriall instead of Denkali in plaintiff's comics. Whereas the jungle settings in the defendant's episode are based on an Indian jungle, the snippets used in the pilot episode by the defendant are those of an African Jungle. The plaintiff's comics are based on a fictions jungle island in Africa. The defendant's Seriall also has drawls as part

of the Jungle tribes, which portray the pygmies in the plaintiff's comics.

5. The plaintiff's comics has a character "Moz Baba" who has seen The Phantom over generations and knows all about them. He is the character who knows all the old jungle saying. In the defendant's Seriall "Shangrila Baba" is a 108 year old man who saw The Phantom a hundred years ago when he was only 8 years old and it is he who has all the old jungle tales, including those Betaal having existed over a hundred years ago.

6. In the plaintiff's comics The Phantom has a love affair with a lady from the civilised world (Diana). In the defendant's Seriall also there is a lady who comes to the jungles from the civilised world and falls in love with Betaal. This character was initially christened "Diana", but the name was later changed to "Sonu" (This is apparent from the Hindi script submitted by the defendant to the plaintiffs, wherein in one place the character "Sonu" has been described as "Diana").

7. The phrase "The Phantom never dies" was popularised by the plaintiffs. According to the plaintiffs story-line. The Phantom continues from generation to generation thereby giving an impression that The Phantom never dies. This concept has been copied by the defendant. In the defendant's episode his character Betaal also never died and is resurrected after 100 years and will be resurrected every 100 years."

8. The Phantom is known as "The Ghost who Walks" ("Chalta Phirta Pret" in Hindi). In the defendant's Seriall Betaal is also a ghost who walks.

9. Just as the first Phantom makes a pledge to a skull to fight civil forces, Betaal also takes an oath to fight civil by breaking skull.

10. The plaintiff's comics have the figure of The Phantom carved out on stone and also has a mountain called "Phantom Head". In the defendant's Seriall, Shangrila Baba is a sculptor who carves out Betaal in stone.

11. In the defendants Seriall Betaal has sworn to returned fight evil and poachers, exactly as in the plaintiff's comics, wherein the first Phantom swore to fight "piracy, cruelty and injustice". Most stories in the plaintiff's comic books deal with The Phantom fighting poachers.

12. The defendant's Seriall also has a giant (Adimanav), exactly as in a few comics of the plaintiff.

13. The defendant's Seriall has a forest officer and a forest patrol exactly as in the plaintiff's comics."

11. The learned senior Counsel also referred to what is stated by the first defendant in the written statement in the following terms :-

"the entire story, concept, characters and idea of the said Seriall Betaal are mine and are not based on any other story or the comic strips."

"the answering defendant was inspired by the idea of Phantom but the same has

been differently and innovatively portrayed by the answering defendant in his proposed television Seriall."

12. The learned senior Counsel for the plaintiffs on 27-3-1997 referred to the various authorities on the point elaborating his arguments that the first defendant has infringed the copyright of the plaintiffs in the artistic and literary work and has been trying to pass off by this television Seriall, the main work of the plaintiffs. The Supreme Court in R.G. Anand Vs. Delux Films and Others, , laid down the following principles which have to be borne in mind while determining the question of the infringement of the copyright :-

"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 imitation of the copyrighted 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.

3. One of the surest and the safest test to 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 in 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."

13. The Supreme Court held that "the fundamental fact which has to be determined where a charge of violation of the copyright is made by the plaintiff against the defendant is to determine whether or not the defendant not only adopted the idea of the copyrighted work but has also adopted the manner, arrangement, situation to situation, scene to scene with minor changes or super-additions or embellishment here and there." The Supreme Court proceeded to say "if on a perusal of the copyrighted work the defendant's work appears to be

a transparent rephrasing or a copy of a substantial an material part of the original, the charge of plagiarism must stand proved. Care however must be taken to see whether the defendant has merely disguised piracy or has actually reproduced the original in a different form, different tone, different tenor so as to infuse a new life into the idea of the copyrighted work adopted by him. In the latter case there is no violation of the copyright".

14. The Supreme Court noticed that the main theme of the play was provincialism and the central idea of the "film" was provincialism and evils of parochialism. After referring to the facts and circumstances of the play and the film and noticing the similarities, the Supreme Court dismissed the appeal confirming the decision of the lower court. The Supreme Court ultimately held :-

"Thus, applying the principles enunciated above and the various tests laid down to determine whether in a particular case there has been a violation of the copyright we are of the opinion that the film produced by the defendants cannot be said to be a substantial or material copy of the play written by the plaintiff. We also find that the treatment of the film and the manner of its presentation on the screen is quite different from the one written by the plaintiff at the stage. We are also satisfied that after seeing the play and the film no prudent person can get an impression that the film appears to be a copy of the original play nor is there anything to show that the film is a substantial and material copy of the play. At the most the central idea of the play, namely, provincialism is undoubtedly the subject matter of the film along with other ideas also but it is well settled that a mere idea cannot be the subject-matter of copyright. Thus, the present case does not fulfill the conditions laid down for holding that the defendants have made a colorable imitation of the play.

On a close and careful comparison of the play and the picture but for the central idea (provincialism which is not protected by copyright), from scene to scene, situation to situation, in climax to anti-climax, pathos, bathos, in texture and treatment and purport and presentation, the picture is materially different from the play. As already indicated above, applying the various tests outlined above we are unable to hold that the defendants have committed an act of piracy in violating the copyright of the play."

15. The learned senior Counsel for the plaintiffs relied on the judgment this Court in Raja Pocket Books v. Radha Pocket Books 1997 PTC 84. The facts briefly stated are :

The plaintiff Raja Pocket Books is engaged in the business of publishing and distribution of paper back novels, books and comics. One of the comic book is a series titled "Nagraj", which is popularly among the younger generation. The character depicted in the plaintiff's comic book. Nagraj is attired in a green colour body stocking giving the impression of serpentine skin and red trunk is with a belt, which appears to be a snake. The character of "Nagraj" was designed for and on behalf of the plaintiffs by late Sh. Jagdish Pankaj in June 1985. Later,

a professional artist continued to create the series revolving around the exploits of the character Nagraj. Therefore, the plaintiff owned the copyright in the comic book series titled "Nagraj" as well as in the fictitious character of "Nagraj", its get up and appearance. The defendant used the same get up, published paper pack novel and comics naming the character "Nagesh". The plaintiff alleged that the comic series proposed and published by the defendant under the title "Nagesh" would amount to outright infringement of the plaintiff's copyright in the series "Nagraj".

16. The learned Judge held :-

"The rules of comparison to be adopted in judging the resemblance would be those as are stated in the decision of the Supreme Court in R. G. Anand's case (supra), namely, an unmistakable impression that the subsequent work appears to be, the copy of the original. Similarly about the theme of visual, phonetical similarity and over all impression of the two works that the same is likely to deceive such a man or cause confusion that he may make mistake in the goods of defendant for that of the plaintiff Nagraj and Nagesh having same meaning, namely, King snakes; Colour of comics is also green, gauntlets are ripped in both cases, functionally, both are capable of doing same and similar work, namely, sealing the walls and the roofs alike, hurling snakes, causing the objects to melt and the snakes capable of returning back and merging in the body of the character. For the purpose of climbing, both use the same material, namely, rope in the form of snake."

17. The learned Judge held "The defendant has no right to use same distinguishing or essential features or convey the same idea in any of its work." The learned Judge allowed the application for injunction.

18. I may state at the stage that the facts in the instant case are different. I viewed the film of the plaintiffs and also the pilot episode of the first defendant. Except an idea from Mr. Lee Falk being the same the two films are distinct and different and I am not able to find any similarities. The learned Senior Counsel for the plaintiffs submitted that the jungle scene, poachers, and old man Baba, and chimpanzee are all characters copied from the plaintiff's work. The learned Counsel Mr. Ajay Sahni for the first defendant submitted that the plaintiffs themselves through the book published in Hindi Phantom, which is at page 246, of the type set filed by the plaintiffs giving details about the work had stated thus (a translation in English as given below) :-

"In about 150 countries of the world Phantom has been read over, by old and young and are very popular. The originator of this powerful character Phantom is Lee Falk, who has also created the story of Mandrake. The stories of Phantom and his works are quite adventurous and interesting.

Lee Falk while studying in the American Universities thought of earning some extra pocket money. Then there he came across some published pictures in the New York Journal entitled Yellow Kid and was quite inspired and started making

some caricature and wrote some stories. But he was not satisfied. As a matter of coincidence, a neighbour of Lee Falk who was quite fond of trekking in the jungles used to narrate those adventurous stories to the kids of the locality.

Lee Falk was impressed by his neighbour's character in his stories and added some romance and lie to that character. Around that time Lee saw a ballet with a man wearing the body hose and the mask and Lee immediately made his comic character wear the same mask and the body hose. Now Phantom was born. But despite all efforts, Lee could not exploit his character and could not sell the same. But Lee did not lose heart but continued his work and at last, lady luck smiled on him.

One day when Lee had gone out, the son of the owner of King Features Syndicate came to his room and came across these features. He liked them so much and after Lee's return he had a long discussion on the features and the deal was struck. Lee sold his features for a handsome amount to King Features Syndicate and also got contracted with them. In the year 1937, a campaign was launched and the features were printed and which were accepted by the public at large. It went off well and so was the reputation of the comic. Through this digest, the Diamond Comic is trying to sell translated comic in Hindi for the Indian public."

Therefore, according to Mr. Sahni, the Phantom is an idea obtained by the plaintiffs from another source and their assertion in the plaint that it was invented by them is not correct and, Therefore, the whole foundation of the plaintiff's case crumbles down. Prima facie, I am of the view that the plaintiffs have not established that they have got copyright in artistic work "Phantom" or the literary work in the story line interplay, location and the incidents.

19. The learned senior Counsel for the plaintiffs relied upon the judgment of the Madras High Court in *C. Cunniah and Co. and Others Vs. Balraj and Co. and Another*, where the picture "Bala Mugugan" printed and published by the respondents in appeal was a colourable imitation of the picture "Mayura Priya" of the plaintiffs in which the plaintiffs own the copyright. The Madras High Court held that the work of the respondents did not constitute independent work. The Division Bench of the Madras High Court had given very cogent reasons in coming to the conclusions and that case is easily distinguishable. The ratio laid down therein would not apply to the facts of the case on hand.

20. The learned senior Counsel for the plaintiff also relied upon the judgment of the Madras High Court reported in *K. R. Venugopala v. Sangu Ganesan* 1971 Cri LJ 1098, wherein the learned Single Judge of the Madras High Court referred to observations of an English decision wherein it was said :-

"There might be and there will be obvious differences deliberately introduced to avoid a possible charge of infringement. If the court, on a comparison of the appellant's picture with the infringing picture, comes to the conclusion that the latter picture was consciously copied from the work of the former, that will be

sufficient to hold that the copyright is infringed."

There can be no exception to what is stated above but each case has to be considered on its facts and circumstances.

21. The learned senior Counsel for the plaintiffs stressed and tried to derive support from the observation of Kakewich J. in Hanfsataengl v. W. H. Smith 1905) 1 Ch. 519, wherein the learned Judge observed "A copy is that which comes so near to the original as to suggest that original to the mind of every person seeing it." The learned senior Counsel emphasised that the principle stated above has to be applied to the facts of this case and according to him, the similarities would show a substantial part of the plaintiff's work is reproduced by the first defendant. I am not able to accept this submission.

22. The learned senior Counsel for the plaintiffs then referred to a judgment of the Division Bench of the Calcutta High Court in Mohendra Chundra Nath Ghosh and Others Vs. Emperor, , wherein the Calcutta High Court held :-

"In deciding whether there is an infringement of copyright in pictures, the question is whether the offending pictures are copies of substantial portions of the copyright pictures. The figures may have been reduced in the offending pictures and sight modifications may have been introduced or the clothes and colours may have been different but it is sufficient if the main figures have an identical pose."

23. The learned senior Counsel for the plaintiffs sought assistance from the judgment of the Madras High Court in The Daily Calendar Supplying Bureau, Sivakasi Vs. The United Concern, , wherein the High Court held :

"What is essential is to see whether there is a reproduction of substantial part of the picture. There might be and there will be obvious differences deliberately introduced to avoid a possible charge of infringement. A bad copy does not cease to be a copy. If on comparison the court comes to the conclusion that the defendant's picture was consciously copied from the work of the plaintiff, that would be sufficient to hold that copyright is infringed. The Court held that the defendant's picture reproduced substantial parts of the plaintiff's picture, its plan, its design, its arrangement of all the important component parts, which help an artist to obtain a representation of the idea of a deity."

24. The learned senior Counsel for the plaintiffs relied upon the judgment of the Bombay High Court in N. T. Raghunathan v. All India Reporter Ltd. AIR 1971 Bom. 48, the Court held that head notes prepared by the plaintiff was copied by the defendant and the defendant not only had copied the idea but also the comparison of the ideas and the form in which they were expressed in the plaintiff's digest.

25. The learned senior Counsel for the plaintiffs relied upon the judgment reported in Harman Pictures v. Osborne 1967 2 All E.R. 324, which has been considered by the Supreme Court in R. G. Anand's case and it is not necessary

to dilate any further on this case.

26. Relating to fictional character, the learned senior Counsel for the plaintiff relied upon the judgment of the House of Lords in *King Features Syndicate v. Kleeman* 1941 2 All ER 403, the House of Lords laid down the test in the following terms :-

"The test to be applied is purely visual, the sketch and brooch being compared oculist subject a fidelibus. The appellant's copyright is in the actual sketch and not in the idea. There would be no infringement if the respondent had independently produced a similar figure without copying the sketch directly or indirectly. The question is whether there was copying of the actual sketch. Here the only evident of actual copying direct or indirect is similarity in regard to the figure, which is a substantial part of the sketch, between the copyright work and the alleged infringement. I think, however, that where there is substantial similarity, such similarity is prima facie evidence of copying, which the party charged may refute by evidence that, notwithstanding the similarity, there was no copying, but independent, creation."

27. The learned senior Counsel for the plaintiffs referred to *Detective Comics Inc. v. Buns Publications* 111 F. 2d 432, (Circuit Court in U.S.A.) wherein the character involving "Superman" was adopted by the defendant in its periodicals christened as Wonderman. The Court found that the defendant had used more than the general types and ideas and had appropriated the pictorial and literary details embodied in the plaintiff's copyright.

28. The learned senior Counsel for the plaintiffs relied upon the following decisions for the same proposition :-

1. *Conan Properties v. Conans Pizza Inc.*, (1985) 752 F 2d 145 .
2. *Shaw Bros (Hong King) Ltd. v. Golden Harvest (H.K.) Ltd.*, 1972 RPC 559.
3. *Children's Television Workshop Inc. v. Woolworth (NSW) Ltd.*, 1981 RPC 187.
4. *Mirage Studios v. Counter-Feat Clothing Co. Ltd.*, 1991 FSR 145.

29. I have gone through those cases and the Courts in each of those cases ad referred to the facts and had come to the conclusion after analysing the facts. Therefore, those cases do not really advance the case of the plaintiffs.

30. Regarding the protection of the title, the learned senior Counsel for the plaintiffs submitted that like a trade mark a title of a work is intangible and incorporeal copyright and is entitled to be protected. The learned senior Counsel relied upon a passage from the judgment of the Circuit Bench from the United States reported in *Rogers v. Grimaldi* 875 F. 2d 994. The learned senior Counsel also relied upon the judgment of this court in *Globe Super Parts v. Blue Super Flame Industries* 1986 PTC 235, and *B.K. Engineering Co. Vs. Ubhi Enterprises (Registered) and Another*, .

31. Relating to vernacular equivalents, the learned senior Counsel relied upon the judgment of the Supreme Court in *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, relating to the trade marks "Eagle" used by the respondents before the Supreme Court and "Eagle Brand" by the appellant for the same product sewing thread was used. The respondents James Chadwick started a passing off action and that failed. In 1942 the appellants applied for registration before the Registrar of Trade Marks, Bombay for the registration of the Vulture Brand under the Trade Marks Act, 1940. The Registrar of Trade Marks came to the conclusion "that the Appellants' mark so nearly resembled the mark of the Respondents as to be likely to deceive or cause confusion. He further held that to describe the mark of the Appellants as "Vulture Brand". When the device was that of an eagle was misleading and liable to cause confusion." That was reversed by the Single Judge of the Bombay High Court. There was an appeal to the Division Bench at the instance of the respondents. That appeal was allowed and the decision of the Division Bench was taken up to the Supreme Court. After considering the get up and other factors, the Supreme Court held :-

"So far as the present case is concerned the goods sold under the Respondents' trade mark are, well-known and are commonly asked for "as "Eagley" or "Eagle", and the particular feature of the trade mark of the Respondents by which the goods are identified and which is associated in the mind of the purchaser is the representation of an Eagle appearing in the trade mark. If the trade mark conveys the idea of an Eagle and if an unwary purchaser is likely to accept the goods of the Appellants as answering the requisition for Eagle good", then undoubtedly the Appellants' trade mark is one which would be likely to deceive or cause confusion. It is clear to us that the bird in the Appellants' trade mark is likely to be mistaken by an average man of ordinary intelligence as an Eagle and if he asked for Eagle goods and he got goods bearing this trade mark of the Appellants it is not likely that he would reject them by saying that this cannot be an Eagle. Two years prior to the application for registration, the Respondents (Appellants ?) described this particular bird an Eagle and called their brand Eagle Brand. The same bird was later on described by them a vulture and the Explanation offered was that they so described owing to an honest and "bona fide" mistake. We have no hesitation in holding that the Appellants' camouflaging an Eagle into a vulture by calling it such is likely to cause confusion. Whatever else may be said about the bird in the Appellants' trade mark it certainly does not represent a vulture or look like a vulture of any form or shape. What has been named by the plaintiffs as a vulture is really an eagle seated in a different posture ? That being so the High Court was perfectly right in the view that Shah J. was in error in interfering with the discretion possessed and exercised by the Registrar, and that the Appellants had failed to discharge the onus that rested heavily on them to prove that the trade mark which they wanted the Registrar to register was not likely to deceive or cause confusion."

32. The learned senior Counsel relied upon the judgment of the Madras High

Court reported in T.G. Balaji Chettiar Vs. Hindustan Lever Ltd., Bombay, , where it was held that the mark Surian, the Tamil equivalent of "Sun" was hand, to be deceptively similar. The learned senior Counsel also relied upon the judgment of this Court reported in Surya Roshni v. Electronic Sound 1996 IPLR 1.

33. After the films were seen, the learned senior Counsel for the plaintiffs made his submissions on 1-4-1997. The films were viewed on 27-3-1997. It was submitted that the plaintiff's character and defendant No. 1's character in the film the dramatical attributes are similar.

-----	plaintiff's	Character
Defendant's		Character
-----	The	character

continues from In the script it is mentioned generation to generation wearing "Sonu is very much impressed by the same distinctive costume the Super Hero. Not knowing its giving an impression that it is a ghost gets infatuated towards the same person, hence the him." - This itself is clearly phrases "The Phantom Never indicative of the fact that the Dies" and "The Ghost Who Walks." character will not show they attributes of a ghost but as he has risen from the grave after a hundred years the impression being conveyed is that "it is the ghost who walks" and "it never dies". The character has made his home in The defendant has filed documents a cave. to show that literal meaning of Betaal/ Vetaal in Hindi is a man who lives in a cave, exactly as the plaintiffs character. The character is only a human with The character has no qualities of highly specialised skills. He is fast a ghost. He is not impervious to in drawing his guns and moves with bullets, he cannot walk through lightning speed. Needs a horse for objects, he cannot fly, he cannot transportation and a wolf and a even scale walls. He needs high falcon for protection and a boots on his feet to walk, guns chimpanzee for delivering mail an for protection, a horse for messages. transportation and a dog and falcon for protection and a chimpanzee. The first Phantom was born when his The defendant's character also father was killed by pirates and "breaks a skull" and takes an he takes "oath" before a skull to "oath". A ghost taking oath ? The avenge his to father's death and defendant has attempted rely on i fight evil forces. the quote of Lord Krishna in Shri Bhagwad Gita that whenever there is evil on earth. I (Lord Krishna) will take rebirth. According to Shri Bhagwad Gita also rebirth will be in the form of a human and not a ghost. What the defendant is Therefore attempting to state is that his character (Betaal) is an avatar of Lord Krishna in a human form. The character signifies 21 The character was buried and has generations, each of which are a tomb stone. He too is Therefore buried and have a tomb stone. The a Christian. A Christian relying character is Therefore a Christian by on the Gita and wearing of religion. swastik and taking oath before a Shivling by breaking a Skull ? The character signifies 21 The character also has a tomb generations with each of the past stone. On the tomb stone is generations having a tomb in its inscribed "died 1897" (in i memory. English). The defendant's character was Therefore alive a hundred years ago, but has become a ghost only now in

1997. As people all over the world (Including Europe) had heard of and read about Betaal, these stories were about a real man and not a ghost. One of the distinctive features of As the tomb stone had an the character is that it comes from inscription in English it the civilised world, is educated and portrays that 100 years ago has a dual identity (The Phantom and "Betaal" came from the civilised Mr. Walker). It is under these world. Even 100 years ago Betaal circumstances that the character lived in a cave - a civilised has made a cave his home in the man was living in a cave ? A jungle. real man with the name "Betaal" ? Being a character which is a normal Despite being a ghost, he still human being, for continuity of future has "Sonu/Diana" being infatuated generations it is important that the with him and falling in love with character has a wife. It is here that him, not knowing he is a ghost character "Diana" fits in. despite, in the very first episode itself, witnessing him rise from the grave. The character is essentially the 21st The character rises from the generation of a family which over the grave after a 100 years and has years has built up a relationship and a readymade loyal horse, dog, loyalty of a horse, dog, a chimpanzee and a falcon. chimpanzee and a falcon.

It was submitted by the learned senior Counsel that from this it is clear that the intention of the first defendant was to sail as close to the plaintiffs as possible and give the viewers a clear impression that his character is indeed "The Phantom". The learned senior Counsel for the plaintiffs also give details about story line of the plaintiffs and the first defendant and the interplay between major characters. Regarding copying of situations and incidents, the following details are given :-

"main character lives in a natural cave of a distinctive shape (skull/bat) in the jungle.

main character has a predecessor(s) who also lived in the same cave and had the same attributes.

main character falls in love with a lady from who comes in search of main character from civilised world.

main character takes oath to fight civil forces before a skull.

main character rides a horse - the horse is not a dumb animal but actively participates with the main character in fighting evil forces. The horse also appears in many incidents without its ride and has actually independently saved the main character from trouble.

main character has a wold who is an extremely intelligent animal and who participates and assists main character in many ways. He is an extremely obedient servant to his master (the main character).

a chimpanzee assists in delivering messages and indeed provides substantial assistance to the main and associated characters.

an intelligent carnivorous bird (falcon) which also assists main character in many ways.

poachers shooting wild animals in Africa riding in Jeeps.

the forest giant knows of the main character (pg 45).

the main character carved in stone.

the old man of the jungle is aware of all the hidden secrets of the jungle.

I am not able to accept the arguments of the learned senior Counsel for the plaintiffs about features mentioned above.

34. The learned senior Counsel for the plaintiffs relied upon the opinion expressed by the Authors in various text books wherein the learned Authors had expressed the same opinion as in the cases referred to by me above.

35. The learned Counsel for the first defendant Mr. Ajay Sahni submitted that copyright law is not concerned with the reproduction of the ideas, but with reproduction of the form in which ideas are expressed.

36. It is not necessary to refer to the other details but in the light of the principles of law laid down by the Supreme Court in R.G. Anand Vs. Delux Films and Others, it is not necessary to indulge in any exercise in formulating any new principles for being applied to the facts of this case. The learned Counsel Mr. Ajay Sahni submitted that comic Tarzan had similar features and the use of vulture/eagle, the forest officers and other things are quite common in all the comics and the plaintiffs cannot claim any copyright. The learned Counsel also referred to Bat woman, comic Robin and Comic Superman wherein also the similar things are found.

37. The learned senior Counsel for the plaintiffs on 4-4-1997 submitted a note reiterating the submissions made already in a different from.

38. On a consideration of the conspectus of the facts submitted before me, I am very clear in my mind that the first defendant is not at all guilty of infringing the copyright of the literary and artistic work of the plaintiffs and he is not guilty of passing off.

39. The learned senior Counsel for the plaintiffs relied upon the news item published wherein the statement alleged to have been made by the first defendant is published. According to the learned senior Counsel the first defendant had clearly admitted that he had copied the work of the plaintiffs. Relating to the character Diana in the script sent by the first defendant, which is in Hindi, we can find the name Diana. Therefore, the first defendant had clearly taken out the work of the plaintiffs and had copied the same.

40. It is not the case of the plaintiffs that the first defendant is publishing comics, using the name and the materials and the character used by the plaintiffs. We are concerned with only the tele Serial now attempted by the first

defendant. If a person uses materials from what may be called existing in the planet and uses them for a different purpose, though idea may be the same as pointed out by the Supreme Court, there is no infringement or passing off. The central idea in the work of the plaintiffs and the work of the first defendant is not at all the same. What is contended by the plaintiffs is the wearing of the mask by the main character and the other activities of the main character in the work of the plaintiffs are used by the first defendant in his work. Finally, there is no basis. The story projected by the first defendant is entirely different and simply because there are horses, dogs and chimpanzees and an old man called Baba with jungle background one cannot say there is any infringement by the other. The learned Counsel for the first defendant submitted that all characters in all comics are shown to wear masks and that is done to maintain suspense. The plaintiffs have not produced materials to show that they have been continuously using the mark Vetal/Betaal which would entitle them relating to the passing off characters and other features. On 25-3-1997 the plaintiffs filed type set of papers. Page 1 of the type set Hindi word "Betaal Parampara" is mentioned. That year is not mentioned. Page 2 Indrajal Comics Betaal is mentioned. That is of the year 1984. At page 3 also I find the word Betaal. That is of the year 1983. At page 41 see the name Betaal. In page 5 Betaal is mentioned. The year is not shown. In page 6 also Betaal is mentioned. In page 7 Betaal is mentioned. At pages 8, and 10 Betaal is mentioned. From page 11 onwards different matter is referred to. At page 15 a page of a particular Comic Journal is shown wherein, according to the plaintiffs, the bust of the Phantom and the Denkali Jungle are shown. From page 16, I am able to see a dog and horse. In page 17 also a page of the comic is shown wherein the plaintiffs have indicated Moz Baba and Diana from the civilised world. In page 18 also Moz Baba is indicated. In page 19 the marriage of ghost is shown. Page 20 a page from a Comic Journal where the plaintiffs had indicated the Phantom without its costume. At page 21 the plaintiffs had highlighted the first of Phantom wearing Swastika. Therefore, I cannot say that the plaintiffs have established any copyright in Betaal. The assertion in the plaint is "in fact the Hindi Comic strips of the plaintiffs are also christened Betaal. But no foundation has been laid for establishing the copyright. As pointed by the Supreme Court, the Courts have to consider the whole impact of the work impugned on the viewers as against the work of the plaintiffs. Therefore, I am of the view that the plaintiffs have not established, *aspirin facie*, strong case for the grant of injunction. When it is so, I need not go into the question of balance of convenience. Accordingly, I.A. 20/97 is dismissed. There shall be no orders to costs.

S. No. 10/97

Post the matter for framing of issues on the 20th of August 1997.

41. Application dismissed.