
(2004) 10 DEL CK 0099

In the Delhi High Court

Case No : FAO 213 of 2003 and FAO (OS) 212 of 2003

Satilila Charitable Society and Another

APPELLANT

Vs

Skyline Education Institute (I) (P) Ltd.

RESPONDENT

Date of Decision : 06-10-2004

Acts Referred:

University Grants Commission Act, 1956 — Section 22, 3

Citation : (2004) 10 DEL CK 0099

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

Bench : Single Bench

Advocate : Arun Bhardwaj, for the Appellant; V.P. Singh Pravin Anand and Swetashree Majumdar, for the Respondent

Judgement

Vijender Jain, J.—By a common order, the appeals filed by the appellant and the respondent can be disposed of as the arguments advanced in both the appeals are similar. The respondents have filed a suit, inter alia, praying an order for permanent injunction restraining the defendants, their officers, servants, agents, representatives, franchisees or any of them, from using the name "Skyline", as a part of their trading name in relation to their activities in the field of education and/or as a trade mark in relation to any printed matter, including course material, literature, syllabus, etc. or in any other manner whatsoever so as to pass off their goods and services as and for those of the plaintiff. Thereafter there were other prayers for damages, rendition of accounts and delivery of all printed material. The learned Single Judge after hearing the parties at length and holding that prima facie case, balance of convenience is in favor of the appellant, still granted a limited injunction against the appellant to the following effect:-

"Restraining from starting any new courses similar to the course run by the plaintiff for graduate and post-graduate education in management, travel and tourism".

2. The ex parte ad interim injunction order dated 1st October, 2002 was modified to the extent that the appellant would be free to make publicity/issue of

advertisement, etc. in their existing name for any course in technical/engineering education provided the said advertisement contained a note to the effect that the institute of the appellant was not related to the respondent's institute being run under the name of Skyline Educational Institute (India) Private Limited in any way.

3. Mr. Bhardwaj, learned counsel appearing for the appellant, has contended that the learned single Judge while holding that the word "Skyline" was a generic word and after taking into consideration, the respective submissions of both the parties, prima facie, came to the conclusion that the word "Skyline" was neither an invented nor specific word and is to be considered as a generic word. When it was shown that a large number of persons and institutions were using said word either as a part of their trading name and the said word was also being used by a very large number of people all over the world. The learned single Judge went on holding that even a prior user of such a mark by the respondent would not vest any exclusive right in them to use the said word in exclusion of others. The learned single Judge also took note of the fact that in the Trade and Mercantile Marks Act, 1958 does not have category of "educational institute" for a class of goods for which trade mark can be registered. It was also held by the learned single Judge that the educational institutions like the respondent had no approval under the All India Council for Technical Education Act and, Therefore, they cannot claim any equitable and discretionary relief. Further in paragraph 11 of the impugned order, the learned single Judge also held that admittedly courses imparted by the appellant were not related to the management in tour and travels etc. which were the courses run by the respondent institute. While discussing deceptive similarity, it was held as to whether there is likelihood of any confusion arising in the mind of the general public, the prospective students who want to pursue their studies either in the respondent or the appellant's institute were educative class and knew as to which courses from which institute they would like to study, Therefore, it cannot be said that use of word "skyline" can be deceptive. The learned single Judge held that in the opinion of the Court merely by the use of word "Skyline" as a prefix in the names of the two institutes, there is no likelihood of such a confusion because the full name of the plaintiff institute is "Skyline Education Institute (India) Private Limited" while that of the defendant is "Skyline Institute of Engineering and Technology" are distinctive enough. The words engineering and technology used in the defendant's name are sufficient to indicate to all concerned that the defendant is not the same institute as the plaintiff. In any case, care can be taken to clarify such a confusion even if there is any likelihood of such a confusion. On the basis of these findings, it was contended by learned counsel for the appellant that when in the prayer clause and in the arguments advanced before the trial Court, the issue was of deceptive similarity in using the name Skyline, the learned single Judge fell in error by imposing a restriction on the appellant not to conduct courses in MBA as that was not the argument which was advanced before the learned single Judge. It was vehemently contended by Mr. Bhardwaj before us

that the respondent had only started their management course as a study centre either as BBA or MBA from 2003 as would be evident from the material placed on record and, Therefore, the finding of the learned single Judge that the appellant was not entitled to start a course in management is contrary to record and has resulted in manifest injustice to the appellant. Mr. Bhardwaj has also referred to a letter of Sikkim Manipal University of Health Medical and Technological Sciences appearing at page 428 of the paper book written by Pro Vice Chancellor of the said university dated December 24, 2003 to the respondent and on the basis of the said letter it was contended before us that Sikkim Manipal University has only approved the plaintiff as a Study Center.

4. It was further contended that in law the respondent has neither any right to award any degree nor can be considered as a college/school to impart education in MBA/BBA courses. Learned counsel for the appellant has also contended that as a matter of fact pursuant to Section 22 of the University Grants Commission Act which pertains to right to confer degrees, the respondent cannot award any degree in these course. Section 22 of the University Grants Commission Act, 1956 is to the following effect:-

"22. Right to confer degrees -- (1) The right of conferring or granting degree shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University u/s 3 or an institution specially empowered by an Act of Parliament to confer or grant degree.

(2) Save as provided in Sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette."

5. It was contended before us that the respondent cannot confer any degree and, Therefore, in this regard any advertisement issued by the respondent was to misrepresent that they are in law entitled to confer a degree to the students who study in their institutions. It was further contended that as far as the appellant is concerned, they were affiliated and recognised under the All-India Council for Technical Education, 1987. Mr. Bhardwaj has contended in detail that All-India Council for Technical Education was set up with the objective of proper planning and coordinated development of the technical educational system throughout the country, promotion of qualitative improvement of technical education in relation of planned qualitative growth, and regulation of the system and proper maintenance of norms and standards under technical education system and matters connected therewith.

6. It was contended that if the respondent was not affiliated or recognised under All-India Council for Technical Education Act, 1987, they could not have imparted any degree and they could not have imparted education in management courses

and, Therefore, on the basis of aforesaid argument, it was contended before us that the impugned order prohibiting the appellant not to start their courses of MBA was against the well-established principle as well as incorrect in view of the legal situation emerging from the objective of aforesaid Acts and regulations made.

7. Mr. Bhardwaj further contended that there is no question of deception for students seeking admission to one institute and the other passing off on the basis of the word "skyline". It was contended that the word "skyline" is generic, Therefore, students who would like to go to the institute run by the respondent would go to the institute of the respondent and students who would like to take education in the institute of the appellant would go to the institute of the appellant. It was contended that the appellant uses the word "skyline" in conjunction with Skyline Institute of Engineering and Technology whereas the respondent uses the word "Skyline Business School". Therefore, it was contended that there was no question of deception or deceptive similarity between the two names. Learned counsel for the appellant also relied on a judgment of a Division Bench of this Court in the case of S.B.L. Ltd. v. Himalaya Drug Co.; 1997 Vol.2 Arbitration Law Report 650.

"Reverting back to the facts of the case, from the documentary evidence filed we are satisfied that there are about 100 drugs in the market using the abbreviation "Liv" made out of the word Liver and organ of the human body, as a constituent of names of medicinal/pharmaceutical preparations with some prefix or suffix—mostly suffixes meant for treatment of ailments or diseases associated with liver. Liv has thus become a generic term and publici juris. It is descriptive in nature and common in usage. Nobody can claim an exclusive right to the use of "Liv" as a constituent of any trade mark. The class of customers dealing with medicines would distinguish the name of the medicines by ignoring "Liv" and by assigning weight to the prefix or suffix so as to associate the name with the manufacturer. The possibility of deception or confusion is reduced practically to nil in view of the fact that the medicine will be sold on medical prescription and by licensed dealers well versed in the field and having knowledge of medicines. The two rival marks Liv. 52 and LJV-T contain a, common feature Liv which is not only descriptive but also publici juris; a customer will tend to ignore the common feature and will pay more attention to uncommon features, i.e., 52 and . The two do not have such phonetic similarity as to make it objectionable."

8. Distinguishing the judgment of the Wander Ltd. and Anr. v. Antox India (P) Ltd; 1991 PTC 1, the learned counsel for the appellant also relied upon paragraph 9 of the said judgment and contended that need for protection must be weighed against the corresponding need of the defendant to be protected against injury and the Court must weigh one need against another and determine where the balance of convenience lies. Paragraph 9 is reproduced as under:-

"Usually, the prayer for grant of an interlocutory injunction is at a stage when the

existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favor at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience lies." The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to case where the defendant is yet to commence his enterprise, are attracted."

9. It was contended that as per the case of respondent the respondent has only become a "study centre" of Sikkim-Manipal University in 2003 and, Therefore, the balance of convenience was not in restraining the appellant from offering its course in management. In its "Skyline Institute of Engineering and Technology" which has approval of All India Council for Technical Education and for which appellant has paid about 4.50 crores for land and has spent about 10.50 crores on the infrastructure built in an area of 13 acres in comparison to respondent who is running a study centre in a clandestine manner from a portion of illegally built rented portion of Laxman Public School.

10. On the other hand, Mr. V.P. Singh, Learned senior counsel for the respondent has also filed an appeal against the order of the learned single Judge. He has filed an appeal impugning the order of the learned single Judge on the ground that word "skyline" in relation to education is not generic as it has gathered a secondary meaning qua the respondent on accounts its long usage, association, goodwill, amount invested by the respondent. It was further contended that Therefore this word qua education has become an adoptive word. It was also contended by Mr. Singh that Court will not go into the microanalysis view but will take a holistic approach for determining the question of passing off. It was also contended by Mr. Singh in the appeal filed by the appellant that once the learned single Judge has come to a, prima facie, conclusion, this Court while sitting as an Appellate Court will not substitute its own finding with the finding of the learned single Judge until and unless this Court comes to a conclusion that the findings are so perverse or manifestly unjust so as to warrant interference by the Appellate Court. It was also contended that when a larger relief is sought by the

plaintiff, that is the respondent herein, the Court can mould its relief, can grant a lesser relief than what has been prayed for by the plaintiff. Mr. Singh has cited *Wander Ltd. and Anr. v. Antox India (P) Ltd*; 1991 PTC 1, relevant paragraph 13 is reproduced as under:-

"The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the Court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to those principles Gajendragadkar, J in *The Printers (Mysore) Private Ltd. Vs. Pothan Joseph*, said:

"..... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseption and Co. v. Johnston* the law as to the reversal by a court of appeal of an order made by a Judge below in the exercise of discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case. The appellate judgment does not seem to defer to this principle."

11. It was also contended by Mr. Singh that on 21st August, 1997, a letter was received from Association of Indian Universities, inter alia, stating that the University of Lincolnshire and Humberside, UK was an accredited university vested with the Royal Charter and a Member of Association of Commonwealth Universities. On the basis of the said letter, it was contended that this position was recognised by the Association of Indian Universities. It was contended by Mr. Singh that for respondent's institute being a study centre reliance has been placed by the appellant on the basis of a notification issued by the University Grants Commission on UGC (Establishment and Maintenance of Standards in Private Universities) and, Therefore, same will not be applicable to the case of the respondent as respondent is not an affiliate of a private university but of a deemed university, i.e., Manipal Academy of Higher Education. It was also contended that in the said regulation, a private university was defined and, Therefore, that regulation will not be applicable to the case of the respondent. The institute of respondent is a "study centre" cannot be disputed as is apparent from the documents produced by the respondent himself. If the notification relied

on by the appellant is not applicable then which notification is applicable to respondent and how the "study centre" of respondent not requiring any approval from the All India Council for Technical Education is still equivalent to the Institute of the appellant duly approved by the AICTE, has not been shown on behalf of the respondent. Mr. Singh, however, further contended that Section 3 of the University Grants Commission defines a deemed university and it was contended that affiliation of the respondent is with the deemed university, Therefore, it cannot be said that the respondent was not an affiliate of a deemed university. It was contended that the deemed university will have the same privileges and parameters of regulation as other universities. It was further contended by learned counsel for the respondent that the respondent has large public prestige earned by hard effort and high cost and in the circumstances the learned single Judge ought to have granted complete restrain from using the word skyline against the appellant. Learned counsel for the respondent who is appellant in FAO (OS) 212 cited *Cornell University v. Messing Bakeries, Inc.*; New York Supreme Court 105 USPQ 140, relevant portion of which is reproduced as under:-

"[1] We have no difficulty in holding to be valid Cornell's argument that it has a legal interest in preventing the exploitation of its name for business purposes. It is not necessary to jurisdiction or to relief that plaintiff be another business in the same line. Because the university is a university and not a baker it is not to be deprived of every legal interest in the use of "Cornell * * * Bread." The ground of equitable intervention is not merely "unfair competition" in the limited sense of protecting the solidly acquired rights of one business enterprise against another striving for the same market. Equity may also shield the thrust by business into the kind of legal rights acquired in areas entirely removed from commercial activities.

The theory underlying injunctive interference is that an educational institution which has won large public prestige by hard effort and at high cost ought not, against its will, have that prestige diluted by a commercial use of its name, suggesting connection or benefit to the institution from the enterprise."

12. To somewhat similar effect, the learned counsel for the respondent has cited *The President and Trustees of Colby College v. Colby College-New Hampshire* 185 USPQ 65. Learned counsel also relied on *Cadila Healthcare Ltd. v. Cadila Pharmaceutical Ltd.*; 2001 PTC 300 and on *Bharathidasan University v. All India Council for Technical Education*; AIR 2001 SC 2861. On the basis of *Bharathidasan University v. All India Council for Technical Education* (Supra), it was contended by Mr. Singh that All India Council for Technical Education accredited under the Act is not intended to be an authority either superior to or supervise and control the universities and thereby super impose itself upon such university merely for the reason that it is imparting teaching and technical education or programmes in any of its departments or units. Relying on *Bharathidasan's* case, it was contended that the respondent being a "study

centre" was a unit of Manipal Academy of Higher Education and, Therefore, the supervisory role of All India Council for Technical Education will not be applicable and would not control the functions of Manipal Academy of Higher Education nor any of its "study centre". Learned counsel relied upon paragraph 10 of the said judgment which are as under:-

"All these vitally important aspects go to show that the AICTE created under the Act is not intended to be an Authority either superior to or supervise and control the Universities and thereby super impose itself upon such Universities merely for the reason that it/is imparting teaching in technical education or programmes in any of its Departments or Units. A careful scanning through of the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition, will show that the role of AICTE vis-a-vis the Universities is only advisory, recommendatory and a guiding factor and thereby subserve the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself, except submitting a Report to the UGC for appropriate action. The conscious and deliberate omission to enact any such provision in the AICTE Act in respect of Universities is not only a positive indicator but should be also one of the determining factors in adjudging the status, role and activities of AICTE vis-a-vis Universities and the activities and functioning of its departments and units. All these vitally important facets with so much glaring significance of the scheme underlying the Act and the language of the various provisions seem to have escaped the notice of the learned Judges."

13. We have given our careful consideration to the arguments advanced by learned counsel appearing for both the parties. As a matter of fact, we have already referred to the impugned order insofar as it discussed the relevant considerations and the established norms for the grant of an injunction or refusal to grant an injunction. Normally once all the ingredients like prima facie case, balance of convenience, equity if not found in favor of grant of injunction, injunction in any form ought not to have been granted. At the same time, that does not mean that Court in order to do justice cannot mould the relief or can grant an injunction in terms not prayed for to do justice between the parties. The concept of grant of injunction also have to be seen in the light as to what would be the loss suffered on account of an injury by non-grant of such an injunction. The argument which has been raised before us that it was basically respondents suit for grant of an injunction against the appellant from using the word Skyline. Having come to the conclusion that Skyline was a word which was used by a very large number of people in India and abroad and it was a generic word, we cannot appreciate as to how the learned single Judge has granted an injunction against the appellant not to start courses in management. To say the least, the present litigation is to have more commerce in education and less education in commerce. Private commercial houses by advertising fancy name of foreign universities lure students in this Country. All this exercise is not in realm of imparting education but knowing fully well that in India the name of a foreign university is lucrative enough to get larger chunk of money from the pockets of

the parents. What is the value of these degrees, whether they are permitted to do so or not, we will advert later. Here is a classic case of the respondent who got letters from the University of Lincolnshire and Humberside, UK both dated 17th October, 1996 which too was for a period of five years only with effect from 1st May, 1997. It was a certificate which the respondent was to give in travel and tourism. However, respondent started giving advertisements for education in, BBA (Hons.) with specialisation in marketing or tourism. One such advertisement is at page 516 of the paper book. It was contended before us by Mr. Singh that on 11th March, 1998 they had also an arrangement of BBA Marketing programme from the said university. At this stage, we would not like to go to the question whether the respondent could have represented that they could offer courses in BBA Marketing or not, what is of relevance is even if we accept the argument of learned counsel for the respondent that they are "study centre" of a deemed university, Manipal Academy of Higher Education, that is also from the year 2003. The authorisation to start courses came in the year 2003, although it was contended by the respondent that they have started courses from 2001. Was it justifiable on their part? Whether they could do so? Was there any legal bar? All are these issues which would be taken care of in the trial. Both the parties would be at liberty to lead evidence and argue the matter. At this stage, when the learned trial Judge has not entertained the plea of the respondent of prima facie case, balance of convenience and irreparable injury to respondent restraining the appellant not to go ahead with their courses of BBA Management and MBA Management after due approval from AICTE in comparison to respondent being a "Study Center" only was without any basis. We would also like to quote a public notice which is at page 129 of the paper book issued by the All India Council for Technical Education cautioning about this mushroom growth of foreign backed universities luring Indian students emptying their hard earned money.

"PUBLIC NOTICE

Advertisement No.AICTE/24/2002

All India Council for Technical Education (AICTE) has been established by an Act of Parliament (Act 52 of 1987) with a view to the proper planning and coordinated development of the technical education system throughout the country, the promotion of qualitative improvements of such education in relation to planned qualitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith. "Technical Education" means programme of education, research and training in Engineering, Technology, Architecture, Town Planning, Management, Pharmacy and Applied Arts and Crafts.

The AICTE is empowered by the Parliament Act to grant approval for establishment of institutions for conduct of technical courses. No institution is permitted to conduct technical courses without prior approval from the ACITE. The AICTE has published a directory of technical institutions approved for

conduct of technical courses and is available at its head Quarters, New Delhi and its seven Regional Offices located at Chandigarh, Kanpur, Kolkatta, Bhopal, Mumbai, Bangalore and Chennai. The AICTE approved list of technical institutions and courses is also available in the web site: www:aicte.ernet.in.

The AICTE inter alias has also been entrusted with the responsibility of taking appropriate steps to prevent commercialization of technical education at all levels. It has come to the notice of the AICTE that certain institutions have put up advertisements inviting applications for admission to technical courses, which are started without prior approval from the AICTE.

It is illegal to conduct technical courses without statutory approval from the AICTE and appropriate actions will be taken against such institutions. In this regard, the general public is advised not to take admission into such unapproved courses.

Members Secretary"

14. In *Bharathidasan*'s case (supra) at page 2866, the Supreme Court observed:-

"However, in recent years, a large number of private engineering colleges and polytechnics have come up in complete disregard of the guidelines, laid down by the All India Council for Technical Education and taking into account the serious deficiencies of even rudimentary infrastructure necessary for imparting proper education and training and the need to maintain educational standards and curtail the growing erosion of standards statutory authority was meant to be conferred upon AICTE to play its role more effectively by enacting the AICTE Act."

15. In view of globalisation of economy in educational sphere hitherto, India has its own institutions of excellence but in a country of one billion people and India emerging as Fourth largest economic power, should a school or a unit or a study centre ask for monopoly and insist that because of name "skyline" no other institute offering different courses, having distinguishable name cannot offer other opportunities to students of getting education. The same will neither be in the spirit of imparting meaningful, effective education and will also tilt the balance in favor of schools which have got some kind of an agreement or collaboration with some foreign universities not in consonance with norms laid down by the AICTE. Therefore, the authorities cited by the learned counsel for the respondent pertaining to Cornell University (Supra) is totally distinguishable in the facts and circumstances of the case. Cornell University is a well established university, a century old university. Said name was used by a bakery. It was in the context of a bakery using the name of Cornell that the Court came to the conclusion that it should not be permitted. As a matter of fact, the Court held that the prestige which has been attached to the Cornell University would be diluted by the commercial use of the name. Similarly the reliance placed by learned counsel for the respondent on Colby College's case is also misplaced in the facts and circumstances of this case.

16. Judging from any angle, we do not see that the learned trial Judge was right in restraining the appellant from using the word "skyline" with its BBA and MBA course more so said courses were never offered or could have been offered prior to 2003 by the respondent. We also find no force in the argument of the counsel for the respondent that the word "skyline" was not a generic word and was an adoptive word as far as education is concerned. A student who would like to go to an educational institution, he is not a lay customer. If a student likes to go to St. Stephens College in Delhi or want to go to Sri Ram College of Commerce or Hindu College, he will go to these colleges and not to other although there may be similarity of names of other colleges. When the learned single Judge came to the conclusion that there is no similarity in the name of two parties, appellant using the name "skyline" as a prefix with the institute of technology and engineering and the respondent using "skyline business school", a student would not get any deception by both names. A very large number of institutes, firms and companies etc. are using the word "Skyline" as part of their name which fact has not been categorically denied by the respondent. Though the Supreme Court has held in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., that education has never been commerce in this country, making it one is opposed to ethos, tradition and sensibilities of this country. It was observed by the Supreme Court that imparting education has never been treated as a trade or business in this country since time immemorial and it has been treated as a religious duty and a charitable activity.

17. It is contended that respondent has applied for trade mark in Clause 16 in respect of publicity brochures etc. and he is trying to mislead in respect of education on the ground that he is a prior user. The learned single Judge on careful appreciation of pleadings and documents had held that respondent prima facie does not have any case nor has balance of convenience in his favor nor shall suffer any irreparable loss and injury. We also hold so and consequently the learned single Judge after holding so was not entitled to grant and impose any restriction on the appellant.

18. Therefore, we find no merit in the appeal preferred by the respondent. The same is, accordingly, dismissed. We, however, allow the appeal of the appellant. That part of the order which prohibits the appellant from not allowing the appellant to offer courses of management with due approval of AICTE is set aside. Appeals 213 and 212 of 2003 are disposed of and the parties are left to bear their own costs.

19. Nothing said would be an expression of opinion on the merit of the case in the facts and circumstances.