
(1994) 04 KAR CK 0007
In the Karnataka High Court
Case No : M.F.A. No. 330 of 1994

Times Publishing House Ltd.

APPELLANT

Vs

The Financial Times Ltd.

RESPONDENT

Date of Decision : 19-04-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 151

Citation : (1994) ILR (Kar) 2068 : (1995) 1 KarLJ 219

Hon'ble Judges : R. Ramakrishna, J

Bench : Single Bench

Advocate : Arun Jaitley, for Uday Holla and Hemant Singh and B.V. Acharya, General, for the Appellant; S. Vijay Shankar, Senior Advocate for K.G. Reghavan for R-1, Santosh Hegde, senior Advocate for Ramesh Kulkarni for R-2, for the Respondent

Final Decision : Allowed

Judgement

R. Ramakrishna, J.—This Appeal is confined to the order on I.A.No. I, dated 2-3-1984 passed by the 17th Additional City Civil Judge, Bangalore in O.S.No. 7087 of 1983. The learned Civil Judge passed a common order on I.A.Nos. I and II. I.A.No. I is filed under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure. The first respondent prayed for grant of a temporary injunction abstraining the appellant and the second respondent from printing, publishing or in any manner using in relation to any news papers, publications, magazines, periodicals or stationery bearing the impugned trade mark "Financial Times" or any other deceptively similar trade mark so as to infringe the plaintiff's registered trade mark No. 468937. By I.A.No. II the relief claimed was an order of temporary injunction under "he same provisions of law to restrain the appellant to pass off or enable others to pass off the first respondent's publication arid for the benefit of the first respondent as in some way connected with the said publications pending disposal of the suit. The appellant, however, initially questioned the order on I.A.No. I which order substantially prevent the appellant from printing and publishing his newspaper "Financial Times" and the

order passed on IANo. II is consequential to the order on I.A.No. I. However, the learned Advocate for the appellant, submitted that due to urgency, the appellant filed the appeal initially against the order on I.A.No. I.

2. The first respondent-Company is the Financial Times Ltd., a Company incorporated under the Companies Act, 1908 to 1917 having its registered office at Southwark Bridge, London. They are carrying on business, inter alia, as publishers of newspapers, magazines and periodicals. One such newspaper published from the first respondent is under the title "Financial Times". The first respondent claimed relief for the infringement of his registered trade mark "Financial Times" and acts of passing off committed by the appellant and the second respondent by using the title "Financial Times" in respect of their publications.

3. According to the first respondent his newspaper "Financial Times" mainly deals with financial affairs. The publication spread over to London, Tokyo, Frankfurt, Mew York and Paris. On account of excellent report, this paper is extensively read throughout the world including India.

4. The first respondent obtained registration of the trade mark "Financial Times" under No. 468937 in Class 16 in respect of printed matter, newspapers, periodical publications, books, stationery, institutional and teaching materials under the provisions of the Trade and Merchandise Marks Act, 1958 (hereinafter referred to as the TMM" Act"). This registration is consequent to the application filed on 9-3-1987. He also obtained the registration of this trade mark in class 9, His further case is that he has also obtained registration of this trade mark "Financial Times" in United Kingdom, Hong Kong, China, Thailand, Singapore, South Korea and Taiwan. Since this publication "Financial Times" has world wide circulation and also it forms a prominent feature of the first respondent's corporate name and also represents the house mark of the first respondent, this right cannot be infringed. It is also exporting "Financial Times" to India by appointing two distributors.

5. The first respondent further contends that on receipt of three letters from the appellant, as per Document Nos. 12 to 14, he was obliged to make some enquiry and then came to know that the appellant and the first respondent are publishing a newspaper under the title "Financial Times". On enquiry, the first respondent further came to know that this newspaper is offered on complementary basis with the Economic Times newspaper with a view to trade upon the first repondent's reputation and goodwill by deliberately adopting this method. The further case is that the appellant adopted an identical style of writing "Financial Times" and used light pink paper for printing the publication which is similar to the colour of the first respondent's "Financial Times". The first respondent with these basic averments has prayed for a perpetual order of injunction restraining publication, Rs.1 lakh by way of damages for infringement and passing off and destruction off all the newspaper published by the appellant.

6. The appellant and the first respondent have resisted the suit and also the applications for grant of temporary relief in favour of the second respondent. It is to be noted here that the appellant is M/s Times Publishing House Ltd., a Company incorporated on 1-9-1983 under the Companies Act, 1956 and also registered with the Registrar of Companies, Delhi and Haryana. This Company is engaged in the business of printing, publishing and selling of newspapers and magazines. On 23-7-1990 the Registrar of Newspaper for India issued a Certificate under the Press and Registration of Books Act, 1867 (hereinafter referred to as the "PRB Act") registering the title of the newspaper "Financial Times" to be published by the appellant Company. The second respondent M/s Welcast Press is a printer and the place of publication is also in Bangalore.

7. The appellant initially contended that the PRB Act is a special Act for regulation of printing presses and newspapers in conformity with Section 5 of the PRB Act and the publication of the appellant is exclusively governed by PRB Act and therefore TMM Act is not applicable.

8. In the counter affidavit sworn to by the Senior Manager and duly constituted attorney of the appellant Company, refuted almost all the averments made in I.A.No. I for grant of temporary injunction. He states that the newspaper in India shall be published in conformity with the Rules provided under the PRB Act and the registration being a pre-requisite, the appellant cannot be prevented to publish his newspaper, it is further contended that since the appellant has obtained a Certificate of Registration by the Registrar of Newspaper for India, he alone can publish the newspaper "Financial Times" and none else in India, The PRB Act is a special legislation which controls printing and publishing of news paper and grant of title or names of newspaper in India. Since it is a special legislation the general legislation of the TMM Act gets automatically excluded. The first respondent obtained an expert injunction suppressing these facts.

The appellant further contends that he has commenced publication in the year 1990 and he is also paying statutory fee levied by the Press Council of India on the basis of the number of copies circulated. The circulation ranged from 15,000 to 50,000 initially and it has touched a figure of 2 lakhs copies and therefore fresh Certificate of Registration was obtained to publish this paper as Bombay and Delhi edition. The main contention is that he is a legitimate printer duly registered under the Act and therefore the news print quota is also allotted. The further contention is that the first respondent, a foreign Company who does not carry any publishing activity in India nor it has registered under the PRB Act, it has no right over the title "Financial Times" and therefore the suit itself is not maintainable. Its further case is that the titles to the newspapers are highly territorial in nature and therefore, publishers of newspaper at abroad cannot object to the newspapers being published in similar title in different Country. The further contention of the appellant is that the impugned registration Trade Mark was obtained by misrepresentation and therefore the appellant filed rectification proceedings in C.O.No. 23 of 1993 before the High Court of Delhi and therefore

the first respondent is not entitled to have an interim injunction and the present suit is liable to be stayed u/s 111 of the TMM Act.

9. With regard to the balance of convenience and comparative hardship the appellant contended that by the order of injunction the publication was stopped, thereby infringing the freedom of press enshrined under the Constitution and it also violated the prohibition contained in the PRB Act. It is further contended that the circulation of this news paper has touched nearly 2 lakhs copies and therefore hundreds of employees engaged by the appellant in various offices at Bangalore, Bombay, Delhi, Patna and Jaipur were thrown out of employment and this has also affected in numeral distributors, wholesalers, retailers. The first respondent whose circulation of this newspaper "Financial Times" is limited to 231 copies per day and that news paper being recognised by an exclusive class of people there would not be any deception and there was no scope for any person to be deceived in between these two papers.

10. As against grant of temporary injunction the contention of the appellant is that it is legitimately publishing "Financial Times" as a weekly news paper after getting necessary declaration from the Registrar of Newspaper in India and this title "Financial Times" being registered under the PRB Act no other person can publish any newspaper in India without such certificate being obtained from the Registrar of Newspapers. No prejudice or hardship will be caused to the first respondent if the injunction was refused in view of the differences in number of copies published, difference in price, different set of readers. Therefore, the order impugned is liable to be set aside.

11. The trial Court formulated the points that are generally required to be answered in cases where question of granting temporary reliefs are involved. The trial Court found that the first respondent has made out a prima facie case for grant of temporary injunction, Having come to such a conclusion, the comparative hardship and the balance of convenience were also held in favour of the first respondent.

12. To establish a prima facie case the basic questions that would arise initially is the fact that the person who is seeking this discretionary and equitable order is required to place substantial material that in the event of refusing to grant the equitable relief there will be irreparable loss and injury which cannot be compensated otherwise and further, materials that are placed in aid of getting an order of injunction is suffice for ultimate result of the suit in favour of the plaintiff. If the materials placed are doubtful in character, the plaintiff will not be entitled for an equitable relief and in the event of his ultimate success in the suit the Courts are not prevented to compensate in terms of money. This method is not unknown to law. This method is generally adopted when a comparative hardship is greater to the defendant than to the plaintiff in the event of granting equitable order. The other fact that should be taken note of is whether an act done in the interregnum of the initial interim order and the final order in the suit is an act which cannot be undone after the conclusion of the suit. It should also

be borne in mind that if the plaintiff cannot be put on the same terms to compensate the defendant in the event of his failure to establish his right in the suit the Court should be reluctant to grant equitable relief in favour of the plaintiff. It is to be noted that the appellant-Company has incorporated as Times Publishing House Ltd., in the year 1983 and on 5-5-1984 he has applied for reservation of title "Financial Times" to the Registrar of Newspapers, The registration was granted on 23-7-1990 under the PRB Act. Consequent to such registration, the appellant started printing and publishing newspaper "Financial Times" which has covered generally the matters connected to finance and other allied matters on that subject. Due to some paucity of funds, the publication was discontinued for some time and it was revived by obtaining a fresh registration to make this newspaper as weekly. It is not in dispute that circulation was increased rapidly and the method adopted for circulation was to enclose as a supplement to Economic Times and the price of news paper is Re. 1/-.

13. As against this, the circulation of the "Financial Times" published by the first respondent in London has a total circulation of 231 copies in India which are being sent by post from London and there are two distributors engaged for the whole of India to distribute this newspaper. The price fixed for a single copy of the newspaper of the first respondent is Rs.50/-. Therefore, on account of the distinctiveness of these two newspapers it is quite natural that there is no possibility of any potential reader to be deceived with regard to the identity of these two newspapers. Therefore, literally it can be said at this juncture that the deception alleged against the appellant is not conclusive due to the fact that the appellant Company was incorporated much earlier to get the registration and it is circulating the newspaper without any hindrance from 1990.

14. As against this, the first respondent obtained Certificate of Registration of his trade mark under TMM Act on 16-11-1993, though the application for registration was said to have been made on 9-3-1987, as per Document No. 1 enclosed to the plaint. It is not out of place to note that after the first respondent obtained his Trade Mark Registration Certificate, the things started moving where several Companies started establishing their rights over the name "Financial Times". This registration of trade mark also resulted in showing apprehension in the minds of Indian Newspapers that as against the restrictions contained in the PRB Act the foreign newspapers are given a free hand for publishing their newspapers, in India. In this background Civil Writ Petitions are filed before the High Court of Delhi between M.K. Agarwal and Another Vs. Union of India and Others, These Petitions are decided on 2-3-1994. In these Writ Petitions, the petitioners are a Chartered Accountant and an Advocate and it was filed against three respondents viz., i) Union of India, in the Ministry of Information and Broadcasting; (ii) Registrar of Newspapers in India under the PRB Act, 1867; and (iii) Registrar of Trade Marks under the TMM Act, 1958. The prayer in the Writ Petitions are for issue of an appropriate writ, order or direction in the nature of a Writ of Prohibition, prohibiting the Registrar of Trade Marks, from registering any purported trade marks of foreign newspaper which are already registered with

the registrar of Newspapers, u/s 6 of the PRB Act 1867; (ii) to issue a Writ of Mandamus directing the Registrar of Trade Marks to strictly comply and not to ignore or violate Section 6 of the PRB Act, 1867, while registering the purported trade mark of any foreign newspaper, (iii) to quash the order of Registrar of Trade Marks, registering the purported Trade Mark of foreign newspapers having same or similar name which are already in circulation and registered u/s 6 of the Press Act.

15, The appellant herein filed an application for intervention in respect of newspaper "Financial Times", Later some more Civil Writ Petitions came to be filed by M/s Banuhu Associates in newspapers editors conference through its President Sri Vishwa Bandhu Guptha; M/s Prayosha Marketing Private Limited, Printers and Publishers of Modern Financial Times, Bombay; a Journalist by name Ravinder Singh, V.N. Narayanan, Editor-in-Chief of Tribune Publications and Iqbal Krishan Sharma. The High Court of Delhi on a question of change in Government Policy in 1955 held that it is an executive function and with regard to the prohibiting the registration of trade marks, the Bench was unable to appreciate the arguments and held all the Petitions are speculative in nature and product of misapprehension in the minds of the petitioners on the ground that it cannot be presumed that the foreign newspapers and journal would contravene the law of this Country or indulge in activities prejudicial to the integrity of the Country and maintenance of public order.

To arrive at this conclusion, the learned Judges have examined relevant provisions of PRB Act and TMM Act. At para 10 of the Judgment, it is observed that the Court has not been shown an instance that there is conflict between these two Acts and the PRB Act being a special enactment prevails when it comes to the registration of newspapers. It is further observed that as and when conflict arises between the two Acts, the Court can always resolve it based on well settled principles of interpretation of statutes. Since no such conflict has been shown to arise in any particular case, it is found unnecessary for the Court to consider the argument in abstract, remedies have been provided in both the Acts if there is infringement of the provisions of any of them. On the basis of those observations, the Civil Writ Petitions came to be dismissed.

16. The submission of Sri Arun Jaitley, the learned Senior Advocate representing the appellant, is mainly focussed on the question that the appellant in his own right as a citizen of this Country after getting the registration in accordance with the PRB Act has started publication of "Financial Times" in India and therefore, the first respondent, who obtained the Trade Marks right, is not entitled to question a legitimately registered name under the PRB Act amounting to an infringement of TMM Act. The further submission of the learned Advocate is that PRB Act is being a special Act, it should have precedence over the TMM Act and therefore, at this stage, the injunction order is causing greater hardship to the appellant and therefore, the same is liable to be set aside.

17. Sri S. Vijay Shankar, the learned Senior Advocate representing the first

respondent, submits that when there is a clear infringement of a trade mark registered in favour of his client irrespective of the business that is, carrying on in between these two parties, the right infringed is subject to the protection in accordance with law and therefore, the order does not require any interference.

18. It is well settled law that the order of granting temporary injunction being a discretionary order, the appellate Courts shall be slow in interfering with such discretionary orders unless it is prima facie shown that the order is perverse and it causes great hardship to the defendant. The appellate Court cannot substitute a different reasoning when there is scope to do so. when the order of the trial Court is an order passed with a plausible conclusion that is arrived by the Court on the basis of the material placed before it.

19. The appellant primarily submitted to this Court that unless a clear distinction is made between these two Acts the respective stands taken by the parties cannot be appreciated and therefore it is inevitable that a clear demarcation shall be made to decide the question on which both the parties are independently depending to show that their rights cannot be infringed by taking recourse to any one of these Acts, but it should be decided with an harmonious construction.

20. The PRB Act 1867 is a special Act. The preamble shows that it is an Act for the regulation of printing-presses and newspapers, for the preservation of copies of books and newspapers printed in India, and for the registration of such books and newspapers. The object of the TMM Act, 1958 is to provide for registration and better protection of trade marks and for the prevention of the use of fraudulent marks on merchandise.

21. In *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, on the question of interpretation of statutes with reference to preamble, it is pointed out that while it is permissible to look at the preamble for understanding the import of the various clauses contained in the Bill, full effect should be given to the express provisions of the Bill even though they appear to go beyond the terms of the preamble. Where the language of an Act is clear, the preamble must be disregarded. Where the object or meaning of an enactment is not clear, the preamble may be resorted to explain it. Again, where any general language is used in an enactment which, it is clear, must be intended to have a limited application, the preamble may be used to indicate to what particular instances the enactment is intended to apply.

22. In *Tribhuban Parkash Nayyar Vs. The Union of India (UOI)*, a question was related to granting of settlement of the claims under Displaced Persons (Claims) Act, 1950. The Court considered the value of the preamble, when the provisions of law requires interpretation and noted that the preamble is a key to open the mind of the Legislature but it cannot be used to control or qualify precise and unambiguous language of the enactment. The recourse to the preamble is to be made when there is a doubt as to the meaning of the provision as the preamble ascertains the reason for the enactment and the intention of the Parliament. If

the language of the enactment is capable of more than one meaning then that one is to be preferred which comes nearest to the purpose and scope of the preamble. There is no quarrel that a special provision would keep away the general law. When Parliament provides a special statute to cover a given situation there is an obligation to follow the special procedure and obtain the protection which law intends to confer on the person falling under the special statute.

23. The PRB Act, as the preamble would show, was enacted to provide for the regulation of newspapers for the preservation of copies of books and newspapers printed in India and for the registration of such books and newspapers. Section 5 provides no newspaper shall be published in India except in conformity with the Rules. Under Sub-section (2) of Section 5 the printer and the publisher of every such newspaper shall appear in person or by agent authorised in this behalf in accordance with Rules made u/s 20, before a District, Presidency or Sub-Divisional Magistrate of the jurisdiction. They should make a declaration giving their name, name of the newspaper, and the place of publication, the language of the paper, periodicity of its publication etc. It also provided to obtain a new declaration in the event of change of title of any newspaper or its language or the ownership and the place of printing.

Under Section 6, each of the two originals of every declaration so made and subscribed shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

Under Section 7, the office copy of the declaration considered to be a prima facie evidence.

Section 15 deals with penalty for printing and publishing newspaper without conforming to Rules. It prohibits to edit, print or publish any newspaper without conforming to the Rules and on conviction a fine not exceeding Rs.2,000/- or imprisonment for a term not exceeding six months or both is provided. Penalty is also provided under Sections 15-A and 16.

Section 19-A deals with the appointment of Press Registrar and u/s 19-B the Registrar shall maintain a register of newspapers which shall contain the particulars regarding title, language, periodicity, name of the editor, place of printing, the average number of pages, the number of days of publication, average number of copies printed, retail selling price per copy, names and addresses of the owners of the newspaper and such other particular which the authorities may prescribe.

The proviso to Sub-section (8) of Section 5 shows that no person who does not originally reside in India shall be permitted to make a declaration prescribed by this Section, nor shall any such person edit a newspaper.

24. Under the Trade and Merchandise Marks Act, 1958 the Registrar is a statutory authority to administer the provisions of the Act. The principal advantage of a registration of trade mark is that it confers upon the Registered

Proprietor certain benefits like filing a suit for infringement of trade mark. u/s 11(b) there is a prohibition of registration of a mark the use of which would be contrary to any law for the time being in force.

Section 12 prohibits the registration of identical or deceptively similar trade marks.

Section 46 provides removal from register and imposition of limitations on ground of non-use.

Under Section 111 in a suit for infringement of a trade mark if the defendant pleads that the registration of the plaintiff's trade mark is invalid; or he raises a defence under Clause (d) of Sub-section (1) of Section 30 and the plaintiff pleads the invalidity of the registration of the defendant's trade mark, the Court trying the suit shall if any proceedings for rectification of the register in relation to the plaintiff's or defendant's trade mark are pending before the Registrar or the High Court, stay the suit pending the final disposal of such proceedings. Admittedly a Rectification Suit in C.O.No. 23 of 1993 is pending before the High Court of Delhi filed under Sections 56 and 46(1) of the Act.

Chapter III deals with procedure for and duration of registration. When the application is made within the territorial limits, the Registrar will have the power to refuse the application or accept it absolutely or subject to some modifications.

Under Section 20, if the application is accepted the Registrar shall as soon as may be after acceptance, cause the application as accepted together with the conditions or limitations. If any opposition is made within three months from the date of the advertisement after serving the copy of the notice, the Registrar shall proceed in accordance with Section 21 and decide. If the application is not opposed and the time for notice of opposition is expired, the Registrar shall, unless the Central Government otherwise directs, register the said trade mark in Part A or Part B of the register, as the case may be, and the trade mark when registered shall be registered as of the date of the making of the said application and that date shall, subject to the provisions of Section 131, be deemed to be the date of registration.

A duty is cast on the Registrar of Trade Marks to cause a search or see whether the application meets the requirements of the various statutory provisions.

25, The conclusion that would emerge under the Press Act is that "Printing" and Publishing" are two distinctive features. Both for Printing and Publishing under a particular title a prior approval of the Registrar of the Newspaper is required as also the filing of a declaration. The word "Printing" include cyclostyling and printing by lithography. "Publishing" includes making known to public, circulation of a newspaper, u/s 15 every time a newspaper is printed or published in violadon of the Act an offence under the Section is committed, under the PRB Act, By further analysing the scheme of the PRB Act a condition precedent for publishing a newspaper in India are that a person should be a citizen of India

and there shall be a declaration regarding publication to be made before a Magistrate who will verify from the Registrar of Newspapers for India the availability of the title. On clearance from the Registrar that no newspaper with the -similar title circulates/publishes in the same State or in the same language, a Certificate of Registration shall be issued by the Registrar of Newspapers.

Registration or reservation of title regulates the right to publish a newspaper in India, The registration under the Trade Marks Act can only supplement a right to publish a newspaper under a particular title which stems out of the Press and Registration of Books Act. Therefore, the registration of a newspaper under the Trade Marks Act merely protects the name of the newspaper which is granted by the Registrar of Newspaper subject to its availability on the basis of titles already registered by him.

26. The Registration Certificate issued in favour of the first respondent is dated 16-11-1993 though the application was registered on 9-3-1987. We have short of material as to how the authorities are keeping this application pending for a period of more than six years and therefore, the contention of the appellant that the very registration is questionable and doubtful stands to reason. Therefore, there is no prima facie case made out for grant of temporary injunction. This is equally so in the back-ground of the fact that the Registrar of Newspapers of India has issued Certificate of Registration recognising the title of a newspaper as "Financial Times" dated 23-7-1990. This is followed by another Certificate of Registration dated 9-12-1993 when the "Daily" changed to "Weekly". Therefore, no deception can be attributed at this stage as the appellant is publishing his newspaper in accordance with the Special Act. The appellant also not concealed this fact of publication as it is evidenced by his letters of October 1993 produced as documents Nos. 12 to 14 by the first respondent. These letters are addressed by the letter head containing "Financial Times" - one for the Manager; another for the Director and General Manager; and yet another letter to the Assistant Credit Manager of the first respondent-Company. Therefore, it is very difficult to accept the fact of deception at this stage of the case.

27. In the above circumstances, Mr. Arun Jaitley, the learned Senior Advocate, submits that the first respondent has no right to publish the newspaper in India and their registered title under the Trade Marks Act is nothing less than title blocking tactics since the same cannot be approved or registered under the Press Act. This is so, as the registration of a title by the foreign Company under the Press Act is specifically prohibited and also due to the fact that the rectification application is pending, the trial Court would not have granted an order of temporary injunction.

28. Here, we are dealing with two Acts and each Act is providing a right to the holder in accordance with the law contained therein and therefore, it requires harmonious construction between these two Acts. The Press Act not only provides for printing and publishing of newspapers in India, it also safeguards the title of a newspaper contained in the declaration if such title is not used by

any newspapers registered earlier. Therefore, prima facie, when the appellant applied for registration of the title one cannot attribute mala fides in their attempt to deceive or to practice an act of deception to push through their paper "Financial Times" to make a reader to understand that it is the same as "Financial Times" belongs to the first respondent. There is variation in pages, news, number of articles and price. The circulation is only 231 copies which is to the selected members of contributors as there is no evidence that it was sold by keeping in the paper stand. The newspaper of the appellant, on the contrary, is containing 6-7 pages priced at Re.1/- and it is a weekly issue. It could also be seen that after the appellant applied before the Delhi High Court for rectification the first respondent filed the present suit. If we resort to the harmonious construction a trade mark registration does not independently grant a right to publish a newspaper though it is registered at SI.No.16 but it can merely supplement the registration under the Press Act which alone gives a right to publish newspaper under a particular title. The Trade Mark Registration Act only shield and not the registration of the title under the Press Act. This obviously means that without a Press Act registration there is no right to publish a newspaper in India. Therefore, only harmonious construction possible between two Acts is that a registration under the Trade Marks Act cannot be made with regard to the newspaper title if there is no registration under the Press Act. The principle of harmonious construction requires that the Special Act shall get primary importance and not to be eclipsed the act that the condition precedent for publishing a newspaper in India is the filing of a declaration under the Press Act. An authorised Proprietor of a newspaper title is entitled under the Press Act, can protect its title by registration under the Trade Marks Act also. The first respondent cannot claim an exclusive right over the trade mark until rectification application filed by the appellant is decided. Therefore, he is not entitled to an order of temporary injunction more so to continue his suit in view of Section 111 of the TMM Act.

29. In *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, while considering the harmonious construction between Clauses 5(a) and 23 of Industrial Disputes Act with Government Order for discharge or dismissal of a workman, the Court held :-

"In applying the rule, however, we have to remember that to harmonise is not to destroy. In the interpretation of statutes the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. These presumptions will have to be made in the case of rule making authority also."

30. In *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, the harmonious construction are summarised and stated that where under a specific Section or Rule, a particular subject has received special treatment, such special provision will exclude the applicability of any general provisions which might otherwise

cover the said topic.

31. In *Power Control Appliances and Others Vs. Sumeet Machines Pvt. Ltd.*, the Supreme Court laid down the principle as to under what circumstances a temporary injunction cannot be granted in trade mark infringement action. The Supreme Court held thus:-

"Now, we come to the principles in relation to the grant of interim injunction. The case in *K.E. Mohammed Aboobacker v Nanikram Maherchand* and another 1957 2 MLJ 573 makes a reference to the case law and holds at page 574-75 as under:

"The principles which should govern the Court in granting or withholding a temporary injunction in trade mark Infringement actions are well settled : See recent decision *Henry Hemmings, Ltd. v. George Hemmings, Ltd.* (195(sic) 68 R.P.C, 47. As a temporary injunction is merely of a provisional nature and does not conclude the rights of the parties in any way, the Court will exercise its discretion in favour of the applicant only in strong cases. The plaintiff must make out a *prima facie* case in support of his application for the *ad interim* injunction and must satisfy the Court that his legal right has been infringed and in all probability will succeed ultimately in the action. This does not mean, however, that the Court should examine in detail the facts of the case and anticipate or prejudice the verdict which might be pronounced after the hearing of the suit or that the plaintiff should make out a case which would entitle him at all events to relief at the hearing. *Celman v. Farrow & Co.* (1898) 15 R.P.C. 198, *Hoover Ltd. v. Airway Ltd.* (1936) 53 R.P.C. 399 *The Upper Assam Tea Company v Herbert and Co.* (1890) 7 R.P.C. 183 *Star Cycle Company Ltd, v. Frankenburs* (1906) 23 R.P.C.337 In fact the Court will not ordinarily grant an interlocutory injunction if a large amount of evidence is necessary to support the plaintiff's case. The proper course in such a case is to ask for the trial of the action. The injury must be actual or imminent. *Pinei & Cle v. Malson Pinet Ltd.* (1895) 14 R.P.C. 933 Where the defendant disputes the plaintiff's title to the mark or contends that the plaintiff is not entitled to a relief by a reason of the acquiescence or delay or other estoppel or of the defendant's concurrent rights the Court will be guided by the balance of inconvenience which may arise from granting or withholding the injunction as well as the justice of the cause after considering all the circumstances in the suit. In other words, where the plaintiff's title is disputed or the fact of infringement or misrepresentation amounting to a bar to the action or some other defence is plausibly alleged upon the interlocutory motion, the Court in granting or refusing the interim injunction is guided principally by the balance of convenience that is by the relative amount of damage which seems likely to result if the injunction is granted and plaintiff ultimately fails or if it is refused and he ultimately succeeds; *Read Brothers v. Richardson and Co.* (1881) 45 L.T. 54 *Hommel v. Bauer & Co.* (1903) 20 RPC 801. It is necessary that an application for interlocutory injunction should be made immediately after the plaintiff becomes aware of the infringement of the mark. Improper and unexplained delay is fatal to an application for interlocutory injunction The

interim injunction will not be granted if the plaintiff has delayed interfering until the defendant has built up a large trade in which he has notoriously used the mark. North British Rubber Company Ltd. v. Gormully and Jaffery Manufacturing Company (1894) 12 R.P.C. 17, Army and Navy Co-operative Society Ltd. v. Army Navy and Civil Service Co operation Society of South Africa Ltd. (1902) 19 R.P.C. 574, Hayward Bros, Ltd. v. Pekall (1909) 26 R.P.C. 89, Yost Typewriter Company Ltd. v. Typewriter Exchange Company (1902) 19 R.P.C. 422, Royal Warrang Holders" Association v. Slade & Co. Ltd. (1908) 25 R.P.C 245. ."

A reference is also made in this Judgment to the Decision in Wander Ltd. v. Antox India P. Ltd. rendered by the Hon"ble Mr. Justice M.N. Venkatachaliah, J., as he then was, which is also important to note at this juncture. It is state , thus:

"Usually, the prayer tor grant of an imprecatory 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 the uncertainty were resolved in his favour 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 own 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 case. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a ase where the defendant is yet to commence his enterprise, are attracted."

32. The facts and circumstances discloses that the first respondent exercised his cause of action immediately after he has obtained a Certificate of Registration of his trade mark on 16-10-1993. The appellant is publishing "Financial Times" from the year 1990 with some gaps in between due to financial constraints and it has again started in 1993 as a "Weekly". There was no hindrance to this publication in the year 1990.

33. With regard to the balance of convenience and irreparable injury the appellant is now publishing and circulating approximately 2 lakhs copies. By this publication and circulation the business of the first respondent is not affected nor

the newspaper of the appellant interfered with the quality maintained by the first respondent newspaper. The Press Act prohibits both printing and publishing of a newspaper belonging to a person other than the Indian, There is no possibility of any deception since all readers are literate and no basic differences between the two newspapers. In addition to this, the Constitution of India guarantees freedom of expression which cannot be gagged at the behest of a person competitor. The first respondent is to establish that he is entitled to make use of the trade mark when PRB Act restricts publication of any newspaper in India by a nonresident. This large number of circulation as at present gave the employment to innumerable persons both in the process of printing and publishing and also in despatching and circulation of this paper. The hardship that will be caused to the appellant is much much greater than the hardship that would be caused to the first respondent. The balance of convenience is also in favour of the appellant as there is no material to constitute deception on the part of the appellant.

34. The learned Advocate for the appellant has also made available the materials that the appellant is publishing the articles from the "Financial Times", United Kingdom through Bennett Coleman and Co. Ltd., who have an agreement dated 5-10-1990 and also made available the materials having paid the money for publication of these articles as a sub-syndicate to third parties.

35. The trial Court has committed some basic and fundamental errors when it came to the conclusion that the trade mark alone govern the publication of newspapers in India and also the observation that if the publication is not registered under the Press Act, it can only be fined up to Rs.2,000/- and there is no prohibition in publication. It also erred in coming to the conclusion that even if publication of a foreign paper implies circulation. It does not require a Certificate of Registration under the Press Act. It also ignored the fact of the statement made by Mr. Jaimin Bhat, a constituted attorney of the first respondent when he has made a statement that there can be no deception between two similar titles of newspaper, as a thing which does not matter. It also further erred in holding that in order to use a newspaper title, registration under Trade Marks Act is a must.

36. Having regard to these facts and circumstances, I am of a clear view that the first respondent has not made out a prima facie case for grant of an order of temporary injunction pending disposal of the suit.

37. (a) When this Appeal is pending, the learned Advocate General on behalf of the Government of Karnataka, filed application I.A.No. II under Order I Rule 10 of the CPC as an intervenor to implead the State of Karnataka. In the affidavit sworn to by one Mr. M. Krishnappa, the Legal Assistant to Advocate General, has stated that the applicant-State is highly aggrieved by the order passed by the trial Court as it would seriously affect the rights of the members of the public in the State and it also affects the Freedom of the Press in this Country. It is further contended that instead of filing a separate Appeal or Writ Petition challenging the said order, the State found expedient to implead in this Appeal.

(b) This application is resisted by the first respondent who in his objections questioned the maintainability of the application as there is no provision in the Code for intervening in the Appeal by the third parties.

(c) I am inclined to agree with the contentions raised by the first respondent as the State is not a necessary party because no relief is sought against the State Government. This is purely a matter between the appellant and the first respondent who wanted to establish their rights under different laws holding the field. A final determination on that subject will substantially decide for the State Government to take appropriate steps if it affects the interest of the State. Therefore, the impleading application I.A.No. II is rejected.

38. In the result, this Appeal is allowed. The order dated 2-3-1994 passed on I.A.No. I in O.S.No. 7087 of 1993 by the XVII Additional City Civil Judge, Bangalore (CCH No. 19) is hereby set aside. The parties shall bear their own costs.