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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 39/2022**

SAMIR KASAL

..... Plaintiff

Through: Mr. Sandeep Sethi, Sr. Adv. with Ms. Rashmi Chopra, Mr. Srivats Kaushal, Ms. Priyadeep, Mr. Humraz Singh, Ms. Tejaswini, Ms. Vatsala Chaturvedi, Advocates

Versus

PRASHANT MEHTA & ORS.

..... Defendants

Through: Mr. A.K. Bhardwaj with Mr. Shivanshu Bhardwaj & Mr. Karan Gautam, Advocates for D-1.
Mr. Rajiv Nayar, Sr. Advocate. with Mr. Vineet Malhotra, Mr. Vishal Gohri, Mr. Saurabh Seth, Advocates for D-2 to D-4
Mr. Saurabh Kirpal, Sr. Adv. with Mr. Shubhendu Kaushik, Advocate for D-5.

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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19.01.2022

[VIA VIDEO CONFERENCING]

I.A.880/2022 (Exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

I.A.879/2022 (by plaintiff u/O II R-2 CPC seeking leave of the court to omit the claim for damages at present)

3. Allowed, subject to just exceptions.
4. The application is disposed of.

I.A.877/2022 (by plaintiff u/S 12A of the Commercial Courts Act, 2015 r/w S-151 CPC seeking exemption from pre-institution meditation)

5. This application has been filed by the plaintiff seeking leave of the court to institute the suit without taking recourse to pre-institution mediation. It is submitted by Mr. Sandeep Sethi, learned senior counsel for the plaintiff, that on account of the urgent interim reliefs that have been claimed in the present suit, the recourse has not been made to pre-institution mediation and so, it is prayed that the exemption may be granted.

6. Mr. Rajiv Nayar, learned senior counsel appearing on behalf of the defendants No.2 to 4, has relied on the order dated 8th September, 2021 of this Court in CS(COMM) 415/2021 titled ***ECL Finance Ltd. v. Tashee Nirman Pct. Ltd. and Ors.***, to submit that substantial compliance of the provisions was essential and there was no verbal or documentary communication to show that any effort had been made to work out a settlement between the parties. Hence, the learned senior counsel submitted that the suit, being premature, could not be taken up for hearing.

7. In response, learned senior counsel for the plaintiff submitted that the relief was claimed in respect of a Tournament to be held from 20th January, 2022, and nothing could be more urgent and pressing as the suit could be filed only on 15th January, 2022 and therefore, the plaintiff had no occasion to initiate pre-institution mediation in keeping with sub-section (1) of Section 12A of the Commercial Courts Act, 2015. Since the suit contemplated extremely urgent relief, the plaintiff could not be asked to approach the Mediation Centre before coming to court.

8. After considering the rival submissions, since there is force found in the contention of the learned senior counsel for the plaintiff that the suit, when filed on 15th January, 2022, entailed urgent interim relief in respect of the conduct of the cricket tournament starting on the 20th January, 2022, the plaintiff was justified in not initiating pre-institution mediation.

9. The application is accordingly allowed and the plaintiff is exempted from initiating pre-institution mediation.

10. The application is disposed of.

I.As.875/2022 (by plaintiff u/O XXXIX R-1 & 2 r/w S-151 CPC for ex-parte ad-interim injunction), 876/2022 (by plaintiff u/O XXXIX R-1 & 2 r/w S-151 CPC for ex-parte ad-interim injunction), 878/2022 (by plaintiff u/S 151 CPC for rendition of true accounts of the defendant No.5, absolute legends private limited)

11. These three applications were taken up for hearing and final disposal.

12. Learned senior counsel/counsel for the defendants have appeared on advance notice and have opposed the grant of interim relief. Arguments have been advanced by Mr. Sandeep Sethi, learned senior counsel for the plaintiff; Mr. A.K. Bhardwaj, learned counsel for the defendant No.1; Mr. Rajiv Nayar, learned senior counsel for the defendants No.2 to 4, and Mr. Saurabh Kirpal, learned senior counsel for the defendant No.5.

13. The plaintiff claims to be a well-known person in Sports, Entertainment and related industry(s), having established himself as a leader in the market over a period of several years. He has been associated with and has organized several entertainments shows, such as, UFA (International Indian Film Academy Awards) and has also handled/managed the IPL (Indian Premier League) teams, namely, Deccan Chargers and

Rajasthan Royals for various events of the IPL.

14. Learned senior counsel for the plaintiff submitted that the plaintiff had conceptualized an International Cricket League, which had novel features, such as two teams namely, “Asia XI” and “World XI” made up of world cricket legends, who have since retired, and the play format of T20 cricket but with a test format of two innings of 10 overs each for each of the teams. The idea was to stage these tournaments in those countries which were not cricket playing countries, but had a large number of Indians living there and whose interest in cricket could be exploited. Learned senior counsel submitted that the plaintiff and defendant No.1 began to work on this concept and the company and staff of the defendant No.1 i.e., 911 Marketing & Media Pvt. Ltd., of which defendant No.1/Prashant Mehta, was the Director, was to provide the logistic and staff support. Attention of this Court was drawn to several emails that were addressed by one, Ms. Shatakshi Suri, on behalf of 911 Marketing & Media Pvt. Ltd., to various cricketers, who were retired, but were great players in their time, such as, Jacques Kallis, Graeme Smith, Matthew Hayden, Nathan McCullam, Farveez Maharoo, Mahela Jayawardena, Kumar Sangakkara, Misbahulhaq Khan, Muttiah Muralitharan, Saeed Ajmal, Shahid Afridi, and Shoaib Akhtar [emails placed at Pages 8-21 of the plaintiff’s Documents]. Learned senior counsel for the plaintiff submitted that the emails contained the introduction of the company of the defendant No.1. Similar emails were addressed to the International Cricket Council (ICC) in order to take their permission to engage retired cricketers, but vide e-mail dated 20th February, 2018 (placed at page No.22 of the Plaintiff’s Documents), the ICC informed that their approval was not required and the plaintiff and defendant No.1

were advised to contact the Cricket Boards of the respective countries, where they intended to host their matches. Emails sent to the England and Wales Cricket Board (**ECB**) in this regard have also been pointed out.

15. Learned senior counsel for the plaintiff further submitted that in order to bring in investors, the defendant No.1 had roped in the defendant No.2 and vide email dated 20th February, 2018, it was informed to the defendant No.2 that the plaintiff had an idea of holding a cricket tournament, by the name, “World Masters League”, which name was later changed to “Legends Premier League”. The concept, format, etc., were disclosed to defendant No.2 in absolute confidentiality. Thereafter, whenever any step was taken by the plaintiff or defendant No.1, the information was shared with the defendant No.2, being a “stakeholder”. The defendant No.2 had even sent an advice vide email dated 7th March, 2018 to the plaintiff to make a joint application to the ECB to obtain their approval for hosting matches in England. The synopses and literature in relation to the Legends Premier League were forwarded to the defendant No.2 on 10th March, 2018. It was made clear that the event was being powered by ‘911 Marketing & Media Pvt. Ltd.’, till a new company was to be constituted. Discussions continued till 23rd March, 2018, during which time, Sample Agreements to be signed by the players were shared by the plaintiff with defendant No.2. These draft Agreements were duly approved by the defendant No.2 and the Agreements were finalized, dates of the events were also finalized and the minutes were noted by the defendant No.2 (at Pages 75-77 of the Plaintiff’s Documents). On 10th April, 2018, the formation of the company was discussed and it was in fact the proposal of the defendant No.2 that the plaintiff meets Mr. Vishesh Chandiok, who would help in setting up the company and in that

email dated 10th April, 2018, the defendant No.2 had indicated that they were all in it together to set up the company. In the WhatsApp message dated 16th April, 2018, at 2341 hours, a proposed equity structure was also discussed with Ashish Nehra, Zaher Khan and Virender Sehwag having 7.5% each, Shah Rukh Khan having 17.5%, Vivek Khushalani/Defendant No.2 having 10%, Arun having 2.5%, Anand having 2.5%, Prashant Mehta/Defendant No.1, having 23% and Samir Kasal/plaintiff having 22% shareholding.

16. Learned senior counsel for the plaintiff thus submitted that the plaintiff and the defendant No.1 and the defendant No.2 were building on the concept introduced by the plaintiff and all along, the format, as proposed by the plaintiff, was circulated amongst not only the stakeholders, but also the players and agencies, who would be involved in the hosting/playing of the matches of the league. The company subsequently was formed as ‘Legends Premier League Sports Pvt. Ltd.’, incorporated on 13th June, 2018 (at page no. 218 of the Plaintiff’s Documents) with the plaintiff and defendant No.1 as the Directors of the said Company.

17. It was submitted that on account of the Covid-19 pandemic that raged the world, no tournament could be held in 2020 and 2021 and suddenly, the plaintiff learnt from media reports that the defendants No.2 to 5 were intending to organize cricket matches in which retired legendary cricketers were to play. The name of the tournament/cricket league was “Legends League Cricket” instead of “Legends Premier League”, which name, however, was used by the defendants No.2 to 5 right upto December, 2021 indicating that they had misappropriated the idea of the plaintiff. It was

submitted that a Legal Notice was issued on 17th December, 2021. The reply thereto was received on 29th December, 2021 and since the defendants had failed to stop their *mala fide* acts, the plaintiff was left with no other option, but to file the instant suit.

18. Relying on the judgments in *Anil Gupta v. Kunal Dasgupta*, 2002 SCC OnLine Del 250, *Urmi Juvekar Chiang v. Global Broadcast News Ltd.*, 2007 SCC OnLine Bom 471 and *Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd.*, 2003 SCC OnLine Bom 344, learned senior counsel for the plaintiff submitted that this was a clear case of breach of confidentiality, and infringement of copyright of the concept developed by the plaintiff. Though the Legal Notice had been issued to the defendant No.1, the defendant No.1 had in response acknowledged the plaintiff as the originator of the idea and had thereafter, forwarded information in the form of various WhatsApp messages, which disclosed that the defendant No.2, with dishonest intentions, had sought to oust the plaintiff from the previous efforts in the name of “Legends Premier League” and had secretly schemed to create a new company with the aid and assistance of the defendant No.3/Raman Raheja, and that initially, an effort was made to humour the defendant No.1 by promising 5% shares in the equity, but since he wanted to protect the interests of the plaintiff, the defendants No.2 and 3, ousted him too.

19. It was submitted that the defendants No.2 to 5 were now intending to conduct cricket tournaments by using the idea of the plaintiff as a ‘spring-board’ and thereby, benefitting commercially to the detriment of the plaintiff. Learned senior counsel pointed out that the defendants had used

the same idea of the plaintiff in engaging retired, but well-known cricketers of yesteryears, hosting it in non-cricket playing countries, where there was a large Indian diaspora, having an Indian and an international team, and having limited overs in the T-20 and Test format i.e., two innings, with limited overs. Hence, it was submitted that the defendants be restrained from conducting the tournament w.e.f. 20th January, 2022.

20. Sh. A.K. Bhardwaj, learned counsel for the defendant No.1, submitted that he has been rendered the fall guy, whereas he is the one who had taken active steps and spent more than Rs.2 crores from his pocket, though being a person with modest means, to execute the idea originated by the plaintiff. It was submitted that various Cricket Control Boards, 30 players, ground people/staff, event managers, media people, etc., had been contacted through emails, meetings had been set and honest efforts had been made by the defendant No.1 for the successful hosting of the “Legends Premier League” Tournament with retired cricketers. It was submitted that a Memorandum of Understanding had also been entered into between the plaintiff, defendant No.1 and defendant No.2, with equity shares and thus, this was also a case of breach of a quasi-contract/implied contract. Subsequently, the defendant No.2 changed his mind and secretly desired to create another company. Initially, the defendants No.2 & 3 took the defendant No.1 along and they assured him 5% equity in the new company, but he was also side-lined. The defendant No.3 was appointed as the CEO of the new company without any extra effort put in by him, except for building on the work of the defendant No.1, and was also given 20% share in the equity. All the hard work of 18 months put in by defendant No.1 had been

dishonestly usurped by the defendants No.2 to 4 and they were now treating him most unfairly.

21. It was submitted by learned counsel for the defendant No.1 that copyright existed in a work and relying on the judgments in *MRF Limited v. Metro Tyres Limited*, 2019 SCC OnLine Del 8973, it was submitted that an original or an inventive thought was not required to claim a copyright in a work. Thus, in the present case, even if it be that the concept of the plaintiff was not original, since the idea had been developed into a recognizable format i.e., of engaging legendary but retired cricketers, dividing them into two teams on geographical basis, and to hold the tournaments in non-cricket playing countries for the benefit of the Indian diaspora, the plaintiff had produced an exclusive work. Learned counsel submitted that even under the statute i.e., Section 14(a)(iii) of the Copyright Act, 1957 (hereinafter referred to as '**the Act**'), the idea developed by the plaintiff constituted a 'work' required to be was protected against infringement of copyright. Furthermore, under Section 2(y) & (z) of the Act, the work of the plaintiff was protected under the Act, whereas the work done by the defendant No.1 was protected on the basis of the existence of a quasi/IMPLIED contract.

22. It was also submitted that since the plaintiff and defendant No.1 had discussed all details openly with the defendant No.2 at the time he was interested and was even an equity holder in the company floated by them, all disclosures were made in confidence and he could not be allowed to unjustly enrich himself. Thus, learned counsel submitted that the defendants No.2 to 5 be restrained from holding the tournament in violation of the rights of the plaintiff and defendant No.1. Additionally, the learned counsel

also adopted the arguments of Mr. Sethi, learned senior counsel for the plaintiff.

23. Mr. Rajiv Nayar, learned senior counsel for the defendants No.2 to 4, submitted that the suit as framed was bad for combining multifarious reliefs. He submitted that no contract had been signed between the plaintiff and the defendant No.2 and if there was any breach of contract, it could be only claimed against the defendant No.1. Learned senior counsel submitted that no interim relief could be granted to the plaintiff on the short ground of delay, inasmuch as the suit had been filed only five days before the matches were to be played. Reliance was placed on the judgements of the Coordinate Benches of this Court in ***Kanungo Media (P) Ltd. v. RGV Film Factory***, 2007 SCC OnLine Del 314 and ***Dr. Reddy's Laboratories Limited v. Eros International Media Limited***, 2021 SCC OnLine Del 1298. It was submitted that even as per the case set out in the plaint, the plaintiff had generated his idea in 2017 and the defendant No.2 was roped in as an investor in February, 2018, but not a word has been spoken of what happened in the interregnum. There is no document to show whether the plaintiff had taken any steps. Rather, in July, 2018, three matches were to be held in England (Gloucestershire, Derbyshire and Leicestershire), but plaintiff has not explained whether those matches were ever held, and if they were not held, why they were not held. The plea of Covid-19 pandemic is not convincing as the world was affected with Covid-19 only in 2020. Thus, there was no assertion of his rights by the plaintiff till December, 2021, when the Legal Notice was issued. It was further pointed that though the plaintiff claims that he had learnt in November, 2021 through media reports, that the defendants No.2 to 5 were intending to organise a cricket

match with cricketers, who were legends in their time, but had retired, in Oman (UAE). Till 17th December, 2021, he took no action. Thereafter, he did nothing till 15th January, 2022, when this suit was filed.

24. The learned senior counsel drew attention of this Court to documents filed on behalf of the defendants No.2 to 5 at Page No.25, to point out that the announcement of the Legends League Cricket was disclosed on 17th September, 2021, when defendants No.2 & 3 were described/introduced as its co-founders. It was submitted that the defendant No.2 being a Promoter of IPL team KKR, was no stranger to cricket. It was thus not necessary for him to borrow any idea of league matches in cricket from the plaintiff. Since September, 2021 it had been disclosed that there would be three teams and six league matches in a T-20 format; assignment of T.V. rights had also started as also the appointment of Shri Ravi Shastri, as the Commissioner; a physiotherapist was also brought on board on 14th October, 2021; and, the legendary actor, Mr. Amitabh Bachchan, was also engaged as the Ambassador for publicity. Thus, there was enough material available in the public domain which indicated that the defendants No.2 to 5 were organising the tournament in January, 2022. As on date, the players who have been contracted to play in the league matches to be held at Oman, had already arrived at Oman; broadcasting rights had been contracted out; the stadium had also been booked; and, at this juncture, the plaintiff had filed the suit only to wrangle some monetary compensation from the defendants.

25. With regard to the claim of copyright, learned senior counsel submitted that the T20 format had been first introduced by Martin Crowe in New Zealand in 1997. At that time, each side was permitted two innings of 10 overs each. Thus, the idea of the plaintiff to have two innings of 10 overs

each was not an original idea. With regard to the engagement of retired legendary cricketers, this was also not a new concept as, way back in 2015, matches were held in the United State of America as ‘Exhibition Matches’ between two teams; one captained by Sachin Tendulkar, known as “Sachin’s Blasters” and the other captained by Shane Warne, named as “Warne’s Warriors”. Further, a 2016-Masters Champions League was held in January and February 2016 at UAE and former cricketers had played in the same. There were 6 teams constituted of 15 retired cricketers each, who were described as “legends”. A Road Safety World Series was to be held in 2020 and 2021, where the former cricketers were described as “legends”, but only 4 matches could be held due to the Covid-19 pandemic. Thus, neither the engagement of retired legendary cricketers nor the hosting of these tournaments in a league format at neutral venues was new in the cricket arena. Therefore, there was no novelty in the conceptualisation of the plaintiff. The plaintiff could not claim a copyright over any of these ideas which have been in the public domain for years.

26. Finally, it was submitted that the infringement of a copyright was to be seen in reference to a ‘completed work’. But, in the instant case, the plaintiff has no ‘completed work’ to show, which, on comparison, could have revealed similarity between the format conceptualised by the plaintiff and the format in which the tournament of the defendants was to be held. In any case, learned senior counsel for the defendants submitted that whereas the plaintiff’s idea was to have a Test Match like two innings with 10 overs each, the defendants were holding the Legends League Cricket as a ‘T-20 tournament’ with 20 overs and one innings each. Further, whereas the plaintiff had intended holding of the matches in Canada, UAE and England,

the defendants were organising the tournaments at Oman (UAE). It was submitted that in UAE, a company called Ten Sports Management had issued a notice dated 16th March, 2018 to the plaintiff/defendant No.1, claiming an exclusive right to hold matches in the Middle-East. According to the learned senior counsel for the defendants, this document was wilfully suppressed by the plaintiff as it would show that the plaintiff had no right to host any cricket match in the Middle-East. It was also submitted that the suppression of this material document was also sufficient to deny interim relief to the plaintiff.

27. It was further submitted that the judgments relied upon by the learned senior counsel for the plaintiff were distinguishable on facts, as in all those cases, the concept notes/work had registered copyright, whereas that was not the case here. It was thus submitted that the plaintiff has not disclosed a *prima facie* case or ‘balance of convenience’ or ‘irreparable loss and injury’, on the basis of which he could claim any relief. Relying on the judgement of a Co-ordinate Bench of this Court in ***The Chancellor, Master and Scholars of the University of Oxford v. Rameshwari Photocopy Services*** [order dated 1st March, 2013 in CS(OS) 2439/2012], which introduced the fourth element of ‘public interest’, it was submitted that the plaintiff having approached the court in the nick of time, injunction had to be declined even in public interest.

28. Mr. Saurabh Kirpal, learned senior counsel appearing on behalf of defendant No.5, submitted that the plaintiff had not disclosed what was the cause of action and what right was he seeking to assert. Learned senior counsel also underlined delay in approaching the court. It was submitted that what happened between the defendants No.1, 2 and the plaintiff were

only pre-contractual negotiations and nothing had come out of it. The company was formed but neither was any contract drawn up with the players, (as it was only a proposed 'Player Agreement' that was forwarded to the defendant No.2 for his inputs) or were any agreements signed for media coverage, nor had any payments been made, which was not the situation qua the defendant No.5. If at all, some document had been signed by Mr. Nehra, the discussions for variations of the terms happened subsequent thereto. Thus, clearly there was no concluded contract even with Mr. Nehra. According to the learned senior counsel, the WhatsApp messages themselves reveal that everything had fallen apart before any agreement could be reached. The WhatsApp messages would also show that though the matches in England were to be held in the month of July, 2018 even in June, 2018, nothing had firmed up, while the plaintiff underscored that time was of essence. Thereafter, there had been no correspondence or even WhatsApp messages in this WhatsApp group of the plaintiff, defendant No.1 and defendant No.2, which was formed specifically for organising the 'Legend Premier League', in relation to the matches that were to be held in July, 2018. No such mention was made even on 2nd August, 2018 by the plaintiff to defendant No. 2 through WhatsApp. On 6th August, 2018, some video was sent by the plaintiff and there was only good-humoured interaction. Thus, not even till 14th August, 2018, was any business venture firmed up. Subsequently, a new WhatsApp group was formed between defendants No.1, 2 and 3. The very fact that defendant No.1 had shared old mails and WhatsApp messages with the plaintiff discloses that the plaintiff and defendant No.1 were acting collusively. The second WhatsApp group had been created in April, 2021 and in the light of

the sharing of the information by the defendant No.1 subsequently with the plaintiff of the formation of the new company, and as no action was initiated by the plaintiff to assert any rights during this entire period from June 2018, the plaintiff has 'acquiesced' in the activities of the defendant No.5. The belated action of filing the suit was *malafide* and no interim injunction could be granted.

29. It was submitted by learned senior counsel for the defendants that copyright was not a common law right but was a statutory right and having disclosed no work that had been created by the plaintiff, he was not entitled to any protection. As regards confidentiality, relying on the judgement of a Co-ordinate Bench of this court in ***Sungro Seeds Ltd. v. Dr. S.K. Tripathi***, 2020 SCC OnLine Del 591, it was submitted that when there was no copyright, there could be no confidentiality. It was further submitted that the Division Bench of this court in ***Akuate Internet Services Pvt. Ltd. v. Star India Pvt. Ltd.***, 2013 SCC OnLine Del 3344 2013 SCC OnLine Del 3344, has also cautioned that no new rights ought to be created to widen the scope of protection on the ground of confidentiality. In any case, there could be no confidentiality if the nature of communication was itself not confidential in nature, as was in the present case, since all aspects of the so-called idea of the plaintiff were already in public domain. Relying on the judgment of a Co-ordinate Bench of this court in ***John Hart Jr. v. Mukul Deora***, 2021 SCC OnLine Del 3499, it was submitted that at best, the defendants could only be directed to maintain the accounts and no injunction could be issued.

30. In rejoinder, Mr. Sethi submitted that there was no denial of the facts urged by the plaintiff that the plaintiff and defendants No.1 and 2 had been in discussion and that the idea had been presented by the plaintiff. Had the

idea being stale, the defendant No.2 would have rejected it, but the parties continued discussions and defendant No.1 put in time, effort and money into executing the idea. Thus, the defendant No.2 had clearly sought to misappropriate the property of the plaintiff, that is the right in the concept of holding a cricket league with retired international cricket legends. It was submitted that the creation of third party rights could not form a justification for denying interim injunction as when a person, the defendant No.2 in this case, was responsible for that situation, because of his dishonest action of misappropriating the property of the plaintiff to conduct the tournament, such third-party interests were inconsequential.

31. On the question of delay, it was submitted that when the notice by the plaintiff to the defendants to desist from wrongful act was met with failure and the defendants knowingly and wrongfully infringed the rights of the plaintiff, then merely because the plaintiff had come to the court with delay, if any, could not prevent enforcement of rights nor give premium to dishonest adoption. Relying on the judgment of the High Court of Madhya Pradesh (Indore Bench) in **GSD Constructions Pvt. Ltd. vs. Balaji Febtech Engineering Pvt. Ltd.** [judgement dated 7th August, 2019 in MA No.4081/2019] and of the Bombay High Court in **Deepak Raheja v. Ganga Taro Vazirani**, 2021 SCC OnLine Bom 3124, it was submitted that if injunction was not granted, then the loss that the plaintiff would be subjected to would be irreparable, as proprietary rights in confidential information would be lost for ever, whereas if an injunction was granted, all that would happen is that defendants No.2 to 5 would lose money and that too, only because of their own dishonesty.

32. Learned senior counsel emphasised that the court in **Anil Gupta**

(*supra*) had underlined, as in its several other judgments, that no competitor could use the ideas of a person as a spring-board for his own advancement. Here, the substance and kernel of the proposal of the plaintiff and that adopted by the defendants No. 2 to 5 was materially the same, of engaging retired but reputed cricketers in a limited overs match to be played at a neutral venue. Since the defendants had played a fraud on the plaintiff, relying on the observations in ***Gujarat Bottling Co. Ltd. v. Coca Cola Co.***, (1995) 5 SCC 545, ***Hindustan Pencils Private Limited v. India Stationary Products Co.***, 1989 SCC OnLine Del 34, ***Franco Indian Research Pvt. Ltd. v. Unichem Laboratories Ltd.***, 2004 SCC OnLine Bom 1073 and ***Ansul Industries v. Shiva Tobacco Company***, 2007 SCC OnLine Del 74, it was submitted that when fraud and dishonesty had been disclosed, delay and laches were inapplicable. It was submitted that the notice dated 15th March, 2018, being irrelevant to the claims made by the plaintiff, had not been filed. Relying on ***S.J.S. Business Enterprises (P) Ltd. v. State of Bihar***, (2004) 7 SCC 166, it was submitted that non-disclosure of an irrelevant fact was not fatal. Thus, it was submitted that the injunction be issued.

DISCUSSION

33. It is trite that while dealing with an application seeking interim injunction, the plaintiff must disclose a *prima facie* case in his favour. The '*balance of convenience*' must be in his favour, as also the fact that the absence of interim injunction would cause '*irreparable loss and injury*' to the plaintiff. Of course, an injunction may have to be also considered in the context of '*public interest*', as held in ***The Chancellor, Master and Scholars of the University of Oxford (supra)***. It is also no doubt true that

the conduct of the party seeking injunction is also important, including whether he acted with alacrity or slept over his right.

34. In the present case, the plaintiff seeks to assert a statutory right under the Act in respect of what he states is his conception of a competitive cricket league, where retired international cricketers were to play at neutral venues. The first question is then, whether there is a ‘work’ within the meaning of the Act, in respect of which the plaintiff can assert copyright. A ‘work’ within the meaning of the Act has been defined as: -

“(y) “work” means any of the following works, namely:—
(i) a literary, dramatic, musical or artistic work;
(ii) a cinematograph film;
(iii) a sound recording;”

Clearly, the concept claimed by the plaintiff, as his original idea, does not fall in any of these definitions. Thoughts, without being expressed in a material form, in print or writing, would not constitute a “literary work”. The argument on behalf of the plaintiff was, no doubt, that when the concept was exchanged by the plaintiff through emails to the defendants, the ‘work’ had taken a concrete form and therefore, the defendants No.2 to 5 could not have forged his idea to use it as a ‘spring-board’ by them for their commercial advantage.

35. What is significant in this case is that the plaintiff, the defendant No.2 and the defendant No.1 claim to have experience in organizing IPL matches. Thus, the developments in the field of cricket would be hidden from none of them. The idea of a ‘Ten Overs’ cricket match, with two innings, was

introduced way back in 1997 in New Zealand. Retired cricketers have been playing matches all around the world and therefore, that too, is not an original idea of the plaintiff as is evident from Pages 1-19 of the Defendants' Documents. Test matches have also been held in countries that do not play cricket. The participation of the Indian diaspora in various cricket venues, particularly, the Middle-East, is also common knowledge. Thus, none of the features of the concept of the plaintiff reflect original thought. Learned senior counsel for the defendants No.2 to 5 rightly pointed out that since each of these ideas have been in 'public domain' for long i.e., since its conceptualisation in 1997, 2015 and so on, none can claim exclusive right to any of these ideas. League matches were held in 2015. IPL has been in existence since 2007. The matches in which retired legendary cricketers have played for various reasons, including public causes, have been ongoing for long. To say that because the plaintiff conceptualized a league match with retired cricketers in a 'T-10 Test Format' to be played at venues where there is Indian diaspora, and that being his idea, had become his exclusive right, is to stretch it too far to claim a right to seek an injunction against the 'Legends League Cricket' tournament organized by the defendants. As rightly pointed out by the learned senior counsel for the defendants No.2 to 5, their format is of three teams being "India Maharajas", "Asia Lions" and "Rest of the World" unlike the two teams of the plaintiff i.e., "Asia XI" and "World XI". The plaintiff cannot have an exclusive right to naming of teams with "Asia" or "World". The cricketers cannot be enjoined from playing for the defendants or for any other organizer, as the plaintiff can claim no such exclusive right.

36. Assuming that the plaintiff had some right in his concept, then it is

clear that the format of the defendants No.2 to 5 is significantly different from that of the plaintiff. The chart submitted by the defendants No.2 to 4 can be usefully referred to for easy comparison:-

Plaintiff's Idea	Defendants League	Remarks
T10 matches with 4 innings [Page 314 of Documents]	T-20 with single innings per team.	The idea of the Plaintiff is copied from New Zealand Max Cricket which was launched in 1997
T-20 matches with 4 innings [as per Plaintiff Para 3 Page 25]	T-20 matches with single innings per team like traditional T-20	There is no similarity.
Retired Players playing in 2 teams of Asia XI and World XI [Page 314]	Retired Players playing in 3 teams, India, Asia and World. Focus on Legends with each team having 17 legends [Page 278] Many more players than the Plaintiff claims to have Approached Brand Ambassador Amitabh Bachhan [Page 286]	Complete change in format. No one can have exclusive rights over cricketers.
Venue was Canada and UK [Page 314]	Taking place in Oman	Venues are different.
Name was "World Cricket Masters" and later "Legends Premier League"	Name is Legends League Cricket	There is no copying of the name either
Business Model as per	Focus on serious cricket in	Business model is

<p>Page 318 is standard and no trade secret.</p> <p>Focus is on entertainment and IP creation</p>	<p>a non exhibition mode. All ICC approvals taken including anti corruption [Page 274]</p>	<p>different.</p>
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37. The observations of the Supreme Court in ***R.G. Anand v. Delux Films***, (1978) 4 SCC 118, as have also been followed by the Division Bench of this Court in ***Fritco-Lay India v. Uncle Chipps Private Ltd.***, 2000 SCC OnLine Del 414, are reproduced herein below:-

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

1. There can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal 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.

4. ...

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.*

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

7. ...”

38. In this case, the fundamental similarity will be the ‘game of cricket’ and no one can claim a copyright to the ‘game of cricket’. Several permutations and combinations in the format of playing the ‘game of cricket’ have been evolved over a period of centuries. Therefore, it is reasonable that there can also be no copyright in the evolution of cricket over a period of time, from a ‘5-Day Test Match Series’, to the latest of ‘T-20 Matches/One-Dayers’. Any such permutations and combinations would involve “innings” and “overs”. It would also involve selection of venue and the duration and length of the matches. Finally, the players are always selected for playing in particular matches. Though it is the contention of the learned counsel for the defendant No.1 that novelty was not essential for copyright, when the substratum is so fundamentally fixed, it would be novelty alone which can be protected. Unfortunately, the plaintiff has not succeeded in showing that his concept had any novelty about it. Every aspect of his idea is well known and adapted and adopted before.

Assuming that his combination is exclusive, then, the differences, as set out in the chart reproduced hereinabove, are sufficient to establish that the defendants No.2 to 5 are holding matches in a format that is different from what was ideated by the plaintiff and they are not copying any idea or concept of the plaintiff.

39. With regard to the arguments that there was a quasi-contract in existence, it has to be stated that the entire chain of emails and conversations through WhatsApp messages, do not establish the conclusion of a contract. A company was created as per the WhatsApp messages exchanged between the plaintiff and defendant No.2 (at page no.82 of the Plaintiff's Documents), with the following equity holdings: -

*“Ashu, Zak and Viru 7.5 % each, SRK 17.5%,
Vivek 10%, Arun 2.5%, Anand 2.5%, Prashant 23 and
Samir 22%”*

The efforts were apparently made to take follow up action by the defendant No. and the plaintiff. There is no document that reflects that such action taken by the plaintiff or the defendant No.1 that had fructified into a firmed-up contract, entailing mutual obligations between the plaintiff and defendant No.1 or defendant No.1 and defendant No.2 *inter se*, or with third parties. When nothing had firmed up, an implied contract is not disclosed. Even the role of the defendant No.2, being described as a “stakeholder”, is merely because he was approached by the plaintiff as the ‘proposed investor’. The defendant No.2 is not disclosed to have made any investments in furtherance of the intention of creating a company to hold league matches. He may have assisted and guided the plaintiff in his

venture, but that cannot make him liable for supposed contractual obligations.

40. With regard to confidentiality, there is force in the contention of the learned senior counsel for the defendant No.5, that confidentiality would also be with reference to the nature of information being shared. Perhaps, when the plaintiff expressed his intention to organize a tournament, in which retired, but well-known cricketers, would participate, and to constitute a company in order to organize these cricket matches, the information would have been confidential, so that no one would jettison his efforts. But, such sharing of intent and information of action taken and contemporaneous discussions cannot have the effect of prohibiting the defendant No.2, for all times to come, from organizing league matches, especially when he is stated to have been and continues to be involved in the organization and sponsorship of KKR in IPL matches. To conclude so, would be violative of the fundamental rights of the defendants, as urged by learned senior counsel for defendant No.5. The claim of a right in confidentiality fails also in the light of the fact that the plaintiff did not choose to follow up with the defendants No.1 & 2 between August, 2018 and the entire 2019, to move forward with his proposal. Confidentiality as asserted, cannot be permitted to continue indefinitely.

41. Thus, the plaintiff has failed to disclose a *prima facie* case either on the basis of rights in copyright or confidentiality or implied contract.

42. The plaintiff has approached the court with much delay. In the judgments relied upon by learned senior counsel for the plaintiff, the delay was not considered fatal only on account of the nature of rights claimed

therein. Those cases related to infringement of trademarks and a continuous sale of the offending goods. In the present case, that is not the situation. The decisions have to be considered in the context of facts. In **CCE v. Alnoori Tobacco Products**, (2004) 6 SCC 186, Justice Arijit Pasayat, has put it succinctly in the following words:-

“11. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark on lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes....”

43. It must be seen, therefore, whether the plaintiff has explained his lethargy in approaching the court. As noticed above, the plaintiff and the defendant No.1 and the defendant No.2 claimed to have come together to organize matches in cricket in 2018. They appear closely connected with sports, and the different matches that are being organized all over the world would certainly be within their ken. To state vaguely that the plaintiff had learnt about the activities of the defendants No.2 to 5 only in November, 2021, is a difficult pill to swallow. When the defendant No.1 claims that he was roped in by the defendant No.2 in his fresh venture when the new

WhatsApp group was created in April, 2021 and at the same time, he claims that he was much concerned with the exclusion of the plaintiff, it stands to reason that the information would have been shared with the plaintiff, not just when in response to a Legal Notice, he did so in December, 2021. A person truly concerned with the success of his idea would have, in the first place, followed up with his “stakeholders” on a continual basis, but the plaintiff is seen as a person who seems to have gone into deep slumber, after early August, 2018. It is significant to note that there were three matches that were to be organized in July, 2018 in England (Gloucestershire, Derbyshire and Leicestershire), but the plaintiff has made no disclosure as to what had happened to those matches. If those matches could not be held, then there must have been a reason for it. The plaintiff has not disclosed the reason. It would appear that the failure to conduct the matches in July, 2018, may have discouraged the plaintiff from moving forward with his idea. Had the plaintiff been still keen to organize the matches, he would have continued to remain in touch with his “stakeholders” to ensure that the matches could be conducted. While Covid-19 has ravaged the world in 2020 and 2021, 2019 was as normal as it could get, and it would not have been difficult for the plaintiff to have disclosed to this court as to what efforts had been made to organize matches after July, 2018, to show that his interest in his own idea was alive and kicking. If he failed to follow up and woke up only in 2021, after the defendants had entered into contractual obligations with third parties, the intentions appear to be suspect.

44. While the court is required to balance the harm that may be caused to the plaintiff, if no injunction is granted, with the injury that the defendants may be subjected to, if the injunction is granted and the plaintiff was to fail



after the trial, it is clear that by approaching the court at the nick of the moment, the plaintiff has attempted to cause greater harm to the defendants No.2 to 5, than benefit to himself. The entire purpose of conducting matches is to obtain monetary benefit. Thus, if the matches are not held, while the defendants, the players, the sponsors, the media partners and the public at large, would be subjected to loss, that cannot be compensated, in case the plaintiff lost after trial, on the other hand, in case the plaintiff was to succeed in the suit, if the matches were held, the interest of the plaintiff could still be protected by awarding him compensation at the end of a successful trial. The 'balance of convenience', therefore, lies in favour of defendants No.2 to 5.

45. These very facts also reflect that in case the matches are not held, 'irreparable loss and injury' would be caused to the defendants No.2 to 5 as also the public interest, whereas the loss, that may befall the plaintiff, could ultimately be compensated.

46. In the light of the discussion hereinabove, the applications [I.A.875/2022 and I.A.876/2022] are dismissed. However, the defendants No.2 to 5 are directed to maintain clear accounts of their earnings and expenditure in respect of the match/matches that are being organized at Oman (UAE) and file the same in court within one month of the conclusion of the league matches. Accordingly, I.A.878/2022 also stands disposed of.

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47. The plaint be registered as a suit.

48. Issue summons in the suit to the defendants by all permissible modes, returnable before the Joint Registrar.

49. Mr. A.K. Bhardwaj, learned counsel for the defendant No.1, Mr. Vineet Malhotra, learned counsel for the defendants No.2 to 4 and Mr. Shubhendu Kaushik, learned counsel for the defendant No.5, accept summons.

50. Written statements to the suit be filed by the defendants within thirty days from today, with advance copy to the learned counsel for the plaintiff. The defendants shall also file the affidavit of admission/denial of the document(s) filed by the plaintiff, failing which the written statement(s) shall not be taken on record.

51. The plaintiff is at liberty to file replication(s) to the written statement(s) within thirty days following the filing of the written statement(s). The replication(s) shall be accompanied by the affidavit of admission/denial in respect of the documents filed by the defendant(s), failing which the replication(s) shall not be taken on record.

52. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the time lines.

53. List before the Joint Registrar on 26th April, 2022 for completion of pleadings.

54. The order be uploaded on the website forthwith.

ASHA MENON, J.

JANUARY 19, 2022

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