



2025:DHC:3292



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

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*Reserved on: April 17, 2025
Pronounced on: May 05, 2025*

+ **CS(COMM) 345/2025**

ROYAL CHALLENGERS SPORTS PRIVATE LIMITED

.....Plaintiff

Through: Ms. Shwetashree Majumder, Ms. Priya Adlaka, Ms. Sucharu Garg and Ms. Shilpi Sinha, Advs.

Versus

UBER INDIA SYSTEMS PRIVATE LIMITED AND ORS

.....Defendants

Through: Mr. Sai Krishna Rajagopal, Ms. Julien George, Ms. Anu Paarcha, Mr. Avijit Kumar and Ms. N. Parvati, Advs. for D-1 & 2.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

I.A. 9726/2025-(u/O XXXIX R-1&2 CPC for Stay)

1. *Vide* the present application under *Order XXXIX rules 1 and 2* read with *Section 151* of the Code of Civil Procedure, 1908¹, the plaintiff seeks grant of temporary injunction restraining the defendants and/ or their representatives from broadcasting the 'advertisement uploaded by the

¹Hereinafter '*CPC*'



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defendant nos.1 and 2 on their social media platforms’² and/ or engaging in any other acts infringing/ disparaging/ tarnishing the trademark ‘Royal Challengers Bengaluru’³ of the plaintiff, as well as directions to take down the same already uploaded from the said social media platforms, during the pendency of the captioned suit.

2. Since Mr. Sai Krishna Rajagopal, learned counsel for the defendant nos.1 and 2 has appeared on advance service, as also since the defendant no.3 has no role to play at this stage of temporary injunction, considering that the reliefs sought, if granted, are only pertaining to the said defendant nos.1 and 2 and their social media platforms, as recorded in the order dated 17.04.2025, issuance of notice has been dispensed with.

3. As recorded in the order dated 17.04.2025, since learned counsel for the defendant nos.1 and 2 appeared on the said date and agreed to proceed with his submissions, no formal notice to the said defendants was issued. Both learned counsels for the plaintiff and the defendant nos.1 and 2 then took this Court through the pleadings as well as the documents on record, and made eloquent submissions thereon as also handed over their respective written submissions in Court in compliance of the said order which are taken on record. Based upon the aforesaid facts and circumstances as also the pleadings on record, this Court is proceeding to adjudicate the present application.

²Hereinafter ‘*impugned advertisement*’

³Hereinafter ‘*RCB trademark*’



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Brief facts:

4. As per pleadings, the plaintiff, a company incorporated in India under the provisions of the Companies Act, 1956, is the owner of the Indian Premier League⁴ Cricket team 'Royal Challengers Bengaluru'⁵. The plaintiff is also the registered proprietor of the RCB trademark and related logos, and has used it extensively to advertise its RCB Cricket team.

5. The defendant no.1 is also a company incorporated in India offering travel/ ride-hailing, freight services, etc. through its mobile application, and is a subsidiary company of the defendant no.2, who is based in the United States of America and offering travel services globally. The defendant no.3 is an Australian Cricketer who plays for the Australian National Cricket team, and is also playing for the 'Sunrisers Hyderabad' Cricket team⁶ in the ongoing IPL 2025.

6. On 05.04.2025, the defendant no.1 posted the impugned advertisement on its Instagram platform in collaboration with the defendant no.3, as well as on its 'X' and Facebook platforms. The defendant no.2 also posted the impugned advertisement on its official YouTube channel.

7. The moot area of focus being the impugned advertisement involved in the present application, the contents thereof as available on the internet for viewers and as depicted in the pleadings, are as under:-

⁴Hereinafter '*IPL*'

⁵Hereinafter '*RCB Cricket team*'

⁶Hereinafter '*SRH Cricket team*'



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Shot Time	Speaker	Dialogue / Shot	Still Images
00:00:00 – 00:00:01		*The opening frame shows the last scene as Defendant No. 3 on the Uber Bike saying, <i>"I'm Travis Head, and we're the Hyderabaddies!"*</i>	
00:00:09	Defendant No. 3	*Inside the logistic room hiding in a container* <i>"Bengaluru, ready for a Head-ache?"</i>	
00:00:12	Accomplice	<i>"Shhhh!"</i>	
00:00:15	Defendant No. 3	<i>"How long?"</i>	
00:00:15	Accomplice	<i>"3 Minutes!"</i>	



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00:00:22	*Both quietly rush towards the pavilion entrance disguised as representatives of the production team*		
00:00:23	Security Guard	<i>"Where are you going?"</i>	
00:00:24	Defendant No. 3	<i>"Yeah, yeah. Production, production!"</i>	
00:00:27	*Both laugh as they get past the security check*		
00:00:30	*Both enter the stadium from the pavilion entrance*		



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00:00:34 - 00:00:37	<p>*Both start spray-painting*</p>	
00:00:42	<p>*Both deface the Bengaluru team name by adding "ROYALLY CHALLENGED" above "BENGALURU"*</p> <p>*A poster bearing the fan chant "Ee Sala Cup Namde" is visible on the left side of the frame*</p>	
00:00:49	<p>*Defendant No. 3 and his accomplice start escaping the scene from the pavilion stairs, a poster bearing the fan chant "Ee Sala Cup Namde" is visible in the background of Defendant No. 3 on the right side of the frame*</p>	
00:00:51	<p>*Defendant No. 3 and his accomplice escape and run towards the Uber Moto riders who arrived outside the stadium within the scheduled time of 3 minutes*</p>	



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00:00:54	Defendant No. 3	<p><i>"I'm Travis Head, and we're the Hyderabaddies!"</i></p> <p>*While Defendant No. 3 and his accomplice escape on Uber Moto bikes with security guard chasing after them*</p>	
00:00:57 - 00:00:58	<p>*The last frame displays 'Uber Moto- Official ride of the Hyderabaddies'*</p>		

Submissions by learned counsel for plaintiff:

8. Based thereon, as also based on the pleadings, Ms. Shwetaashree Majumdar, learned counsel appearing for the plaintiff submitted that the impugned advertisement shows the “deprecatory” variant of the “well-known trademark” **“ROYAL CHALLENGERS BENGALURU”** of the plaintiff as **“ROYALLY CHALLENGED BENGALURU”** on the banner in the above stadium⁷, as also the poster bearing the words **“*Ee Sala Cup Namde*”**⁸, which is a common phrase in Kannada language roughly translating to **“*This Year the Cup Is Ours*”** and which is popularly associated with the RCB Cricket team and has been wrongly depicted in the impugned advertisement.

9. As per Ms. Majumdar, all the aforesaid derogatory statements in the impugned advertisement have caused the plaintiff to approach this Court

⁷Hereinafter ‘*impugned banner*’

⁸Hereinafter ‘*impugned poster*’



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seeking appropriate injunctive and other ancillary reliefs against the defendants.

10. Ms. Majumdar submitted that the feature of the impugned poster forming a part of the impugned advertisement is also an act of infringement, particularly, since the slogan therein is popularly associated with the RCB Cricket team by its fans/ followers across India who use it to create songs and victory chants for the RCB Cricket team. Any (mis)use thereof by the defendants in the impugned advertisement pronounces the element of deceptive similarity and results in infringement, dilution and disparagement of the RCB trademark belonging to the plaintiff.

11. Ms. Majumdar further submitted that all the aforesaid cumulatively taken are clearly amounting to disparagement, more particularly since, as depicted in the final frame of the impugned advertisement, the defendant no.1 is the ***“Official Ride Partner of the Hyderbaddies”***, which is actually referring to the SRH Cricket team, a competing team in the ongoing IPL 2025, and the same is the hidden second advertiser behind the impugned advertisement trying to cast a negative light on the RCB trademark/ RCB Cricket team during the ongoing IPL 2025, further, the defendant no.3 is also playing for the said SRH Cricket team. That being the position, the impugned advertisement by a commercial rival is an act of disparagement on the part of the defendants.

12. Emphasizing on the elements of disparagement highlighted in the pleadings, Ms. Majumdar then submitted that had the impugned



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advertisement used statistics to claim that the SRH Cricket team was better than RCB Cricket team, no claims of disparagement would've been maintainable. However, the impugned advertisement, is “*poking fun*” at the plaintiff, which is not within the permissible contours of comparative advertisement and there is no ‘*fair use*’ by the defendants. Moreover, what has to be seen is (i) *the intent*, (ii) *the manner of representation* and (iii) *the message sought to be conveyed*, in the impugned advertisement. The impugned advertisement is aimed at encashing upon the goodwill of the RCB trademark/ RCB Cricket team by showing them in a derogatory light, and undermines the public’s emotional connection with them. These, thus, amount to disparagement and defamation.

13. Ms. Majumdar then referred to ***Royal Challengers Sports Private Limited v. Sun Pictures A Division of Sun TV Network Ltd. & Anr.***⁹, which was also a similar suit instituted by the very same plaintiff before this Court earlier against producers and co-producers of an Indian film titled ‘*Jailer*’, who were/ are also the owners of the SRH Cricket team involved herein. The said suit, which was pertaining to disparagement *qua* a character who was shown to commit offensive actions such as assaulting other characters, including sexually harassing female character(s) wearing an RCB Cricket team jersey, was decreed in favour of the plaintiff on the first date of hearing itself i.e. 22.08.2023, as the defendants therein agreed to suffer a decree.

14. Continuing further, Ms. Majumdar relied upon ***Hamdard National***

⁹CS (COMM) 581/2023



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Foundation & Anr. v. Hussain Dalal and Ors.¹⁰ wherein, a co-ordinate bench of this Court, while dealing with a particular scene of a Hindi film “*YEH JAWAANI HAI DEEWANI*” which showed the lead actor calling the product “*ROOH AFZA*” of the plaintiff as “*bekaar*” (useless/ bad) in Hindi, granted an *ad interim* injunction in favour of the plaintiff therein and against the defendant therein, and then relied upon ***ICICI Bank Ltd. v. Ashok Thakeria***¹¹ wherein, a co-ordinate bench of this Court again, while dealing with another Hindi movie “*GRAND MASTI*” whose plot depicted a Bank robbery taking place in a certain “*IBIBI BANK*” in broad daylight, granted an *ad interim* order of injunction in favour of the plaintiff therein and against the defendant therein as the impugned mark was held deceptively similar to that of the plaintiff, and disparaging as well since it implied that the plaintiff Bank has weak security.

15. Ms. Majumdar, by drawing attention of this Court to certain comments by the general public *qua* the impugned advertisement on the YouTube channel of the defendant no.2, then submitted that *irreparable harm* is being, and will be, caused to the reputation of the RCB trademark/ RCB Cricket team, if the impugned advertisement, which has already gained a lot of attention and has already reached millions of viewers, is allowed to remain on air. If there is any further attention, the plaintiff will suffer more. Hence, the *balance of convenience* is also in favour of the plaintiff for grant of temporary injunction till the pendency of the captioned suit.

¹⁰2013 SCC OnLine Del 2289

¹¹2013 SCC OnLine Del 6538



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16. Ms. Majumdar lastly submitted that since the RCB trademark is duly registered in the name of the plaintiff, and since it has achieved significant reputation in India, the defendants' depiction in the impugned banner is squarely hit by *Section 29(4)*¹² of the Trade Marks Act, 1999¹³, as the same is 'deceptively similar' to the RCB trademark. In effect, the defendants are infringing the RCB trademark and diluting its positive association in the minds of the general public by giving it a derogatory spin.

Submissions by learned counsel for defendant nos.1 and 2:

17. *Per contra*, Mr. Sai Krishna Rajagopal, learned counsel appearing for the defendant nos.1 and 2 commenced by submitting that the captioned suit is nothing but a result of hypersensitivity on the part of the plaintiff and that the impugned advertisement employs only a humorous pun using the names of the cities Hyderabad and Bengaluru. Even if the impugned banner is taken to be a reference to the RCB Cricket team, the same is by way of intentional, denominational use in the spirit of a comical tease or a parody and only constitutes light-hearted banter, widely accepted by sporting fans and a culturally entrenched part of the game of cricket.

18. Mr. Rajagopal, then taking this Court through the impugned

¹² 29(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which—

(a) is identical with or similar to the registered trade mark; and

(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and

(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.

¹³ Hereinafter '*TM Act*'



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advertisement, submitted that the (i) *intent* and (iii) *message* therein is to indicate that the motorbike services offered by the defendant no.1, which is not a rival/ competing entity, are extremely efficient and reliable, as is clear from the sequence where the motorbike ride booked by the defendant no.3 arrives within the stipulated time of *three minutes* and saves the defendant no.3 and his accomplice from the security team of the stadium. Similarly, as per Mr. Rajagopal, the (ii) *manner* of the impugned advertisement is merely a wordplay conveying that Bengaluru is going to be **“ROYALLY CHALLENGED”** in their upcoming Cricket match with Hyderabad, i.e. there is going to be a tough fight between their respective Cricket teams. In a game of cricket, which is a sporting event with an inherently charged, festive and competitive environment, mere indication of one team being challenged by the other does not amount to any negative connotation. The culture developed around Cricket is ripe with such thematic comedy, as the same has been undertaken multiple times in the past.

19. Further, as per the written synopsis filed, the advertisement of the *Mauka-Mauka campaign* referring to the Pakistan Cricket team never being able to win the Cricket World Cup, or the advertisement of the Australia matches campaign wherein Australian Cricketers were shown as babies, or even Amul's various IPL related witty comics, all evidence the said comical context of the game of Cricket. It even reads that the RCB trademark/ RCB Cricket team had earlier also been referred to as *“Royally Challenged”* in the past by Consumer News and Business Channel as well. Reference to other



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similar kinds of advertising campaigns between Coca Cola and Pepsi around Halloween making fun of each other were also referred. Be that as it may, the same is of no relevance at this stage.

20. Mr. Rajagopal further submitted that even the reference to “*Hyderabaddies*” is only *qua* the defendant no.3, and the adjective “*bad*”/ its variants(s) have not been attributed to the RCB trademark/ RCB Cricket team. Further, the impugned poster and the slogan thereon forming a part of the impugned advertisement, is a passing/ background presence which is not very noticeable and even so, only depicted as it is on a poster in reference to the passion and threat posed by the fans. As such, viewing the advertisement as a whole in the context of the Cricket matches in the ongoing IPL, there is not a single element of disparagement in the impugned advertisement.

21. On the aspect of SRH Cricket team being the hidden second advertiser behind the impugned advertisement, Mr. Rajagopal submitted that the defendant nos.1 and 2 have arrangements with multiple IPL teams playing in the IPL 2025, and the SRH Cricket team is only one of them. That, by itself, does not mean that there is any act of disparagement or any element of hidden commercial purpose for SRH Cricket team involved. Regardless, for arguments sake, even if the defendant no.3 is taken to represent the SRH Cricket team, there is no falsehood/ misrepresentation being perpetrated and the above arguments against disparagement still hold good.

22. Mr. Rajagopal then submitted that the right to advertise as deemed appropriate by the advertiser is fortified by the fundamental right to “*free*



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speech” guaranteed under Article 19(1)(a)¹⁴ of the Constitution of India. Reliance in this regard was placed by Mr. Rajagopal on ***Tata Sons Private Limited and Ors. vs. Puro Wellness Private Limited and Ors.***¹⁵, wherein a co-ordinate bench of this Court, after citing ***Colgate vs. HUL***¹⁶, held that the right to free speech must weigh the balance in cases of temporary injunctions and further that there is no absolute rule that while considering advertisements impugned for disparagement where multiple interpretations are possible, the Court must discard all but the most adverse one, and that the advertisement must be viewed as a whole for the overall impression, and not frame-by-frame with the specific aim of catching disparagement.

23. Mr. Rajagopal, thereafter relying upon ***Bloomberg Television Production Services India Private Limited and Ors. vs. Zee Entertainment Enterprises Limited***¹⁷, submitted that although the same is a case of defamation in the context of journalism, the Hon’ble Supreme Court has clearly laid down that in the context of speech in the public domain, the *three-fold test* of *prima facie*, *irreparable harm*, *balance of convenience* should not be applied mechanically, and it must be borne in mind that

¹⁴ 19. (1) All citizens shall have the right—

(a) to freedom of speech and expression;

xxx xxx xxx

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 4 [the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

¹⁵2023 SCC OnLine Del 6338

¹⁶206 (2014) DLT 329 (DB)

¹⁷(2025) 1 SCC 741



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prolonged litigation can be used to award an effective death sentence to such speech/ expression.

24. Continuing further, Mr. Rajagopal, then relying upon *Tata Sons Ltd. vs. Greenpeace International & Anr.*¹⁸, on the aspect of infringement submitted that denominative use of a trademark to draw attention to the same does not amount to infringement, and has nothing to do with *Section 29(4)* of the TM Act.

25. Mr. Rajagopal also then, referring to *Laugh It Off Promotions CC v. South African Breweries and Freedom of Expression Institute*¹⁹, which has been referenced by this Court in *Greenpeace (supra)*, and wherein the Constitutional Court of South Africa while denying injunction against *Laugh It Off Promotions CC* for altering well-known trademarks into comical variants (eg. “*Black Label*” to “*Black Labour*”) and turning them into T-shirts for sale, as also while dealing with “*Does the law have a sense of humour?*” held that humour is one of the great solvents of democracy; and that the parody must take from the trademark in order to be recognizable, yet fall short of infringement, not carrying any element of deception.

26. In the aforesaid backdrop, Mr. Rajagopal once again referred to the impugned advertisement as nothing more than a humorous twist, which as per the own contention of the plaintiff is at best “*poking fun*” at the plaintiff, more so, since, the advertisers herein are *per se* not engaged in a similar/ competing good(s)/ service(s).

¹⁸2011:DHC:515

¹⁹CCT 42.04



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27. Mr. Rajagopal then submitted that the comments posted on the impugned advertisement annexed by the plaintiff in themselves have no element of deceptive similarity/ confusion, and the claim of ‘*deceptively similar*’ by the plaintiff is not maintainable. *Qua* the comments posted after the release of the impugned advertisement as annexed by the plaintiff, Mr. Rajagopal submitted that the same are selective in nature, and there are other positive comments by fans of RCB itself. So much so, one of the comments on *page 209* of the list of documents filed by the plaintiff reads “*this ad is so wholesome, even for RCB fans 😊*”. Thus, the average perception is of light-hearted banter.

28. Mr. Rajagopal then submitted that the plaintiff is making self-contrary averments/ arguments since in *paragraph 27* of the plaint, on one hand, it is alleged that the defendants are exploiting the ‘*goodwill*’ but at the same breadth it is also alleged that the defendants are damaging the ‘*reputation*’ of the plaintiff.

29. Mr. Rajagopal lastly submitted that no *irreparable harm* is likely to be caused to the plaintiff from the streaming of the impugned advertisement, since it nowhere derogates, deprecates, or makes even a single negative remark on the character/ quality of the RCB trademark/ RCB Cricket team. Since the impugned banner and the impugned poster in the impugned advertisement are not likely to impact any general perception/ perception of the fans/ followers of the RCB Cricket team, there is no loss of reputation being incurred by the plaintiff. The *balance of convenience* thus heavily tilts



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in favour of the defendants in view of their fundamental right to free speech.

Rejoinder submissions by learned counsel for plaintiff

30. After conclusion of submissions by Mr. Rajagopal, Ms. Majumdar in her rejoinder arguments reiterated the submissions already made by her before, however, *qua* the case laws cited by Mr. Rajagopal, she submitted that the same are not applicable to the facts and circumstances involved herein. She, specifically with respect to *Greenpeace (supra)*, submitted that the same is not relating to advertisements and hence is not applicable, and with respect to *Laugh it off Promotions SS (supra)*, she submitted that the same is not applicable in India. Lastly, she emphasized that the present is a clear case of infringement by the defendants under *Section 29(4)* of the TM Act. Additionally, in the written synopsis filed for and on behalf of the plaintiff, Ms. Majumdar has sought to interpret the word “**CHALLENGED**” in “**ROYALLY CHALLENGED**” by submitting that the same alludes to the outcome of the upcoming match between the RCB and SRH Cricket teams in the ongoing IPL 2025 and that by using a similar mark as the RCB trademark, the impugned advertisement creates an image in the minds of the people viewing it that the RCB Cricket team is going to be vanquished as it is shown as an underperformer/ unreliable. Moreover, although the same signifies a “Victor”, the impugned advertisement reflects the RCB Cricket team as a “Loser”.

Analysis and Findings:

31. This Court has heard both Ms. Shwetashree Majumdar, learned



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counsel for the plaintiff and Mr. Sai Krishna Rajagopal, learned counsel for the defendant nos.1 and 2 at considerable length as also gone through the pleadings and the accompanying documents, especially the impugned advertisement along with the judgements cited at Bar in support thereof.

32. In the light of the aforesaid and since the present proceedings are pertaining to the impugned advertisement, therefore, the reliefs sought *qua* that by the plaintiff have to be tested on the anvil of the *two prong test* of (i) *Whether there is any disparagement per se?* and (ii) *Whether the provisions of Section 29(4) of the TM Act are attracted?*, which, needless to say, have to be dealt with taking into account the provisions of *Article 19* of the Constitution of India.

33. For adjudicating on the aforesaid *two prong test*, this Court will proceed to analyse the meaning, scope and application thereof under the aforesaid facts and circumstances, pleadings and judgments cited by the learned counsel for the parties herein.

Disparagement

34. *Theoretically*, disparagement as per the ***Black's Law Dictionary*** is "... *a false and injurious statement that discredits or detracts from the reputation of another's property, products or business.*", and as per the ***Merriam-Webster Legal Dictionary*** it is "... *...the publication of false injurious statements that are derogatory of another's property, business or product*", and as per the ***Oxford English Dictionary*** is an act which "*casts another in a bad light or undervalues their reputation*". In fact, as per



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*Chapter 19: Trade Libel and Threats of **Kerly's Law of Trade Marks and Trade Names**²⁰, to maintain such an action, the statement made must "...specifically denigrate the claimant, and must be intended to be taken seriously, and must contain specific false comparison, and must not be mere general praise of the defendant's goods."*

35. Statutorily, since disparagement has nowhere been defined in any Statute, therefore, it is only a 'tortious liability' and so the same has to be taken into consideration as per the factual circumstances involved of each case, which is for the plaintiff to show/ establish.

36. Legally, disparagement, and the law *qua* that has developed over the years with the interpretations given by the Court(s) across the World, including India through the lens of different Court(s) of the country. Disparagement has now (tried to have) been given some shape/ meaning and the broad contours/ parameters thereof have been set out. In fact, while analysing disparagement, as also the permissible contours thereof, the High Court of Madras in ***Gillette India Limited vs. Reckitt Benckiser***²¹, while dealing with the issue of disparagement, has gone onto hold as under:-

"96. The meaning of the expression "disparage" as given in the commonly used dictionaries is, inter alia, to speak slightly, to undervalue, to bring discredit or dishonour, to deprecate, to degrade, to derogate, to denigrate, to defame, to reproach, to disgrace, or to unjustly class. Disparagement is, inter alia, the act of speaking slightly, of undervaluing, of bringing discredit or dishonour, of deprecating or degrading or disgracing or unjust classing. It also means derogation or

²⁰***Kerly's Law of Trade Marks and Trade Names, Fifteenth Edition (2011)*** by J. Mellor, D. Llewelyn, T. Moody-Stuart, D. Keeling and I. Berkeley,

²¹2018 SCC OnLine Mad 1126



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denigration or defamation or reproachment.”

[Emphasis supplied]

37. Interestingly, before ***Gillette India Limited (supra)***, a co-ordinate bench of this Court in ***Pepsi Co. Inc. and Ors. vs. Hindustan Coca Cola Ltd. And Anr.***²², also while dealing with the issue of disparagement, after venturing into the question of “What is *disparagement*?” held as under:-

“11. The New International Websters' Comprehensive Dictionary defines *disparage/ disparagement* to mean, “to speak of slightly, undervalue, to bring discredit or dishonor upon, the act of depreciating, derogation, a condition of low estimation or valuation, a reproach, disgrace, an unjust classing or comparison with that which is of less worth, and degradation.” The Concise Oxford Dictionary defines *disparage* as under, to bring dis-credit on, slightly of and depreciate.

12. In the electronic media the disparaging message is conveyed to the viewer by repeatedly showing the commercial everyday thereby ensuring that the viewers get clear message as the said commercial leaves an indelible impression in their mind. To decide the question of *disparagement* we have to keep the following factors in mind namely; (i) Intent of commercial (ii) Manner of the commercial (iii) Story line of the commercial and the message sought to be conveyed by the commercial. Out of the above, “manner of the commercial”, is very important. If the manner is ridiculing or the condemning product of the competitor then it amounts to *disparaging* but if the manner is only to show one's product better or best without derogating other's product then that is not actionable.”

[Emphasis supplied]

38. Similarly, a co-ordinate bench of this Court thereafter in ***S.C. Johnson And Son v. Buchanan Group Pty Ltd. & Ors.***²³, again while dealing with the issue of *disparagement*, held that “... ...what is required to be answered is

²²2003 (27) PTC 305 (Del)

²³2010 (42) PTC 77(Del)



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whether there is denigration of plaintiffs' products. The answer to this question in my mind lies in what is the fundamental purpose for which the product is manufactured.”.

39. *Practically*, disparagement depends upon the facts and circumstances involved and the touchstone is the underlying message therein viewed from the eyes of a common layman. Thus, the impugned advertisement, the intent therein, the manner thereof, and the message thereby, along with the position of the plaintiff, who is the owner and registered proprietor of the RCB trademarks, and its rights therein under the existing circumstances have to be cumulatively taken into consideration. At the end of the day, the plaintiff has to show/ establish that the acts of the defendants amount to disparagement.

40. As per above, disparagement has to be of such a nature which is conveying or seems to convey something negative attributable on the face of it. Tersely put, disparagement *per se* has to have an element of demeaning/ criticism/ condemning/ ridiculing/ denigrating/ defaming/ disgracing/ belittling/ scorning/ mocking/ falsity with a view to cause injury and/ or harm. Therefore, at a *prima facie* level for seeking the relief(s) of temporary injunction, the plaintiff is *at least* required to show/ establish the presence of the aforesaid element(s) of disparagement in the impugned advertisement.

41. While testing the impugned advertisement herein for disparagement, this Court has to bear in mind that for a better understanding/ appreciation of the impugned advertisement herein as also the message therein, the advertisement as a ‘whole’ has to be viewed in one go, without breaking it



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into segments/ fragments. Segmentizing/ fragmentising, with respect, can never be the intent of law, especially whilst dealing with the issue of disparagement. In any event, doing so, would amount to adding colours to a normal black and white pencil sketch and can add an interpretation/ a new dimension thereto.

Section 29(4) of the TM Act

42. The plaintiff, who is the owner and registrant of the RCB trademark, has to show/ establish its rights *qua* infringement of the said trademark and the rights therein as per the provisions of the TM Act, especially, as per the provisions of *Section 29(4)* of the TM Act. Meaning thereby, the plaintiff has to primarily show/ establish that the defendants were in “*use*” of its RCB trademarks “... *...in the course of trade... ...*”, and that there is an infringement on their part. Additionally, the plaintiff is required to show/ establish that the same “... *...is identical with or similar to... ...*” its RCB trademarks as also that the said use is “... *...in relation to goods or services... ...*”. Finally, the plaintiff has also to show/ establish that the aforesaid is “... *...without due cause... ...*” whereby the defendants “... *...takes undue advantage... ...*” and which is “*detrimental*” to the “... *...distinctive character or repute... ...*” of the said RCB trademarks of the plaintiff.

43. The position *qua* above has already been clarified by a co-ordinate bench of this Court in *ITC vs. Philip Morris*²⁴, wherein it has been held that

²⁴2010 SCC OnLine Del 27



the threshold of proof required under *Section 29(4)* of the TM Act is higher than the preceding provisions of *Section 29(1) to (3)* of the TM Act on *simpliciter* infringement, more so, as the provisions stipulated thereunder come under the category of dilution of a trademark and relate to the uniqueness of the trademark itself, not falling strictly within the realm of traditional trademark law which focuses more on consumer interest.

44. It is thus apparent therefrom that while dealing with the provisions of *Section 29(4)* of the TM Act, even in cases of identity between the impugned marks and the registered trademark, there can be *no presumption* of infringement by the defendants herein, simply because they are for different kinds of “... *...goods or services... ..*” from those of the plaintiff. Even otherwise, at this stage, the plaintiff will have to not only show, but also *prima facie* establish the aforesaid element(s) constituting infringement by the defendants in the impugned advertisement.

45. Without the aforesaid ingredients, an action for infringement under *Section 29(4)* of the TM Act would *simpliciter* not lie, even if it is assumed that the mark used by the defendant was similar to the same.

Article 19 of the Constitution of India

46. Though every citizen of the country under *Article 19(1)(a)* of the Constitution of India has the right “*to freedom of speech and expression*”, however, the same have to be read in consonance with *Article 19(2)* of the Constitution of India as the same is subject to “... *...reasonable restrictions on the exercise of the right conferred... ..*” and cannot be pertaining to “...



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...decency or morality... ..” or which can cause any “... ..defamation or incitement... ..”. Therefore, advertisers like the defendants herein, are though free to come out with an advertisement as per what they choose/ desire, however, the same not being without fetters, has to be within the permissible contours. Having said that, the plaintiff has to show/ establish that the defendants, though having equally vital rights, cannot be allowed to impinge upon its rights.

47. In fact, the Hon’ble Supreme Court in **Tata Press Ltd. v. MTNL & Ors.**²⁵ has held that advertisement/ commercial speech is also protected under *Article 19(1)(a)* of the Constitution of India, as the same contributes to the market place of ideas in the economic sphere. Similarly, a co-ordinate bench of this Court, after considering the ratio laid down in **Reckitt vs. Wipro**²⁶, while dealing with the aforesaid issue in **Tata Sons Private Limited (supra)**, has held as under:-

“99. The findings in *Reckitt v. Wipro* may almost be transposed, wholesale, into the facts of the present case; so stark are the similarities between the two. In the present case, too, there is no direct reference to Tata's white salt, though the commercial does refer to white salt in general. Unlike the situation which obtained in *Reckitt v. Wipro*, there is no overt, or covert, representation of white salt being removed and being replaced by Puro Healthy Salt. As in that case, all positive assertions, in Puro's commercial, are with respect to Puro Healthy Salt. Just as Wipro emphasised the presence of sandal, in Santoor, as imparting moisturising properties to it, thereby highlighting its advantages, Puro's commercial emphasises the natural character of Puro Healthy Salt, owing to its not being bleached, being free of any added chemicals and possessing naturally occurring iodine, as features which rendered it a healthy

²⁵(1995) 5 SCC 139

²⁶2023 SCC OnLine Del 2958



alternative. Extolling one's product, even if it borders on exaggeration, is perfectly permissible in comparative advertising and, so long as it does not contain serious representations of qualitative or quantitative facts, does not even have to pass the test of truth. What is proscribed is denigration of the rival's product. Declaring one's product to be superior to the other's, or even to all others, is permissible in comparative advertising. It is only where the purported inferiority of others' products, to one's own, is attributed to some specific feature, which is described in qualitative or quantitative terms, that the truth of the assertion is required to be established.

xxx xxx

106. It must always be remembered, in cases where commercials and advertisements are called into question as being disparaging, that what weighs in the balance is the right to free speech and to promote one's product in the manner one deems most appropriate. This is an essential feature of the right to trade and business. A competitor must not be permitted, by seeking recourse to litigative measures, or by approaching Court, to dictate the manner in which his rival's product is to be advertised. His right begins and ends with ensuring that his product is not disparaged. Additionally, the highest that he can seek is that the rival does not, in puffing up his product, resort to serious representations of fact which are misleading or incorrect, or in support of which no quantitative or qualitative data is forthcoming."

[Emphasis supplied]

48. Thus, it is clear therefrom that even exaggeration in an advertisement is permissible, however, only as long as it does not make serious qualitative/quantitative representations. It is also borne therefrom that if it does not make such factual representations, it need not even pass the test of truth. However, it is only when superiority is claimed with respect to a specific aspect by the advertiser over the rival product will truth be required to be established. The plaintiff has to thus make out a case accordingly.



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Impugned advertisement

49. The complete impugned advertisement is running into 52 *seconds*. It starts with the defendant no.3 riding on a “**Uber-bike**”, introducing himself with a cheeky smile as one of the “**Hyderabaddies**”, and then asking “**Bengaluru**” if they were “... ..*ready for a Head-ache?*”, which is a mere wordplay of his own name. Thereafter, the said defendant no.3 is, after simply booking/ checking a ride on “**Uber Moto**”, seen entering the Stadium along with his accomplice and writing “**ROYALLY CHALLENGED**” using a spray paint right before “**“BENGALURU’ V. HYDERABAD**”, which are the names of two cities. Then the said defendant no.3 is seen leaving the Stadium in the “**Uber Moto**” which has arrived within the “**three minutes**”. The impugned advertisement then finally ends with the tagline reading “**Uber Moto- Office ride of the Hyderabaddies**”.

50. In essence, in the opinion of this Court, the (i) *intent* (ii) *manner* and (iii) *message* of the impugned advertisement is to show that **Uber-Moto**/ the service(s) offered by the defendant nos.1 and 2 are fast and reliable as the ride booked by the defendant no.3 arrives within the stipulated time and saves the defendant no.3, who at the very outset had introduced himself in a negative vein as a “**hyderabaddie**”, from being caught by the Security team of the Stadium after finishing the mischievous task. Mere presence of a reference similar to the RCB trademark on the impugned banner, or the impugned poster with the slogan thereon in the impugned advertisement cannot be said to be having any elements of disparagement and/ or



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infringement within the meaning of *Section 29(4)* of the TM Act. In fact, the position will be the same when viewed through the eyes of a common layman.

51. It is pertinent to note that the defendant no.3 in the impugned advertisement is seen as himself, hailing and using the services of the defendant nos.1 and 2, which are ride hailing companies, whose services have no nexus whatsoever with Cricket. Though the said defendant no.3 is a Cricketer and calls himself a “*Hyderabaddie*”, however, nowhere throughout the impugned advertisement is the said defendant no.3 either heard referring to the SRH Cricket team or seen wearing the SRH Cricket team jersey. As such, the impugned advertisement itself does not reflect any connection with the SRH Cricket team.

52. At best, the impugned banner and the impugned poster in the impugned advertisement are *qua* an upcoming match between the RCB and SRH Cricket teams pitted against each other in an upcoming match they will be playing in Bengaluru in the ongoing IPL 2025. Even so, the same is a matter of fact, and throughout the impugned advertisement, the defendants have never pointed any fingers to the quality/ performance of the RCB trademark/ RCB Cricket team, nor can be said to seeking to draw out any comparison with any/ either of them so as to derive something in their favour. To this effect, it is the own case of the plaintiff in *paragraph no.21* of the plaint, as also noted above, that there is no element of comparison of player statistics or team performance in the impugned advertisement. As



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such, it cannot be said that the impugned advertisement has any element of *comparative advertising*. Accordingly, there are no element(s) of (un)fair and/ or (in)accurate comparison of any kind to show any kind of *commercial exploitation* by the defendants.

53. Likewise, since it is also the own case of the plaintiff in the aforesaid *paragraph no.21* of the plaint that the same is “... .. *not a parody*... ..”, there is no element of any irony or sarcasm therein. As a result, and even otherwise in view of the aforesaid discussions, the impugned advertisement cannot be said to be false and/ or misleading at this stage, and thus there are no act(s) of disparagement by the defendants.

54. All throughout the impugned advertisement, there is no (in)direct imputation/ insinuation/ comparison/ exaggeration/ sensationalism/ distortion of matters of fact of any kind by any of the defendants against the RCB trademark/ RCB Cricket team. That being so, there is no element of demeaning/ criticism/ condemning/ ridiculing/ denigrating/ defaming/ disgracing/ belittling/ scorning/ mocking/ falsity with a view to injure or harm the RCB trademark/ RCB Cricket team.

55. Even the impugned poster with the slogan “*Ee Sala Cup Namde*” depicted there on the Stadium wall is only showing the same as it is, there are neither any comment(s) *qua* it nor any reference thereto anywhere throughout the impugned advertisement which can draw this Court to infer and/ or conclude that there is any element of disparagement and/ or infringement under *Section 29(4)* of the TM Act.



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56. There is nothing underlying in the whole of the impugned advertisement which can cause to trigger or motivate any members of the general public, much less any of the players/ viewers/ followers of any of the RCB and/ or SRH Cricket teams at this stage. There can be no one-sided impression or one-sided version of the impugned advertisement, *particularly*, since what according to the plaintiff is '*right*' can according to the defendants be '*wrong*', and *vice versa*. The act(s) of disparagement cannot be concluded on the basis of the reviews/ comments/ statements made by few viewers/ followers as there are always two sides of a coin. In any event, the same cannot form or be the benchmark for determining the act of disparagement and/ or infringement under *Section 29(4)* of the TM Act. This is not a tell-tale.

57. Further, in the opinion of this Court, there is nothing in the impugned advertisement which shows/ portrays/ reflects or wherefrom it can be either inferred or concluded that the defendants have launched the said impugned advertisement with a view to achieve any benefit and/ or take any kind of undue/ unfair advantage or to cause any detriment to the character and/ or repute of the RCB trademark/ RCB Cricket team. The defendants have neither caused any harm to the reputation of nor derived any benefit from the goodwill of the RCB trademarks/ RCB Cricket team of the plaintiff.

58. Further, this Court does not see anything in the impugned advertisement which evidences diminishing of cache or dilution of positive association in the minds of the general public *qua* the RCB trademark/ RCB



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Cricket team. As such, this Court does not find anything negative/ deprecatory/ derogatory/ denigratory in the contents of the impugned advertisement; and some online stray comments can hardly prove the case of the plaintiff either way. The impugned advertisement is within the realm of *fair use* by the defendants.

59. The aforesaid, coupled with the law *qua* dilution of trademarks laid down in *ITC (supra)*, leads to infer that mere use of an identical or similar mark by the defendants itself does not *per se* create presumption of infringement under *Section 29(4)* of the TM Act, more so, since there is nothing to show/ establish otherwise.

60. It is also noteworthy that under such circumstances, it is not possible for this Court to either draw any adverse inference therefrom and/ or to agree with the submissions made by Ms. Majumdar, particularly, at this stage, while dealing with the present application. The contention of Ms. Majumdar that the word “challenged” indicates a “loser”/ “vanquished” is, *prima facie*, not acceptable, particularly when the match is yet to be played.

61. Notably, the impugned advertisement involved herein is pertaining to a game, and that too a *game of Cricket*, the players/ viewers/ followers whereof have their own respective genre, space, devotion, bias and tolerance, as the case may be from stage to stage and time to time, depending upon the situation(s) involved, and have their own preferred manners of engagement with the game. The contours of disparagement and/ or infringement while dealing with an impugned advertisement relating to a game of Cricket cannot



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be given such a restrictive meaning or viewed by a narrow spectacle.

62. It is also worth noting that the plaintiff in *paragraph 15* of the plaint, has itself pleaded that the impugned advertisement is on a social media platform/ handles of both the defendant nos.1 and 2, and wherein the defendant no.3 is *admittedly* shown as a “*fictional anti-hero character named Hyderabaddie*”. Based thereon, this Court would not be wrong to conclude that the impugned advertisement is at best only a creative depiction of matter(s) of fact which tries to give a taste of humour to the viewers.

63. In view of the aforesaid, no common layman would be able to draw any inference and/ or conclusion after seeing the impugned advertisement, much less, hardly anything of the type sought to be contended by the plaintiff. As collated hereinabove, a selective reading/ viewing of the impugned advertisement is neither permissible nor ought to be permitted while viewing an impugned advertisement through the eyes of a common layman. In view thereof, the impugned advertisement cannot be said to come within the purview and periphery of and tantamount to disparagement and/ or infringement within the meaning of *Section 29(4)* of the TM Act, especially taking into account the provisions of *Article 19* of the Constitution of India.

64. With regards to ***Royal Challengers Sports Private Limited (supra)***, a prior suit instituted by the very same plaintiff in the context of the movie ‘*Jailer*’, the same cannot be applicable to the facts involved in the present proceedings mainly since the same was relating to a different cause of action *qua* a character who was shown to commit offensive actions and was wearing



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the RCB Cricket team jersey. Here, in the impugned advertisement, there is nothing of that sort. Similarly, the plaintiff cannot seek any benefit from the law laid down in ***Hamdard National Foundation (supra)*** since there too, the element of derogation/ negative light was clearly discernible, such as the lead actor calling the product “*ROOH AFZA*” of the plaintiff as “*bekaar*” (useless/ bad) in Hindi. Here, there is nothing of that sort in the impugned advertisement as well. The same is the situation when it comes to the plaintiff trying to take benefit from ***ICICI Bank (supra)*** wherein a bank robbery is shown to take place in a certain “*IBIBI BANK*” in broad daylight and it uses a similar tagline to that of the ICICI Bank. There is nothing of that sort here. Interestingly, in the impugned advertisement, the Security team in the Stadium is rather shown as vigilant.

65. Thus, in view of the afore-going, this Court is of the considered opinion that the general perception created by wholistic viewing of the impugned advertisement is one of a healthy banter and good-natured light-hearted humour without any elements of disparagement and/ or infringement under *Section 29(4)* of the TM Act with regards to the RCB trademark/ RCB Cricket team.

Prima facie case:

66. In view of the afore-going, the plaintiff has not been able to make out a *prima facie* case of disparagement and/ or infringement in the impugned advertisement in its favour and against any of the defendants. More so, when this Court does not, and in fact cannot find anything wrong with the (i)



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intent, (ii) *manner* and (iii) *message* thereof, especially when seen with the overall spirit, or the purpose, or the context or the underlying reasoning therein. Not to forget that such *intent*, *manner* and *message* is required to be tested when seen through the eyes of a common layman.

Irreparable harm, loss and injury:

67. Considering that the plaintiff has not been able to make out a *prima facie* case of any injury as there is no falsity/ misrepresentation/ undue and unfair advantage/ deprecation/ derogation/ defamation on part of the defendants *qua* the RCB trademark/ RCB Cricket team, as also there does not appear to be any detriment to the repute of the RCB trademark taking place which would be in-compensable, post the outcome of the present *lis*, this Court is of the view that there is no scope of any kind of *irreparable harm, loss and injury* likely to be caused to the plaintiff due to non-grant of temporary injunction.

Balance of convenience:

68. Further, keeping in mind the law laid down by the Hon'ble Supreme Court in *Bloomberg Television (supra)*, it must be borne in mind that prolonged litigation can be used to award an effective death sentence to speech/ expression at pre-litigation stages. The decision in *Bloomberg Television (supra)* read together with *Tata Press (supra)* wherein it was held by the Hon'ble Supreme Court that commercial free speech is also protected under *Article 19(1)(a)* of the Constitution, this Court is of the view that the *balance of convenience* is not in favour of the plaintiff for grant of temporary



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injunction. More so, since in the opinion of this Court, there is no *inconvenience* so great being caused to the plaintiff, so as to outweigh the rights of the defendants.

Conclusion:

69. In light of the aforesaid, as also for the afore-going analysis and conclusion, there is no *prima facie* case of disparagement and/ or infringement of trademark under *Section 29(4)* made out by the plaintiff in its favour and against the defendants; neither this is a case of any kind of *irreparable harm, loss and injury* likely to be caused to the plaintiff if temporary injunction is not granted in its favour and against the defendants; nor the *balance of convenience* lie in favour of the plaintiff for grant of temporary injunction.

70. The impugned advertisement is in the context of a game of Cricket, a game of sportsmanship, which, in the opinion of this Court, does not call for interference of any sort at this stage, especially while this Court is considering the present application under *Order XXXIX rules 1 and 2* read with *Section 151* of the CPC. More so, since in a case like the present one, interference by this Court, at this stage, would tantamount to allowing the plaintiff to run on water with assurances of their not falling.

71. Accordingly, the present application is dismissed. No order as to costs.

72. Before parting, this Court must appreciate the able assistance provided by both Ms. Shwetashree Majumdar, learned counsel for the plaintiff and Mr.



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Sai Krishna Rajagopal, learned counsel for the defendant nos.1 and 2 as also their respective team(s) of counsels assisting them.

SAURABH BANERJEE, J.

MAY 05, 2025

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