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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**# **CNR No. DLHC010986622012****Reserved on: 28th March, 2026****Pronounced on: 30th July, 2026**+ **RFA 320/2012 & CM APPL. 80300/2025****TV TODAY NETWORK****.....Appellant**

Through: Mr. Hrishikesh Baruah, Ms. Radhika Gupta, Ms. Nishtha Sachan, Mr. Saket Verma, Mr. Utkarsh Dwiwedi, Mr. Kumar Kshitij, Ms. Pragya Agarwal and Mr. Yashashwy Ghosh, Advocates

versus

SAURASHTRA AAJ TAK AND ANR.**.....Respondents**

Through: Mr. Arjun Mahajan, Mr. Sumit R. Sharma, Mr. Raghvendra N. Budholia, Mr. Sagar Agarwal, Mr. Piyush Gautam, Mr. Harshit Kapoor, Mr. Manav Singh, Mr. Siddharth Bajaj, Mr. Aryan Verma and Ms. Bhavya Arora, Advocates

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA, J.

INTRODUCTION:

1. The present Regular First Appeal ('RFA') has been filed under Section 96 of the Code of Civil Procedure, 1908 ('CPC'), thereby, challenging the



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judgment dated 29th February, 2012 ('impugned judgment'), passed by the Additional District Judge ('ADJ') (Central) 12, Tis Hazari Courts, Delhi, in *TM 08/2011* (earlier suit bearing *C.S. 838/2003*), titled as *M/s T.V. Today Network Versus M/s Saurashtra Aaj Tak and Another*.

2. The aforesaid suit was filed by the appellant/plaintiff, seeking permanent injunction to restrain the respondent/defendant from using the name 'Saurashtra Aaj Tak' and publishing its newspaper under the name, style and title of 'Saurashtra Aaj Tak'. A further prayer for mandatory injunction was sought for directing the respondent/defendant to change the name of its newspaper from 'Saurashtra Aaj Tak' to any other name, style and title, not being similar/deceptively similar to the name, style and title 'Aaj Tak'.

3. The Trial Court, *vide* the impugned judgment, decreed the suit and passed a decree of mandatory injunction in favour of the plaintiff/appellant and against the respondent/defendant, thereby, directing the respondent/defendant to prominently publish the disclaimer with its name, wherever the word 'Saurashtra Aaj Tak' was published either in its own newspaper or magazine or in any promotional material. The disclaimer was directed to be published in the words "*'Saurashtra Aaj Tak' has no connection or association with 'Aaj Tak' of T.V. Today Network*". Further a decree of permanent injunction was passed, thereby, restraining the defendant/respondent from claiming any association or connection with the appellant/plaintiff, either expressly or impliedly.

4. Before advertng to the facts of the present case, it is noted that this Court, *vide* order dated 16th July, 2013, admitted the present appeal arising out of the impugned judgment and decree. Further, the Court was informed that on account of change in the management of respondent no. 1, respondent no.



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2 was no longer an editor or publisher in respondent no. 1. The Court noted that respondent no. 2, despite service, had failed to appear and was accordingly proceeded *ex-parte*. Additionally, it was also recorded that no interim protection had been operating during the pendency of the suit before the Trial Court, and consequently, the applications seeking interim relief were dismissed.

5. On 02nd May, 2025, the counsel for the appellant informed this Court that the trademark in question has been declared a Well-Known trademark by the Registrar of Trademarks.

6. By way of order dated 19th December, 2025, this Court took on record additional documents filed by the appellant/plaintiff, namely the Status Pages and Trademark Registration Certificates pertaining to the mark 'Aaj Tak' in Class 38 and Class 41, as well as the Trademark Registration Certificate of 'Aaj Tak' in Class 16.

FACTUAL MATRIX:

7. The brief facts, relevant for adjudication of the present appeal, as culled out from the impugned judgment and the pleadings on record, are as follows:

Pre-Filing of Suit:

7.1. The present dispute pertains to the use of the expression 'Aaj Tak' by the respondent/defendant and the publication of a newspaper under the title 'Saurashtra Aaj Tak'.

7.2. The appellant/plaintiff namely, 'T.V. Today Network' is a company registered under the Companies Act, 1956 ('Companies Act') having its registered office at *Videocon Towers, E-1 Jhandewalen Extension, New Delhi-110055*. The appellant/plaintiff company is engaged in the business of



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dissemination of news in media. The appellant/plaintiff has been operating the news channel 'Aaj Tak', and has a viewership of twenty million people.

7.3. The news channel 'Aaj Tak' was initially launched on 'Doordarshan Channel' in the year 1995. In year 2000, 'Aaj Tak' was introduced as the first 24-hours Hindi news channel, and since then has acquired substantial public viewership and recognition.

7.4. During the first week of December, 2002, the appellant/plaintiff came to know that a newspaper under the title 'Saurashtra Aaj Tak' had been launched and published by the respondent/defendant from Rajkot, Gujarat. The newspaper was being published in Gujarati language and was being circulated in the Saurashtra region of the State of Gujarat.

7.5. Upon acquiring knowledge regarding the publication of the newspaper, the appellant/plaintiff issued a legal notice dated 27th January, 2003, calling upon the respondent/defendant to discontinue the use of the expression 'Saurashtra Aaj Tak'. However, no reply to the said notice was received from the respondent/defendant and the publication of the said newspaper continued thereafter.

7.6. Aggrieved thereby, the appellant/plaintiff filed the suit, on 09th April, 2003, being C.S. 838/2003, titled *M/s T.V. Today Network Versus M/s Saurashtra Aaj Tak and Another*, before this Court.

Post-Filing of Suit:

7.7. This Court, by order dated 14th October, 2003, transferred the suit to the District Court, in view of change in the pecuniary jurisdiction of this Court, and subsequently, the suit was renumbered as *TM 08/2011*, titled as *M/s T.V. Today Network Versus M/s Saurashtra Aaj Tak and Another*.



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7.8. The Trial Court by way of the order dated 20th August, 2008, recorded that despite due service of summons, the defendant had stopped participating in the proceedings and, accordingly, proceeded against them *ex-parte*.

7.9. The Trial Court by way of order dated 04th February, 2012, took the subsequent fact on record with regard to the registration of the words ‘Aaj Tak’ as a trademark during the pendency of the suit. M/s. Living Media India Limited was granted Certificate of Registration of Trademark dated 07th October, 2005, bearing *Trade Mark no. 1242921*, for the words ‘Aaj Tak’ in Class 41 in respect of education, providing of training, entertainment, sporting and cultural activities. Additionally, a Certificate of Registration of Trademark dated 23rd November, 2005, bearing *Trade Mark No. 1242922* for the mark ‘Aaj Tak’ was granted in favour of M/s. Living Media India Limited under Class 38 in respect of Telecommunications.

7.10. The Trial Court passed the impugned judgment and decree dated 29th February, 2012, whereby, the suit was decreed in favour of the plaintiff and a mandatory injunction was granted against the respondent/defendant, thereby, directing the respondent/defendant to prominently publish the disclaimer with its name, in the words “‘*Saurashtra Aaj Tak*’ has no connection or association with ‘*Aaj Tak*’ of *T.V. Today Network*”, wherever the word ‘Saurashtra Aaj Tak’ was published, either in its own newspaper or magazine or in any promotional material. Further, a decree of permanent injunction was passed, restraining the respondent/defendant from claiming any association or connection with the appellant/plaintiff, either expressly or impliedly.

7.11. Thus, the present appeal has been filed by the appellant/plaintiff, seeking to set aside the impugned judgment and decree, since the



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respondent/defendant were not restrained from using the mark 'Saurashtra Aaj Tak', but were allowed to use the same with a disclaimer, as aforesaid.

SUBMISSIONS OF THE APPELLANT:

8. Before this Court, the appellant has raised the following contentions:

8.1 The present appeal has been filed against the impugned judgment in so far as it permits the respondent to use the mark 'Saurashtra Aaj Tak', despite clear and categorical findings that the respondent are riding on the goodwill of the appellant.

8.2 The appellant forms part of the India Today Group, which was established in the year 1975 with the launch of the 'India Today magazine' and has since developed into a reputed and well-established media group in the country. The appellant adopted and commenced use of the trademark 'Aaj Tak'/'आज तक' in the year 1995, when a 30-minute news programme under the said name was launched on Doordarshan Channel of Prasar Bharti Broadcasting Corporation. The said programme gained considerable popularity and success amongst viewers, which eventually led to the launch of India's first private 24-hour Hindi satellite news channel under the mark 'Aaj Tak'/'आज तक' in the year 2000, and since then, the appellant has continuously engaged in dissemination of news and allied media services under the said mark.

8.3 The appellant has been operating for more than thirty years, and has acquired substantial reputation and goodwill in the market with a viewership exceeding twenty million people. By virtue of long, continuous, exclusive and uninterrupted use, the mark 'Aaj Tak'/'आज तक' has acquired distinctiveness and secondary meaning and has become closely associated with the appellant



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and its news dissemination activities. Over a period of time, the combination of the words 'Aaj' and 'Tak' have become synonymous with the appellant and has acquired the status of a household name amongst the public.

8.4 Further, during the pendency of the suit in question, the appellant secured the registration for the mark 'Aaj Tak' bearing *Trademark no. 1242921*, i.e., *Exhibit PW-1/11*, dated 07th October, 2005 in Class 41 and *Trademark no. 1242922*, i.e., *Exhibit PW-1/12*, dated 23rd November, 2005, in Class 38 in the name of M/s Living Media India Limited, i.e., the holding company of the appellant. Both the aforesaid trademark registrations operate as of date 13th October, 2003.

8.5 The appellant is the prior user of the trademark 'Aaj Tak', and the subsequent adoption of the mark 'Saurashtra Aaj Tak' by the respondent, even in Gujarati language, would deceive and mislead the public as well as the advertisers, into believing that the newspaper belongs to or is closely associated to the appellant. The respondent has adopted the deceptively similar trade name for its own gain and to exploit the appellant's goodwill and name, generated over the years.

8.6 The respondent has adopted a mark that is phonetically similar to the appellant's mark, and even by adding the prefix 'Saurashtra' to the words 'Aaj Tak', the respondent's mark remains deceptively similar.

8.7 The appellant has a family of marks, all of which use the 'Tak' suffix, and the same has become a source identifier of the marks of the appellant and is therefore, the dominant part of the marks.

8.8 The appellant and respondent operate in the same business, i.e., dissemination of news and media business, in which the respondent only has a regional presence while the appellant enjoys a national presence. Thus, the



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apprehension that the respondent is riding on the goodwill of the appellant cannot be ruled out.

8.9 The consumers have developed a certain expectation and standard of quality from the appellant, and if the services of the respondent fall short of such expectations, then the same is likely to be suffered by the appellant on account of ostensible likelihood of association between the appellant and respondent, owing to similarity of the marks.

8.10 Thus, the appellant has established the ingredients of passing off, i.e., goodwill, misrepresentation and likelihood of damage before the Trial Court. The Trial Court has itself arrived at the finding that the adoption of the mark 'Saurashtra Aaj Tak' by the respondent is likely to be associated with the appellant's trademark 'Aaj Tak', and likely to create confusion in the minds of the public. The Trial Court has also come to the conclusion that the acts of the respondent are likely to injure the goodwill and reputation of the appellant.

8.11 However, despite such categorical findings, the Trial Court has erred in not granting permanent injunction, and thereby, completely restraining the respondent/defendant from using the mark 'Aaj Tak'.

8.12 The Trial Court has erroneously held that the use of the mark 'Saurashtra Aaj Tak' by the respondent was not *per-se* dishonest, and the respondent must have also acquired goodwill. The said findings of the Trial Court are based on surmises and conjectures, since the respondent has not led any evidence to establish its goodwill and reputation. Further, the element of *per-se* dishonesty is not a material aspect for establishing passing off, and proof of fraudulent intention is not a necessary element in a passing off action.

8.13 The written statement dated 22nd April, 2003, filed by the respondent/defendant before the Trial court was only a pleading, and not



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evidence. The contentions of the respondent/defendant in the written statement had to be proved by way of evidence and witness had to be cross-examined in this regard. However, no evidence was led by the respondent.

8.14 Further, the respondent has asserted various defences, including *bona fide* use, which were not tested in evidence and therefore cannot be the basis of any legitimate claim. Since the respondent did not lead any evidence before the Trial Court, an adverse inference has to be drawn against the respondent.

8.15 It was the case of the respondent itself that it had commenced its business in the year 2002 under the name 'Saurashtra Aaj Tak'. Even though the respondent had obtained registration for the name 'Saurashtra Aaj Tak' under the Press and Registration of Books Act, 1867 ('PRB Act'), however, the said registration under the PRB Act has no relevance or over-riding effect on the provisions of the Trade Marks Act, 1999 ('Trade Marks Act').

8.16 Thus, the impugned judgment erred in permitting the respondent to use the mark 'Saurashtra Aaj Tak' with a disclaimer.

8.17 During the pendency of the present appeal, 'Aaj Tak' has been declared as a Well-Known trademark by the Registrar of Trademarks. Thus, the adoption of the words 'Saurashtra Aaj Tak', by the respondent is not permissible as the same amounts to a conflicting mark.

8.18 The suit in question has been instituted by the company 'T.V. Today Network Limited', which is the entity using the trademark 'Aaj Tak'. The name of the appellant is clear from the plaint as well as the documents filed by the appellant before the Trial Court. The institution of the suit by the authorized representative is maintainable and there is no defect in the Board Resolution dated 23rd May, 2008, which duly authorizes Mr. Ashok Kumar Vermani, General Manager (Legal) and Company Secretary to institute



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proceedings before the Court.

8.19 The appellant had inadvertently missed the word 'Limited' in the cause title. However, the said defect is only a case of misdescription, and is not fatal to the maintainability of the suit. Moreover, the respondent ought to have taken an objection in this regard at the very inception, and not at the stage of appeal.

SUBMISSION OF RESPONDENT NO. 1:

9. Rebutting the contentions of the appellant, the respondent has raised the following arguments before this Court:

9.1 The suit filed by the appellant suffers from serious defect and is not maintainable in the eye of law. The appellant has failed to demonstrate any enforceable legal right in the trademark 'Aaj Tak' and has not properly disclosed its legal status or the capacity in which it claims to have filed the suit. The full legal name of the plaintiff/appellant entity has not been disclosed, i.e., whether it is a limited company, private limited company, or a partnership firm.

9.2 Only a registered proprietor or a duly authorised licensee can maintain an action for infringement or passing off. The appellant has claimed proprietary rights in the trademark 'Aaj Tak', but the Trademark Registration Certificates filed on record clearly show that the mark 'Aaj Tak' is not registered in the name of the appellant, but in the name of M/s Living Media India Limited, which is a separate legal entity. Thus, the appellant failed to disclose that the registered proprietor of the trademark 'Aaj Tak' is not 'T.V. Today Network Limited'. A party approaching the Court must disclose all material facts and cannot be permitted to obtain equitable relief by concealing relevant information.



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9.3 The appellant has failed to produce any licence, assignment or power of attorney from M/s Living Media India Limited. The plaint filed by the appellant neither contains averments explaining the relationship between the appellant company and M/s Living Media India Limited, nor any right to enforce the mark, rendering the present proceedings unsustainable. There is no pleading in the plaint about any internal group structure, control, or authorisation from M/s Living Media India Limited, thereby, making the claim wholly unsupported.

9.4 The suit suffers from a clear misjoinder of parties, as the registered proprietor, M/s Living Media India Limited, who alone could claim proprietary rights in the mark 'Aaj Tak', was not impleaded as a party to the proceedings despite the appellant asserting itself to be merely a division thereof.

9.5 The Board Resolution dated 23rd May, 2008, relied by the appellant to demonstrate authorisation, is signed solely by Mr. Ashok Kumar Vermani. However, there is no document on record to show that he was a director of the appellant company at the relevant time, nor there is any supporting material such as minutes of the board meeting or the signature of any other directors. Therefore, the said Board Resolution is self-serving and the institution of the present suit was unauthorised and legally untenable.

9.6 M/s Living Media India Limited was the original entity using the mark 'Aaj Tak' and the appellant has, at best, derived user rights through a later arrangement. However, no such agreement or transfer document has been placed on record in the present suit, raising serious doubts about the maintainability of the suit as the appellant has no *locus standi* to file or pursue the present proceedings.



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9.7 The respondent's use of the mark 'Saurashtra Aaj Tak' since the year 2002 is prior, continuous, *bona fide*, and confined to a local area, and is therefore protected under the doctrine of prior user under Section 34 of the Trade Marks Act, against claims of passing off by a subsequent registrant or user.

9.8 The respondent started a small regional newspaper titled as 'Saurashtra Aaj Tak', in Gujarati language, which is circulated exclusively in the Saurashtra region of the State of Gujarat.

9.9 The said publication under the name of 'Saurashtra Aaj Tak' was started in the year 2002, after obtaining approval and title verification from the Registrar of Newspaper for India ('RNI') under the PRB Act. The said approval was granted after verification of the title, which was not found to be identical or deceptively similar to any existing publication name. The appellant had never questioned or opposed the name of the respondent's newspaper at the time of RNI registration or during the early years of publication.

9.10 The name 'Saurashtra Aaj Tak' was adopted by the respondent in good faith, with a view to reflect its local character ('Saurashtra') and its editorial nature as a daily publication ('Aaj Tak' meaning 'up to today' or 'as of today' in Hindi/Gujarati). The term 'Aaj Tak' has been used descriptively to signify daily news coverage, and the addition of 'Saurashtra' provides a clear regional qualifier that differentiates the mark in totality.

9.11 The respondent has not adopted any trade dress, logo, colour combination, font style, or slogan associated with the appellant's television channel. The manner in which the name 'Saurashtra Aaj Tak' has been used



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alongside regional cultural symbols and Gujarati content makes it evident that it is a localised, original, and self-contained brand identity.

9.12 Respondent's newspaper is confined strictly to the print medium, has no presence in television or digital broadcasting, and is targeted solely at the vernacular, local readership of the Saurashtra region.

9.13 The appellant has neither pleaded nor placed on record any documents or evidence to demonstrate that it has ever used the mark 'Aaj Tak' in relation to newspaper or print media. The appellant is a national broadcasting channel, which began operating 'Aaj Tak' as 24-hours news channel, however, there is no evidence to demonstrate that the appellant has ever launched or attempted to launch a newspaper under the name of 'Aaj Tak'.

9.14 Thus, the respondent's use of the name 'Saurashtra Aaj Tak' predates any corresponding use by the appellant in print media in the said territory, and is therefore shielded by Section 34 of the Trade Marks Act.

9.15 The absence of overlap in the class of consumers, the difference in language, geography, and media platform, all contribute to establishing that the respondent's adoption and use of the name 'Saurashtra Aaj Tak' was not only *bona fide*, but also unlikely to cause confusion or mislead any member of the public or trade.

9.16 The adoption of the name was independent, without any knowledge of the appellant's use of the term 'Aaj Tak' in the television segment, and without any intention to imitate, encash upon, or derive benefit from the appellant's alleged goodwill or reputation.

9.17 The absence of any prior challenge by the appellant, the lack of confusion or customer complaints, and the fact that the respondent has



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always operated independently, are all indicators that the respondent's use of the mark 'Saurashtra Aaj Tak' was neither deceptive nor dishonest.

9.18 Thus, the impugned judgment correctly held that the factual averments in the written statement reflected *bona fide* local use, and that the respondent may have, over time, developed goodwill within its limited sphere. The Trial Court found no indication of dishonest intent or bad faith on the part of the respondent, and therefore declined to grant a blanket injunction. The condition of disclaimer as imposed on the respondent's use of the mark, addresses the appellant's apprehensions, while protecting the respondent's *bona fide* and independent use of the mark within a localised territory.

9.19 Appellant has failed to establish any of the legal ingredients of passing off, and the mere existence of the phrase 'Aaj Tak' in both names, without any actual evidence of confusion or deception, is insufficient to sustain the claim.

9.20 The term 'Aaj Tak' is a common expression in Hindi, which translates to 'Till Today' or 'As of Today' in English. It is a descriptive, generic, or commonly used term and not fanciful, invented, or arbitrary in nature. Therefore, it cannot be monopolised by any one entity. Further, the appellant did not place any evidence on record to establish that the term 'Aaj Tak' had acquired a secondary meaning, warranting exclusive rights across all platforms, language, territories.

9.21 The RNI has approved multiple titles incorporating the phrase 'Aaj Tak' across different regions and languages, which shows that the phrase is not regarded as uniquely distinctive, but is treated as a descriptive expression available for *bona fide* use with appropriate qualifiers. The respondent's use of the term 'Saurashtra Aaj Tak' was approved by the RNI after proper



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scrutiny, indicating that the title was not found to be deceptively similar to any existing publication, including the appellant's TV channel.

9.22 The appellant has also failed to demonstrate the existence of any actual confusion or a reasonable likelihood thereof. The evidence on record does not support the allegation that any segment of the public, advertisers, or readers was misled into believing that the respondent's publication was associated with or emanating from the appellant. The names of such persons have been not been disclosed, no affidavits from any advertiser or third party have been filed, and no documentary evidence has been produced to support the plea.

9.23 A visual comparison of the respective marks further reinforces the absence of any likelihood of confusion. The appellant's mark 'Aaj Tak' is in Hindi Devanagari script, enclosed in a red trapezoidal shape. In contrast, the respondent's logo clearly features the phrase 'Saurashtra Aaj Tak' written in Gujarati script, with no red background, no similarity in stylisation, and no visual alignment with the appellant's branding.

9.24 Even a character-wise analysis shows stark differences. These distinctions, both in script and in trade dress, make it evident that the respondent's use is neither deceptive nor dishonest. The overall look, font, and linguistic presentation of the respondent's mark is unique and region-specific.

9.25 Further, the respondent has always used the full name 'Saurashtra Aaj Tak' as a composite title, and has never attempted to isolate or emphasise the words 'Aaj Tak' independently in its masthead, promotional material, or design, emphasizing the specific geographical region it serves.



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9.26 Thus, the Trial Court correctly examined all material placed on record and found no evidence to establish that the term ‘Aaj Tak’ had acquired such distinctiveness or recognition as to warrant a monopoly across unrelated platforms.

9.27 Therefore, the Trial Court rightly refused to grant a blanket injunction. The decree is, therefore, based on a sound appreciation of the record and does not suffer from any legal or factual infirmity.

9.28 The Trial Court directed the respondent to carry a clear and prominent disclaimer on every publication stating that there is no association with ‘Aaj Tak’ of ‘T.V. Today Network’. The respondent has complied with this order consistently since the date of the decree. The presence of such a disclaimer further safeguards against any possibility of confusion and reinforces the respondent’s independent identity.

9.29 The appellant has not filed any supporting material such as consumer surveys, market data, or independent recognition studies to establish that the mark of the appellant had become Well-Known at the time of adjudication. While the appellant may claim Well-Known status today based on its continued presence in the media space, such recognition, if any, is a post-decree development and cannot be relied upon to invalidate or undermine the impugned judgment passed in the year 2012.

9.30 The measured approach adopted by the Trial Court aligns with the well-settled principle that injunctive relief is an equitable remedy, to be granted on considerations of fairness, proportionality, and the overall conduct of the parties.



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ANALYSIS AND FINDINGS:

10. This Court has heard the learned counsels for the parties, and has perused the documents on record.

11. The present appeal impugns the judgment and decree dated 29th February, 2012, passed by the Trial Court in *TM 08/2011*, wherein, despite holding the appellant to have established that the words ‘Aaj Tak’ used by the appellant had acquired distinctive meaning and the appellant has goodwill and reputation in the said mark, the Trial Court held that it could not be ruled out that the respondent/defendant has also developed goodwill and reputation in the mark ‘Saurashtra Aaj Tak’ and that the said use by the respondent/defendant was not *per-se* dishonest. Thus, on the said basis, the respondent/defendant has been allowed to continue the use of the mark ‘Saurashtra Aaj Tak’, however, with a disclaimer that it had no connection or association with ‘Aaj Tak’ of ‘T.V. Today Network’.

12. The suit had been filed by the appellant/plaintiff seeking a decree of permanent injunction restraining the defendant from using the name ‘Saurashtra Aaj Tak’ and/or publishing its newspaper under the said name. The appellant/plaintiff also sought a decree of mandatory injunction directing the defendant to change the name of its newspaper from ‘Saurashtra Aaj Tak’ to any other name that is not deceptively similar to the name and style of the plaintiff’s channel.

13. The Trial Court passed the decree of mandatory injunction, thereby, directing the defendant to prominently publish a disclaimer with its name wherever the word ‘Saurashtra Aaj Tak’ was published, either in its own newspaper/magazine or in any promotional material, to the effect that “‘Saurashtra Aaj Tak’ has no connection or association with ‘Aaj Tak’ of T.V.



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Today Network". The disclaimer was directed to be published in font size of not less than 12, and if it was published in a font size of less than 12, it should not be less than the font size of defendant's newspaper's name as published. Further, a decree of permanent injunction was also passed, thereby, restraining the defendant, its agents, assigns, etc., from claiming any association or connection with the plaintiff, either expressly or impliedly.

14. Accordingly, it is evident that the Trial Court while granting relief in favour of the appellant, did not grant a decree of permanent injunction restraining the respondent from using the mark 'Saurashtra Aaj Tak' altogether.

15. The Trial Court record reveals that the respondent/defendant was proceeded *ex-parte vide* order dated 20th August, 2008. Although the respondent had filed a written statement before the Trial Court, it did not lead any evidence.

16. During the pendency of the suit, the appellant/plaintiff got the mark 'Aaj Tak' registered under Classes 38 and 41 in the name of M/s Living Media India Limited. The Trial Court noted the testimony of the *PW-1*, i.e., Mr. Ashok Kumar Vermani, that the words 'Aaj Tak' were closely associated with the appellant company in relation to its business of news dissemination, media channel and allied businesses. Further, the Trial Court took note of the testimony of *PW-1* that they had established tremendous goodwill, and the words 'Aaj Tak' were closely associated with the appellant/plaintiff in the news industry for the last several years. It was held that the combination of the words 'Aaj Tak' had become synonymous with the appellant/plaintiff apart from being a household name.



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17. Furthermore, the Trial Court held that although the words ‘Aaj Tak’ literally mean ‘Till Today’ and are descriptive words, however, due to long usage of the said words by the appellant/plaintiff in the context of news dissemination, the words ‘Aaj Tak’ had attained secondary meaning in the field of news dissemination by the appellant/plaintiff. Thus, the words ‘Aaj Tak’ were held to have acquired distinctive meaning and reputation *vis-à-vis* the appellant’s services of news dissemination.

18. The Trial Court further held that the appellant/plaintiff successfully established that the use of ‘Saurashtra Aaj Tak’ by the respondent/defendant was likely to create confusion in the minds of the general public and consumers, and create a likelihood of association. It was held that the fields and provision of services provided by the appellant/plaintiff and the respondent/defendant are on parallel lines, i.e., dissemination of news and media business. Likelihood of confusion was held by the Trial Court even though the respondent/defendant only has a regional presence in print media, while the appellant/plaintiff has a national presence.

19. The Trial Court further went on to hold that the appellant/plaintiff has goodwill and reputation in the mark ‘Aaj Tak’ and that the apprehension of the respondent/defendant riding on the goodwill of the appellant/plaintiff, cannot be ruled out. It was further held that any act, omission or misfeasance on the part of the respondent/defendant is likely to injure the goodwill and reputation of the appellant/plaintiff.

20. The Trial Court held that due to the services provided by the appellant/plaintiff during the course of time, the consumers might have developed certain expectations and quality standards. In case, the provision of services by the respondent/defendant falls short of that standard, the



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fallout of the same is likely to be suffered by the appellant/plaintiff on account of the ostensible likelihood of association between the appellant/plaintiff and the respondent/defendant, due to the similarity of trade/service marks.

21. Despite holding in categorical terms that the appellant/plaintiff had goodwill and reputation in the mark 'Aaj Tak', the Trial Court held that it could not be ruled out that the respondent/defendant had also developed goodwill and reputation in its trademark in the course of time. The Trial Court further held that *prima facie* acts of the respondent/defendant did not appear to be *per-se* dishonest.

22. The aforesaid findings of the Trial Court are erroneous, in the absence of any evidence by the respondent/defendant in this regard. It is to be noted that the respondent/defendant in its written statement claimed that it had registered the words 'Saurashtra Aaj Tak' under the PRB Act. However, it never claimed *bona fide* use of the words 'Aaj Tak'. No case was pleaded by the respondent/defendant under Section 35 of the Trade Marks Act, which provides the defence of *bona fide* use. No evidence was led by the respondent/defendant to show that its use of the words 'Aaj Tak' was honest or *bona fide* in any manner.

23. As noted above, the respondent/defendant was proceeded *ex-parte* in the trial proceedings and did not lead any evidence. Thus, an adverse inference would be drawn against the respondent. The testimony of the plaintiff's witness, i.e., *PW-1* being Mr. Ashok Kumar Vermani, has remained uncontroverted.

24. The Trial Court has categorically held that the mark of the appellant/plaintiff has acquired distinctiveness. It has also been held by the



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Trial Court that the use of the mark 'Saurashtra Aaj Tak' by the respondent/defendant would lead to likelihood of confusion and association and is likely to injure the reputation of the appellant/plaintiff. Since the respondent/defendant has not filed any appeal or cross-objections against the aforesaid findings, the said findings have attained finality. Thus, only the issue of the Trial Court permitting the respondent/defendant to use the mark 'Saurashtra Aaj Tak' with a disclaimer is under challenge before this Court, and shall form the subject matter of adjudication in the present appeal.

25. It is noted that during the pendency of the appeal, the mark 'Aaj Tak' has also been registered under Class 16, i.e., newspapers in the name of M/s Living Media India Limited. Furthermore, the mark 'Aaj Tak' has been declared a Well-Known trademark by the Registrar of Trademarks.

Whether The Appellant/Plaintiff Had The Locus Standi To File The Suit For Passing Off?

26. The respondent herein has contended that the suit in question was not maintainable, as the appellant/plaintiff company is not the registered proprietor of the mark 'Aaj Tak' and has no *locus* to file the suit. It is the case of the respondent/defendant that the mark 'Aaj Tak' was registered as a trademark under Classes 38 and 41 in the name of M/s Living Media India Limited, which is not a party to the present suit.

27. In this regard, it is to be noted that the suit in question had been filed with respect to passing off, and not infringement of the mark 'Aaj Tak'. The relevant provisions, i.e., Section 27 and Section 28 of the Trade Marks Act, that are invoked in a suit for passing off, are as follows:



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“xxx xxx xxx

27. No action for infringement of unregistered trade mark.— (1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark.

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods or services as the goods of another person or as services provided by another person, or the remedies in respect thereof.

28. Rights conferred by registration.— (1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

(2) The exclusive right to the use of a trade mark given under subsection (1) shall be subject to any conditions and limitations to which the registration is subject.

(3) Where two or more persons are registered proprietors of trade marks, which are identical with or nearly resemble each other, the exclusive right to the use of any of those trade marks shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by any one of those persons as against any other of those persons merely by registration of the trade marks but each of those persons has otherwise the same rights as against other persons (not being registered users using by way of permitted use) as he would have if he were the sole registered proprietor.

xxx xxx xxx”

(Emphasis supplied)

28. Section 28 of the Trade Marks Act grants a registered proprietor of the trademark, the exclusive right to obtain relief in respect of infringement of the trademark. Section 27(1) of the Trade Marks Act provides that no person can institute any proceedings with respect to infringement of an unregistered



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trademark. However, Section 27(2) is a *Savings Clause*, which states that nothing in this Act shall be deemed to affect rights of action against any person for passing off goods or services as the goods of another person or as services provided by another person, or the remedies in respect thereof. Thus, a combined reading of Sections 27 and 28 of the Trade Marks Act makes it clear that though a suit for infringement of a registered trademark can be filed by the registered proprietor, the same does not bar the common law remedy of passing off, which can be availed even by a party which is a prior user of the mark, even if not the registered proprietor of the mark.

29. At this stage, it would be fruitful to refer to the decision in the case of ***S. Syed Mohideen Versus P. Sulochana Bai, (2016) 2 SCC 683***, wherein, the Supreme Court held that a collective reading of the Sections 27, 28, 29 and 34 of the Trade Marks Act shows that the rights conferred by registration are subject to the rights of the prior user of the trademark. Section 27(2) of the Trade Marks Act makes it clear that the rights in passing off emanate from the common law and not from the statutory provisions and they are independent from the rights conferred by the Trade Marks Act. Thus, as per the scheme of the Trade Marks Act, even the registered proprietor cannot disturb/interfere with the rights of the prior user. The action for passing off which is premised on the rights of prior user generating a goodwill, shall be unaffected by any registration provided under the Trade Marks Act. The use of the mark/carrying on business under the name confers rights in favour of such party and generates goodwill in the market. Accordingly, the latter user of the mark/name in the business, cannot misrepresent its business as that of business of the prior right holder. The prior user is essentially considered to be superior than a party having any other rights. Consequently, the



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examination of rights in common law which are based on goodwill, misrepresentation and damage are independent to that of registered rights. Further, registration is merely a recognition of the rights pre-existing in common law, and does not itself create any rights.

30. Thus, in the aforesaid case of ***S. Syed Mohideen Versus P. Sulochana Bai (Supra)***, it was held as follows:

“xxx xxx xxx

30. Firstly, the answer to this proposition can be seen by carefully looking at the provisions of the Trade Marks Act, 1999 (the Act). Collective reading of the provisions especially Sections 27, 28, 29 and 34 of the Trade Marks Act, 1999 would show that the rights conferred by registration are subject to the rights of the prior user of the trade mark. We have already reproduced Section 27 and Section 29 of the Act.

30.1. From the reading of Section 27(2) of the Act, it is clear that the right of action of any person for passing off the goods/services of another person and remedies thereof are not affected by the provisions of the Act. Thus, the rights in passing off are emanating from the common law and not from the provisions of the Act and they are independent from the rights conferred by the Act. This is evident from the reading of the opening words of Section 27(2) which are “Nothing in this Act shall be deemed to affect rights....”

30.2. Likewise, the registration of the mark shall give exclusive rights to the use of the trade mark subject to the other provisions of this Act. Thus, the rights granted by the registration in the form of exclusivity are not absolute but are subject to the provisions of the Act.

30.3. Section 28(3) of the Act provides that the rights of two registered proprietors of identical or nearly resembling trade marks shall not be enforced against each other. However, they shall be same against the third parties. Section 28(3) merely provides that there shall be no rights of one registered proprietor vis-à-vis another but only for the purpose of registration. The said provision 28(3) nowhere comments about the rights of passing off which shall remain unaffected due to overriding



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effect of Section 27(2) of the Act and thus the rights emanating from the common law shall remain undisturbed by the enactment of Section 28(3) which clearly states that the rights of one registered proprietor shall not be enforced against the another person.

30.4. Section 34 of the Trade Marks Act, 1999 provides that nothing in this Act shall entitle the registered proprietor or registered user to interfere with the rights of prior user. Conjoint reading of Sections 34, 27 and 28 would show that the rights of registration are subject to Section 34 which can be seen from the opening words of Section 28 of the Act which states “Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor....” and also the opening words of Section 34 which states “Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere....” Thus, the scheme of the Act is such where rights of prior user are recognised superior than that of the registration and even the registered proprietor cannot disturb/interfere with the rights of prior user. The overall effect of collective reading of the provisions of the Act is that the action for passing off which is premised on the rights of prior user generating a goodwill shall be unaffected by any registration provided under the Act. This proposition has been discussed in extenso in N.R. Dongre v. Whirlpool Corpn. [N.R. Dongre v. Whirlpool Corpn., 1995 SCC OnLine Del 310 : AIR 1995 Del 300] wherein the Division Bench of the Delhi High Court recognised that the registration is not an indefeasible right and the same is subject to rights of prior user. The said decision of Whirlpool [N.R. Dongre v. Whirlpool Corpn., 1995 SCC OnLine Del 310 : AIR 1995 Del 300] was further affirmed by the Supreme Court of India in N.R. Dongre v. Whirlpool Corpn. [N.R. Dongre v. Whirlpool Corpn., (1996) 5 SCC 714]

30.5. The above were the reasonings from the provisions arising from the plain reading of the Act which gives clear indication that the rights of prior user are superior than that of registration and are unaffected by the registration rights under the Act.

31. Secondly, there are other additional reasonings as to why the passing off rights are considered to be superior than that of registration rights.

31.1. Traditionally, passing off in common law is considered to



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be a right for protection of goodwill in the business against misrepresentation caused in the course of trade and for prevention of resultant damage on account of the said misrepresentation. The three ingredients of passing off are goodwill, misrepresentation and damage. These ingredients are considered to be classical trinity under the law of passing off as per the speech of Lord Oliver laid down in Reckitt & Colman Products Ltd. v. Borden Inc. [Reckitt & Colman Products Ltd. v. Borden Inc., (1990) 1 WLR 491 : (1990) 1 All ER 873 (HL)] which is more popularly known as “Jif Lemon” case wherein Lord Oliver reduced the five guidelines laid out by Lord Diplock in Erven Warnink Besloten Vennootschap v. J. Townend & Sons (Hull) Ltd. [Erven Warnink Besloten Vennootschap v. J. Townend & Sons (Hull) Ltd., 1979 AC 731 at p. 742 : (1979) 3 WLR 68 : (1979) 2 All ER 927 (HL)] (“the Advocaat case”) to three elements : (1) goodwill owned by a trader, (2) misrepresentation, and (3) damage to goodwill. Thus, the passing off action is essentially an action in deceit where the common law rule is that no person is entitled to carry on his or her business on pretext that the said business is of that of another. This Court has given its imprimatur to the above principle in Laxmikant V. Patel v. Chetanbhai Shah [Laxmikant V. Patel v. Chetanbhai Shah, (2002) 3 SCC 65].

31.2. The applicability of the said principle can be seen as to which proprietor has generated the goodwill by way of use of the mark/name in the business. The use of the mark/carrying on business under the name confers the rights in favour of the person and generates goodwill in the market. Accordingly, the latter user of the mark/name or in the business cannot misrepresent his business as that of business of the prior right holder. That is the reason why essentially the prior user is considered to be superior than that of any other rights. Consequently, the examination of rights in common law which are based on goodwill, misrepresentation and damage are independent to that of registered rights. The mere fact that both prior user and subsequent user are registered proprietors are irrelevant for the purposes of examining who generated the goodwill first in the market and whether the latter user is causing misrepresentation in the course of trade and damaging the goodwill and reputation of the prior right holder/former user. That is the additional reasoning that the statutory rights



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must pave the way for common law rights of passing off.

32.Thirdly, it is also recognised principle in common law jurisdiction that passing off right is broader remedy than that of infringement. This is due to the reason that the passing off doctrine operates on the general principle that no person is entitled to represent his or her business as business of other person. The said action in deceit is maintainable for diverse reasons other than that of registered rights which are allocated rights under the Act. The authorities of other common law jurisdictions like England more specifically Kerly's Law of Trade Marks and Trade Names, 14th Edn., Thomson, Sweet & Maxwell South Asian Edition recognises the principle that where trade mark action fails, passing off action may still succeed on the same evidence. This has been explained by the learned author by observing the following:

“15-033. A claimant may fail to make out a case of infringement of a trade mark for various reasons and may yet show that by imitating the mark claimed as a trade mark, or otherwise, the defendant has done what is calculated to pass off his goods as those of the claimant. A claim in ‘passing off’ has generally been added as a second string to actions for infringement, and has on occasion succeeded where the claim for infringement has failed.”

32.1. The same author also recognises the principle that *the Trade Marks Act affords no bar to the passing off action.* This has been explained by the learned author as under:

“15-034. Subject to possibly one qualification, nothing in the Trade Marks Act, 1994 affects a trader's right against another in an action for passing off. It is, therefore, no bar to an action for passing off that the trade name, get up or any other of the badges identified with the claimant's business, which are alleged to have been copied or imitated by the defendant, might have been, but are not registered as, trade marks, even though the evidence is wholly addressed to what may be a mark capable of registration. **Again, it is no defence to passing off that the defendant's mark is registered. The Act offers advantages to those who register their trade marks, but imposes no penalty upon those who do not. It is equally no bar to an action for passing off that the false representation relied upon is an imitation of a**



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trade mark that is incapable of registration. A passing off action can even lie against a registered proprietor of the mark sued upon. The fact that a claimant is using a mark registered by another party (or even the defendant) does not of itself prevent goodwill being generated by the use of the mark, or prevent such a claimant from relying on such goodwill in an action against the registered proprietor. Such unregistered marks are frequently referred to as 'common law trade marks'.

32.2. From the reading of the aforementioned excerpts from Kerly's Law of Trade Marks and Trade Names, it can be said that not merely it is recognised in India but in other jurisdictions also including England/UK (Provisions of the UK Trade Marks Act, 1994 are analogous to the Indian Trade Marks Act, 1999) that the registration is no defence to a passing off action and nor the Trade Marks Act, 1999 affords any bar to a passing off action. In such an event, the rights conferred by the Act under the provisions of Section 28 have to be subject to the provisions of Section 27(2) of the Act and thus the passing off action has to be considered independent "Iruttukadai Halwa" under the provisions of the Trade Marks Act, 1999.

33. **Fourthly, it is also a well-settled principle of law in the field of the trade marks that the registration merely recognises the rights which are already pre-existing in common law and does not create any rights.** This has been explained by the Division Bench of the Delhi High Court in Century Traders v. Roshan Lal Duggar & Co. [Century Traders v. Roshan Lal Duggar & Co., 1977 SCC OnLine Del 50 : AIR 1978 Del 250] in the following words : (SCC OnLine Del para 10)

"10. '16. ... First is the question of use of the trade mark. Use plays an all-important part. A trader acquires a right of property in a distinctive mark merely by using it upon or in connection with his goods irrespective of the length of such user and the extent of his trade. The trader who adopts such a mark is entitled to protection directly the article having assumed a vendible character is launched upon the market. Registration under the statute does not confer any new right to the mark claimed or any greater rights than what already existed at common law and at equity without registration. It does, however, facilitate a remedy which may



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be enforced and obtained throughout 'the State and it established the record of facts affecting the right to the mark. **Registration itself does not create a trade mark. The trade mark exists independently of the registration which merely affords further protection under the statute. Common law rights are left wholly unaffected.**' [Ed. : As observed in *L.D. Malhotra Industries v. Ropi Industries*, 1975 SCC OnLine Del 172, para 16.]”

(emphasis supplied)

33.1. The same view is expressed by the Bombay High Court in *Sunder Parmanand Lalwani v. Caltex (India) Ltd.* [*Sunder Parmanand Lalwani v. Caltex (India) Ltd.*, 1965 SCC OnLine Bom 151 : AIR 1969 Bom 24] in which it has been held vide AIR para 32 as follows : (SCC OnLine Bom paras 1 & 2)

“1. A proprietary right in a mark can be [‘*Iruttukadai Halwa*’] obtained in a number of ways. The mark can be originated by a person, or it can be subsequently acquired by him from somebody else. Our Trade Marks law is based on the English Trade Marks law and the English Acts. The first Trade Marks Act in England was passed in 1875. Even prior thereto, it was firmly established in England that a trader acquired a right of property in a distinctive mark merely by using it upon or in connection with goods irrespective of the length of such user and the extent of his trade, and that he was entitled to protect such right of property by appropriate proceedings by way of injunction in a court of law. Then came the English Trade Marks Act of 1875, which was substituted later by later Acts. The English Acts enabled registration of a new mark not till then used with the like consequences which a distinctive mark had prior to the passing of the Acts. The effect of the relevant provision of the English Acts was that registration of a trade mark would be deemed to be equivalent to public user of such mark. Prior to the Acts, one could become a proprietor of a trade mark only by user, but after the passing of the Act of 1875, one could become a proprietor either by user or by registering the mark even prior to its user. He could do the latter after complying with the other requirements of the Act, including the filing of a declaration of his intention to use such mark. See observations of Llyod Jacob, J. in *Vitamins Ltd. 's Application*, *In re* [*Vitamins Ltd. 's Application*, *In re*, (1956) 1 WLR 1 :



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(1955) 3 All ER 827 : 1956 RPC 1] at RPC p. 12, and particularly the following : (WLR p. 10)

‘ ... A proprietary right in a mark sought to be registered can be obtained in a number of ways. The mark can be originated by a person or can be acquired, but in all cases it is necessary that the person putting forward the application should be in possession of some proprietary right which, if questioned, can be substantiated. ’

2. Law in India under our present Act is similar.”

(emphasis supplied)

33.2. We uphold the said view which has been followed and relied upon by the courts in India over a long time. The said views emanating from the courts in India clearly speak in one voice, which is, that **the rights in common law can be acquired by way of use and the registration rights were introduced later which made the rights granted under the law equivalent to the public user of such mark. Thus, we hold that registration is merely a recognition of the rights pre-existing in common law and in case of conflict between the two registered proprietors, the evaluation of the better rights in common law is essential as the common law rights would enable the court to determine whose rights between the two registered proprietors are better and superior in common law which have been recognised in the form of the registration by the Act.**

34. When we apply the aforesaid principle to the facts of the present case, we find that the impugned judgment [S. Syed Mohideen v. P. Sulochana Bai, 2013 SCC OnLine Mad 3885] of the High Court, affirming that of the trial court is flawless and does not call for any interference. From the plethora of evidence produced by the respondent she has been able to establish that the trade mark “Iruttukadai Halwa” has been used by her/her predecessors since the year 1900. The business in that name is carried on by her family. It has become a household name which is associated with the respondent/her family. The Court has also noted that the halwa sold by the respondent's shop as “Iruttukadai Halwa” is not only famous with the consumers living in Tirunelveli, but is also famous with the consumers living in other parts of India and outside. Reference is made to an article published in Ananda Viketan, a weekly Tamil magazine dated 14-9-2003, describing the high quality and the trade mark Iruttukadai



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halwa sold by the plaintiff, the findings and conclusions reached by the court below are perfectly in order, hence, the same does not call for interference, carries more merit, for, this name has been further acknowledged in a Tamil song from the movie *Samy* as follows:

“Tirunelveli Halwada, Tiruchy Malai Kottaida (Rock Fort)
Tirupathike Laddu thantha Samyda Iruttukadai Alwada, Idli
Kadai Ayada (grandma)”

xxx xxx xxx”

(Emphasis Supplied)

31. Reference at this stage, may also be made to the decision in the case of *Satyam Infoway Ltd. Versus Siffynet Solution (P) Ltd.*, (2004) 6 SCC 145, wherein, the Supreme Court held that the action for passing off is available to the owner of a distinctive trademark and the person who, if the word or name is an invented one, invents and uses it. Thus, it was held as follows:

“xxx xxx xxx

13. The next question is, would the principles of trade mark law and in particular those relating to passing off apply? An action for passing off, as the phrase “passing off” itself suggests, is to restrain the defendant from passing off its goods or services to the public as that of the plaintiff’s. It is an action not only to preserve the reputation of the plaintiff but also to safeguard the public. The defendant must have sold its goods or offered its services in a manner which has deceived or would be likely to deceive the public into thinking that the defendant’s goods or services are the plaintiff’s. The action is normally available to the owner of a distinctive trade mark and the person who, if the word or name is an invented one, invents and uses it. If two trade rivals claim to have individually invented the same mark, then the trader who is able to establish prior user will succeed. The question is, as has been aptly put, who gets these first? It is not essential for the plaintiff to prove long user to establish reputation in a passing-off action. It would depend upon the volume of sales and extent of advertisement.

xxx xxx xxx”

(Emphasis Supplied)



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32. As per the facts of the present case, the India Today Group was established in the year 1975 with the launch of the magazine 'India Today magazine'. Appellant/plaintiff company is a part of the said group, and is engaged in the business of dissemination of news in media. M/s Living Media India Limited, which is the holding company of the appellant, started using the mark 'Aaj Tak' since the year 1995 in respect to the news program 'Aaj Tak', which was initially launched on Doordarshan Channel. The appellant/plaintiff company, after its incorporation in the year 1999, began running a dedicated 24-hour Hindi news channel under the mark 'Aaj Tak' in the year 2000, and has a viewership of twenty million people.

33. This Court further takes note of the Magazine Article titled '*The New Face of New*' by Kaveree Bamzai, which records that the program 'Aaj Tak' was launched on 31st December, 2000 and is a market leader in delivering Hindi news from the frontline of events.

34. The use of the mark 'Aaj Tak' by the appellant/plaintiff company since the year 2000 has been admitted by the respondent/defendant and remains undisputed. *Per contra*, it is the case of the respondent/defendant that it began publication under the name 'Saurashtra Aaj Tak' only in the year 2002.

35. Thus, the facts on record make it evident that the appellant/plaintiff company has been using the mark 'Aaj Tak' since the year 2000 and is a prior user of the said mark, in comparison to the defendant/respondent, who began use of the mark 'Saurashtra Aaj Tak' only in the year 2002.

36. Accordingly, it is apparent that the appellant/plaintiff retains the common law remedy for filing a suit for passing off, being the prior user of the mark in comparison to the respondent/defendant, in view of Sections 27 and 28 of the Trade Marks Act. Hence, this Court holds that the



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appellant/plaintiff had the *locus* to file the suit in question, and the same was maintainable.

37. It is also to be noted that the respondent/defendant had not raised the plea of maintainability of the suit and *locus standi* of the appellant/plaintiff in filing the suit, at the time of the trial. At this juncture, such an objection, not having formed part of the pleadings or issues before the Trial Court, cannot be raised before this Court. Furthermore, since the respondent/defendant has not raised this issue by way of any cross-appeal, the decree to that extent cannot be interfered, set aside or modified to the advantage of the respondent/defendant.

38. In this regard, reference can fruitfully be made to the judgment in the case of *A. Kanthamani Versus Narseen Ahmed, (2017) 4 SCC 654*. In the said case, it has been held that the plea regarding the maintainability of suit is required to be raised in the first instance in the pleading (written statement) and then only such pleading can be adjudicated by the Trial Court, on its merits as a preliminary issue. Thus, it has been held as follows:

“xxx xxx xxx

30. Coming first to the submission of the learned counsel for the appellant about the maintainability of the suit, in our considered view, it has no merit for more than one reason:

30.1. First, as rightly argued by the learned counsel for the respondent, the objection regarding the maintainability of the suit was neither raised by the defendant in the written statement nor in the first appeal before the High Court and nor in grounds of appeal in this Court.

30.2. Second, since no plea was raised in the written statement, a fortiori, no issue was framed and, in consequence, neither the trial court nor the High Court could render any finding on the plea.

30.3. Third, it is a well-settled principle of law that the plea



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regarding the maintainability of suit is required to be raised in the first instance in the pleading (written statement) then only such plea can be adjudicated by the trial court on its merits as a preliminary issue under Order 14 Rule 2CPC. Once a finding is rendered on the plea, the same can then be examined by the first or/and second appellate court. It is only in appropriate cases, where the court prima facie finds by mere perusal of plaint allegations that the suit is barred by any express provision of law or is not legally maintainable due to any legal provision; a judicial notice can be taken to avoid abuse of judicial process in prosecuting such suit. Such is, however, not the case here.

xxx xxx xxx”

(Emphasis Supplied)

39. Likewise, in the case of ***Bansari and Others Versus Ram Phal, (2003) 9 SCC 606***, it was held that a respondent may defend himself without filing any cross-objection to the extent to which decree is in his favour. However, if he proposes to attack any part of the decree, he must take cross-objection. If the respondent wishes to get rid of the findings to the extent to which the decree is against the respondent, he should have either filed an appeal of his own or taken cross-objection, failing which the decree to that extent cannot be insisted on by the respondent for being interfered, set aside or modified to his advantage. Accordingly, in the aforesaid judgment, it was held as follows:

“xxx xxx xxx

9. Any respondent though he may not have filed an appeal from any part of the decree may still support the decree to the extent to which it is already in his favour by laying challenge to a finding recorded in the impugned judgment against him. Where a plaintiff seeks a decree against the defendant on grounds (A) and (B), any one of the two grounds being enough to entitle the plaintiff to a decree and the court has passed a decree on ground (A) deciding it for the plaintiff while ground (B) has been decided against the plaintiff, in an appeal preferred by the defendant, in spite of the finding on ground (A) being reversed the plaintiff as a respondent can still seek to support the decree by



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challenging the finding on ground (B) and persuade the appellate court to form an opinion that in spite of the finding on ground (A) being reversed to the benefit of the defendant-appellant the decree could still be sustained by reversing the finding on ground (B) though the plaintiff-respondent has neither preferred an appeal of his own nor taken any cross-objection. **A right to file cross-objection is the exercise of right to appeal though in a different form.** It was observed in *Sahadu Gangaram Bhagade v. Special Dy. Collector, Ahmednagar* [(1970) 1 SCC 685 : (1971) 1 SCR 146] that **the right given to a respondent in an appeal to file cross-objection is a right given to the same extent as is a right of appeal to lay challenge to the impugned decree if he can be said to be aggrieved thereby. Taking any cross-objection is the exercise of right of appeal and takes the place of cross-appeal though the form differs. Thus it is clear that just as an appeal is preferred by a person aggrieved by the decree so also a cross-objection is preferred by one who can be said to be aggrieved by the decree.** A party who has fully succeeded in the suit can and needs to neither prefer an appeal nor take any cross-objection though certain finding may be against him. Appeal and cross-objection — both are filed against decree and not against judgment and certainly not against any finding recorded in a judgment. This was the well-settled position of law under the unamended CPC.

10. The CPC amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross-objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross-objection against a finding. The difference which has resulted we will shortly state. **A respondent may defend himself without filing any cross-objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross-objection.** The amendment inserted by the 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:

(i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent.



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(ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent.

(iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross-objection. The law remains so post-amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross-objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross-objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross-objection to a finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross-objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross-objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In the pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any finding recorded against the respondent.

12. The fact remains that to the extent to which the decree is against the respondent and he wishes to get rid of it he should have either filed an appeal of his own or taken cross-objection failing which the decree to that extent cannot be insisted on by the respondent for being interfered, set aside or modified to his advantage. The law continues to remain so post-1976 amendment. In a suit seeking specific performance of an agreement to sell governed by the provisions of the Specific Relief Act, 1963 the court has a discretion to decree specific performance of the



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agreement. The plaintiff may also claim compensation under Section 21 or any other relief to which he may be entitled including the refund of money or deposit paid or made by him in case his claim for specific performance is refused. No compensation or any other relief including the relief of refund shall be granted by the court unless it has been specifically claimed in the plaint by the plaintiff. Certainly the relief of specific performance is a larger relief for the plaintiff and more onerous to the defendant compared with the relief for compensation or refund of money. The relief of compensation or refund of money is a relief smaller than the relief of specific performance. A plaintiff who files a suit for specific performance claiming compensation in lieu of or in addition to the relief of specific performance or any other relief including the refund of any money has a right to file an appeal against the original decree if the relief of specific performance is refused and other relief is granted. The plaintiff would be a person aggrieved by the decree in spite of one of the alternative reliefs having been allowed to him because what has been allowed to him is the smaller relief and the larger relief has been denied to him. A defendant against whom a suit for specific performance has been decreed may file an appeal seeking relief of specific performance being denied to the plaintiff and instead a decree of smaller relief such as that of compensation or refund of money or any other relief being granted to the plaintiff for the former is larger relief and the latter is smaller relief. The defendant would be the person aggrieved to that extent. It follows as a necessary corollary from the abovesaid statement of law that in an appeal filed by the defendant laying challenge to the relief of compensation or refund of money or any other relief while decree for specific performance was denied to the plaintiff, the plaintiff as a respondent cannot seek the relief of specific performance of contract or modification of the impugned decree except by filing an appeal of his own or by taking cross-objection.

13. We are, therefore, of the opinion that in the absence of cross-appeal preferred or cross-objection taken by the plaintiff-respondent the first appellate court did not have jurisdiction to modify the decree in the manner in which it has done. Within the scope of appeals preferred by the appellants the first appellate court could have either allowed the appeals and dismissed the suit filed by the respondent in its entirety or could have deleted the latter part of the decree which granted the decree for specific



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performance conditional upon failure of the defendant to deposit the money in terms of the decree or could have maintained the decree as it was passed by dismissing the appeals. What the first appellate court has done is not only to set aside the decree to the extent to which it was in favour of the appellants but also granted an absolute and out-and-out decree for specific performance of agreement to sell which is to the prejudice of the appellants and to the advantage of the respondent who has neither filed an appeal nor taken any cross-objection.

xxx xxx xxx”

(Emphasis Supplied)

40. Accordingly, it is held that the appellant/plaintiff, had the *locus* to file the suit. Further, in the absence of any plea regarding maintainability of the suit or *locus* of the appellant/plaintiff in the suit proceedings, the said plea cannot be raised by the respondent/defendant for the first time in the present proceedings.

Whether The Appellant/Plaintiff Has Satisfied The Elements Required To Sustain A Plea For Passing Off ?

41. The three essential factors in a suit for passing off, i.e., goodwill and reputation, misrepresentation/possibility of deception, and likelihood of damage, have been laid down in the case of ***Britannia Industries Ltd. Versus ITC Limited, 2017 SCC OnLine Del 7391***, in the following manner:

“xxx xxx xxx

*9. The present case, therefore, has to be considered as one of passing off in relation to the trade dress/get-up. **Passing off is a common law tort and each case of passing off depends on its own facts. The essential attributes which need to be established for a successful passing off action have often been considered as the classical trinity, which, in the words of Lord Oliver in Reckitt & Colman Products Ltd. v. Borden : 1990 RPC 341 HL, are as under: —***



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“First, he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying ‘get-up’ (whether it consists simply of a brand name or a trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public, such that the get-up is recognised by the public as distinctive specifically of the plaintiff’s goods or services.

Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by him are the goods or services of the plaintiff.

Thirdly, he must demonstrate that he suffers or, in a quia timet action, that he is likely to suffer damage by reason of the erroneous belief engendered by the defendant’s misrepresentation that the source of the defendant’s goods or services is the same as the source of those offered by the plaintiff.”

10. It is evident that a passing off action has to be examined from the standpoint of three factors : (1) goodwill and reputation; (2) misrepresentation/possibility of deception; and (3) likelihood of damage. We must also note that goodwill and reputation do not refer to the same thing though, there could be some degree of overlap. There may be a reputation and yet there may not exist any goodwill. As an example, a particular mark may have a reputation worldwide. But, there may be no sales under that mark in a particular territory, say, India. Thus, although the mark would have a reputation worldwide, including India, it would not have a goodwill attached to it in India. It is not just the reputation, but the goodwill which constitutes property inasmuch as it



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represents a link between the business and the customer.

xxx xxx xxx”

(Emphasis Supplied)

42. The aforesaid three essential factors to establish a claim for passing off in the context of the present case, are discussed hereinbelow.

Goodwill and Reputation

43. In the present appeal, the respondent/defendant has contended that the words ‘Aaj Tak’ are generic words, meaning ‘Till Today’, and the appellant/plaintiff cannot seek a monopoly on the use of such words.

44. In this regard, it is to be noted that the Trial Court considered the testimony of *PW-1* to the effect that the appellant has established tremendous goodwill, and the words ‘Aaj Tak’ are closely associated with the appellant/plaintiff in the news industry for the last seven years, i.e., from the year 1995 till the year 2002. The combination of the words ‘Aaj Tak’ has become synonymous with the appellant/plaintiff, apart from being a household name. Further, the Trial Court noted that although the words ‘Aaj Tak’ literally mean ‘Till Today’, and are descriptive words, however, due to the long usage of the said words by the appellant/plaintiff in the context of news dissemination, the words ‘Aaj Tak’ have attained secondary meaning in the field of news dissemination by the appellant/plaintiff. Thus, the words have acquired distinctive meaning and reputation *vis-à-vis* the plaintiff’s services of news dissemination.

45. This Court notes that *PW-1* has clearly deposed that the words ‘Aaj Tak’ are distinctive and closely associated with the appellant/plaintiff, having a viewership of more than thirty million people, at the time. He further deposed that the words ‘Aaj Tak’ have become synonymous with the appellant/plaintiff



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company, apart from being a household name. The evidence led by the plaintiff and the testimony of *PW-1* before the Trial Court, remains unrebutted and uncontroverted.

46. Thus, this Court is of the considered opinion that the Trial Court rightly held that the words ‘Aaj Tak’ have acquired good will and reputation, and have also acquired a secondary meaning due to its long, continuous usage by the appellant/plaintiff company in the field of news dissemination. The respondent/defendant has failed to lead any evidence to show that the words ‘Aaj Tak’ were not distinctive in nature.

47. At this stage, it is apposite to refer to the decision in the case of ***Living Media India Limited Versus Jitender V Jain & Anr., 2002 SCC OnLine Del 605***, whereby the Court in a passing off suit, in the year 2001, although at an interlocutory stage, held that the words ‘Aaj Tak’ had acquired secondary meaning, in the following manner:

“xxx xxx xxx

21. It appears that whole gemut of the case of the defendant is on the presumption that the word “AAJ TAK” is not only descriptive in nature but also is a dictionary word and has even otherwise no acquired secondary meaning and as such plaintiff has no exclusive proprietorship or monopoly over it.

22. The broad principle on which the foundation of the right to restrain the user of a similar name was enunciated in British Vacuum Cleaner Co. Ltd. v. New Vacuum Cleaner Co. Ltd., (1907) 2 Ch. 312 referred to and relied upon in Office Cleaning Services Limited v. Weiminster Office) like this:

“The foundation of the right to restrain the user of a similar name is the principle that no one is entitled to represent his business or goods as being the business or goods of another by whatever means that result may be



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achieved, and it makes no difference whether the representation be intentional or otherwise; but a distinction has been and must always be drawn between cases in which the trade name or the part of it in question consists of word or words of ordinary use descriptive of the business carried on or the article dealt in and cases in which the word or words complained of is or are of the character of a fancy word or words and primarily have no relation to such business or article but only to the person carrying on the business or dealing in the article.”

23. It was in view of this principle that Their Lordships held that “if it can be established that the descriptive word or words has or have acquired among the public, or that class of the public likely to deal with the business or goods in question, a subsidiary or secondary meaning denoting or connoting the business or the origin of the article, the person claiming to restrain the user of that word or those words can obtain the relief he seeks.

24. Let us assume for the sake of argument that mark “AAJ TAK” is descriptive in nature, has a dictionary meaning and has not acquired a secondary meaning. Can the plaintiff still seek interlocutory injunction against the use of this word on account of its having prior, long, continuous and regular user in relation to news at Doordarshan?

25. The word ‘mark’ has been defined in the Trade Marks and Merchandise Act of 1958 as under:

“2. Definitions and interpretation.—(1) In this Act, unless the context otherwise requires—

(i) “mark” includes a device, brand, heading, label, ticket, name, signature, word, letter or numeral or any combination thereof;”

26. The word trademark has been defined as a registered trademark or a mark used in relation to goods for the purpose of indicating so as to indicate a connection in the course of trade between the goods and some person having the right as



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proprietor to use the mark. If any mark is used in relation to goods of the purpose of indicating or so as to indicate and some person having the right as proprietor it is a trademark which becomes the property of its prior user even if it happens to be descriptive in nature but has been coined by it.

27. The mark is always used for the purpose of indicating either a connection in the course of trade between the goods and it is the prior user which provides the right of protection. Thus even if the adjective “Khabrein” is pre-fixed it does not make the trademark “Khabrein Aaj Tak” distinct or different from the mark “AAJ TAK”.

28. The word “AAJ TAK” itself is so distinctive that it has acquired such a meaning that any pre-fix or suffix would be of no relevance so far as the action of passing off is concerned. The only object and design of the defendant to adopt the word “AAJ TAK” was to trade and encash upon the goodwill of the plaintiff earned over the years through the advertisements and because of its extensive popularity. The mark “AAJ TAK” has become synonymous with the plaintiff so far as the news channel is concerned.

29. The word “AAJ” and “TAK” may be individually descriptive and dictionary word and may not be monopolised by any person but their combination does provide a protection as a trademark if it has been in long, prior and continuous user in relation to particular goods manufactured, sold by a particular person and by virtue of such user the mark gets identified with that person. It is so irrespective of the fact whether such a combination is descriptive in nature and has even a dictionary meaning. In such a case any other person may choose any of the two words viz. either “AAJ” or “TAK” as its trade name or mark but it has to be prohibited from using the combination of these words as such a user not only creates confusion as to its source or origin but also bares the design or motive of its subsequent adopter.

30. Any kind of prefix or suffix would not make any difference



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so far as the trade name or for that purpose the domain name “AAJ TAK” is concerned. It is immaterial whether the defendant has no clientele or publication in Delhi. Channel “AAJ TAK” is a National Channel. It has widespread reputation and goodwill. Adoption of similar or deceptively similar mark amounts to passing off even if it has no local physical market, goodwill or reputation of a product or person is all pervasive. It is not confined in the four walls or to a particular territory. It has to be protected wherever it is threatened or is sought to be eroded or exploited. Merely because the product or mark adopted by a rival has no circulation or sale in the territory of the plaintiff’s mark or product is no defence against protection of the mark. Protection of mark is in actuality protection of reputation and goodwill. At every cost the reputation has to be protected and preserved.

xxx xxx xxx”

(Emphasis Supplied)

48. From a reading of the aforesaid judgment, the following can be culled out:

- I. The words ‘Aaj’ and ‘Tak’ may be individually descriptive and dictionary words, and may not be monopolised by any person, but their combination provides a protection as a trademark if it has been in long, prior and continuous user in relation to particular use by a particular party, and by virtue of such user the mark gets identified with that party. It is so irrespective of the fact whether such a combination is descriptive in nature and has even a dictionary meaning. In such a case any other party may choose any of the two words viz. either ‘Aaj’ or ‘Tak’ as its trade name or mark, but it has to be prohibited from using the combination of these words, as such a user would not only create



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confusion as to its source or origin, but would also reveal the design or motive of the party adopting the said mark subsequently.

- II. The words 'Aaj Tak' are itself so distinctive, that it has acquired such a meaning that any prefix or suffix would be of no relevance so far as the action of passing off is concerned. The mark 'Aaj Tak' has become synonymous with the plaintiff therein so far as the news channel is concerned.
- III. It is immaterial whether the defendant therein has no clientele or publication in Delhi, since the channel 'Aaj Tak' is a national channel, having widespread reputation and goodwill. Adoption of similar or deceptively similar mark amounts to passing off even if it has no local physical market, as goodwill or reputation of a product or person is all pervasive. Merely because the product or mark adopted by a rival has no circulation or sale in the territory of the plaintiff's mark or product is no defence against protection of the mark.

49. It is also to be noted that although the present suit had been filed for passing off, during the pendency of the suit, the mark 'Aaj Tak' was registered under the Trade Marks Act, in Classes 41 and 38 in the name of M/s. Living Media India Limited, the holding company of the appellant herein, with effect from 13th October, 2003.

50. This Court also considers it imperative to note the observations made in the judgment dated 16th November, 2017 in **CS(COMM) 989/2016**, titled as ***Living Media India Limited & Anr. Versus P Kaushik***, wherein, it was held that the mark 'Aaj Tak' was being used since the year 1995. Since then, the plaintiff therein had been actively engaged in the business of dissemination of news, offering their allied services to the public under the



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aforesaid trade name, and were stated to have accumulated a viewership of twenty million people.

51. Thus, this Court finds no infirmity in the findings of the Trial Court to the effect that the mark 'Aaj Tak' had acquired significant goodwill and reputation, and had attained a secondary meaning and distinctiveness with respect to news dissemination by the appellant/plaintiff.

Misrepresentation/Possibility Of Confusion

52. The Trial Court has held unequivocally that the appellant/plaintiff successfully established that the use of 'Saurashtra Aaj Tak' by the respondent/defendant is likely to create confusion in the minds of the general public and consumers, and create a likelihood of association. The fields and provision of services provided by the appellant/plaintiff and the respondent/defendant are on parallel lines, i.e., dissemination of news and media business. This is so even though the defendant has a regional presence only in print media, while the plaintiff has a national presence.

53. The contention of the respondent/defendant that since circulation of its newspaper is in Gujarati language, limited to the Saurashtra region only, there is no likelihood of confusion, is found to be meritless. Merely because the circulation of the respondent's newspaper is limited to Saurashtra would be of no aid to the respondent/defendant, as the appellant/plaintiff company is operating a nationwide television channel under the mark 'Aaj Tak', which is accessible even in Saurashtra. Clearly, both the appellant/plaintiff and the respondent/defendant are in the field of news dissemination, whether by means of a news channel or a print media, being allied and cognate activities.

54. Thus, the adoption and use of the mark 'Saurashtra Aaj Tak' by the respondent/defendant on its newspaper would undoubtedly cause confusion



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in the minds of the consumers, including, both the viewers and advertisers. The consumers are likely to associate the newspaper of the respondent/defendant as the regional division/wing of the news channel operated by the appellant/plaintiff company. This is more so because the respondent/defendant has incorporated the entirety of the appellant's mark, 'Aaj Tak', and prefixed a geographical identifier in front of it. The result is a mark in which the appellant's mark forms the dominant part. The prefix 'Saurashtra' would not negate the association, if anything, it reinforces it by suggesting a regional arm of the same business.

55. Pertinently, the respondent/defendant and the appellant/plaintiff operate in the same business/field, i.e., news dissemination, which would increase the likelihood of confusion and association in the minds of the general public. A viewer who watches 'Aaj Tak' news bulletin on television and subsequently encounters a newspaper called 'Saurashtra Aaj Tak' is likely to believe the inevitable inference that the two are connected.

56. Thus, the Trial Court rightly held that the appellant/plaintiff successfully established that the use of 'Saurashtra Aaj Tak' by the respondent/defendant is likely to create confusion in the minds of the general public and consumers and create a likelihood of association.

57. Thus, the contention of the respondent/defendant that the use of the prefix 'Saurashtra' is sufficient to dispel any confusion or association in the minds of the consumers, does not find much merit, as mere addition of a prefix or suffix to a mark is not enough to distinguish the defendant's mark from the plaintiff's mark, and the same is likely to cause confusion in identifying the source/origin of the product.



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58. Reference may be made to the decision in the case of *Playboy Enterprises, Inc Versus Bharat Malik & Anr.*, 2001 SCC OnLine Del 406, wherein, this Court held that close imitation or deceptive similarity by using any part of the word either as prefix or suffix is likely to create confusion in the minds of the customers as to the source of the goods/services, in the following manner:

“xxx xxx xxx

33. Name of a magazine having unique distinctiveness attains publicity and acquires unbelievable reputation because of its identity, quality, title, the cover, its contents, theme, sophistication, ideas, spectrum of issues it raises and deals with, the articles or the information either as to entertainment or information or intellectual aspect. Use of the same name or uniquely distinctive prefix or suffix of the name is always with a motive to exploit the goodwill and reputation by taking illegitimate advantage of its publicity involving huge cost. It is bound to create confusion as to its being an off-shot or sister publication of the infringed magazine because of broad akinness as to its features viz. title, get-up, colour scheme, display, market, customers and area of circulation.

34. Again, the title of one is in capital letters and the other is in small letters is not a determining distinction. Predominant prefix or suffix of the title or mark or phonetic similarity as to the name are few other factors that go to decide the piracy of and assault on the name or trade mark. Comparison should show that they are indeed one in heart, mind and purpose. And if it happens to be cheap imitation it is bound to play havoc with the hard-earned reputation of the assaulted publication.

xxx xxx xxx

39. The trademark PLAYBOY falls in the last category and thus its close imitation or deceptive similarity by using any part of the word either as prefix or suffix is likely to create confusion in the minds of the customers as to its source. It also bares dubious design and ill-motive to exploit and thrive upon the profound publicity and mighty magnitude of its circulation projecting popularity and the degree of distinction, quality and



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sophistication.

xxx xxx xxx”

(Emphasis Supplied)

59. In the case of *M/s Living Media India Ltd. & Anr. Versus Asad Patel & Ors*, in *CS (OS) 2678/2008*, this Court by way of judgment dated 12th April, 2010 held that use of the mark ‘Aaj Tak’ prefixed with the word ‘Khabrein’ by the defendant therein, in the business of news broadcasting amounted to passing off, in the following manner:

“xxx xxx xxx

12. It is also seen that the manner in which the defendants have used AAJ TAK prefixed with “Khabrein”, is almost identical to that of the plaintiffs. Also, the defendants are engaged in the same business of news broadcasting. The words AAJ TAK form a prominent part of the defendants’ logo, Khabrein is printed in a very small font in comparison to the font used for printing AAJ TAK, so much so that the word Khabrein can easily go unnoticed. The defendants do not claim being unaware the plaintiffs being engaged in the same business much prior to them. Had they even claimed so, their contention should fail in view of the plaintiffs’ widespread popularity and reach. It is clear that the defendants’ have adopted the impugned mark, with mala fide intentions to gain undue benefits and trade on the plaintiffs well established and hard earned reputation. The act of passing off also stands established against the defendants.

xxx xxx xxx”

(Emphasis Supplied)

60. The documents on record, i.e., the newspaper of the respondent company dated 05th December, 2002 under the title ‘Saurashtra Aaj Tak’ in Gujarati language, as well as the Advertisement Rate Card of the respondent company showing deceptive similarity between the mark of the appellant/plaintiff and respondent company, is reproduced as under:



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શ્રીમદ્ભગવદ્ ગીતા સુવર્ણ સ્મૃતિ

ગુરુવાર, ૧૪ ડિસેમ્બર ૨૦૦૨, રૂપિયા ૨.૦૦, પાના ૧

સૌરાષ્ટ્ર આજીતક

તંત્રી: રાજુભાઈ શાહ અસ્સલ કાકિયાવાડી મિત્રજ

સો ઉમેદવારોને ગેરલાયક ઠેરવવા ચુંટણી પંચ પાસે આજે રજુઆત થશે

ભાજપ-કોંગ્રેસના દોઢ ડઝનથી વધુ ઉમેદવારો ગુનહાસિત ઇતિહાસ ધરાવતા હોવાના ઘટસ્ફીટ સાથે પ્રોફેસરો અને નિવૃત્ત ન્યાયાધિશોનું સંગઠન આજે ઘડાકો કરશે

મનિયા સુરેશ ગાંધીનગર તા.પ

નિવૃત્ત ન્યાયાધિશો અને આઈ બાર એમ ની સાથે સંકળાયેલા વિભિન્ન પ્રોફેસરો ના સંબંધિત ની નિવૃત્ત ન્યાયાધિશોનું મિ. જી. દિવાન અને અન્ય સભ્યો આજે મનિયા સુરેશ સમક્ષ એવી રજુઆત કરશે કે ૧૦૦ જેટલા ઉમેદવારો ચુંટણીના ઇતિહાસ પાછળ છે. જેથી તેમને ચુંટણી લડવા ગેરલાયક ઠેરવવા જોઈએ. આજે બપોરે તેવા ઉમેદવારોનું ચિહ્ન બહાર પાડશે.

ગુજરાત વિધાન સભાની ચુંટણીનો જન નિર્ણાયક તબક્કો પ્રવેશી પુરવો છે ત્યારે આ રાજને ચુંટણી પંચની કડકોટી હવા ચુંટણીના પરાવતા અસંખ્ય ઉમેદવારો પાંચાતમાં ઉતર્યા છે. તેવા અણખારી અરજાઓ અને નિવૃત્ત ન્યાયાધિશોના અરજાવાની કિશોરના સંબંધે તપાસકરી એક યાદી તૈયાર કરી છે. જેમા ૧૦૦ જેટલા ઉમેદવારોનું ચિહ્ન તૈયાર કરાયું છે તેમાં તમામ ૬૮ ને એકાદે બહાર લેવાઈ જાશે. પ્રાથમિકતા સાથે ચુંટણીમાં સામે રીધી સંપર્ક પરાવતા ઉમેદવારો એ પાંચ પોતાના રોઈ અર્થે છે તેવું બહાર આપ્યું છે. આ ઉમેદવારોને ચુંટણી ના રોકવા જોઈએ - ગેરલાયક ઠેરવવા જોઈએ, તેનો માંગણી કરવામાં આવનાર છે.

રજવાર પ્રજાવાન ગણતંત્રના મુશ્કેલી આ સંબંધિત ચુંટણી પંચ ને રજવર મળી આજે ઉમેદવારોની યાદી રજુ કરશે અને એવા તમામ ૧૦૦ ચુંટણી ની પાછળ રહે પાછળી ચુંટણી લડવા માટે ગેરલાયક ઠેરવવામાં આવી શકે. આ જોઈએ.

ચાંદીના બાજુપ અને કોંગ્રેસ દોઢ ડઝન ઉમેદવારો છે અને બાંધીયા અને બેપાયા છે. જયારે આ પાછળે મેં જો ત્યારે ગુજરાતના રાજકીયમાં અણખારા મળે શકે અને ચુંટણી પંચ ત્યારે કોઈ વેર નિર્ણય લેશે તેના પર બંધાની મીડે મંડાવી છે.

‘હજો તેને હજવામાં કોઈ પાપ નથી!’

ભુવર નેન

સાવકોટ તા.પ

‘કોઈની પ્રોપર્ટી પર નબર નાથી છે ? કોઈને કમ્પાઈને તેના પકલ-ફાલ પડાવી લીધા છે? કોઈની બેન-દીકરી પર લિંગી નબર કરીને પ એવું છે? કોઈ કોઈ કોઈ સંપત્તિ નડત કાપ થયો હોય કે એક પલ પોટ ૧૫૫ કુવોડ તો તેને બચાવી દા. જુ લેર લેરો બચા તેવા છું. જુર મુજ બાંધાના અટલા રાજો પૂરા થાય ત્યાં તેના ટેકરો, સોનાઓની તાલીઓ મુશ્કેલી થાં છે. નાનકડો પોર લઈને જુર મુજ એક ઘાને બે ઠડકા છે. આ કોંગ્રેસનો અણખારા રહેવાવાળો વળી બહારી તકલીની મેં બાન પડે ? એલે આ ભાજપવાળોની કુખખાલીમાં બાંધે એઈ છે ? કોંગ્રેસને તમારોમ્મ રસ નથી. તેને તો એક ઘાસાભય બોલિ છે અને પાછા પવાળાં તો પોતાની કુખખાલીમાં પાછાવી દે તેનો પરચારો બોલિ છે. હું ખોટો છું ?

ફરી પડતી તાલીઓ હુર મુજન લખાને છે છે અને ત્યાં મુજની બળાતના અલગ રહેણે આવી હુર છે. નાચણી તરવાર મુજના પોર કોંગ્રેસને બંધો છે. આ કુખખાલી તો કોઈ સખર પણ પડતી નથી. હું

કુદિયાણાની બેઠક જેના કારણે મહત્વની બની ગઈ છે એ ભુરા મુંબા ખાંડેલાની ચંટણી જોવા લંડનથી. તેના કિત્રો-સંબંધીઓ પણ આયા છે !



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‘Saurashtra Aaj Tak’, with more emphasis on the words ‘Aaj Tak’, leaves no doubt that the respondent/defendant is trying to pass off its newspaper on the goodwill and reputation of the appellant/plaintiff.

62. The respondent/defendant has contended that since approval for the title ‘Saurashtra Aaj Tak’ had been obtained after due title verification by the RNI under the PRB Act, which did not find the words ‘Saurashtra Aaj Tak’ to be identical or deceptively similar to any pre-existing publication name, it cannot be said that there was any infringement or passing off under the Trade Marks Act. The said contention of the respondent/defendant is entirely misplaced.

63. The purpose of the two enactments, i.e., the PRB Act and the Trade Marks Act, is completely different. The purpose of the Trade Marks Act is to ensure registration and protection of trademarks, and prevention of misuse of the marks. Whereas, the purpose of the PRB Act is regulation of printing presses and newspapers, and the nature of inquiry therein is limited to the purpose of approval of the name of a magazine or publication. Even if a registration was granted by RNI under the PRB Act, the same would be of no relevance in a suit for passing off/infringement to refute confusion.

64. In this regard, reliance is placed on the decision in the case of *Playboy Enterprises, Inc. (Supra)*, wherein, it was held as under:

“xxx xxx xxx

28. The registration of name of magazine, calendar or any printed publication under the provisions of PRB Act is an independent action and has no relevance or effect either over-riding or over-stepping the provisions of TMM Act. The preamble of the PRB Act itself demonstrates that this Act was not made for the purpose of governing disputes relating to names, titles and trade marks. Trade mark or mark registered



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under the TMM Act or its prior, long and known existence particularly the mark of arbitrary nature makes it so strong, the infringement of which entitles the user to obtain injunction against the infringer.

29. The nature of enquiry under the PRB Act is for the purpose of approval of the name of a magazine or publication and as such it cannot have precedence over the provisions of the TMM Act which is a special enactment and was made for the purpose of governing disputes relating to names, titles or trade marks. This conclusion emanates from the comparison of the object of the aforesaid two Acts. The preamble of PRB Act shows that it was made for regulating printing presses and newspapers, for preservation of copies of every book and registration of such books and newspapers. Thus the main concern of the Legislature was to enact a law which would help in preservation of the copies of the books and newspapers.

xxx xxx xxx”

(Emphasis Supplied)

65. Thus, it is evident that the appellant is the prior user of the trademark ‘Aaj Tak’. The subsequent adoption of the mark ‘Saurashtra Aaj Tak’ by the respondent, even in Gujarati language, would deceive and mislead the public into believing that the newspaper of the respondent belongs to or is closely associated to the appellant. Thus, use of the aforesaid mark by the respondent is likely to create confusion in the minds of the general public and create a likelihood of association.

Likelihood of Damage

66. The Trial Court has categorically held that the appellant/plaintiff has goodwill and reputation in the mark ‘Aaj Tak’ and that the apprehension of the respondent/defendant riding on the goodwill of the appellant/plaintiff cannot be ruled out. Any act, omission or misfeasance on the part of the respondent/defendant is likely to injure the goodwill and reputation of the appellant/plaintiff. Due to the services provided by the appellant/plaintiff



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during the course of time, the consumers might have developed certain expectations and quality standards. In case, the provision of services by the respondent/defendant falls short of that standard, the fallout of the same is likely to be suffered by the appellant/plaintiff on account of the ostensible likelihood of association between the appellant/plaintiff and the respondent/defendant, due to the similarity of trade/service marks.

67. The respondent/defendant has contended that the appellant/plaintiff has failed to demonstrate the existence of any actual confusion as no evidence has been placed on record to show that the public or the advertisers were confused. However, this contention of the respondent/defendant is meritless.

68. In a suit for passing off, the plaintiff must demonstrate that the misrepresentation has caused or is likely to cause damage to the plaintiff's goodwill. It is well established that a plaintiff need not show actual damage/loss in order to sustain the action of passing off. Where misrepresentation is established and the connection between misrepresentation and potential injury to the plaintiff's goodwill is sufficiently clear, damage to goodwill will follow.

69. Reference in this regard is made to the judgment in the case of ***Pernod Ricard India Private Limited and Another Versus Karanveer Singh Chhabra, 2025 SCC OnLine SC 1701***, wherein, it was held that while an intent to deceive is not a necessary element in an action for infringement or passing off, however, passing off requires proof of a likelihood of confusion or deception. It was held that actual deception or damage need not be proved – the test is whether confusion is probable in the mind of the average consumer due to the similarity in the marks or the overall get-up of the goods. Thus, it was held as follows:



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“xxx xxx xxx

29.1. A key distinction between the two lies in the requirements of proof. In an infringement action, the plaintiff is not required to establish the distinctiveness or goodwill of the mark - registration, by itself, affords the right to seek protection. If the impugned mark is shown to be identical or deceptively similar to the registered mark, no further evidence of confusion or deception is necessary.

However, in a passing off action, the plaintiff must prove: (i) the existence of goodwill or reputation in the mark, (ii) a misrepresentation made by the defendant, and (iii) a likelihood of damage to the plaintiff's goodwill.

29.2. While an intent to deceive is not a necessary element in either action, passing off requires proof of a likelihood of confusion or deception. It is well settled that actual deception or damage need not be proved - the test is whether confusion is probable in the mind of the average consumer due to the similarity in the marks or the overall get-up of the goods.

xxx xxx xxx”

(Emphasis Supplied)

70. Likewise, in the case of *Honda Motors Co. Ltd. Versus Charanjit Singh & Ors.*, 2002 SCC OnLine Del 1332, it was held that the plaintiff in passing off action does not have to prove that he has actually suffered damage by loss of business or in any other way. A probability of damage is enough, but the actual or probable damage must be damage to him in his trade or business, i.e., damage to his goodwill in respect of that trade or business. Thus, it was held as follows:

“xxx xxx xxx

12. It is also well settled that the plaintiff in passing off action does not have to prove that he has actually suffered damage by loss of business or in any other way. A probability of damage is enough but the actual or probable damage must be damage to him in his trade or business i.e., damage to his goodwill in respect of that trade or business. It was so observed in *Bulmer v. Bellinger*, (1978) RPC 79 (CA).



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13. It has further been observed in *Apple Computer v. Apple Leasing*, 1993 IPLR 63 [1992 (1) Arb. LR. 93 (Delhi)], that it is not even necessary in the context of the present day circumstances of free exchange of information and advertising through newspapers, magazines, video, T.V. Movies, freedom of travel between parts of the world to insist that a particular plaintiff must carry on business in a jurisdiction where improper use of its name or mark can be restrained by the Court. It was also observed that in a case of passing off action, the main consideration is the likelihood of confusion and consequential injury to the plaintiff, and the need to protect the public from deception, deliberate or otherwise.

14. In a nutshell, in an action for passing off, the plaintiff has to establish that his business or goods has acquired the reputation he is claiming, by showing that, his trade name has become distinctive of his goods and the purchasing public at large associates the plaintiff's name with them. The plaintiff is, however, not required to establish fraudulent intention on the part of the defendant. Causing of actual confusion amongst the customers is also not to be proved. What is required to be established is the likelihood of deception or confusion in the minds of the public at large. The likelihood or probability of deception depends on a number of factors, which necessarily, is a question of fact and varies in the circumstances of each case. The plaintiff has also to establish that the defendant's user of the plaintiff's marks, letters or other indicia with regard to his goods is likely to lead to confusion in the minds of public, and such confusion is likely to cause damage or injury to the reputation, goodwill and fair name of the plaintiff. The plaintiff has also to show his prior user of the trade mark, in point of time than the defendant. The plaintiff, however, need not prove actual loss or damage in an action of passing off. Also registration of the trade mark is inconsequential in such an action.

xxx xxx xxx”

(Emphasis Supplied)

71. Accordingly, in the facts and circumstances of the present case, there is a distinct likelihood of injury/damage to the goodwill of the appellant/plaintiff by use of the impugned mark by the respondent/defendant.



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Whether The Relief Granted By The Trial Court Was Adequate?

72. By way of the impugned judgment, the Trial Court issued a mandatory injunction against the respondent/defendant, permitting it to use the mark ‘Saurashtra Aaj Tak’ subject to display of a disclaimer, on the premise that the respondent/defendant must have also acquired goodwill and reputation in the name ‘Saurashtra Aaj Tak’ and *prima facie* its act does not appear to be *per-se* dishonest. The observations of the Trial Court in this regard are reproduced as under:

“xxx xxx xxx

16. The averments which the defendants have made in their written statement are factual aspect but no evidence has been led. However, it cannot be ruled out that the defendants have also in the course of time might have developed goodwill and reputation in their trade mark and prima-facie that acts of the defendant do not appear to be per-se dishonest.

xxx xxx xxx”

(Emphasis Supplied)

73. However, it is evident from the record that no plea of *bona fide* use had been taken by the respondent/defendant in its written statement.

74. Moreover, the respondent/defendant neither entered the witness box nor placed anything on record to establish the goodwill or reputation of the mark ‘Saurashtra Aaj Tak’, or that the use of the said mark by it was *bona fide*, in any manner whatsoever. Further, no plea was made nor any evidence was placed on record by the respondent/defendant to show that it had registered the mark ‘Saurashtra Aaj Tak’ under the Trade Marks Act.

75. It is a settled principle of law that intent to deceive/*bona fide* use is not a necessary element in an action for passing off. In this regard, reliance is placed on paragraph 29.2 in the case of *Pernod Ricard (Supra)*, as reproduced



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hereinabove, wherein, the Court had held that intent to deceive is not a necessary element in action for passing off. Further, actual deception need not be proved.

76. Reference is also made to the decision in the case of ***Laxmikant V. Patel Versus Chetanbhai Shah and Another, (2002) 3 SCC 65***, wherein, the Supreme Court held that absence of an intention to deceive is not a defense to a passing off action, in the following manner:

“xxx xxx xxx

*13. In an action for passing-off it is usual, rather essential, to seek an injunction, temporary or ad interim. The principles for the grant of such injunction are the same as in the case of any other action against injury complained of. The plaintiff must prove a prima facie case, availability of balance of convenience in his favour and his suffering an irreparable injury in the absence of grant of injunction. According to Kerly (ibid, para 16.16) passing-off cases are often cases of deliberate and intentional misrepresentation, but it is well settled that fraud is not a necessary element of the right of action, and the absence of an intention to deceive is not a defence, though proof of fraudulent intention may materially assist a plaintiff in establishing probability of deception. Christopher Wadlow in *Law of Passing-Off* (1995 Edn., at p. 3.06) states that the plaintiff does not have to prove actual damage in order to succeed in an action for passing-off. Likelihood of damage is sufficient. The same learned author states that the defendant's state of mind is wholly irrelevant to the existence of the cause of action for passing-off (ibid, paras 4.20 and 7.15). As to how the injunction granted by the court would shape depends on the facts and circumstances of each case. Where a defendant has imitated or adopted the plaintiff's distinctive trade mark or business name, the order may be an absolute injunction that he would not use or carry on business under that name (Kerly, ibid, para 16.97).*

xxx xxx xxx”

(Emphasis Supplied)



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77. In the present appeal, respondent company has contended that the use of the mark ‘Saurashtra Aaj Tak’ by it, since the year 2002, is prior, continuous, *bona fide*, and confined to the Saurashtra region of Gujarat, and is therefore protected under the doctrine of prior user under Section 34 of the Trade Marks Act.

78. In this regard, Section 34 of the Trade Marks Act reads as under:

“xxx xxx xxx

34. Saving for vested rights.— *Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods or services in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior—*

(a) to the use of the first-mentioned trade mark in relation to those goods or services be the proprietor or a predecessor in title of his; or

(b) to the date of registration of the first-mentioned trade mark in respect of those goods or services in the name of the proprietor or a predecessor in title of his;

whichever is the earlier, and the Registrar shall not refuse (on such use being proved) to register the second mentioned trade mark by reason only of the registration of the first-mentioned trade mark.

xxx xxx xxx”

(Emphasis Supplied)

79. The aforesaid provision, i.e., Section 34 of the Trade Marks Act is with respect to a registered trademark, and restrains the proprietor or registered user of the registered trademark from restraining any person from using a mark identical or nearly resembling to it, if such person, or his predecessor in title, has been continuously using that mark from a ‘date prior’ to either (a) the use



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of the first mentioned trademark or (b) registration of the first mentioned trademark, whichever is earlier.

80. As noted hereinabove, the appellant/plaintiff has admittedly been using the mark 'Aaj Tak' atleast since the year 2000, while the respondent/defendant has been using the mark 'Saurashtra Aaj Tak' only since the year 2002. Thus, clearly, the use of the mark 'Saurashtra Aaj Tak' by the respondent is not from a date prior to the use of the mark 'Aaj Tak' by the appellant/plaintiff. Thus, Section 34 of the Trade Marks Act would be of no avail to the respondent company, in the present facts and circumstances.

81. In view of the detailed discussion hereinabove, this Court is of the considered view that the Trial Court erred in holding that the use of the mark 'Saurashtra Aaj Tak' was not *per-se* dishonest and that the said mark had acquired its own goodwill and reputation. When the elements of passing off have been established by the appellant/plaintiff, there was no occasion for the Trial Court to not have granted a decree of permanent injunction restraining the respondent/defendant from using the mark 'Saurashtra Aaj Tak'. The justification for granting a limited mandatory injunction to the respondent/defendant to use the mark 'Saurashtra Aaj Tak' with a disclaimer is based on erroneous findings, as discussed hereinabove, which cannot be sustained.

82. At this stage, the following judgments pertaining to the mark of the appellant/plaintiff may be referred to, wherein, injunction was granted, restraining third parties from using a mark which contained the words 'Aaj Tak'.

- I. ***Asad Patel (Supra)***, which pertained to the use of the mark 'Khabrein Aaj Tak' by a third party. Permanent injunction was granted in favour of



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the holding company of the appellant herein along with costs at Rs. 1,00,000/-. Thus, in the said case, it was held as follows:

“xxx xxx xxx

10. *The plaintiffs place reliance on a previous order of this Court made in a case instituted by the same plaintiffs against the defendants therein, titled M/s Living Media India Ltd. V. Jitendra V. Jain and Anr., 98 (2002) DLT 430 (IAs 10383 and 12189/1999 in Suit No. 2282/1999, dated 21.05.2002). The issue in that case was identical with the case at hand, as even in that case the defendants were using Khabrein as prefix to AAJ TAK. The Court held as under:*

“26. The mark is always used for the purpose of indicating either a connection in the course of trade between the goods and it is the prior user which provides the right of protection. Thus even if the adjective “Khabrein” is pre-fixed it does not make the trade mark “Khabrein Aaj Tak” distinct or different from the mark “AAJ TAK”.

27. The word “AAJ TAK” itself is so distinctive that it has acquired such a meaning that any pre-fix of suffix would be of no relevance so far as the action of passing off is concerned. The only object and design of the defendant to adopt the word “AAJ TAK” was to trade and encash upon the goodwill of the plaintiff earned over the years through the advertisements and because of its extensive popularity. The mark “AAJ TAK” has become synonymous with the plaintiff so far as the news channel is concerned.

28. The word “AAJ” and “TAK” may be individually descriptive and dictionary word and may not be monopolised by any person but their combination does provide a protection as a trademark if it has been in long, prior and continuous user in relation to particular goods manufactured, sold by a particular person and by virtue of such user the mark gets identified with that person. It is so irrespective of the fact whether such a combination is descriptive in nature and has even a dictionary meaning. In such a case any other person may choose any of the two words viz. either “AAJ” or “TAK” as its trade name or mark but it has to be prohibited from using the combination of these



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words as such a user not only creates confusion as to its source or origin but also bares the design or motive of its subsequent adopter.

29. Any kind of prefix or suffix would not make any difference so far as the trade name or for that purpose the domain name “AAJ TAK” is concerned. It is immaterial whether the defendant has no clientele or publication in Delhi. Channel “AAJ TAK” is a National Channel. It has widespread reputation and goodwill. Adoption of similar or deceptively similar mark amounts to passing off even if it has no local physical market, goodwill or reputation of a product or person is all pervasive. It is not confined in the four walls or to a particular territory. It has to be protected wherever it is threatened or is sought to be eroded or exploited. Merely because the product or mark adopted by a rival has no circulation or sale in the territory of the plaintiff's mark or product is no defense against protection of the mark. Protection of mark is in actuality protection of reputation and goodwill. At every cost the reputation has to be protected and preserved.”

11. The plaintiffs have clearly established that they hold a valid trademark registration for the mark AAJ TAK. In absence of the defendants' written statement the plaint averments remain uncontroverted. The defendants have stated in their Order XXXIX Rule 4 application that their mark Khabrein AAJ TAK is registered with the Indian Motion Picture Producers' Association since June, 2002. Such registration only secures the right to use the title for the purpose for which it is registered, to the exclusion of other producers. Grant of registration by a private body of producers, in no manner, overrides or derogates the statutory rights of a person conferred under the Trade Marks Act, 1999 or the Copyright Act, 1957. In any case, the registration secured by the defendants is much later (since 17.06.2002), as against the plaintiffs', who secured registration under the Trademarks Act on 20.09.1995. The only valid defence in a suit such as the present one can be prior user of the impugned mark – which plea has not been taken.

xxx xxx xxx

13. No doubt that the order in *Jitendra V. Jain (supra)* is an interim one, yet one cannot lose sight of the fact that the



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controversy was identical in nature and the discussion on the issue was detailed. The principles of law stated therein, in the considered opinion of this Court, are sound and the Court finds no reason to digress from the view upheld in that order.

xxx xxx xxx

15. In view of the above, the plaintiffs' are held entitled to a decree of permanent injunction in terms of paragraphs 23 (a), (b), (c) and (d) along with costs at Rs. 1,00,000/- (Rs. One lakh). The suit is decreed in such terms. All pending applications are also disposed of.

xxx xxx xxx”

(Emphasis Supplied)

II. **P Kaushik (Supra)**, wherein, a third party was enjoined from using the mark ‘Nazar Aaj Tak’, in the following manner:

“xxx xxx xxx

17. In view of the averments made in the plaint and the un-rebutted evidence filed by the Plaintiffs, the Plaintiffs have established that they are the registered proprietor of the said trade mark “AAJ TAK”, thus they have a statutory right to the exclusive use of the same. The mark “Nazar AAJ TAK” used by the Defendants is structurally, visually and phonetically identical to the registered trade mark of the Plaintiffs “AAJ TAK”. There is a clear violation of the rights of the Plaintiffs. It is also clear that the plaintiffs have been using their mark since 1995. The act of the Defendants lacks bonafide. The goods and services sold by the Defendants using the deceptively similar trade mark will also lead to passing off the goods and services of Defendants as that of the Plaintiffs.

18. Accordingly, a decree of permanent injunction is passed in favour of the Plaintiffs and against the Defendants restraining the Defendants, its heirs, representatives, directors, employees, agents from using the trademark “Nazar AAJ TAK”; “AAJ TAK”; “nazaraajtak@gmail.com” or any other trademark deceptively or phonetically similar to the Plaintiffs’ registered trademark “AAJ TAK” in relation to magazine, newspaper, journal, news or any other media related services.

xxx xxx xxx”

(Emphasis Supplied)



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III. *Living Media India Limited & Anr. Versus Mandeep Kaur & Anr., 2017 SCC OnLine Del 12763*, which pertained to the mark ‘Aaj Tak Aamne Saamne’. In the said case, permanent injunction was granted along with damages of Rs. 1 Lac and interest @ 8% per annum from the date of decree till receipt of payment. In the said case, it was held as follows:

“xxx xxx xxx

17. In view of the averments made in the plaint and the un-rebutted evidence filed by the Plaintiffs, the Plaintiffs have established that they are the registered proprietor of the said trade mark “AAJ TAK”, thus they have a statutory right to the exclusive use of the same. The mark “AAJ TAK AAMNE SAAMNE” used by the Defendants is structurally, visually and phonetically identical to the registered trade mark of the Plaintiffs “AAJ TAK”. There is a clear violation of the rights of the Plaintiffs. It is also clear that the plaintiffs have been using their mark since 1995. The act of the Defendants lacks bonafide. The goods and services are sold under the deceptively similar trade mark will also lead to passing off the goods and services of Defendants as that of the Plaintiffs.

18. Accordingly, a decree of permanent injunction is passed in favour of the Plaintiffs and against the Defendants restraining the Defendants, its heirs, representatives, directors, employees, agents from using the trademark “AAJ TAK AAMNE SAAMNE”; “AAJ TAK”; “aajtakaamnesaamne com” or any other trademark deceptively or phonetically similar to the Plaintiffs’ registered trademark “AAJ TAK” in relation to magazine, newspaper, journal, news or any other media related services. Plaintiffs shall also be entitled to damages of Rs. 1 lac. A decree for Rs. 1 lac is accordingly passed in favour of the Plaintiffs and against the Defendants. The Plaintiffs shall also be entitled to interest @ 8 per cent per annum simple from the date of decree till payment is received.

xxx xxx xxx”

(Emphasis Supplied)



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IV. *Living Media India Ltd. & Anr. Versus M. Hussain & Ors., 2013 SCC OnLine Del 2840*, which pertain to the mark ‘Speed Aajtak’. In the said case, permanent injunction along with a decree directing the defendants therein to pay Rs. 10 Lakhs as damages, was passed. Accordingly, in the said case, it was held as follows:

“xxx xxx xxx

16. *In the present case it is seen that the Defendants have been blatantly infringing the registered trademark and the copyright of the Plaintiffs’ mark ‘AAJ TAK’ and commercially exploiting the goodwill and reputation attached to such mark. The Defendants are also involved in a fraud by issuing press membership cards with the trademark and logo ‘AAJ TAK’ of the Plaintiffs and thereby cheating the general public and authorities into thinking that the holder of such pass is in fact a journalist associated with the Plaintiffs. Therefore apart from the need to stop such infringement on the ground that it causes irreparable damage to the Plaintiffs’ reputation, it is also essential to do so in public interest and to deter such a brazen infringement of the Plaintiffs’ trademark.*

17. *For the aforementioned reasons, the suit is decreed in terms of prayers as set out in Para 25(a) to (e) of the plaint as under:*

(i) a decree order of permanent injunction is passed restraining the Defendants, their Directors, Partners or as the case may be, employees, servants, agents, and/or any one claiming under or through them, from, in any manner using the word ‘SPEED AAJTAK’ and/or any other deceptive variant(s) thereof, in respect of their online news service or any other news service thereby amounting to infringement of Trade mark and/or passing off;

(b) a decree order of permanent injunction is passed restraining the Defendants, their Directors, Partners, or as the case may be, employees, servants, agents and/or any one claiming under or through them, from reproducing the work ‘SPEED AAJTAK’ in any manner amounting to infringement of the copyright of the Plaintiff, residing in the artistic representation of the words ‘AAJ TAK’;



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(c) a decree is passed directing transfer of the domain name/website located at the URL www.speedaajtak.com in favour of the Plaintiffs;

(d) a decree is passed directing the Defendants to pay to the Plaintiffs a sum of Rs. 10 lakhs as damages;

(e) a decree is passed against the Defendants for delivery up to the Plaintiff of the infringing material in the possession and/or custody of the Defendants.

xxx xxx xxx”

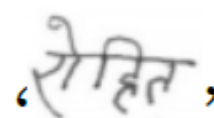
(Emphasis Supplied)

83. The aforesaid judgments clearly point out that the mark ‘Aaj Tak’ has acquired distinctiveness and secondary meaning.

84. It is undisputed that the appellant/plaintiff is the prior user of the mark ‘Aaj Tak’. The subsequent adoption of the mark ‘Saurashtra Aaj Tak’ even in Gujarati language would lead to the confusion of phonetic similarity. An aural similarity is also a basis of determining the deceptive similarity between marks. Thus, this Court in the case of *Anshul Vaish, Partner Rohit Wrappers Versus Hari Om and Co. and Another*, 2025 SCC OnLine Del 664, while dealing with a case of infringement of plaintiff’s mark therein, i.e.,



and defendant’s mark therein, i.e.,



, held as

follows:

“xxx xxx xxx

22.....The mere fact that the mark of the respondents is in a different language, does not deter from the incidence of the likelihood of confusion, in addition, the risk of association with the petitioner’s trademark and goods. Confusion and deception amongst the competing marks is inevitable on account of identity of trademarks and commonality of goods, trade channel and class of consumers. An unwary consumer of average



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intelligence and imperfect recollection is bound to get confused by the adoption of the identical mark by the respondent, who would assume that the impugned mark is a variant of the petitioner's mark written in a different language. Further, the adoption and use of the impugned mark by the respondent, in the course of trade and in relation to similar goods, will certainly lead to confusion and/or deception about a trade connection, nexus or trade association between the petitioner and the respondent.

xxx xxx xxx”

(Emphasis Supplied)

85. In the present case, the Trial Court has held in categorical terms that due to long usage, the words ‘Aaj Tak’ had attained a secondary meaning having reference to the dissemination of the news by the appellant/plaintiff through its news channel, and thus, had acquired a distinctive meaning and reputation. Further, the Trial Court also accepted that the mark ‘Saurashtra Aaj Tak’ was likely to create confusion in the minds of the general public and consumers that the respondent/defendant is associated with the appellant/plaintiff. Furthermore, the Trial Court concluded that any deficiency in services of ‘Saurashtra Aaj Tak’ will be attributed to the appellant/plaintiff. Thus, the Trial Court has come to a conclusion that the acts of the respondent/defendant are likely to injure the goodwill and reputation of the appellant/plaintiff.

CONCLUSION:

86. Thus, in view of the said categorical findings, the ingredients of ‘passing off’, i.e., goodwill, misrepresentation and likelihood of damage, are well established. In view thereof, the Trial Court has erred in not granting permanent injunction completely, thereby, restraining the respondent/defendant from using the mark ‘Aaj Tak’ in any manner. The Trial Court has erred in permitting the respondent/defendant to use the mark



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‘Saurashtra Aaj Tak’ with a disclaimer. Consequently, the findings and directions of the Trial Court in regard thereto, are set aside

87. As a result, considering the detailed discussion hereinabove, a decree of permanent and mandatory injunction is passed in favour of the appellant/plaintiff thereby restraining the respondent/defendant, its directors, employees, servants, agents, and/or anyone claiming under it, from using the name ‘Saurashtra Aaj Tak’ in any manner. The respondent/defendant is directed to change the name of its newspaper from ‘Saurashtra Aaj Tak’ to any other name, style and title which is not similar, and/or deceptively similar to the name, style and title of the appellant/plaintiff’s mark, ‘Aaj Tak’.

88. Let Decree Sheet be drawn in terms of the aforesaid.

89. The present appeal is accordingly allowed in the aforementioned terms.

**MINI PUSHKARNA
(JUDGE)**

JULY 30, 2026
Au/Ak/Sk