

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 19.03.2021

Pronounced on : 23.03.2021

+ CS(COMM) 126/2021

DR. REDDY'S LABORATORIES LIMITED ..... Plaintiff

Through: Mr. Chander M. Lall, Senior Advocate with Mr. Raman Narula, Mr. Shashi P. Ojha and Ms. Nancy Roy, Advocates.

versus

EROS INTERNATIONAL MEDIA LIMITED AND ANR.

..... Defendants

Through: Mr. Sandeep Sethi, Senior Advocate with Mr. Neel Mason, Ms. Ridhima Pabbi and Ms. Ekta Sharma, Advocates for D-1 and D-2.

**CORAM:  
HON'BLE MR. JUSTICE SANJEEV NARULA**

**JUDGMENT**

**SANJEEV NARULA, J.:**

**I.A. 4237/2021 (u/O. XXXIX Rules 1&2 CPC seeking interim relief)**

1. The Plaintiff seeks urgent interlocutory injunction to restrain the release of a feature film named 'Haathi Mere Saathi' (alternately titled 'Kaadan' in Tamil and 'Aranya' in Telugu) [hereinafter referred to as "**the movie**"] via any media platform such as cinemas, OTT, etc., alleging that the movie disparages Plaintiff's registered trademark/brand 'DRL'.

2. Briefly stated, the facts giving rise to the present dispute are as follows:

- (i) The Plaintiff is a multinational pharmaceutical company engaged in the business of manufacturing, marketing and distribution of pharmaceutical, nutritional and cosmetic products, having its headquarters located at Hyderabad. It is the registered proprietor of the word mark 'DRL' under Trade Mark Registration No. 1529767 dated 09<sup>th</sup> February 2007 in Class 05 (pharmaceutical preparations).
- (ii) The Plaintiff maintains that its impeccable reputation is at the core of its existence and a large segment of the population knows its business as 'DRL'. It claims that the mark/brand 'DRL' has acquired distinctiveness and is associated only with the Plaintiff. The Plaintiff claims that 'DRL' has been openly, continuously, extensively and exclusively used by them as well as third parties in various promotion materials, press reports and other publications. They have subsidiaries that have DRL as part of their corporate name, such as 'DRL Impex Ltd. and 'DRL Investments Ltd.'. Since 1986, its reputation has spread far and wide by virtue of its corporate social governance (CSR) initiatives.
- (iii) Defendant No. 1 is a leading global motion movie production and distribution company incorporated in 1981. It is producing and releasing the movie (Haathi Mere Saathi), which has been directed by Mr. Prabhu Solomo (the Defendant No. 2).

- (iv) In the last week of February, 2020, the Plaintiff discovered that the Defendant media house is using/portraying the Plaintiff's word mark/brand 'DRL' in the trailer video of the movie, as part of the name 'DRL Township', in a derogatory/disparaging manner. The plot of the movie centres on the destruction of an elephant corridor and habitat, by a corporate entity named 'DRL', for the construction of its 'DRL Township'.
- (v) The Plaintiff is aggrieved that such unauthorized use of 'DRL' as part of the movie plot, as one acting for commercial exploitation and gain with no regard to the environment, and showing its brand in a poor light, is purposeful, *mala fide* and intended to detriment the distinctive character, reputation and goodwill of the plaintiff's brand.
- (vi) Despite notice dated 03<sup>rd</sup> March, 2020 by the Plaintiff to the Defendants asking for deletion of the relevant scenes from the movie, no reply was received. However, the movie was not released on its originally set date of 2<sup>nd</sup> April, 2020.
- (vii) Then on 3<sup>rd</sup> or 4<sup>th</sup> March, 2021, Defendants launched the trailer video of the movie on YouTube, spotting which, the Plaintiff issued another letter/notice dated 8<sup>th</sup> March, 2021 to the Defendants. Defendant No. 1 replied through their advocate on 12<sup>th</sup> March, 2021, denying all allegations therein and refusing to comply with the requisitions thereof. The movie is now slated to be released on 26<sup>th</sup> March, 2021.
- (viii) The Plaintiff fears that such use of its mark in the movie will impact

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its: (a) sales, (b) power to attract talent for R&D/innovation, (c) new collaboration, (d) share price, (e) business partners, (f) morale of employees, (g) repute among existing stakeholders, as, they would assume and carry the impression that the Plaintiff must have been part of encroachment of a restricted area, for which reason the producers have chosen the name 'DRL Township' for its movie.

- (ix) Moreover, the use of 'DRL' will have the inevitable consequence of: (a) exposing the Plaintiff to hatred, ridicule or humiliation, (b) injuring the Plaintiff in their profession or trade, and (c) lowering the reputation of the Plaintiff in the estimation of the right thinking members of society and consumers. The impact upon the reputation of the Plaintiff is immeasurable and goes to the very essence of the business that it has built over the years using the brand name 'DRL'/Dr. Reddy's Laboratories.

#### **PLAINTIFF'S CONTENTIONS:**

3. Mr. Chander M. Lall, learned Senior Counsel for the Plaintiff, at the outset, drew the attention of this Court to the registration of the word mark 'DRL' under Trade Mark Registration No. 1529767 dated 9<sup>th</sup> February, 2007 in Class 05. Further, to substantiate his contention that the said mark has acquired distinctiveness and is associated only with the Plaintiff, Mr. Lall referred to:

- (a) news articles from English language newspapers, where the Plaintiff has been referred to as 'DRL'.

- (b) results from Google search engine, to show that in case a search is done for the letters 'DRL', the name of the Plaintiff company is shown on the first page, thereby, clearly indicating that 'DRL' is associated with the Plaintiff.
- (c) Internet extracts showing annual reports of Plaintiff's company wherein it has referred to itself by its abbreviation 'DRL'.
- (d) Internet extracts from the website of the Ministry of Corporate Affairs to show that the names of some of the Plaintiff's subsidiaries contain the letters 'DRL', such as 'DRL Impex Ltd.' and 'DRL Investments Ltd.'.

4. He submitted that the Plaintiff's reputation is not limited to the healthcare industry, but has spread far and wide by virtue of the CSR initiatives undertaken by the foundation set up by the Plaintiff in 1996, and refers to internet reports to highlight the amounts spent by the Plaintiff on CSR activities, which are in the range of Rs. 27-34 crores for the past four financial years. Mr. Chander Lall contended that as the Plaintiff is also referred as 'DRL', any use of the said mark in a bad light would negatively affect the Plaintiff. The deliberate negative portrayal in the movie would seriously tarnish its impeccable reputation as an environmentally-conscious company, impinge upon the Plaintiff's standing in the eyes of the society, and hamper the public trust gained by it through years of CSR activities.

5. Explaining the context of the use of the mark by the Defendant, Mr. Lall elucidated that the teaser and trailer of the movie indicate that the movie revolves around theme that 'DRL' is a villainous corporation, destroying the

habitat of elephants and the livelihood of humans in the locality by setting up a township in the middle of an elephant corridor. The entire plot of the movie seems to be a struggle of the protagonist against 'DRL', where the entity, represented by these letters, is shown in extremely poor light. Mr. Lall submitted that while it is doubtless that the movie is described as a work of fiction, however, it portrays a real-world situation of mass mindless destruction of wildlife habitats for human consumption. He submitted that the movie is bound to leave the audience with a clear message that 'DRL' is an irresponsible and reprehensible company, which is entirely to the peril of the Plaintiff. The counsel assisting Mr. Lall also played the video clip of the trailer in Court, to show the use of the mark 'DRL' in the movie. Besides, screenshots shown in the teaser, which form part of the plaint, were also pointed out to the Court. Mr. Lall further submitted that the Defendant No. 1, in response to the legal notice issued by the Plaintiff, has contended that 'DRL' refers to a fictional corporate entity, named 'Drishti Refineries Limited'. Mr. Lall thus submitted that the Defendant should instead use the full name Drishti Refineries Limited in the movie, instead of the acronym 'DRL', which may cause confusion in the minds of viewers. Alternatively, the acronym should be used in conjunction with the name of the corporate. In such an event, he would not have any objection as the use of 'DRL' as it would then clearly be relatable to the fictitious corporate 'Drishti Refineries Limited'.

6. Mr. Lall also made a legal submission regarding the use of the trademark 'DRL'. Firstly, he contended that the use of the said word mark by the Defendant would not only amount to infringement of the registered

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trademark under Section 29 of the Trade Marks Act, 1999 [*hereinafter referred to as 'the Act'*], but also would amount to passing of. He referred to Section 29 (6) and (8) to contend that the use of a registered mark in an advertisement amounts to infringement, if such advertising is against the reputation of the trademark. In support of this contention, Mr. Lall relied upon the judgement of this Court in *Hamdard National Foundation and Anr. v. Hussain Dalal and Ors.*<sup>1</sup> On the aspect of impact or visual effect on the viewers through the medium of television channels and electronic media, Mr. Lall relied upon the judgment in *Hindustan Unilever v. Reckitt Benckiser.*<sup>2</sup>

#### **DEFENDANT'S CONTENTIONS:**

7. Mr. Sandeep Sethi, Senior Counsel for the Defendants, on the other hand, argued that the present suit is completely misconceived, baseless and frivolous. The Plaintiff has instituted the suit on claims that are based on conjectures, surmises and mere apprehensions about the impact of the use of an acronym used in a fictional creative work in an unconnected industry, to the reputation of their organization. The Plaintiff cannot claim any monopoly over the English letters 'D-R-L' beyond its purported limited right under the Act, much less restrict the fundamental right of the Defendant proffered under Article 19(1)(a) of the Constitution of India. The Plaintiff has neither made a case for infringement of its trade mark, nor of disparagement of 'DRL', so as to be entitled to an interim injunction. In fact,





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<sup>1</sup> 2013 (55) PTC 216 (DEL)

<sup>2</sup> 214 (57 PTC) 495 (DEL).

the Plaintiff has never used the alleged registered mark in relation to the goods registered in Class 05 i.e. pharmaceutical preparations. Without prejudice, Mr. Sethi submitted that the Defendants are not using the letters 'DRL' as a trademark in relation to some goods and services. The use is for denoting a made-up entity, in a work of fiction, and that cannot possibly amount to infringement of the trademark 'DRL' or the disparagement of the Plaintiff's mark or brand.

8. Next, Mr. Sethi strongly objected to the Plaintiff asserting its right over the acronym 'DRL' *in toto*, and handed over a list across the board to show that the said letters/acronym have been registered as trademarks under several other categories and classes by several other entities, a few of which, for the sake of illustration, are reproduced hereinbelow:

S. No.	Trademarks	Application/Registration No. and Status	Class	Owner/Proprietor
1.		2110751 Registered	39	DRL Logistics Private Limited
2.		3676384 Registered	9, 25, 2, 8, 41	Drone Racing League, Inc.
3.		3805949 Pending	5	Sah Agrovvet (OPC) Pvt. Ltd.
4.		3534721 Registered	7	Surinder Kumar Trading as Data Ram and Sons

9. Next, Mr. Sethi also laid emphasis on the aspect of delay on the part



of the Plaintiff in approaching this Court. He submitted that on this ground alone, without going into the other aspects, the Court should deny the relief of injunction. He submitted that as per the Plaintiff's own case, it discovered the portrayal/use of the mark 'DRL' in the official teaser of the movie sometime in the last week of February, 2020, which prompted it to issue a notice dated 3<sup>rd</sup> March, 2020 calling upon the Defendants to immediately delete the scenes in the movie. However, thereafter, radio silence was observed on part of the Plaintiff for a whole year, and now, just before the release of the movie, slated for 26<sup>th</sup> March, 2021, the Plaintiff has filed the present suit and injunction application. Mr. Sethi submitted that there are several authorities on the proposition that a Plaintiff who approaches this Court at the eleventh hour seeking interim injunction against the release of a movie, is disentitled to such a relief. In support of this submission, Mr. Sethi urged that recently, this Court by way of a detailed judgment in **John Hart JR and Anr. v. Mukul Deora and Anr.**,<sup>3</sup> had rejected an application seeking interim injunction on this ground. In the said judgment, the Court has extensively delved on the question of delay in approaching the Court for injunctive relief by relying upon several other decisions on this aspect,<sup>4</sup> and authoritatively reinforced the law on the aspect of delay in approaching the court for injunctive relief.

10. Mr. Sethi submitted that the Plaintiff's reliance on Section 29 of the

<sup>3</sup> Dated 21<sup>st</sup> January, 2021 in CS(COMM) 38/2021; Also at MANU/DE/0100/2021.

<sup>4</sup> Such as **Kanungo Media (P) Ltd. v. RGV Film Factory**, 138 (2007) DLT 312: MANU/DE/7193/2007; **Biswaroop Roy Choudhary v. Karan Johar**, 131 (2006) DLT 458 : MANU/DE/2753/2006; **Warner Bros. v. Harinder Kohli & Ors.**, 155(2008)DLT56:MANU/DE/1333/2008 and **Vinay Vats v. Fox Star Studios India Pvt. Ltd. & Ors.**, MANU/DE/1488/2020.

Act is misplaced as it is specifically pertains to advertising, and is thereby restricted in its scope to acts where an advertiser is inviting its potential customers to use its goods or services by comparing itself to a competitor's goods using the competitor's trademark. Even in such cases of advertising, under trademark law, comparison is permissible, as long as it is not disparaging or denigrating. Thus, if the law permits the use of trademark within advertisements, it certainly permits its use as a fictional term within a fictional movie, and such use, by no means, can be considered misleading, deceptive or disparaging.

11. Mr. Sethi further submitted that the case before this Court presents a larger issue, regarding whether the fundamental right of the Defendant, as enshrined under Article 19(1)(a) of the Constitution of India for free speech and expression, can be taken away at the instance of a Plaintiff on specious pleas. He submitted that freedom of speech certainly allows the Defendant to use the acronym/letters 'DRL' in creative fictional works. The movie is not a documentary, but a feature film and does not relate or aver to pharmaceutical companies in the slightest. In support of this contention, Mr. Sethi relied upon the judgments of *Tata Sons Ltd. v. Greenpeace International & Anr.*,<sup>5</sup> *Prakash Jha v. Bata India Ltd.*,<sup>6</sup> and *Bata India Ltd. v. Prakash Jha Productions*.<sup>7</sup> As an arguendo, Mr. Sethi submitted that if the Defendant's actions cannot be construed as infringement, then Plaintiff could, at max, contend that the action of the Defendants amounts to defamation of the

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<sup>5</sup> 2011 SCC OnLine Del 466.

<sup>6</sup> 2012 SCC OnLine Del 5682.

<sup>7</sup> (2013) 1 SCC 729.

Plaintiff. On this aspect also, the law is well established that in matters relating to publication of allegedly defamatory content, the Courts are extremely reluctant in granting injunctive relief. The Plaintiff could rather pray for adequate monetary compensation of the alleged loss occasioning on account of injury to its reputation, in case the content is proven to be actually defamatory.

12. Lastly, Mr. Sethi submitted that words 'DRL', 'DRL Township' and 'DRL Group' have been used at several instances in the movie, and it would be impracticable, if not next to impossible, for Defendant No. 1 to sift through and edit the entire movie, at such a short notice. The movie in question is due to be released within a week; the Defendant has spent crores on the project; and has also created several third-party rights in the process. The balance of convenience thus lies in its favour, and if the Court were to grant an injunction, it would gravely prejudice the Defendant, cause humongous losses, and also dent its image in its industry.

#### **ANALYSIS AND FINDINGS**

13. Having heard the arguments of the parties at length, the contentions advanced by the parties can be dealt with, under the following heads:

A. WHAT IS PLAINTIFF'S RIGHT OVER THE ACRONYM/ LETTERS 'DRL'

14. Plaintiff claims to be the proprietor of the registered trademark 'DRL' in relation to goods in Class 05 i.e., pharmaceutical preparations. However,

along with the plaint, no evidence has been placed on record to show the use of the registered trademark ‘DRL’, in respect of the pharmaceutical preparations or otherwise. The Plaintiff has not filed any advertisement extracts, invoices, product packaging etc. that could indicate to the Court that the Plaintiff is using ‘DRL’ in relation to its products/services. The application for registration was under ‘proposed to be used’ category. The Plaintiff is unable to show the use of the registered mark from the date of the application of the trademark which i.e. 9<sup>th</sup> February, 2007 till the filing of the suit. In *Corn Products Refining Co. Ltd. v. Shangrila Food Products Ltd.*,<sup>8</sup> the Supreme Court has held that it is not permissible to draw any inference as to use from mere presence of the mark on the register. To sustain an action of infringement, it is imperative to exhibit continuous and sustained use of the mark, to demonstrate that it has acquired distinctiveness. On this count, the Plaintiff has failed. Defendants have also brought to the notice of the Court that during examination, an objection was raised under section 9 of the Act against Plaintiff’s registration of the acronym DRL, to which the Plaintiff had submitted that “*DRL is part of their trading style and has no specific meaning or significance to goods covered by the said trademark application*”. Therefore, it appears, *prima facie*, that the Plaintiff is asserting its claim on ‘DRL’ in the context of the short-form of its corporate name – Dr. Reddy Laboratories Limited, and its primary trademarks. Moreover, registration of the trademark in one class cannot, by itself, give the Plaintiff an unrestricted right or monopoly over the letters D, R and L, when used in that order.

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<sup>8</sup> AIR 1960 SC 142.

15. In fact, the Plaintiff is trying to establish its association with the word mark 'DRL', not only on the basis of its trademark registration, but essentially on the basis of news articles published in English newspapers such as Indian Express, Business Standard and Economic Times, which have been placed on record. In the said articles, it is noticed, that the reference to 'DRL' is simply as an acronym and is also followed or preceded by the full name of the Plaintiff. Thus, it is observed that these articles do not use 'DRL' on a standalone basis, and the authors of the articles have used the initials of the company in the nature of an abbreviation for mere ease of reference.



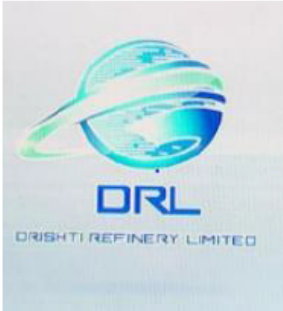
16. Now the question arises as to what is Plaintiff's right, if any, in this acronym. This question will be delved into in detail at the stage of trial. However, for the limited purpose of deciding the present application for injunction, in the absence of any material placed on record, it cannot be said that such an acronym has acquired distinctiveness and is associated only with the Plaintiff. As is rightly pointed out by the Defendant, there are several third-party companies whose trade names consist of the acronym 'DRL', and the same are in fact registered with the Ministry of Corporate Affairs (MCA). Plaintiff's own documents reflect a third-party company trading as 'DRL Pharma Private Limited' which is in the same industry as that of Plaintiff, i.e. involved in the business of pharmaceutical products. Even on the register of the Registrar of Trade Marks, 'DRL' and its combinations are shown to be the registered marks of several other entities in various classes, as evident from the material placed before this Court by

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the Defendant (as extracted earlier). It indicates that various third parties are using and are also registered proprietors of the trademark 'DRL' in relation to several types of businesses. Defendants also contend that 'DRL' is a popular abbreviation for 'Daytime Running Lamps' and various entities are using the acronym for describing the said feature in their products. The acronym 'DRL' is also used by the Defence Research Laboratory, India. There is no material for the court to hold that DRL is synonym to the Plaintiff's corporate name. Thus, *prima facie*, the Court is unable to opine that there is any tangible connection or direct association of the acronym 'DRL' with the Plaintiff's trademark / companies / brand. In the absence of the same, the Plaintiff does not meet the test of establishment of a *prima facie* case, so as to be entitled to an injunction.

B. WHETHER THE USAGE OF 'DRL' IN THE MOVIE AMOUNTS TO INFRINGEMENT OF THE PLAINTIFF'S TRADEMARK?

17. As the Plaintiff's registration of the trademark 'DRL' is in respect of pharmaceutical preparations, thus its right, too, on a *prima facie* basis, is limited to the said goods. Be that as it may, the use of 'DRL' by the Defendants which is alleged to be infringement, is now called in question. Defendant No. 1, in its reply to the Plaintiff's notice, and also before this Court, has explained that the acronym 'DRL' in the movie is not a standalone use, but a composite term such as 'DRL Township', 'DRL Township Group' or 'DRL - Drishti Refineries Limited'. The extracts of the usage are represented herein below:

Teaser of the Film	Trailer of the Film
	
<p data-bbox="858 651 967 674"><u>In the Film</u></p> 	

18. Even on a scrupulous comparison, the court finds absolutely no similarity with the Plaintiff's business. The fictitious entity of Drishti Refineries Limited is involved in the business of setting up refinery plants, which is completely distinct from that of the Plaintiff. The afore-noted usage of acronym 'DRL', has no co-relation with the Plaintiff's primary trademark – Dr. Reddy and/or its body corporate i.e. Dr. Reddy's Laboratories Ltd. Thus, *prima facie*, the Court does not find merit in the contention of the Plaintiff that the aforesaid portrayal would amount to the general populace drawing an association with the Plaintiff company. Besides, 'DRL Township' / 'DRL Township Group' cannot be appreciated, *de hors* the context of the movie, wherein the complete name of the fictitious entity, Drishti Refineries Limited, is stated to have been used explicitly. Moreover, to address the concern of the Plaintiff, the counsels for the Defendants have assured this Court that the movie is preceded by a disclaimer to the effect

that “*all characters appearing in this work are fictitious. Any resemblance to real persons, living or dead, is purely co-incidental.*” Therefore, in view of the Court, the *prima facie* case is not made out in favour of the Plaintiff, to suggest that the average movie-goer would associate the name ‘DRL Township’ in the movie as a reference to the Plaintiff’s brand or business. The well-established ‘ordinary person test’ also leads to the same conclusion.

19. The Plaintiff has also contended that environmental issues are mainstream business, and in the present times, consumers want to buy products and services of companies that are compliant with environmental, social and corporate governance principles. As the products of the Plaintiff company are bought on the trust that consumers repose in them, any association to the activities of ‘DRL Township’ in the movie which is portrayed as having no regard for the environment, would be detrimental to its brand. This argument is clearly far-fetched. The correlation that is being conceived between the use of ‘DRL’ in the movie, the movie-viewer’s possible association with the plaintiff, and the likely negative impact on the Plaintiff’s reputation keeping CSR objectives in mind, is a creative argument at best, based on assumptions and surmises, and lacks a material foundation in the first place. Plaintiff is also unable to show any material that the teaser/trailer of the film, which has been in the public domain for nearly one year, has made any negative impact in the minds of general public or that the use of ‘DRL’ has been understood to be as reference to the Plaintiff Company.



20. Next, we shall deal with Plaintiff reliance's on Section 29(8) of the Act. First and foremost, the plaint filed before the court does not even pray for relief of account of infringement. Plaintiff has however relied upon the said provision to contend that the use of 'DRL' by the Defendants constitutes infringement, as the advertisement is against the reputation of the Plaintiff's trademark. In view of the above discussion, since the Court does not find any similarity, direct or indirect correlation, or association with the use of 'DRL' by the Defendants with the Plaintiff's mark/brand, the question of the usage being against the reputation of the trademark of the Plaintiff becomes merely speculative. Nevertheless, on a *prima facie* basis, in the view of the Court, Plaintiff's reliance on Section 29(8) of the Act does not entitle the Plaintiff to a grant of relief of injunction in the facts of the present case. Section 29, which deals with infringement, has several sub-Sections, all of which have to be read together in conjunction. The use of a trademark in the course of trade, and in connection with the sale of goods or services, constitutes infringement, if it is used in such a manner that it is likely to cause confusion in the minds of a consumer as to the identity of those goods or services. Therefore, the use of 'DRL' by the Defendants cannot be examined in vacuum. One can easily notice that the Defendants' use of DRL, certainly, is not akin to the use of a trademark, in respect of the goods/services for which the Plaintiff is the proprietor. Therefore, the Court does not find a *prima facie* case of infringement.

21. This brings us to the judgments relied upon by the Plaintiff on the proposition that the use of registered trademark in advertising amounts to infringement if the same is against the reputation of the trademark. The said

judgments are clearly distinguishable on facts. In *Hamdard National Foundation (supra)*, the Plaintiff therein claimed that the remarks made against the quality of its beverage, by a character in a cinematographic film, were detrimental and damaging to its goodwill and reputation, and sought an injunction on this basis. The Delhi High Court considered the Supreme Court's decision in *Bata Limited (supra)*, wherein it was opined that derogatory remarks against a brand can be put to restrictions and conditions on a case-to-case basis. While differentiating *Bata (supra)*, it observed that the facts therein stood on a different footing from the facts before the High Court, as the usage of the product in *Hamdard (supra)* was targeted and specific, through visual as well as spoken depiction, and was avoidable, uncalled for, and in poor taste. Thus the same was likely to tarnish the reputation of the brand among its consumers. For such reasons, a partial restraint was allowed by the High Court, by directing the producers to omit the objectionable dialogue from the home video version of that film. However, in the present factual matrix before us, the reference to the trademarked name 'DRL' is ambiguous and representative at best. It, more importantly, does not specifically show or target the brand or business of the Plaintiff herein, for which reason, the *Hamdard* judgment stands differentiated and cannot support the Plaintiff's contentions. The judgment of this court in *Hindustan Unilever (supra)*, was a case of comparative advertising between Dettol and Lifebouy soaps, and therefore, the tests and principles applied by the Court therein cannot be of any assistance to the case sought to be canvassed by the Plaintiff in front of this Court.

22. This Court also finds merit in the contention of the Defendants that if

the law permits an honest usage of a trademark within an advertisement, the Court should grant an injunction for use of a fictitious term in a fictional feature film. In the facts of the instant case, the use of ‘DRL’ by the Defendant cannot be construed to be comparative, misleading, deceptive and/or disparaging.

23. On the aspect of free speech vis-à-vis trademark protection, the stance of this Court is quite clear. A serious view was taken in *Tata v. Greenpeace* (*supra*), where injunction was sought against Greenpeace’s use of Tata’s registered logo in a game called ‘Turtles versus Tata’, which was an attempt to underline the effect of the Dhamra Port Project on Olive Ridley turtles’ habitat. Therein, this Court held as under:

*“42. The above analysis would show that the use of a trademark, as the object of a critical comment, or even attack, does not necessarily result in infringement. Sometimes the same mark may be used, as in Esso; sometimes it may be a parody (like in Laugh it Off and Louis Vuitton). If the user’s intention is to focus on some activity of the trademark owners, and is “denominative”, drawing attention of the reader or viewer to the activity, such use can prima facie constitute “due cause” under Section 29(4), which would disentitle the plaintiff to a temporary injunction, as in this case. The use of TATA, and the ‘T’ device or logo, is clearly denominative. Similarly, describing the Tatas as having demonic attributes is hyperbolic and parodic. Through the medium of the game, the defendants seek to convey their concern and criticism of the project and its perceived impact on the turtles habitat. The Court cannot anoint itself as a literary critic, to judge the efficacy of use of such medium, nor can it don the robes of a censor. It merely patrols the boundaries of free speech, and in exceptional cases, issues injunctions by applying Bonnard principle. So far as the argument by the plaintiff that it is being “targeted” is concerned the Court notes that the defendants submit that the major gains through the port accrue to the Tatas.*

43. (...) This is because the Courts, the world over, have set a great value to free speech and its salutary catalyzing effect on public debate and

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*discussion on issues that concern people at large. The issue, which the defendant's case seeks to address, is also one of public concern. The Court cannot also sit in value judgment over the medium (of expression) chosen by the defendant since in a democracy, speech can include forms such as caricature, lampoon, mime parody and other manifestations of wit. The defendant may - or may not be able to establish that there is underlying truth in the criticism of the Dhamra Port Project, and the plaintiff's involvement in it. Yet, at this stage, the materials on record do not reveal that the only exception - a libel based on falsehood, which cannot be proven otherwise during the trial-applies in this case. Therefore, the Court is of opinion that granting an injunction would freeze the entire public debate on the effect of the port project on the Olive Ridley turtles' habitat. That, plainly would not be in public interest; it would most certainly be contrary to established principles."*

24. Plaintiff perceives the movie to be a “serious representation of fictional facts which could be a reality” and argues that “untruthful speech is not protected under Article 19(1)(a) of the Constitution”. This argument is twisted and is contrary to the concept of freedom of speech, an unalienable right guaranteed by the Constitution of India and the most precious of all liberties. *Tata v. Greenpeace* (supra) discusses at length, why entertainment, literature and other art forms should not be critiqued on by the Courts or pertinaciously restrained from its release to the masses. An artist's right of free speech and expression includes their right to criticise and question. Even if the expression is upsetting for some, the artist cannot be silenced. The discomfort generated by an artist's expression cannot be a ground for silencing ideas at the altar of maintaining a corporate's goodwill. This would amount to gatekeeping the debate and keeping uncomfortable ideas out of bounds. Moreover, environmental damage by humans (dubbed 'Ecocide') is an important issue in the present milieu and requires widespread boost and dialogue to raise awareness. To that effect, as suggested in the teasers, the

theme of the movie is to bring to light the struggles of communities on the fringes of the society in their fight against deliberately negligent organizations, for the protection of animal rights, forest lands and ecologically sensitive areas. While it is indeed unfortunate, that the acronym of the fictional corporate entity fashioned by the Defendants in their movie, coincides with the acronym of the Plaintiff's corporate name, however, this in itself cannot be the sole ground for granting an injunction against the release of a certified feature film. The Plaintiff claims that its brand identity is sensitive to the negative imagery which will form in the minds of environmentally-conscious movie-goers, pertaining to a fictitious company in a fictional movie, which neither appropriates the name, nor the business, nor any real-world relation to the Plaintiff's brand. Such an abstract and far-fetched association, cannot, in the mind of this Court, be sufficient to tether the freedom of speech and expression granted to the Defendant by the Constitution. This is nothing but a hypersensitive position taken by the Plaintiff.

C. DELAY IN APPROACHING THE COURT

25. The Court finds considerable merit in the objection of the Defendants regarding delay on the part of the Plaintiff in seeking legal relief. The Defendant has pointed out that the teaser of the movie, which contained the alleged infringing use, was published in the month of February, 2020 and has garnered millions of view on YouTube. Yet, the Plaintiff has approached the doors of justice just days before the release of the movie. In fact, it is the admitted case of the Plaintiff that upon sighting the alleged use of its mark in

2020, the Plaintiff sent a legal notice dated 3<sup>rd</sup> March, 2020, but the teaser was not brought down by the Defendants. The Plaintiff, despite receiving no response for the same, the Plaintiff did not approach the Court. According to the justification provided by Mr. Lall, the lack of release of the movie on its originally set date of 2<sup>nd</sup> April, 2020, along with the lack response to its notice, led the Plaintiff to assume that same is an admission of the facts contained in its notice. Mr. Lall submits that the present suit is timely, because when the Plaintiff noticed that the Defendants have launched a trailer video of the movie on YouTube on 4<sup>th</sup> March, 2021 and was apprised of its release on 26<sup>th</sup> March, 2021, the Plaintiff issued the notice dated 8<sup>th</sup> March, 2021, which was replied to by the Defendants on 12<sup>th</sup> March, 2021, refuting the assertions in the legal notice, and the present suit was filed without delay on 17<sup>th</sup> March, 2021. This line of reasoning is not convincing in the slightest and cannot justify the delay of filing the present action, the timing which is highly suspect and belated, being just few days before the date of release of the movie. The cause of action for the Plaintiff to approach the Court, arose as early as, February, 2020 and the present suit filed after nearly one year of first coming into the knowledge of the infringing action. This laxity would disentitle the Plaintiff of the discretionary relief of injunction, which is based on equity. In this one year, the Defendants have gone ahead with the preparations for the release of the movie by expending monies, time and energy and entering into contracts with third parties. This, as rightly contended by the Defendant, would tilt the balance of convenience in its favour. The Plaintiff has tried to differentiate the judgment of this Court in *John Hart* (*supra*), by justifying that the belated action was under a *bona fide* belief that the movie of the Defendants was not released, however

the same is clearly misplaced. Besides, the judgment of this Court in *Hindustan Pencils (P) Limited v. Indian Stationery Products Co. & Anr.*,<sup>9</sup> would not advance the Plaintiff's case, as the facts in the said case are clearly distinguishable. The said case was regarding trademark infringement, where the Defendants had continued to do its business by using the registered device and word mark of the Plaintiff. The Court therein held that such a use by the Defendants was at its own peril and cannot be set up as a defense. Further, the Court in the said case noted that it was not in dispute that the mark used by the Defendants was similar to that of the registered mark of the Plaintiff and there was, thus, a clear breach of the Plaintiff's right under the Act. However in the present factual matrix, the injunction is being sought against the release of the movie, when the balance of convenience has clearly shifted in the favour of the Defendants, and thus the case is distinguishable on facts. In the opinion of this Court, on the ground of delay itself, the Plaintiff would be disentitled to the relief of injunction as sought for in the present application.

## CONCLUSION

26. Thus, on the consideration of the facts and circumstances noted above and the legal position on the subject, in the considered opinion of this Court, the Plaintiff has failed to meet the three-pronged test for grant of injunction. The Plaintiff does not have a *prima facie* case in its favour, the balance of convenience is in favour of Defendants and not in favour of the Plaintiff.

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<sup>9</sup> AIR 1990 Delhi 19.

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The Plaintiff has not been to able make out a case of irreparable loss that it would suffer if the movie is released. The Plaintiff can always, in such circumstances, if it succeeds in establishing its case in trial, cement its claims for compensation and damages. In these circumstances, the present application is completely devoid of merits and accordingly, the same is dismissed.

**MARCH 23, 2021**  
'nd/v/as'

**SANJEEV NARULA, J**

भारतमेव जयते