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

\+ FAO(OS) (COMM) 218/2024

SUPER CASSETTES INDUSTRIES PVT LTD .....Appellant

Through: Mr. Amit Sibal, Sr. Advocate with Mr. Harsh Kaushik and Mr. Sachin Akhoury, Advocates.

versus

VISHESH FILMS PVT LTD .....Respondent

Through: Mr. Sandeep Sethi, Sr. Advocate with Mr. Pravin Anand, Mr. Aniruddh Bakhru, Mr. Dhruv Anand, Ms. Udita Patro, Ms. Sampurnda Sanyal, Ms. Shreya Seth, Ms. Nimrat Singh, Mr. Dhananjay Khanna and Ms. Vijaylaxmi Rathi, Advocates

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **25.09.2024**

CAV 482/2024

Since learned counsel for the caveator/respondent has entered appearance, the caveat stands discharged.

CM APPL. 56560/2024 (Exemption)

Allowed, subject to all just exceptions.

The application shall stand disposed of.

FAO(OS) (COMM) 218/2024 & CM APPL. 56559/2024 (stay)

1. This appeal is directed against the order dated 02 September 2024 pursuant to which the learned Single Judge has granted an

interim injunction in the following terms:-

> "44. In light of the above, an interim injunction is granted in favour of the Plaintiff, restraining the Defendant, and/or anybody acting on their behalf, from using the title "Tu Hi Aashiqui"/ "Tu Hi Aashiqui Hai" and/or any other name/ title which uses the mark "Aashiqui", in respect of their proposed film."

2. We take note of the following salient findings which have come to be recorded in the order impugned: -

> "21. The title "Aashiqui" is derived from the Hindi/Urdu language and broadly translates to "romance" or "love". In the opinion of the Court, while it may suggest the theme or genre of the films produced by the Plaintiff, it does not describe the general category of the goods or services themselves. To argue that "Aashiqui" is descriptive would imply that it describes the film's plot, characters, etc., however, films are more than the sum of their parts, being intricate stories where no single word can serve as a comprehensive descriptor. A single word like "Aashiqui", which may suggest a theme of romance, cannot be said to exhaustively describe the full spectrum of a film's narrative, which might include love, but also violence, hatred, jealousy, crime, and a myriad of other human emotions and experiences. In trademark law, a term that is merely suggestive—i.e., one that evokes some characteristic of the goods or services without directly describing them—can still function as a valid trademark. <u>Therefore, "Aashiqui" is prima facie not a mere descriptive term but rather a distinctive mark that suggests a specific brand of romantic films, capable of being protected under trademark law</u>.
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> **xxxx xxxx**
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> 27. <u>When applying the test of deceptive similarity, it is also important to recognize that the Defendant's title and the Plaintiff's trademarks are used in relation to identical products—cinematographic films and entertainment services.</u> At this juncture, the Defendant's product is a film of which specifics—content, plot, and thematic elements—remain largely undisclosed. Consequently, the Plaintiff has based their claims only on the title of the proposed film. <u>As noted above, the title "Tu Hi Aashiqui"/ "Tu Hi Aashiqui Hai" prominently features the word "Aashiqui" as its dominant and most distinctive element. The word "Aashiqui", when used in the title of a film, is immediately recognizable to the public as being associated with the highly successful romantic film series. This association is not merely incidental; it has been built through years of significant commercial success – an aspect which cannot be refuted by the Defendant, being a partner in the said franchise.</u>

Moreover, the addition of the words “Tu Hi” and “Hai” does not significantly alter the overall impression of the title, particularly when viewed through the lens of imperfect recollection. The principle that slight variations in a mark are insufficient to dispel confusion when the products are identical is supported by the decision in ***Parle Products (P) Ltd. v. J.P. & Co., Mysore***[8], where the Supreme Court held that while comparing two marks, it is not the individual features but the overall similarity that matters. The Court emphasized that the marks should not be dissected and compared piece by piece; instead, the marks should be judged on their overall impression. Moreover, when the goods or services are identical, even a slight degree of similarity is enough to cause confusion as consumers may not have the time or inclination to examine the marks closely and are likely to rely on the overall impression, which can lead to confusion. Therefore, the use of “Aashiqui” in any film title, particularly in a title that lacks additional distinctive elements, is likely to cause confusion among the public, leading them to believe that the film is part of the Aashiqui Franchise.

28. The significance of the Defendant’s proposed use of “Aashiqui” in this context is further heightened by the specific association between the parties. The Plaintiff and Defendant have a history of collaboration on the Aashiqui Franchise and have, in the recent past, publicised their intention to collaborate for the production of a third instalment of the series. In this context, the deceptive similarity is compounded by the fact that the production team of the Defendant’s proposed film comprises of the same director and lead actor who were previously associated with the joint Aashiqui 3 project. The overlap in the production team, coupled with the media narrative suggesting that the Defendant’s film might be part of the Aashiqui Franchise, only intensifies the likelihood that the public will perceive any film utilising the term “Aashiqui” as being a continuation or spin-off of the established series, in view of the joint announcement by the parties. Additionally, it must also be noted that, as pointed out by the Plaintiff, this proposed title “Tu Hi Aashiqui Hai” corresponds to the refrain/ hook line of the hit song “Tu Meri Zindagi Hai” from the film Aashiqui (1990). While the Defendant relies on the agreements executed between the parties to assert its exclusive rights over the music in the said film, it cannot be denied that such a direct reference would inevitably create a perceived connection to the Aashiqui Franchise in the minds of the public/ audience. In such circumstances, the average consumer, when encountering the title “Tu Hi Aashiqui Hai”, is likely to associate it with the Aashiqui Franchise, given the established reputation of the brand and the fact that the production team that was announced for the third instalment remains the same. The Court must also consider

the target audience for the films in question. The Aashiqui Franchise has, prima facie, built a strong following amongst viewers who are likely to be misled by the Defendant's use of a similar title, particularly given the overlap in the thematic content suggested by both titles and the history of association between the parties.

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32. The first two instalments of the Aashiqui Franchise were co-produced by the Plaintiff and Defendant, with joint approval, joint credits and joint consent on all aspects of release, as provided in the two Agreements. Thus, neither party can exploit any rights in the films by excluding the other, and the Defendant cannot be permitted to make a sequel, remake, or adaptation of the Aashiqui Franchise, or create any third-party rights in respect of the same, without the Plaintiff's express consent. This includes control over scripts, pre-production, production, and participation in any underlying works of the first two "Aashiqui" films—namely, their script, screenplay, plot, dialogues, characters, storyline, theme and more. The Defendant's undertaking and disclaimer is nothing but an acknowledgement of existing contractual obligation. Thus, the Court finds considerable merit in the Petitioner's contention that the Defendant's deceptively similar title, even with a disclaimer, would not effectively dissociate the proposed film from the established brand identity of the Aashiqui Franchise. The use of the term "Aashiqui" would inevitably evoke a perceived connection to the Aashiqui Franchise, especially given the powerful association established between the title "Aashiqui" and the Aashiqui Franchise, which both the parties created jointly.

33. Moreover, as discussed above, the likelihood of perceived association with the Aashiqui Franchise is exacerbated given that the Plaintiff and Defendant had previously publicly announced that they were co-producing a third instalment of the Aashiqui Franchise, tentatively titled "Aashiqui 3", with notable industry figures such as Pritam Chakraborty as the music director, Anurag Basu as the film director, and Kartik Aaryan as the lead actor. This announcement was widely covered in the media and further reinforced by the Plaintiff's posts on social media platforms, emphasizing their ongoing collaboration with the Defendant and the continuation of the Aashiqui Franchise. This joint announcement created a strong public perception that any upcoming film involving the term "Aashiqui" and the aforementioned personnel would be associated with the Aashiqui Franchise. Further, the song 'Bhool Ja' was allegedly leaked by an unknown third party on 17th September, 2023 on YouTube – explicitly claiming to be associated with Aashiqui 3. This was followed by the Defendant releasing the identical song 'Bhool Ja'

on its YouTube channel on 6th of October, 2023."

3. We note that the learned Single Judge was persuaded to frame the interim injunction bearing in mind the fact that the title "Aashiqui" would not constitute an instance of isolated use but had become part of a recognized film series and the Aashiqui franchise itself. The Court also bore in consideration the collaborative arrangement which admittedly bound the parties and the announcement of a sequel to the original series. It is these aspects which clearly appear to have weighed upon the Court in answering the question of deceptive similarity against the appellant.

4. We bear in mind the well settled principle of a limited review which an appellate court is liable to exercise while evaluating a challenge to a discretionary order, and which would indisputably include the grant of a temporary injunction. While reiterating the tests which were propounded in **Wander Ltd. vs. Antox India P. Ltd.**[1], the Supreme Court in **Punjab & Sind Bank vs. Frontline Corpn. Ltd.**[2], had held as follows:-

> "**26.** We find that the present appeal deserves to be allowed on another ground also. Undisputedly, the jurisdiction which was exercised by the Division Bench was analogous to the one exercised under Order XLIII Rule 1 of the CPC. It will be relevant to refer to the following observations of this Court in the case of *Wander Ltd.* v. *Antox India P. Ltd.*:
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> > "**14.** The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of

[1] 1990 Supp SCC 727
[2] 2023 SCC OnLine SC 470

discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd.* v. *Pothan Joseph* [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)

> "… These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co.* v. *Jhanaton* [[1942] A.C. 130] '…the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."
>
> The appellate judgment does not seem to defer to this principle."

27. It has been held by this Court that the Appellate Court would not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. It has been held that an appeal against exercise of discretion is said to be an appeal on principle. It has further been held that the Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. It has been held that if the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

28. Undisputedly, in the present case, while vacating the interim relief granted vide order dated 15th July 2013, the Single Judge had held that the relief claimed by the plaintiff could not have been granted in view of the provisions of Section 34 of the SARFAESI

> Act. As such, the Single Judge had passed the said order on the basis of a statutory bar. As observed earlier, the scope in which a civil suit is maintainable as determined by this Court in the case of *Mardia Chemicals Limited* (supra) is very limited. The case of the respondent/plaintiff would not come within the said limited scope. As such, we are of the considered view that the Division Bench has grossly erred in interfering with the discretion exercised by the Single Judge."

5. On going through the order impugned and bearing in mind the principles reiterated in *Punjab & Sind Bank*, we find ourselves unable to hold that the grant of interim injunction suffers from any manifest or patent error or for that matter a perversity, and consequently, we find no reason to interfere with such injunction.

6. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 25, 2024/*ib*