



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

Reserved on: 22nd July, 2024

Pronounced on: 2nd September, 2024

+ **CS(COMM) 68/2024, I.A. 1797/2024, I.A. 3979/2024**

VISHESH FILMS PRIVATE LIMITED

.....Plaintiff

Through: Mr. Sandeep Sethi, Senior Advocate with Mr. Pravin Anand, Mr. Dhruv Anand, Ms. Udit Patro, Ms. Sampurna Sanyal, Ms. Nimrat Singh and Mr. Dhananjay Khanna, Advocates.

versus

SUPER CASSETTES INDUSTRIES LIMITED Defendant

Through: Mr. Amit Sibal, Senior Advocate with Mr. Harsh Kaushik, Ms. Shumi Wasandi and Mr. Sachin Akhoury, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.

1. The Plaintiff, Vishesh Films Private Limited, alleges that their proprietary rights in the renowned film franchise “Aashiqui” are being violated by the Defendant, despite the existence of joint ownership under the agreements executed between the parties. The Plaintiff, in collaboration with the Defendant, produced the iconic films *Aashiqui* (1990) and *Aashiqui 2* (2013)¹, which have become synonymous with romantic cinema in India.

¹ Collectively, “Aashiqui Franchise”



The Plaintiff also assert their rights over the trademarks “Aashiqui” and “Aashiqui Ke Liye”, registered in Classes 9, 16, and 41 under the Trade Marks Act, 1999², with usage claimed since 1990 and 2014, respectively. On the basis of these rights, the Plaintiff seeks to prevent the Defendant from releasing any sequels, in particular, the anticipated third instalment tentatively titled “Aashiqui 3”/ “Tu Hi Aashiqui”/ “Tu Hi Aashiqui Hai”, without their express consent.

2. Super Cassettes Industries Limited, the Defendant, on the other hand, while admitting joint ownership over the Aashiqui Franchise, categorically denies any intention to produce another instalment of the Aashiqui Franchise or create any derivative works based on the cinematographic films *Aashiqui* and *Aashiqui 2*. They assert that the title of their proposed movie “Tu Hi Aashiqui”/ “Tu Hi Aashiqui Hai” is not similar to the Plaintiff’s registered trademark or a sequential title, and therefore, there is no possibility of public confusion. They further undertake that their film under the aforementioned titles will be entirely distinct from the films in the Aashiqui Franchise; it shall have no sequential linkage and not be a continuation/ adaptation/ derivative of the previous films.

3. Nonetheless, the Plaintiff argues that, at present, two instalments of the Aashiqui Franchise have been co-produced and released by the Plaintiff and Defendant jointly, both of which have enjoyed tremendous commercial success. There were discussions between the parties for a third instalment of the Aashiqui Franchise, which was also jointly announced to the public. Further, they highlight that the Defendant has already promoted a public narrative suggesting that their upcoming film is the third instalment of the

² “TM Act”



Aashiqui Franchise. This perception is further reinforced by the Defendant's application to register the title "Tu Hi Aashiqui". In these circumstances, the Plaintiff contends that confusion is inevitable and the Defendant should be restrained from using the term "Aashiqui" in the title of its proposed film, as it risks misleading the public into believing that the new film is part of the Aashiqui Franchise, thereby violating the Plaintiff's rights in the "Aashiqui" brand.

The Parties:

4. The Plaintiff is an Indian film production house. Under the leadership of Mr. Mukesh Bhatt, they are known for producing commercially successful films with popular music. They have several blockbuster Bollywood films to their credit, which, over the years, have become recognised banners in the Indian film industry, such as the films 'Dil Hai Ki Manta Ni', 'Sir', 'Sadak' and franchises like 'Murder', 'Raaz' and 'Jannat', to name a few.

5. The Defendant, Super Cassettes Industries Private Limited, was founded by Late Mr. Gulshan Kumar in the year 1983. It is popularly known to be doing business as 'T-Series', an Indian music record label and film production company. After the demise of Mr. Gulshan Kumar, the company has been taken over by his son, Mr. Bhushan Kumar. Over the years, they have been in the business of acquiring soundtracks and publishing them on various online, digital, television and other platforms, in addition to producing movies.

Facts in brief relating to joint ownership rights in the film franchise-Aashiqui



6. On 1st January 1990, the Plaintiff entered into an agreement with the Defendant for co-production of the first instalment of the Aashiqui Franchise, namely, the cinematographic film *Aashiqui*³. The said agreement has various clauses that deal with joint ownership of all rights in the film between the parties, except music. The relevant clauses of the 1990 Agreement are Nos. 1, 5, 7 and 8, which read as follows:

“1. That the parties hereto shall co-produce a film ‘tentatively titled ‘AASHIQUI’ starring Anu Aggarwal, Rahul Roy, etc Music by Nadeem Shravan and directed by Mr. Mahesh Bhatt hereinafter for the sake of brevity referred to as the said film.

...xxx... ...xxx... ...xxx...

5. That except for music, all the rights of the said film including theatrical/non-theatrical, T.V. & Cable, T.V. rights, Indian & Overseas rights, video rights, 16mm rights, dubbing rights shall be held in the joint name. Distribution agreement shall be signed by party of Second Part only.

...xxx... ...xxx... ...xxx...

7. Net profits of the film shall be shared and divided equally. Pet profits will be computed after deducting amount mentioned in Clause No. 3 of this agreement, laboratory expenses, quota, publicity from the realisation from all sources except music.

...xxx... ...xxx... ...xxx...

8. The names of M/S. SUPER CASSETTES INDUSTRIES LIMITED and M/s. VISHESH FILMS shall appear jointly in the publicity/credits of the films and wherever word ‘AASHIQUI’ appears the same shall appear as MAHESH BHATT’S AASHIQUI.”

7. The film was released on 23rd July, 1990 as a romantic musical, co-produced by the Plaintiff and the Defendant and starring Rahul Roy, Anu Agarwal and Deepak Tijori, with Mukesh Bhatt as producer and Mahesh Bhatt as director. It was a box office success and its music won many hearts.

8. Given the success of *Aashiqui*, after a lapse of 21 years, the parties entered into another agreement dated 21st December, 2011 to jointly produce

³ “1990 Agreement”



another film titled *Aashiqui 2*⁴. There too, the parties were joint owners and co-producers. The Plaintiff was mainly responsible for the conceptualization as well as creative and technical aspects of the film. Moreover, there are clauses that underscore the joint ownership of the parties in respect of the film and its underlying rights such as Clause 5.8 (Sequel Rights), Clause 8 (Copyright) and Clause 5.9(c) (Within Profit Sharing), Clause 7 (Assignment) and Clause 10 (Credits) of the 2011 Agreement. *Aashiqui 2* was thus produced with joint approval, joint credit and joint consent as a continuation of the *Aashiqui* Franchise. Upon its release on 26th April, 2013, this second instalment also achieved considerable commercial success, earning over INR 100 crores.

9. In view of the aforementioned agreements, the first two films in the *Aashiqui* Franchise are jointly owned, credited and produced between the Plaintiff and Defendant. These agreements continue to govern the relationship between the parties in respect of any film that is to be associated with the *Aashiqui* Franchise, including any prequel, sequel or re-make, as provided in the 2011 Agreement.

10. The Plaintiff is also the registered proprietor of the trademarks “*Aashiqui*” and “*Aashiqui Ke Liye*” in respect of Classes 9, 16 and 41 under the TM Act, which are relevant to the exploitation of cinematograph films, including their promotional material.

CONTENTIONS OF THE PETITIONER

11. Mr. Sandeep Sethi, Senior Counsel, with Mr. Pravin Anand, counsel representing the Plaintiff, have urged the following facts and contentions for

⁴ “2011 Agreement”



securing an interlocutory order of injunction:

11.1 The Plaintiff registered trademarks for “Aashiqui” and “Aashiqui Ke Liye” specifically to safeguard the titles from potential third-party infringements. These trademarks – bearing TM No. 2563752 for “Aashiqui”/ “**Aashiqui**” (registered on 12th July, 2013) and TM No.

2721365 for “Aashiqui Ke Liye”/ “**AASHIQUI KE LIYE**” (registered on 21st April, 2014) – were both registered as device marks under Classes 9, 16 and 41 under the TM Act. The user of the aforementioned marks commenced since 1990 and 2014 respectively.

11.2 In or around the year 2022, the parties started to discuss the possibility of co-producing a third instalment to the Aashiqui Franchise, tentatively titled as “Aashiqui 3”. They decided on Mr. Pritam Chakraborty as music director, Mr. Anurag Basu as film director, Mr. Kartik Aryan as a lead actor and Mr. Mukesh Bhatt and Mr. Bhushan Kumar as co-producers. An announcement to this effect was carried in an interview published in Variety Magazine dated 4th September, 2022. Further, an announcement was also posted on the Plaintiff’s Instagram page, emphasising their 32-year-old partnership with the Defendant and prominently depicting “Aashiqui 3” as the title of their upcoming film, while also mentioning the other aforementioned details pertaining to the personnel involved in the film.

11.3 Thereafter, one Culver Max Entertainment Pvt. Ltd. (formerly known as Sony Pictures Network Pvt. Ltd.) issued a public notice dated 13th May, 2023, shockingly claiming to have acquired the media rights for *Aashiqui 3*. The Plaintiff immediately reacted, as a result of which the Defendant confirmed through their email dated 18th May, 2023, that the



advertisement given by Culver Max Entertainment Pvt. Ltd. was a mistake and admitted that *Aashiqui 3* is a jointly owned intellectual property between Vishesh Films and T- Series, and cannot be licensed without any agreement to that effect. Nonetheless, the Plaintiff issued a public notice on 25th September, 2023 clarifying the joint ownership in the intellectual property rights and derivative rights associated with the Aashiqui Franchise.

11.4 Subsequently, the song titled ‘Bhool Ja’ was leaked by an unknown third party on 13th September, 2023 on YouTube, explicitly claiming to be associated with *Aashiqui 3*. This was followed by the Defendant releasing the same song ‘Bhool Ja’, sung by Arijit Singh, on their YouTube channel on 6th October, 2023. The two songs are identical with the same lyrics and music.

11.5 Mr. Mahesh Bhatt, who is the brother of Mr. Mukesh Bhatt and the director of the first instalment in the Aashiqui Franchise, gave an exclusive interview dated 11th October, 2023 to the Times of India titled ‘The moral legacy of Aashiqui Franchise belongs to Gulshan Kumar’. Intending to undermine the rights of the Plaintiff by creating a narrative that associates the Aashiqui Franchise exclusively with the Defendant, the article records statements such as “Right isn’t always legal”. However, in doing so, the article admits and recognizes, perhaps unwittingly, that as a matter of law, the Plaintiff has legal rights in the Aashiqui Franchise.

11.6 Mr. Bhushan Kumar was quoted in an exclusive interview with India Today dated 8th September, 2023, stating that *Aashiqui 3* would commence shooting by the end of January, 2024. Thereafter, an article dated 26th December, 2023 was published by Pinkvilla, which again forwarded the narrative that the film *Aashiqui 3* was being produced by the Defendant. In



addition to the above, the Defendant has also applied for registration of the Hindi feature film title “Tu Hi Aashiqui” on 29th December, 2023, with the Indian Film & TV Producers Council.

11.7 Therefore, pursuant to the joint announcement regarding *Aashiqui 3* between the parties in September 2022, the actions undertaken by the Defendant indicate a clear intent to misrepresent their film as being part of the Aashiqui Franchise. They are not only using the same personnel as was announced jointly by the parties, namely, Kartik Aryan and Anurag Basu, but also using the music from the Aashiqui Franchise films, which have been produced by the parties jointly. This is bound to create public confusion and a perception that the film being produced by the Defendant is, in fact, the third instalment of the Aashiqui Franchise. Such a perception is bound to cause harm to the Plaintiff, as it will not only exclude the Plaintiff from participating in the production of this film, but also ‘kill’ the Plaintiff’s prospect of ever coming up with *Aashiqui 3*.

11.8 In view of the joint ownership in respect of Aashiqui Franchise, as established by the two agreements, as well as the Defendant’s own admission of joint ownership in intellectual property, the Defendant cannot be permitted to make a Sequel/Remake/Adaptation of the Aashiqui Franchise, or create any third party rights in respect of the same, without the Plaintiff’s express consent on scripts/pre-production and production and/or participation in any underlying works of the first two *Aashiqui* films, namely, their script, screenplay, plot, dialogues, characters, storyline, theme, etc. Therefore, it is argued that the Defendant cannot use the title “Aashiqui 3” or any other title containing the word “Aashiqui”, and must be restrained from promoting, advertising or in any way exploiting such a film



independently, to the exclusion of the Plaintiff, since there already exists a public perception that the film being released by the Defendant is a part of the Aashiqui Franchise.

11.9 Defendant's allegations that the Plaintiff has unilaterally registered the trademark "Aashiqui" despite acknowledging that the franchise is jointly owned by the parties, is also a misconceived argument. In Clause 8 of the 2011 Agreement, the word "Trademark" is conscientiously missing, and therefore, the Plaintiff was within its right to apply and obtain trademark protection to the exclusion of the Defendant. However, without prejudice to this argument, in order to alleviate any concern that the Defendant may have, the Plaintiff is willing to withdraw its trademark application and re-apply for the same jointly with the Defendant.

11.10 The Plaintiff has trademark rights in the term "Aashiqui". The Defendant's use is clearly subsequent. The "Aashiqui" mark has acquired secondary meaning and any production using the title "Aashiqui" would create an impression of association with the Aashiqui Franchise. This is especially likely given the circumstances existing presently, since the public and film industry at large already perceives the film being developed/produced by the Defendant as being *Aashiqui 3*. This presumed connection will be further bolstered if the Defendant uses the music of the Aashiqui Franchise for its new film.

11.11 It is absurd to suggest that "Aashiqui" is generic in nature. In the present case, 'Aashiqui' has been used in relation to a film, for which the said term can never be considered as generic. The mark 'Aashiqui' is a strong trademark which is neither generic nor descriptive.

11.12 The Defendant's contention that the term 'Aashiqui' is common



to trade is devoid of merit. They have sought to rely on various films released over the years containing the word “Aashiqui”, however, in an infringement suit, the Defendant cannot escape liability by citing third party instances of use. Moreover, it is well established that overwhelming evidence is necessary to successfully take the plea of common to trade. Out of the 26 films cited by the Defendant, only 8 are relevant for the present case as they contain the word “Aashiqui”, whereas the remaining use variants such as “Aashiq” and “Aashiqana”, but not “Aashiqui”. Furthermore, out of those eight, two instances of use are the instalments of the Aashiqui Franchise itself. From the remaining items, one item is a song whereas others items include works that are not films.

11.13 The Defendant’s contention that the phrase “Tu Hi Aashiqui Hai” is common to many songs and films, is also misconceived. “Tu Hi Aashiqui Hai” is a refrain and an important component of the song “Tu Hi Meri Zindagi Hai” from the film *Aashiqui* (1990). The Defendant has clearly adopted the words “Tu Hi Aashiqui Hai” to draw an association with the first *Aashiqui* film and take advantage of the renown and goodwill of the Aashiqui Franchise in its entirety.

11.14 The Defendant’s insinuation that the Plaintiff has planted a ‘Zoom’ article, is an irresponsible allegation without an iota of proof. Plaintiff had nothing to gain by striking at its own feet. On the contrary, the clarification by the Defendant during the course of the present proceedings, which appeared on 6th March, 2024, is also covered by the same publication (Zoom) and therefore, it is evident that they have a relationship with that publication.

11.15 The Defendant’s argument that there is no similarity between



the title of the proposed film and that of the trademark over which the Plaintiff has proprietary rights, is also not sound. The word “Aashiqui” is the only element of trademark registration No. 2563752 and there is no other element in the registration, such as a design, a border or ornamentation. The mere presentation of a word in a certain font does not make it a device mark, although it may have been referred to as a device mark for convenience of registration.

11.16 The Defendant’s reliance on the principle of estoppel, to argue that the Plaintiff is bound by its reply to the Examination Report in respect of a label trademark for the word “Aashiqui” in Classes 9, 16 and 41, is not tenable. The Plaintiff had only stated that their mark was different entirely and bore no resemblance to the cited marks. Moreover, the services enlisted *qua* the cited mark before the Registry were not overlapping with that of the Plaintiff’s services under Class 41.

CONTENTIONS OF THE DEFENDANT

12. Mr. Amit Sibal, Senior Counsel representing the Defendant, strongly opposes the grant of injunction on the following grounds:

12.1 This Court does not possess territorial jurisdiction to entertain and try the present suit. Exclusive jurisdiction is vested with the courts in Mumbai in terms of Clause 13 of the 1990 Agreement and Clause 14 of the 2011 Agreement. Moreover, substantial part of cause of action has arisen in Mumbai, as both agreements were executed in Mumbai.

12.2 Nothing survives in the present suit and the applications as the Defendant has issued a press release dated 6th March, 2024, published in various news and social media websites, clearly stating that they are not



making *Aashiqui 3*. Further, the Defendant has also undertaken not to produce a third instalment of the Aashiqui Franchise in exclusion of the Plaintiff. In view of the same, there is no cause made out for copyright infringement.

12.3 Plaintiff's claims of breach of contract as well as trademark infringement and passing off are based on their own breach. They have unauthorisedly, unilaterally and fraudulently registered the word "Aashiqui" as a device mark, which contravenes the agreements executed between the parties and consequently disentitles them from seeking any relief rooted in law and equity.

12.4 The Hindi/Urdu word "Aashiqui" is generic/descriptive/non-distinctive/common to trade and has not been registered separately as a word mark. The words "Aashiqui" and "Aashiqui Ke Liye" are also, therefore, non-registrable as device marks, based on the legal principle that what is not allowed to be achieved directly cannot be achieved indirectly.

12.5 Even if the Plaintiff's trademark registrations are considered to be valid, they will, at the highest, receive only a low-level of protection as a trademark for a film title. "Aashiqui" means romance, and thus, when it appears in a film title such as "Tu Hi Aashiqui"/ "Tu Hi Aashiqui Hai", an ordinary person is unlikely to immediately associate the same with Vishesh Films, i.e., the Plaintiff, or the Aashiqui Franchise. The word "Aashiqui" has been used prominently in the titles of several films, none of which belonged to the Aashiqui Franchise. Furthermore, the word "Aashiqui" has not acquired secondary meaning, and in any case, determination of secondary meaning is a matter of trial and evidence which cannot be done at an interim stage, that too based on the basis of mere assertions and legally inadmissible



evidence.

12.6 There is no deceptive similarity in the title “Tu Hi Aashiqui”/ “Tu Hi Aashiqui Hai” and the device marks fraudulently registered by the Plaintiff. The use of the added matter in the film title, i.e. “Tu Hi” and “Hai”, makes the Defendant’s proposed film title sufficiently distinguishable from the Aashiqui Franchise, and thus it cannot be held liable for passing off.

12.7 There is no likelihood of confusion between the Defendant’s proposed film and the Aashiqui Franchise. The elements of commonality in the Aashiqui Franchise are absent in “Tu Hi Aashiqui Hai”. Specifically, the posters of both, *Aashiqui* and *Aashiqui 2*, contained the common elements of a man holding a raincoat over a woman while they embrace, as well as using the same stylised font and the phrase “Love Makes Life Live”. It is pointed out that the Defendant’s proposed film does not contain any of these elements. Hence, since their film uses a different title and plot, there is no basis for the Plaintiff to claim that the Defendant’s proposed film would inevitably be perceived to be a part of the Aashiqui Franchise. Where there exist such stark contrasts in major elements of the films, obscure and solitary media announcements cannot *ipso facto* lead the general public to associate “Tu Hi Aashiqui”/ “Tu Hi Aashiqui Hai” with *Aashiqui 3*, merely because of an overlap of the actor and director. Moreover, celebrity gossip and rumour-mongering by tabloids and social media handles, which have been placed as documentary evidence by the Plaintiff, cannot be made the basis of an allegation and cause of action against the Defendant.

12.8 Defendant’s *bona fides* are evidenced by the fact that they possessed a valid registration certificate from the Indian Film & TV



Producers Council for the title “Tu Hi Aashiqui Hai” since 29th July, 2020. Even when the next instalment of the Aashiqui Franchise was being discussed between the Plaintiff and Defendant as co-producers, which was announced on 4th September, 2022, the Defendant never suggested the title “Tu Hi Aashiqui”/ “Tu Hi Aashiqui Hai” as a title for the said film.

12.9 The Plaintiff’s contentions founded on a lyrical review of the song ‘Tu Meri Zindagi Hai’ from the film *Aashiqui* (1990) are irrelevant and do not demonstrate any likelihood of confusion. The alleged association between the song lyric and the film title “Tu Hi Aashiqui Hai” was not originally raised by the Plaintiff, and has been subsequently argued as an afterthought. Moreover, the media reports referring to the re-naming of the film title from *Aashiqui 3* to “Tu Hi Aashiqui Hai” seem to have been published under the instructions of the Plaintiff immediately after the hearing held on 13th February, 2024.

ANALYSIS AND FINDINGS

13. In the modern cinematic landscape, the titles of films have transcended their original function as mere labels, having evolved into powerful symbols that carry immense commercial significance. With the proliferation of film franchises/ series, where multiple instalments are released under a consistent title or theme, often spanning decades, the titles themselves have become integral to the identity and success of the brand. Such titles, through their consistent use, often acquire a secondary meaning that transcends the individual works they originally represented. These titles encapsulate the essence of the series, invoking the memories, emotions and expectations of audiences who have followed the journey of these films over



the years. Audiences come to immediately recognize and associate these titles with specific themes, characters and storylines, creating an enduring connection that extends far beyond the initial release of a single film. As a result, these titles acquire substantial goodwill and brand value, transforming into assets that are worthy of legal protection.

14. Under the TM Act, a trademark is defined to be any mark capable of distinguishing the goods or services of one person from those of others. When a film title achieves this level of recognition and becomes synonymous with a particular series or producer, it effectively functions as a trademark. The distinctiveness of such titles, coupled with the secondary meaning and goodwill they acquire through extensive use and public recognition, justifies their protection under trademark law. The significance of these titles in the context of a series is particularly pronounced because they serve as a bridge between the various instalments, ensuring continuity and maintaining a connection with the audience. The mere mention of such a title immediately conjures up the thematic elements and emotional experiences associated with the previous films in the series. This powerful association is the result of sustained marketing efforts, consistent quality and the emotional investment of the audience, all of which contribute to the title's evolution into a valuable trademark.

15. Having discussed the significant role that film titles play in the branding and recognition of cinematic works, particularly in the context of a successful franchise, it becomes imperative to examine the specific legal issues that arise in the present case. The Plaintiff asserts that the term "Aashiqui" has become synonymous with the series of romantic films which comprise the Aashiqui Franchise jointly produced by the Plaintiff and



Defendant, and thus, it is not only a valuable asset but also one that warrants protection against unauthorized use. In this background, the Defendant's proposed film title, "Tu Hi Aashiqui"/ "Tu Hi Aashiqui Hai", raises critical questions regarding trademark infringement, deceptive similarity and the potential for public confusion. These issues must be carefully analysed in light of the established legal principles and facts presented by both parties to determine whether the Plaintiff's rights have been infringed and whether an injunction should be granted to prevent irreparable harm. The Court must safeguard the legitimate rights of the trademark holder while also considering the broader interests of creativity and fair competition within the industry. The analysis shall focus on whether "Aashiqui" meets the legal criteria for trademark protection, whether there is a likelihood of consumer confusion and whether the use of a similar title by another party could dilute the established brand value.

Whether this Court has jurisdiction to entertain the suit, notwithstanding the jurisdiction clauses in the agreements.

16. At the outset, it is noted that the Defendant has challenged the jurisdiction of this Court, citing specific clauses in the agreements that vest exclusive jurisdiction in the courts of Bombay. However, it is a settled principle of law that while parties can agree to a specific forum, such a clause does not oust the jurisdiction of other courts that would otherwise have the jurisdiction to hear the matter.

17. In the present case, the Plaintiff has brought a suit that includes claims of trademark infringement, passing off, and breach of intellectual property rights, all of which are tortious in nature. These claims are not purely contractual and thus can be filed in any court where a part of the cause of



action arises or where the defendant resides or carries on business.

18. The Plaintiff has an established office within this Court’s jurisdiction, and significant actions related to the alleged infringement—such as public announcements, media releases, and the Defendant's activities—have had a direct impact within this Court’s territorial jurisdiction. Therefore, at this interim stage where the issue of territorial jurisdiction is determined on the basis of the allegations made in the plaint, this Court has the requisite jurisdiction to entertain the present suit, notwithstanding the jurisdiction clauses in the agreements between the parties.

Whether the title “Aashiqui” is generic and/or common to trade.

19. The Defendant has challenged the rights asserted by the Plaintiff in their trademark “Aashiqui” on the grounds that it is both generic and common to trade within the film industry, and thus lacks distinctiveness. To address this contention, it is crucial to understand the distinct legal concepts of “generic” and “common to trade”, and to analyse how they apply to the mark “Aashiqui”.

20. A generic term refers to the common name of a product or service, and cannot function as a trademark because it does not distinguish the source of the goods or services. For example, terms like “soap” for a cleaning product or “movie” for a film are generic because they describe the general category of the product. Generic terms are not eligible for trademark protection because allowing one party to monopolize such a term would unfairly limit competitors’ ability to describe their own goods or services. The term ‘common to trade’, on the other hand, refers to words, symbols or phrases that, while not necessarily generic, have been widely used by



multiple entities within a particular industry. When a term is common to trade, it suggests that the mark is not distinctive because it has been used by various players in the market to describe similar products or services. However, unlike generic terms, a term that is common to trade may still acquire distinctiveness if it is closely associated with a particular source and has not become so diluted that it loses its ability to identify that source.

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. 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.

22. Additionally, the title “Aashiqui” has been used consistently by the Plaintiff, in collaboration with the Defendant, in connection with their series of successful. Films. Consequently, the word “Aashiqui” has *prima facie*



acquired strong reputation and goodwill which is closely associated with a particular brand of romantic cinema produced by the parties jointly. This is established by the box office success and gross revenues earned by the Aashiqui Franchise, a fact not in dispute. In fact, *Aashiqui 2*, a continuation of the Aashiqui Franchise which was released on 26th April, 2013, achieved considerable commercial success of over INR 100 crores. Therefore, even if the question of whether “Aashiqui” has acquired secondary meaning is to be determined at the stage of trial, as argued by the Defendant, the Court is of the *prima facie* view that “Aashiqui” is not generic, as it does not describe a general category of goods but rather serves as a distinctive identifier of the Aashiqui Franchise.

23. The Defendant also argues that “Aashiqui” is common to trade, implying that its use by various entities in the film industry has diluted its distinctiveness. For a term to be considered common to trade, there must be substantial evidence that it is used by multiple entities in the industry to such an extent that it loses its ability to identify a single source. However, the Court does not find merit in the Defendant’s contention in this regard. The Plaintiff has provided evidence that the films in the Aashiqui Franchise have not only achieved commercial success but have also created a strong brand identity that is recognized by the public, such that the term “Aashiqui” has become uniquely associated with their successful film series spanning multiple decades. On the other hand, the Defendant has sought to bolster their argument that the Plaintiff’s trademark should be considered ‘weak’ by citing 26 instances of use. However, as pointed out by Mr. Sethi, only eight of the 26 instances cited by the Defendant are films utilising the term “Aashiqui”, of which two films belong to the Aashiqui Franchise itself. As



noted by the Court in *Pankaj Goel v. Dabur India*⁵, to establish a plea of common to trade, the defendant must show that the use is substantial. Merely citing isolated instances of third-party use of “Aashiqui” in film titles, without demonstrating that such use has achieved the same level of recognition or association with a specific source so as to pose a threat to the distinctiveness of the Plaintiff’s trademark, would not be sufficient to undermine the Plaintiff’s rights over the said mark. Moreover, the Defendant’s argument fails to recognize that trademark law does not require a trademark owner to pursue legal action against every instance of potential infringement, especially when those instances are isolated, minor, or do not pose a significant threat to the brand’s identity. The fact that the Plaintiff has not sued every third-party who has used the term “Aashiqui” in some form would not in itself diminish the strength or validity of their trademark. The Plaintiff’s decision to prioritize action against the Defendant, who is using the term in a way that directly impacts the Plaintiff’s established brand, is both strategic and legally sound.

24. Therefore, in the *prima facie* opinion of the Court, the title “Aashiqui” is neither generic nor common to trade. It is a suggestive mark that has acquired distinctiveness and goodwill through its association with the successful Aashiqui Franchise. The term “Aashiqui” does not describe the general category of goods or services (films) but instead functions as a distinctive brand identifier for the Aashiqui Franchise. The Defendant’s claim that the term “Aashiqui” is common to trade is not supported by sufficient evidence showing widespread use of the term by other entities in a way that would dilute its association with the Plaintiff’s films. The

⁵ 2008 SCC OnLine Del 1744



Defendant's implicit acknowledgment of the term's significance, by asserting their own rights over the title, further undermines their argument that "Aashiqui" is common to trade. Furthermore, the Plaintiff's registrations for "Aashiqui" and "Aashiqui Ke Liye" provide a legal presumption of validity and distinctiveness, which the Defendant has not effectively rebutted and thus require to be protected under the trademark law.

Whether the Defendant's proposed film title "Tu Hi Aashiqui Hai" is deceptively similar to the Plaintiff's trademark "Aashiqui" and Whether there is a likelihood of confusion among the public regarding the connection between the Defendant's proposed film and the Plaintiff's Aashiqui franchise.

25. The concept of deceptive similarity in trademark law involves assessing whether the disputed mark is so similar to the protected mark that it is likely to confuse or deceive the public. The determination of whether the Defendant's proposed film title "Tu Hi Aashiqui"/ "Tu Hi Aashiqui Hai" is deceptively similar to the Plaintiff's registered trademark "Aashiqui" hinges on the application of the well-established test of deceptive similarity which has been articulated in several landmark cases. The Supreme Court in *Amritdhara Pharmacy v. Satya Deo Gupta*⁶, laid down the principle that in determining whether two marks are deceptively similar, the court must consider the overall impression that the marks create in the minds of the public, particularly in the context of imperfect recollection. The court must evaluate the phonetic, visual, and conceptual similarities between the marks, taking into account the likelihood of confusion among the general public.

⁶ AIR 1963 SC 449



Further, in *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*⁷, the Supreme Court further elaborated that deceptive similarity must be assessed not only by comparing the marks side-by-side but also considering how an ordinary person with imperfect recollection would perceive the marks when encountered separately. The focus is on whether the similarities between the marks are likely to lead to confusion about the source or origin of the goods or services.

26. The Defendant's proposed film title – "Tu Hi Aashiqui"/ "Tu Hi Aashiqui Hai" – evidently incorporates the word "Aashiqui" in its entirety. Nonetheless, the Defendant contends that the Plaintiff's trademarks are registered as device marks and not word marks, and therefore, due to their presentation in a particular font/ style, there cannot be said to be any deceptive similarity. However, in the opinion of the Court, this argument lacks merit. The Plaintiff's registration under No. 2563752 is for the mark **Aashiqui**. Pertinently, while this mark is registered as a device, it comprises only of the word "Aashiqui", which is represented in a standard font without any accompanying images, symbols, or designs that could divert attention away from the word itself. It is not as if there is a graphic presentation of a person or an object alongside the word "Aashiqui" that might shift the focus of the consumers to the accompanying device. The entire focus of consumers is on the word "Aashiqui", which will be read, spoken, and recognized as the primary identifier of the mark. The Plaintiff has also applied for registering "Aashiqui" as a word mark, which has been opposed by the Defendant during the pendency of the present proceedings.

⁷ (2001) 5 SCC 73



Be that as it may, since the Plaintiff’s registered device mark is nothing but the word “Aashiqui”, the anti-dissection rule, which requires the Court to assess a mark as a whole rather than in parts, does not come into play here. Thus, notwithstanding the registration being classified as a device mark, it must follow that protection has been granted to the term “Aashiqui”, regardless of the font, design, or stylistic presentation in which it is used. The reference to word marks as device marks for registration purposes does not diminish the protection afforded to the word “Aashiqui”, which is the core element of the brand identity of the Aashiqui Franchise.

27. 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. 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. 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. 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

⁸ AIR 1972 SC 1359



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.

29. The Defendant has laid emphasis on the font and stylised presentation of “Aashiqui”, as well as other elements of the first two Aashiqui film posters, to assure the Court that their proposed film will be sufficiently different so as to not be a derivative work or bear any connection to the Aashiqui Franchise. However, this does not fully mitigate the risk of public confusion or address the potential dilution of the Plaintiff’s trademark on account of the use of the same term “Aashiqui”. The public, upon seeing the title of the Defendant’s proposed film, is likely to assume a connection to the Aashiqui Franchise and infer that the Plaintiff is involved in or endorses



the Defendant's film, thus diluting the strength of the "Aashiqui" brand. In fact, such confusion is not merely hypothetical but has been evidenced by media reports and public statements that have already linked the Defendant's proposed film with the Aashiqui Franchise. This misperception could harm the Plaintiff's reputation, particularly if the Defendant's film does not meet the high expectations associated with the Aashiqui Franchise. Moreover, such a public misperception and dilution of distinctiveness could also jeopardize the Plaintiff's future plans to co-produce a third instalment of the Aashiqui Franchise. In this case, the Defendant's use of "Aashiqui" in their title could dilute the distinctiveness of the Plaintiff's trademark by creating a misleading association between the proposed film and the Aashiqui Franchise, regardless of the film's actual content.

30. To conclude, the Court is of the *prima facie* opinion that the phonetic and conceptual similarities in the marks, combined with the likelihood of confusion among the target audience, supports the conclusion that the Defendant's use of the title infringes upon the Plaintiff's trademark rights. Although the Defendant purportedly intends to distance their proposed film from the Aashiqui Franchise, given the factual backdrop of past association and the recent events of joint announcement, the incorporation of the exact word "Aashiqui" in the Defendant's proposed title creates a strong likelihood that an average consumer encountering the title "Tu Hi Aashiqui"/ "Tu Hi Aashiqui Hai" is likely to assume that the film is part of the Aashiqui Franchise or is otherwise affiliated with the "Aashiqui" brand. Therefore, given the strong visual, phonetic and conceptual similarities between the Plaintiff's trademark and the Defendant's proposed title, particularly in the context of identical goods (films), it is evident that "Tu Hi



Aashiqui”/ “Tu Hi Aashiqui Hai” is deceptively similar to “Aashiqui”. The principles laid down in *Amritdhara Pharmacy, Cadila Health Care*, and related case laws confirm that the Defendant’s proposed title is likely to cause confusion and mislead the public regarding the source or origin of the film. Thus, the case of the Plaintiff would be covered under Section 29(1) read with Section 29(2)(b) of the TM Act. Moreover, even if it is assumed that there is no confusion as to the source of service, at the very least, there is likelihood of confusion as regards association, sponsorship, endorsement etc. Therefore, the Plaintiff’s claim of deceptive similarity is well-founded, and the Defendant’s title should be restrained to protect the Plaintiff’s established brand.

Whether the Defendant’s disclaimer is adequate to prevent public misperception of a connection with the Plaintiff’s Aashiqui franchise.

31. The Defendant argues that a disclaimer stating that their film is not a sequel or derivative work of the “Aashiqui” films should be sufficient to dispel any public confusion or misperception. Indeed, Mr. Amit Sibal, Senior counsel for the Defendant, has expressly given an undertaking to the Court that their film will not be a part of the Aashiqui Franchise, addressing a significant portion of the Plaintiff’s concern regarding the potential unauthorized continuation of their franchise. Further, a disclaimer to this effect has been issued by the Defendant, which is available on their website and was also released through certain media platforms. However, the Plaintiff remains apprehensive, arguing that the Defendant’s use of the title “Tu Hi Aashiqui Hai”, which prominently features the term “Aashiqui”, would still likely perpetuate public perception that the film is connected to the Aashiqui Franchise, despite the Defendant’s undertaking.



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.

34. In such circumstances, the Defendant's proposed use of "Aashiqui" in their film title, suggesting similar thematic elements to the Aashiqui Franchise, would only reinforce and perpetuate this perceived association to the Aashiqui Franchise for the public. The Court finds merit in the Plaintiff's argument that the Defendant's attempt to now dissociate their film from the Aashiqui Franchise through a disclaimer is unlikely to achieve the desired result, given that the public perception has already been shaped by the initial joint announcement. Disclaimers, while sometimes effective in clarifying certain points, are generally insufficient to counteract a strong pre-existing public perception. This is particularly true in the present case, when the title itself contains the dominant and distinctive element "Aashiqui", which is likely to be the primary element influencing the public's perception. Therefore, the disclaimer does not effectively prevent public misperception, and the Plaintiff's concern about the ongoing confusion and potential harm to their brand is justified. In the Court's opinion, the disclaimer and the undertaking would not serve any purpose in light of the strong public association already established with the "Aashiqui" title. If the Defendant



wants to maintain a safe distance, they would have to use some other word.

Whether the principle of estoppel applies, binding the Plaintiff to its reply to the Examination Report regarding the label trademark for “Aashiqui” in Classes 9, 16, and 41.

35. The Defendant contends that the Plaintiff is estopped from asserting its trademark rights based on its response to the Examination Report for a label trademark of the word “Aashiqui”. The Defendant argues that the Plaintiff’s acknowledgment of differences between its mark and cited trademarks in the report should preclude the Plaintiff from now claiming exclusivity over the word “Aashiqui”. However, this argument of estoppel is inapplicable in the present case. The Plaintiff’s response in the Examination Report merely stated that their mark, in its entirety, bore no resemblance to the cited trademarks. This statement was made in the context of comparing the visual and conceptual aspects of the specific marks cited in the report and does not constitute an admission that would bar the Plaintiff from asserting its trademark rights over “Aashiqui” in different circumstances. Moreover, the goods and services associated with the Plaintiff’s mark, particularly under Class 41, do not overlap with those for which the cited trademarks were registered. The Plaintiff’s response cannot be extrapolated to imply a waiver of rights across all contexts. Further, the Plaintiff relies on the precedent set in *Mr. Raman Kwatra & Anr. v. KEI Industries Limited*⁹, where the Court clarified that estoppel applies only in cases where the Plaintiff seeks to sue a Defendant whose trademark has been cited as a third-party citation in an examination report. In the current case, the citation concerns a third party who has not been sued by the Plaintiff, and thus, the

⁹ 2023 SCC OnLine Del 38



principle of estoppel has no bearing on the Plaintiff's claims against the Defendant.

Whether the Plaintiff has acquiesced by not taking action against the film titled "Chandigarh Kare Aashiqui," also produced by the Defendant.

36. The Defendant argues that the Plaintiff has acquiesced to the use of the term "Aashiqui" by not taking action against the film *Chandigarh Kare Aashiqui*, which was produced by the Defendant. The Defendant suggests that this inaction weakens the Plaintiff's claim over the term "Aashiqui" as it relates to the current dispute. The Plaintiff, however, contends that the film *Chandigarh Kare Aashiqui* is an entirely independent project, distinct from the Aashiqui Franchise and any collaborative projects between the Plaintiff and Defendant. The title "Chandigarh Kare Aashiqui" includes the highly distinctive term "Chandigarh", which significantly alters the overall impression of the title and diminishes any direct reference to the Aashiqui Franchise. This distinctive element ensures that the title does not create confusion or suggest a connection to the Aashiqui Franchise.

37. Be that as it may, as already discussed, the Plaintiff's decision not to challenge the title "Chandigarh Kare Aashiqui" does not amount to acquiescence. Trademark owners are not obligated to take action against every possible infringement, especially when the risk of confusion is minimal or when the title in question contains distinctive elements that clearly differentiate it from the protected mark. In the event that any challenge were to be initiated against the title "Chandigarh Kare Aashiqui", the deceptive similarity and likelihood of confusion would have to be evaluated with due regard to the facts and circumstances of the said case. However, the Court finds no basis to conclude that the Plaintiff's inaction



qua the said film would constitute acquiescence on their part so as to diminish their rights over the “Aashiqui” trademark in the present dispute.

Whether the Plaintiff’s unilateral registration of the trademark “Aashiqui” as a device mark, and the Defendant’s joint ownership of the film franchise, prohibits the Plaintiff from suing the Defendant under Section 28(3) of the Trademarks Act, 1999.

38. The Defendant contends that, as a joint owner of the Aashiqui Franchise, they should also be considered a joint owner of the associated trademark. Consequently, they argue that the Plaintiff’s unilateral registration of the trademark “Aashiqui” as a device mark violates the agreements between the parties and that the Plaintiff is barred from suing the Defendant under Section 28(3) of the TM Act. However, this argument fails to hold up under scrutiny at this interim stage. Firstly, the Plaintiff has taken a conciliatory approach by offering to amend the trademark registration to include the Defendant as a co-proprietor. This gesture underscores the Plaintiff’s willingness to collaborate with the Defendant in protecting the “Aashiqui” brand. By doing so, both parties would be empowered to jointly oppose any potentially infringing trademarks, whether existing or arising in the future, thereby safeguarding the integrity of the Aashiqui Franchise. Secondly, the Defendant’s reliance on Section 28(3) of the TM Act is misplaced. Section 28(3) provides that when two or more persons are registered as proprietors of identical or nearly resembling marks, none of them can sue the other for infringement. Thus, even if both parties are assumed to be co-owners of the trademark “Aashiqui”, Section 28(3) of the TM Act would not prevent one co-owner from suing the other for infringement on the ground that use of “Tu Hi Aashiqui / Tu hi Aashiqui



Hai” creates confusion or misleads the public into believing that it is associated with the original “Aashiqui” series, and violates the provisions of the Act. Thus, the Plaintiff and Defendant as assumed joint owners would still have the obligation to ensure that the trademark “Aashiqui” is used in a way that maintains its integrity and does not lead to public confusion.

Whether the balance of convenience favours the Plaintiff, considering the anticipatory nature of the action (quia-timet).

39. In a *quia-timet* action, where the Plaintiff seeks to prevent harm before it occurs, the balance of convenience is a crucial factor. The Plaintiff has established a strong *prima facie* case of trademark infringement and passing off, coupled with evidence of the likely confusion that would result from the Defendant’s use of the title “Tu Hi Aashiqui Hai”. The potential harm to the well-established franchise, in terms of brand dilution and loss of goodwill, far outweighs any inconvenience the Defendant might face in being required to change the title of their film. Moreover, the Defendant has not yet released the film, nor are they deep into the production process. Thus, there is still an opportunity to choose a different title that does not infringe upon the Plaintiff’s rights. Given the anticipatory nature of the action, the Court must act to prevent harm that could irreparably damage the Plaintiff’s brand and franchise. Therefore, the balance of convenience supports the granting of an injunction in favour of the Plaintiff.

40. At this juncture, it is also pertinent to note that the Defendant has placed reliance on the judgment in *Venus Worldwide Entertainment v. Popular Entertainment Network*¹⁰. However, the circumstances in that case

¹⁰ 2023 SCC OnLine Del 5006



are clearly distinguishable from the factual matrix before this Court. In *Venus Worldwide Entertainment*, the Court was dealing with a dispute over the film title “KHILADI”. The Court categorically observed that the plaintiff in that case had sought registration for a device mark that encompassed the entire poster of the film, which included several features, pictures, and other elements. Consequently, the Court held that it was not open to the Plaintiff to claim exclusivity over a part of the mark—specifically, the word “KHILADI”—due to the prosecution history and the anti-dissection rule. The Court emphasized that these principles generally prevent a party from isolating a single element of a composite mark for protection, except where the isolated element is the dominant part of the mark. In contrast, the present case involves the Plaintiff’s device registration for “Aashiqui”, which solely comprises of the word “Aashiqui” without any accompanying images, designs, or other elements. The registration here is not for a composite mark that includes multiple features, but rather for the word itself, which stands as the central and dominant feature of the trademark. As such, the principles of anti-dissection and prosecution history estoppel invoked in *Venus Worldwide Entertainment* do not apply here, as there is no composite mark to dissect. Moreover, the plaintiff in *Venus Worldwide Entertainment* approached the Court at a significantly belated stage, after substantial investment had already been made in the production and promotion of the films sought to be enjoined. This delay was a critical factor in the Court’s decision. In contrast, the present case involves a timely filed *quia-timet* action, where the Plaintiff seeks to prevent harm before it occurs. The Plaintiff has not only secured a valid and subsisting trademark registration for “Aashiqui”, but has also acted proactively to prevent any



potential infringement before the Defendant has taken any significant steps towards the commercial exploitation of the proposed film. Therefore, the judgment in *Venus Worldwide Entertainment* is distinguishable on facts and is not applicable to the present case.

Whether the Plaintiff would suffer irreparable harm if the injunction is not granted.

41. The Plaintiff has convincingly demonstrated that the release of the Defendant's film under the title "Tu Hi Aashiqui"/ "Tu Hi Aashiqui Hai" would likely cause irreparable harm to their brand and the Aashiqui Franchise. Trademark infringement, particularly in the context of a well-established and recognized film franchise, can result in significant damage to the brand's identity and reputation—harm that is difficult, if not impossible, to quantify and compensate through monetary damages alone. The Plaintiff's brand is closely tied to the title "Aashiqui" and therefore, allowing the Defendant to use a deceptively similar title would not only dilute this brand but could also lead to consumer confusion, causing long-term harm to the Plaintiff's reputation and diminishing the value of their intellectual property. In trademark law, the irreparable harm standard is met when the injury cannot be adequately remedied by damages. In this case, the potential loss of goodwill, coupled with the risk of public misperception and brand dilution, constitutes irreparable harm in the opinion of the Court. Therefore, the Plaintiff is entitled to an injunction to prevent such harm from occurring.

CONCLUSION AND DIRECTIONS

42. At this interim stage, the Court is required to assess whether the



Plaintiff has made out a *prima facie* case, and whether the balance of convenience and the risk of irreparable harm weigh in favour of granting relief. The Plaintiff's mark "Aashiqui" is registered under the Trade Marks Act, 1999. Registration of a trademark carries with it a presumption of validity, including the assumption that the mark is capable of distinguishing the goods or services of one entity from those of others. This presumption also implies that the mark can function as a trademark. The Defendant's argument about lack of secondary meaning effectively challenges the validity of a registered mark—something that places the burden of proof on the Defendant, not the Plaintiff. While determination of secondary meaning requires evidence to be presented at trial, this does not preclude the granting of interim relief in this case. The "Aashiqui" title is not just an instance of isolated use, but rather, has become part of a recognised film series, with two successful instalments released in 1990 and 2013. It is crucial to protect titles of expressive works that become part of a series and have the potential of acquiring distinctiveness. In this case, considering the fact that the parties have previously publicised the possibility of co-producing a third instalment to the Aashiqui Franchise, there exists a strong public association of the "Aashiqui" mark with the continuing series of films.

43. It may be true that once the Defendant's film is released, moviegoers will find that there is no direct link between the said film and the Aashiqui Franchise. However, trademark law is particularly concerned with the initial likelihood of confusion, whereby the public might be misled into believing there is an association between the Defendant's film and the well-established Aashiqui Franchise. This confusion, even if temporary, can cause significant harm by diluting the "Aashiqui" brand and diminishing the



distinctiveness of the Aashiqui Franchise. The Plaintiff's rights in the "Aashiqui" trademark extend to protecting the title from such confusion, which is especially likely given the strong public association of the word "Aashiqui" with the series. In such circumstances, permitting the Defendant to use a deceptively similar title, especially given the existing public anticipation of a third instalment of the Aashiqui Franchise, would have the effect of infringing the Plaintiff's trademark rights by misleading consumers and diluting the brand identity of the Aashiqui Franchise.

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.

45. With the foregoing directions, the present applications stand disposed of.

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46. List before the Roster Bench on 3rd October, 2024.

SANJEEV NARULA, J

SEPTEMBER 02, 2024

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