

Mahendra And Mahendra Paper Mills Ltd vs Mahindra And Mahindra Ltd on 9 November, 2001

Equivalent citations: AIR 2002 SUPREME COURT 117, 2002 (2) SCC 147, 2001 AIR SCW 4679, 2002 CLC 160 (SC), (2002) 1 JCR 228 (SC), 2001 (2) COPYTR 597, 2001 (8) SCALE 174, (2001) 9 JT 525 (SC), 2001 (9) JT 525, (2001) 5 SCJ 329, (2002) 1 ORISSA LR 112, (2001) 8 SUPREME 443, (2002) 3 ICC 604, (2001) 8 SCALE 174, (2002) 46 ALL LR 228, (2002) 3 BOM CR 686

Bench: D.P. Mohapatra, Shivaraj V. Patil

CASE NO.:

Appeal (civil) 7805 of 2001

PETITIONER:

MAHENDRA AND MAHENDRA PAPER MILLS LTD.

RESPONDENT:

MAHINDRA AND MAHINDRA LTD.

DATE OF JUDGMENT: 09/11/2001

BENCH:

D.P. MOHAPATRA & SHIVARAJ V. PATIL

JUDGMENT:

JUDGMENT 2001 Supp(5) SCR 225 The Judgment was delivered by MOHAPATRA, J. :

MOHAPATRA, J.

Leave granted.

The interim order passed by the learned Single Judge of the Bombay High Court injuncting the defendant from using the name 'Mahendra & Mahendra' in his business establishment, which order was confirmed by the Division Bench of the court, is under challenge in this appeal filed by the defendant.

Mahindra & Mahindra Ltd., the respondent herein, instituted a Suit No. 4007 of 1998 in the Bombay High Court seeking a decree of permanent injunction against Mahendra & Mahendra Paper Mills Ltd., the appellant herein, restraining it from using in any manner as a part of its corporate name or trading style the words "Mahendra & Mahendra" or any word which is deceptively similar to "Mahindra" and/or 'Mahindra & Mahindra'. In the said suit the plaintiff filed an application seeking an interim order of injunction against the defendant on similar terms.

The case of the plaintiff, sans unnecessary details, is that it is a 'company' incorporated and registered under the Indian Companies Act, 1913 and is an existing company under the Companies Act, 1956. It was incorporated in October 1945 with the name 'Mahendra and Mohammed Ltd.', which was subsequently changed to 'Mahindra and Mahindra Ltd.' on 13th January, 1948. It is the case of the plaintiff that the said company is a flagship company of Mahindra group of companies in which are included 15 other companies, namely :

1. Mahindra & Mahindra Financial Services Ltd.
2. Mahindra Exports Ltd.
3. Mahindra Steel Services Centre Ltd.
4. Mahindra Fort India Ltd.
5. Mahindra Applied Systems Technology Ltd.
6. Mahindra Sintered Products Ltd.
7. Mahindra Engineering & Chemical Products Ltd.
8. Mahindra Network Services Ltd.
9. Mahindra Information Technology Systems Ltd.
10. Mahindra Realty & Infrastructure Developers Ltd.
11. Mahindra USA Inc. USA
12. Mahindra Hellenic Auto Industries SA Greece
13. Mahindra British Telecom Ltd.
14. Mahindra Holdings & Finance Ltd.
15. Mahindra Acres Consulting Engineerings Ltd.

The further case of the plaintiff is that the word 'Mahindra' is its registered trade mark bearing Registration No. 338997, in respect of the goods in Class 12 of the Trade & Merchandise Marks Act, 1958 (hereinafter referred to as 'the Act'). According to the plaintiff, the word 'Mahindra' is not only a registered trade mark but forms the dominant and significant part of the plaintiff and other companies of the group. The companies carrying the name 'Mahindra' are engaged in industrial and trading activities in multiple fields such as manufacture of cars, jeeps, tractors, motor spare parts,

farming equipments, chemicals, hotels, real estate, exports, computer software and computer systems, etc. The annual turnover of the plaintiff and some of its group companies exceeds Rs. 3, 000 crore. The annual expenditure for advertisements and market development for sales promotion by the plaintiff and its group of companies is about Rs. 9 crore. The plaintiff has averred that the name and trade mark of 'Mahindra' is extremely popular in India and is associated with the products and services of the plaintiff. It was further averred that the Mahindra group of companies have a nation-wide network of selling and distributing agents. The name and trade mark "Mahindra" is prominently used and displayed on all its products and also promotional materials. On account of high quality of the products manufactured and sold by the plaintiff, as also high quality of products and services of other group companies, the plaintiff asserts, that the name and trade mark of 'Mahindra' have come to be known exclusively with the plaintiff and its group of companies and have acquired tremendous reputation and goodwill among members of public throughout the world including India. The further case pleaded by the plaintiff is that in or about August 1996, it came across a prospectus of the defendant in respect of its public issue and for the first time the plaintiff then came to know about the existence of the defendant and its corporate name. The name of the defendant is almost the same as that of the plaintiff with the only difference in spelling by substituting 'e' for 'i' in 'Mahindra'. It is the contention of the plaintiff that the words are phonetically, visually and structurally almost identical and in any event deceptively similar. In the prospectus of the defendant the words "Mahendra and Mahendra" are more prominently written than the rest of the names. According to the plaintiff the defendant wishes and intends to fraudulently and wrongfully deceive members of the public into believing that the defendant is the associate of the plaintiff or in some way connected with the plaintiff and to trade on the reputation of the plaintiff. The plaintiff apprehends that by the use of name/words deceptively similar to that of the plaintiff's name as its corporate name the intention of the defendant is to pass-off or likely to pass-off and to enable others to pass-off its business and products as those of the plaintiff. It is the contention of the plaintiff that the defendant by use of the said words is trading on the goodwill and reputation of the plaintiff. The plaintiff in the notice issued on 28th August, 1996 had called upon the defendant to change its name. It had also moved the Securities and Exchange Board of India and various stock exchanges in the country drawing their attention to the fact that the defendant was using a deceptively similar corporate name as that of the plaintiff and to take appropriate action against the defendant. The defendant, in its reply to the said notice, took the plea that it has used the name of 'Mahendra' honestly and the allegations made by the plaintiff that it has dishonestly adopted the said name and style is misconceived. Thereafter, the plaintiff filed the suit.

The defendant, the appellant herein, contested the notice by filing a reply affidavit, filed by one Mulchand alias Mahendra G. Parwani in which it was stated, inter alia, that the deponent is better known as 'Mahendrabhai' in the trade circle and he resides in 'Mahendra House' named after him. He has been filing income returns in the name of Mahendra G. Parwani. In the year 1974 he started his sole proprietary business in Prantija District of Gujarat in the name of 'Mahendra Radio House'. After about four years, he along with his two brothers started a partnership firm in the name of 'Mahendra & Mahendra Seeds Company'. According to the deponent, his nephew's name is also 'Mahendra' and that is how the partnership firm came to be named as Mahendra & Mahendra Seeds Company. The defendant further averred that on 1st of January, 1982 the said partnership of Mahendra & Mahendra Seeds Company was incorporated as Pvt. Ltd. company in the name of

'Mahendra & Mahendra Seeds Pvt. Ltd.' having its office at 7, Ellora Commercial Centre, Opposite GPO, Ahmedabad. Another proprietary firm by the name 'Mahendra Music & Electronics' was started by the defendant's family in the year 1983 and the same was registered under the Sales Tax Act also. It is the further case of the defendant that in the year 1994 the said Mulchand (alias Mahendrabhai G. Parwani) along with his brothers Trikambhai Parvani and Dayalbhai Parwani, incorporated a company by the name of 'Mahendra & Mahendra Paper Mills Ltd.'. According to the defendant, the words 'Mahendra & Mahendra' was a continuation of their business name which they have been using continuously for various businesses since the year 1974. That the public issue was opened on 25th July, 1996 and the same remained open till 6th August, 1996 and despite wide advertisement by the defendant and best efforts, the defendant could not even manage to get 100 per cent subscription and the allegation by the plaintiff that defendant has been using plaintiff's goodwill is wholly misconceived. The defendant also stated that the name 'Mahendra' is a household name in Gujarat and there are several businesses being carried on in the said name throughout Gujarat. The defendant further stated that its products are, in no way similar to the products and businesses of the plaintiff. The business carried on by the defendant does not overlap with the business of any of the companies enlisted by the plaintiff. The defendant pleads that it has a reputation of its own in the name of 'Mahendra & Mahendra' and cannot derive any benefit by the name which is alleged to be similar to that of the plaintiff. The assertion of the plaintiff that the trade mark 'Mahindra' and/or 'Mahindra & Mahindra' have come to be identified with the plaintiff or the plaintiff's group of companies in any manner, has been denied by the defendant. The defendant has also denied that the name of its company can be said to be deceptively similar to that of the plaintiff. The plea of passing-off or likelihood of passing-off of trade or business of the plaintiff has been denied. The defendant has also set up the plea that the balance of convenience is not in favour of the plaintiff nor the plaintiff would suffer irreparable loss in case the injunction is not granted. On consideration of the petition for interim injunction filed by the plaintiff, the learned Single Judge in para 14 of his order issued the following directions :

'Accordingly, during the pendency of the suit interim injunction in terms of prayers (a), (b) and (c) shall remain operative. Prayers (a), (b) and

(c) read, thus :

(a) That pending the hearing and final disposal of this suit, the defendant by itself, its servants, its agents or otherwise howsoever be restrained by an order of temporary injunction of this Hon'ble Court from in any manner using as a part of its corporate name or trading style the words "Mahendra and Mahendra" or any word(s) which are deceptively similar to "Mahindra"

and/or "Mahindra and Mahindra" so as to pass-off or to enable others to pass-off the business and/or services of the defendant as those of the plaintiffs or as emanating from or affiliated or in some way connected with the plaintiffs.

(b) That pending the hearing and final disposal of this suit, the defendant by itself, its servants, or otherwise howsoever be restrained by an order of temporary injunction of this Hon'ble Court from

in any manner using in relation to its products the words "Mahendra and Mahendra" or any word(s) which are deceptively similar to "Mahindra" and/or "Mahindra and Mahindra"

so as to pass-off or to enable others to pass-off the business and/or services of the defendant as those of the plaintiffs or as emanating from or affiliated or in some way connected with the plaintiffs.

(c) That pending the hearing and final disposal of this suit, the defendant by itself, its servants, its agents or otherwise howsoever be restrained by an order of temporary injunction from in any manner infringing the plaintiff's registered trade mark "Mahindra" under Registration No. 338997 by using the impugned word/mark "Mahendra" and/or "Mahendra and Mahendra"

or any word/s or mark deceptively similar to the plaintiff's registered trade mark. The appeal filed by the defendant against the said order, Appeal No. 1058 of 1998, was summarily dismissed by the Division Bench of the High Court vide its order dated 2nd December, 1998. The relevant portion of the order reads :

"In our view, the impugned order passed by the learned Single Judge does not call for any interference. It is found that the respondents are having registered trade mark of Mahindra & Mahindra Company. The appellants want to use the said trade mark by name Mahendra & Mahendra Paper Mills Ltd., for which the company was incorporated in the year 1994. However, before the learned Single Judge, the appellants have failed to produce any material on record to show to what extent the appellants were doing business.

Further, considering the reasons recorded by the learned Single Judge, this appeal is dismissed. ..."

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Hence, this appeal by the defendant.

The main thrust of the submissions of Shri P. N. Misra, learned senior counsel for the appellant, was that the present case is not an action for infringement of trade mark but it is an action in passing-off the business and services. In the absence of any similarity of the goods manufactured or sold by the parties the tests of deception or confusion amongst the consumers does not arise. According to Shri Misra, the action in passing-off is not to be considered in the abstract sense; it has to be judged on the facts and circumstances of the case. The learned counsel contended that the defendant has been doing business since 1974 using the trade name "Mahendra" in a wide range of products. Therefore, the claim of exclusive user of the name made by the plaintiff does not arise, at least not at the interlocutory stage, as it depends on evidence to be led in the suit. The learned counsel further submitted that while judging the plea of passing-off, the test to be applied is probability and not mere possibility of confusion or deception. On the facts and in the circumstances of the case, the

learned senior counsel submitted, that grant of interim injunction in favour of the plaintiff was not warranted; the Division Bench of the High Court should have set aside the order passed by the learned Single Judge and vacated the interim order of injunction. Per contra, Shri R. F. Nariman, learned senior counsel for the respondent, contended that the order of interim injunction passed by the learned Single Judge is based on well recognised principles of law which have been aptly applied to the case in hand. Shri Nariman further contended that on a bare perusal of the prospectus issued by Mahendra & Mahendra Paper Mills Ltd. it is manifest that the defendant is trying to utilise the tremendous popularity and goodwill associated with the plaintiff's name 'Mahindra and Mahindra' in the trade circles. According to him, any man of average intelligence and imperfect recollection is likely to get an impression that the defendant is one of the associated companies of the 'Mahindra and Mahindra' group. The further contention of the learned counsel was that whatever amount was collected by the defendant from sale of shares of the company to investors was due to the deceptively similar name given to the defendant company. It was the further submission of the learned counsel for the respondent that the business activity of the defendant company has not yet commenced. The learned counsel contended that the plaintiff successfully established a strong prima facie case in its favour and in the circumstances denial of order of interim injunction will result in irreparable loss and injury in its trade and business. In the submission of Shri Nariman, the learned Single Judge rightly passed the order of interim injunction and the Division Bench was justified in declining to interfere with the said order.

In section 105, clause (c), of the Act it is laid down, inter alia, that no suit for passing-off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered, shall be instituted in any court inferior to a District Court having jurisdiction to try the suit. Section 106 in which is enumerated the reliefs available in an action for infringement or for passing-off provides in clause (c) of sub-section (2) that :

"Notwithstanding anything contained in sub-section (1), the court shall not grant relief by way of damages (other than nominal damages) or an account of profits in any case -

(c) where in a suit for passing-off the defendant satisfies the court -

(i) that at the time he commenced to use the trade mark complained of in the suit he was unaware and had no reasonable ground for believing that the trade mark of the plaintiff was in use; and

(ii) that when he became aware of the existence and nature of the plaintiff's trade mark, he forthwith ceased to use the trade mark complained of."

The question that arises for determination in this case is, whether, on the facts and circumstances of the case, the High Court committed an error in granting the plaintiff's prayer for interim injunction.

This question has been considered by different High Courts and this court in umpteen cases from time to time. On analysis of the principles laid down in the decisions, certain recognised parameters relating to the matter have emerged. Without intending to be exhaustive some of the principles which are accepted as well settled may be stated, thus, that whether there is a likelihood of deception or confusion arising is a matter for decision by the court, and no witness is entitled to say whether the mark is likely to deceive or to cause confusion; that all factors which are likely to create or allay deception or confusion must be considered in combination; that broadly speaking, factors creating confusion would be, for example, the nature of the market itself, the class of customers, the extent of the reputation, the trade channels, the existence of any connection in course of trade, and others. This court, in the case of *Corn Products Refining Co. v. Shangrila Food Products Ltd.* 1960 (1) SCR 968, observed that :

"The question whether two companies marks are so similar as to be likely to deceive or cause confusion is one of first impression and it is for the court to decide it. The question has to be approached from the point of view of a man of average intelligence and imperfect recollection. To such a man the overall structural and phonetic similarity of the two marks Gluvita and Glucovita is likely to deceive or to cause confusion. In deciding whether two marks are so similar as to be likely to deceive or cause confusion the similarity of idea is a relevant consideration"

. This court further observed that in order that a trade mark may acquire a reputation among buyers, it is not necessary that they should know who the manufacturer of the goods is. It is no answer to an opposition to an application for registration to say that there is a number of marks having one or more common features which occur in the proposed mark unless it is proved that these marks had by user acquired a reputation in the market.

In the case of *Wander Ltd. v. Antox India (P.) Ltd.* 1990 Supp(SCC) 727, a bench of three learned Judges considered the question of grant of interlocutory injunction under order 39, rule 1, Code of Civil Procedure, 1908 in a case under section 29(2) of the Act and section 55 of the Copy Right Act, 1957 and held as follows :

"Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated :... is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The relief for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies."

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear of a prima facie case. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted. ...

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 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 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) (P.) Ltd. v. Pothan Joseph* 1960 (3) SCR 713 :

".... These principles are well established, but as has been observed by Viscount Simon in *Charles Osentos & Co. v. Jhanton* [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."

In the case of *S.M. Dyechem Ltd. v. Cadbury (India) Ltd.* 2000 (5) SCC 573, this court formulated the point whether the plaintiff had made out a case for grant of temporary injunction treating the suit as a "passing-off"

action, the relative strength of the case was in the plaintiff's favour ? Referring to a number of decisions of this court and courts in England, this court made the following observations :

'Here the point is in relation to relative strength of the parties on the question of "passing-off". As discussed under Point 5, the proof of resemblance or similarity in case of passing off and infringement are different. In a passing-off action, additions, get-up or trade-dress might be relevant to enable the defendant to escape. In *National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd.* 1948 AIR(Mad) 481, the passing-off action failed. But thereafter *James Chadwick Co.* succeeded in an appeal arising out of the registration proceedings and the said judgment was confirmed by this court in *National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd.* 1953 AIR(SC) 357. It was held that the judgment in the passing-off case

could not be relied upon by the opposite side in latter registration proceedings.

In the same tone, Halsbury (Trade Marks) 4th edn., 1984, vol. 48, para 187) says that in a passing-off action the "degree of similarity of the name, mark or other features concerned is important but not necessarily decisive, so that an action for infringement of a registered trade mark may succeed on the same facts where a passing-off action fails or vice versa"

. As to vice versa, Kerly says (para 16.12), an infringement action may fail where the plaintiff cannot prove registration or that its registration extends to the goods or to all the goods in question or because the registration is invalid and yet the plaintiff may show that by imitating the mark or otherwise, the defendant has done what is calculated to pass-off his goods as those of the plaintiff. In *Schweppes Ltd. v. Gibbens* 1905 22 RPC 601 (HL), Lord Halsbury said, while dealing with a passing-off action that "the whole question in these cases is whether the thing - taken in its entirety, looking at the whole thing - is such that in the ordinary course of things a person with reasonable comprehension and with proper insight would be deceived"

. ' In a recent decision in the case of *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.* 2001 (5) SCC 73, a bench of three learned Judges, summed up the position of law regarding tests to determine a passing-off action, with the following observations :

'We are unable to agree with the aforesaid observations in *Dyechem* case, 2000 (5) SCC 573. As far as this court is concerned, the decision in the last four decades have clearly laid down that what has to be seen in the case of a passing-off action is the similarity between the competing marks and to determine whether there is likelihood of deception or causing confusion. This is evident from the decisions of this court in the cases of *National Sewing Thread Co. Ltd.* case 1953 AIR(SC) 35, *Corn Products Refining Co.* case 1960 AIR(SC) 142, *Amritdhara Pharmacy* case 1963 AIR(SC) 449, *Durga Dutt Sharma* case 1965 AIR(SC) 980, and *Hoffman-La Roche & Co. Ltd.* case 1969 (2) SCC 716. Having come to the conclusion, in our opinion incorrectly, that the difference in essential features is relevant, this court in *Dyechem* case sought to examine the difference in the two marks "PICNIK" and "PICNIC". It applied three tests, they being : (1) is there any special aspect of the common feature which has been copied ? (2) mode in which the parts are put together differently, i.e., whether dissimilarity of the part or parts is enough to make the whole thing dissimilar, and (3) whether, when there are common elements, should one not pay more regard to the parts which are not common, while at the same time not disregarding the common parts ? In examining the marks, keeping the aforesaid three tests in mind, it came to the conclusion, seeing the manner in which the two words were written and the peculiarity of the script and concluded (at SCC p. 597, para 39) that " the above three dissimilarities have to be given more importance than the phonetic similarity or the similarity in the use of the word PICNIC for PIKNIK. ...Broadly stated, in an action for passing-off on the basis of unregistered trade mark generally for deciding the question of deceptive similarity the following factors are to be considered :

- (a) The nature of the marks, i.e., whether the marks are word marks or label marks or composite marks, i.e., both words and label works.
- (b) The degree of resemblance between the marks, phonetically similar and hence similar in idea.
- (c) The nature of the goods in respect of which they are used as trade marks.
- (d) The similarity in the nature, character and performance of the goods of the rival traders.
- (e) The class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the goods.
- (f) The mode of purchasing the goods or placing orders for the goods.
- (g) Any other surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks.

Weightage to be given to each of the aforesaid factors depending upon facts of each case and the same weightage cannot be given to each factor in every case.

The trial court will now decide the suit keeping in view the observations made in this judgment. No order as to costs. Appeal disposed of.' The Bombay High Court in *Sunder Parmanand Lalwani v. Caltex (India) Ltd.* 1969 AIR(Bom) 24 (V 56 C 5), held that a large number of persons, if they saw or heard about the mark "Caltex" in connection with the applicant's watches, would be led to think that the watches were in some way connected with the opponents who were dealing in petrol and various oil products with the Caltex mark, or they would at least wonder whether they were in any way connected with the opponents'. The court considered the factors which tend to show that there was a likelihood of creating deception or confusion. In the case of *Bata India Ltd. v. Pyare Lal & Co.* 1985 AIR(All) 242, considering the plea of passing-off or enabling others to pass-off mattresses, sofa cushions and other articles associating them with the name of 'Bata' in any manner or form, held that 'the plaintiffs had cause of action for instituting the proceeding for passing off. The plaintiff had made out a case of issuance of an interim order of injunction in respect of the user of the name "Bata" to any of their products by the defendants'. The High Court further observed that 'the word "Bata" was well known in the market and the user of such a name is likely to cause not only deception in the mind of an ordinary customer but may also cause injury to the plaintiff-company. The fact that the plaintiff was not producing foam was not enough to hold that there could be no passing-off action in respect of the user of the name "Bata" to the products marketed by the defendants is indicative of their intent.' Bombay High Court in the case of *Kirloskar Diesel Recon (P.) Ltd. v. Kirloskar Proprietary Ltd.* 1966 AIR(Bom) 149, considered the scope of granting injunction in a suit for infringement of a trade mark under section 106 of the Act by the use of the mark 'Kirloskar', held :

"The principle of balance of convenience applies when the scales are evenly balanced. The existence of 1st appellant in each appeal is very recent whereas the existence of the respondents belonging to "Kirloskar group of companies" has been for over a period of 50 years. On their own showing, the appellants are not using the word "Kirloskar" as trade mark but as part of trading style whereas the respondents have not only acquired distinctiveness and goodwill in the word "Kirloskar" but it is even the registered trade mark of the 1st respondent. There is sufficient evidence on record to show that the huge business is carried by "Kirloskar group of companies". There is nothing on record to show the extent of the business of the appellants. The 2nd appellant has throughout been aware about the business reputation of the respondents and efforts of the respondents in protecting their rights in the trade marks as also of preventing others to use the word "Kirloskar" as a part of the trading name or trading style. By extant of the interim injunction in favour of the respondents, the appellants are not prevented from carrying on business without the word "Kirloskar" forming part of the corporate name of the 1st appellant in each appeal. In the facts of the case, the respondents' reputation is likely to be adversely affected if the appellants are not prevented from using names of the 1st appellant in each appeal. In the facts of the case, the balance of convenience is not in favour of the appellants. ...

The real question in each case is whether there is as a result of misrepresentation a real likelihood of confusion or deception of the public and consequent damage to the plaintiff. The focus is shifted from the external objective test of making comparison of activities of parties to the state of mind of public in deciding whether it will be confused. With the passage of time and reputation acquired, the trade mark "Kirloskar" has acquired the secondary meaning and has become almost a household word. The judgments relied upon by Mr. Kane pertain to the cases of one type of business and not where variety of businesses have been carried by the plaintiff and defendants in the instant case. The business activities of the respondents vary from pin to piano as borne out from the object clauses of the memorandum of association of the respondents. The appellants have still to commence their business activities but as mentioned in the memorandum of association of 1st appellant in each appeal, some of the object clauses therein overlap with the activities of respondents and more particularly of respondents Nos. 6 and 7. Judging the case in hand on touchstone of the principles laid down in the aforementioned decided cases, it is clear that the plaintiff has been using the word 'Mahindra' and 'Mahindra & Mahindra' in its companies/business concerns for a long span of time extending over five decades. The name has acquired a distinctiveness and a secondary meaning in the business or trade circles. People have come to associate the name 'Mahindra' with a certain standard of goods and services. Any attempt by another person to use the name in business and trade circles is likely to and in probability will create an impression of a connection with the plaintiff's group of companies. Such user may also affect the plaintiff prejudicially in its business and trading activities. Undoubtedly, the question whether the plaintiffs' claim of 'passing-off action' against the defendant will be

accepted or not has to be decided by the court after evidence is led in the suit. Even so for the limited purpose of considering the prayer for interlocutory injunction which is intended for maintenance of status quo, the trial court rightly held that the plaintiff has established a prima facie case and irreparable prejudice in its favour which calls for passing an order of interim injunction restraining the defendant-company which is yet to commence its business from utilising the name of 'Mahendra' or 'Mahendra & Mahendra' for the purpose of its trade and business. Therefore, the Division Bench of the High Court cannot be faulted for confirming the order of injunction passed by the learned Single Judge.

On the discussions made in the preceding paras and for the reasons noted therein, the orders passed by the High Court do not call for interference. It is needless to say that the observations made in this judgment are only in relation to the interim order. Therefore, the appeal is dismissed with costs. Hearing fee assessed at Rs. 15, 000.