

Michael Heath Nathan Johnson vs Subhash Chandra And Ors. on 1 November, 1995

Equivalent citations: 60(1995)DLT757

Author: K. Ramamoorthy

Bench: K. Ramamoorthy

JUDGMENT

K. Ramamoorthy, J.

(1) The plaintiff has filed the application for injunction restraining the defendants-respondents their servants and agents by an order of permanent injunction from in any manner directly and/or indirectly through themselves and/or through^ their business associates and/or other group of Companies in any manner disclosing, utilising, exploiting and/or implementing the Smpc system, having the characteristics identified in the Affidavit of the Applicant/Plaintiff annexed to the plaint (Annexure A), and based on the Applicant's valuable and unique confidential information; and to confirm the aforesaid order after hearing the parties. There are seven defendants in the suit. First defendant is contesting the case. 7th defendant Stephen Moss, without filing any reply to the application for injunction, has filed an affidavit in support of the first defendant.

(2) I have heard learned Counsel for the plaintiff and the first defendant for a considerable length of time.

(3) Mr. Ashok Desai, learned Senior Counsel, appearing for the plaintiff, started cerebral debate on Intellectual Property Rights. I heard him at length because of the attempt made by him collecting all facts in favor of his client presenting a configuration, as it were, of the various points in favor of the plaintiff to enable me to appreciate his arguments. Though at the first blush, I could not on a perusal of the plaint fully appreciate the case of the plaintiff, the dexterity and alacrity with which Mr. Ashok Desai, learned Senior Counsel made his submissions marshalling the facts, illumined the dark corners of the plaintiff's case. Though the arguments extended to a number of days, in the ultimate analysis the point distilled down to a very specific one. The same became discernible to me very early. The plaintiff's claim could be characterised even at the out set as something we try to spot in a milky way on a clear sky and something which cannot be easily comprehended or visualised in cyber space by a casual Observer. Mr. Ashok Desai, learned Senior Counsel made a full disquisition, as it were, on Satellite Mobile Personal Communication System (SMPC) venture loquising what is stated by the plaintiff. The plaintiff claims to be a trendsetter in this type of technology bringing the peoples of the world closer over a hand set at moderate cost saving lot of time. When the space technology in the globe is in incandescent stage providing amenities to people which human ingenuity could not conceive of thus far, the plaintiff is trying to scuttle the attempt of the first

defendant to do something with the able assistance of the U.S. Advance Technology Expertise. Though the plaintiff through a long plant has made an attempt to project himself as a reincarnation of great geniuses whose contribution had been the basis for the modem technological advance but analysis of the materials provided by the plaintiff do not show him in iridescent colours. The plaintiff expects a great nugget for his so called system conceived by him by a process of configuration and seeks to completely destroy all attempts of the first defendant to proceed with his work.

(4) Before I notice the pleadings in the case I would like to refer to the events chronologically, that had taken place from the date of the filing of the plaint till 6.8.95. 25.3.95 Plaint was presented - The documents filed along with the plaint are :- (i) Undated joint venture proposal between the plaintiff and the African (Tele Communication Ltd.) (ii) Investment proposal dated December 1993. (iii) Agenda faxed by Mr. Roger dark to the plaintiff on 24.1.94. (iv) Undated fax cover sheet from plaintiff to the first defendant, (without address of the first defendant). (v) Letter dated March 30, 1994 with invoice dated March 31, 1994. It is not stated when these documents were sent to first defendant. (It is the case of the first defendant that it was sent only on 19.10.1994). (vi) Letter dated October 26, 1994 alleged to have been written by the 760 plaintiff to first defendant and others. In the beginning of the letter this is what is written :- To Subhash Chandra Stevemols 3, Roger dark Ted McForland From Michael Johnson. "Each of you know that the Satellite Mobile Personal Communications System project you are working on was created and authored by me. That is a fact. Each of you know, that I introduced the project to each of you in turn and at different times. That is a fact. Roger also knows that the project was introduced to both the Us manufacturers by me long before it was exposed to any of you (including myself). That is a fact. Ted knows that I introduced the concept to Hughes and briefed them extensively in the U.S., once again long before any of you were involved. That is a fact involving many personalities. " (vii) Letter dated November 23, 1994 by the Solicitor of the first defendant called Deacons to the plaintiff calling upon the plaintiff to pay the sum of 300,000 Us Dollars and other claims. 27.3.95 The plaintiff filed additional documents. (i) Letter dated February 4, 1995 from plaintiff to first defendant. (No address of the first defendant is given, no record filed to show the letter was sent by the plaintiff to the first defendant). (ii) Letter dated March 26, 1995 from Mr. Prentiss Q. Yancey to plaintiff wherein it is stated by Mr. Yancey as under:- " I am writing to confirm the following facts: (1) The Satellite Mobile Personal Communications (SMPC) System is the only Personal Communications System utilizing both a Geostationary Satellite and small cellular type handsets known to Africom. The Smpcs was and is to the best knowledge of African a proprietary work product created by Michael Johnson. (2) The Smpc System and its application to Africa was first generally described by Michael Johnson and African Director Gregory Brown to At & T executive Richard Moore in June of 1993. (3) The Smpc System was first presented in detail to At & T in September of 1993 as part of an investment proposal which was the subject of a Non-Disclosure Agreement between Africom and At & T dated January 27, 1994. (4) Africom has at all times sought to protect any confidentiality, proprietary rights and copyright which exist in the Smpc system. 761 (5) The Smpc System was included in the Joint Business Case produced by At & T and Africom between January and May of 1994 and again is the subject of a non-disclosure, confidentiality and non-complete agreement between Africom and At & T January 21, 1994. (6) It is recognized by Africom that the confidentiality of the Smpc System is crucial and Africom has and will continue to uphold this position." (iii) An undated document

between Skybird Co. Ltd. and Yellow gold. (There is no material to show that this was ever given to the first defendant). (Yellow Gold was an Operational Company brought into existence by the plaintiff and 7th defendant Mr. Roger Clark pursuant to service agreement executed between the parties. The execution of service agreement is not disputed by the plaintiff). 30.3.95 News item dated January 18, 1995 in the Times of India about the agreement between the first defendant and foreign Co. (This document was already filed as Annexure B along with the plaint. The plaintiff filed his affidavit setting out his technological system claiming to be his brain born child). 1.5.95 Replies by defendants 1 and 2 to IA. 2773/95. 6.7.95 Affidavit of Mr. Paramjit Singh Bains, an expert on behalf of the first defendant 21.7.95 Written statement on behalf of defendants I and 2. 3 7.7.95 Plaintiff filed two volumes of documents in a trunk box running into about 1300 pages. 23.7.95 Mr. Roger Clark filed an affidavit in support of the plaintiff. 22.7.95 Rejoinder affidavit in I.A. 2773/95 Along with documents running into about 200 pages. 2.8.95 Affidavit of plaintiff in answer to the affidavit of Mr. Paramjit Singh Bains. 8.8.95 Affidavit of Mr. David Greenwood, an expert, according to the first defendant with annexures running into about 700 pages. 11.8.95 Mr. Stephen Moss (Defendant No. 7) filed an affidavit in support of the first defendant. 16.8.95 Two affidavits filed by the plaintiff controverting the facts stated in the affidavit of Mr. David Greenwood and Mr. Stephen Moss.

(5) It appears that the first defendant, plaintiff, Mr. Roger Clark and Mr. Stephen Moss wanted to do something in common in the space technology and wanted to make money by doing business. There was some misunderstanding amongst them. I am not able to resist inference that they had been moving together without having confidence among each other and one wanted to over-reach the other. They had conceived an idea of floating Companies. Mr. Ashok Desai, learned Senior Counsel said that in some foreign countries one can just go and take from the shelf some companies registered under the Companies Act and use them 762 for one's business. What will be the legal effect of such actions, we need not go into? But what happened on the basis of the adventurous experiment of these four people has to be noticed because that seems to be the genesis of the bitterness among the parties. As per the understanding Mr. Roger Clark, Principal of Wittering Company, Mr. Stephen Moss. Principal of jussen Company, plaintiff. Principal of Outwood, Esher Company to consist of all the three above Companies, first defendant to be the Principal of Rubies Company, This Esher Company, Wittering, Jussen, Outwood along with Rubies to form a Company called Roadgold, and a Company called Yellow Gold, to be the Operational Company. An agreement called shareholders agreement is dated 1.1.94 was executed. A reading of the shareholders agreement would show how the parties were trying to take advantage of the situation obtaining in foreign countries and to my mind the contents of this agreement appear to be wholly unrealistic but that is not relevant to the case. However, the plaintiff having been a party to this agreement claims something contrary to the contents against the first defendant apparently when things did not materialise as the parties contemplated at the time of entering into such an agreement. As I said above, persons belonging to different parts of the globe without any faith and confidence amongst themselves masquerading as the proverbial 'Three Musketeers' had come to an adhoc understanding which appears to me to be unnatural and artificial and which has been done for the sake of business with avidity and avarice, and, therefore, in the natural course of events the parties have not been able to achieve anything lasting and useful not only to the peoples of the world but also to themselves. It is stated in the shareholders agreement, Rubies Overseas Ltd. is a Company

incorporated in the British Virgin Islands. A shareholding Company also is incorporated in the British Virgin Islands. Roadgold Enterprises was also incorporated in British Virgin Islands. It is stated "the parties desired to enter into this agreement to provide for the ownership, management and activities of Roadgold Enterprises Ltd. 'Operational Company' is designed as "Yellow Gold Co. Ltd., a wholly owned subsidiary Company. Company means Roadgold Enterprises." Service agreement is defined as "the agreement between the Company and each of Wittering Holding, Jassen International Ltd. and Outwood Investment Ltd. in the form annexed hereto as Ex. A, B and C." Clause 6 provides the business of the Company. 6.1 States the business of the Company is to act as the holding of the Company for 100% of the issue share capital of the Operational Company and to raise funds for the Operational Company. 6.2 Provides contemporaneously with the appointment of the Directors in Clause 3.2 the Company shall enter into the Service Agreements with Jassen International Limited, Outwood Investments Limited and Wittering Holdings Inc. under the terms of which inter alia the Company shall pay to each of such companies the sum of US\$ 3,00,000 on or before the execution of such. 6.3 Provides The business of Operational Company shall be to establish, develop and operate a telecommunications and media consultancy which shall seek equity and fee remuneration from large scale projects in exchange for the provision of its expertise and to carry on any other business agreed to by the parties. The other sub clauses in those would provide for as to how the parties are to 763 secure funds for the Operational Company. 12.1 refers to the parties getting things in confidence i.e. called confidentiality clause. The same is as follows :- "12.1 The parties hereto shall and shall procure the Company to keep and shall procure that their respective agents and employees and the agents and employees of the Company shall keep confidential all trade secrets, technical data or other information of a confidential nature beginning to or obtained from the other until the same shall have become generally known to companies engaged in similar business otherwise than through disclosure on the part of the Company. Clause 16.1 reads as follows:- "This Agreement contains the entire understanding between the parties hereto and supersedes any prior understanding and/or agreements between the parties hereto respecting the subject matter of this Agreement. There are no representations agreements arrangements or understandings oral or written between the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein." By this the parties had made it clear that they are governed only by the terms of the agreement and nothing else other than what is contended in the agreement would prevail. In the shareholders agreement it is to be noticed that under Clause 3.3 it is stated "the parties shall forthwith after the execution of this agreement procure the appointment as directors of those persons referred to in Clause 3.2." By letter dated 1.1.94 first defendant wrote to 1. Outwood Investments Limited 2. Wittering Holdings Inc. 3. Jassen International That the ultimate 100% shareholders, owner and sole principal of Rubies Overseas Ltd. is the first defendant. There are service agreements dated 1.1.94 between Roadgold Enterprises Ltd. and Wittering hold Ltd. Under this agreement a non refundable signing fee of 300,000 dollars has been paid to the Principal of Wittering (Mr. Roger dark). Mr. Roger dark representing Wittering Holding by letter dated 1.1.94 wrote to 1. Subhash Chandra 2. Rubies Overseas Limited 3. Roadgold Enterprises Limited that he is the sole principal for that company. 5. There is Another service agreement between Roadgold Enterprises Ltd. represented by the first defendant and Jassen International Ltd.; represented by D. Shera St. Moss. Here also a non refundable signing fee of 300,000 Us Dollars was paid to the 7th defendant. As to how the services are to be rendered as mentioned in the agreement. Defendant No. 7 Mr. Stephen Moss representing Jassen International

Ltd. by letter dated 1.1.94 wrote to; 1. Subhash Chandra 764 2. Rubies Overseas Limited 3. Roadgold Enterprises Limited that he was the ultimate 100% shareholder owner and sole principal of Jassen International Ltd. This is what is called a side letter. There is yet another agreement dated 1.1.94 between Roadgold Enterprises Ltd., represented by defendant No. 1 and Outward Investment Ltd., represented by the plaintiff. Here also a non refundable signing fee of 300,000 Us Dollars was paid to the plaintiff. The plaintiff alone did not execute any side letter and the non execution of side letter would entitle the First defendant to get back 300,000 Us Dollars paid under the service agreement. Whether the parties to this agreement and the shareholders agreement acted in accordance with terms thereof is not a matter before me but the relevancy of that fact is the parties to the agreement had only thought of doing some consultancy work and there was no other understanding between the plaintiff and the first defendant with regard to any other matter. On 18.3.94 7th defendant wrote to Mr. Eric Philips, A.T. and T Development Projects of Africa and Middle East. This letter is stated to have been written by the 7th defendant on behalf of the first defendant Subhash Chandra. What is stated by the 7th defendant in this letter is of some interest because he complains that the plaintiff had disclosed some material to third parties. The relevant portion reads as follows:- "Please be advised that Mr. Stephen Moss and - Mr. Roger dark, and their respective consultants and support staff, are not involved in Africom and have no relationship with it. Both individuals and their teams since January 1, 1994 have been part of ASCOM's core staff, in which capacity they have been engaged in developing ASCCOM's own plans for satellite telecommunications in Asia and Africa. These plans have been shaped with the participation of spacecraft manufacturers Martin Marietta Astro Space and Hughes Communications which companies have supplied to Ascom on a confidential basis, inter alia, detailed technical proposals. We believe that notwithstanding our best efforts to preserve and safeguard all proprietary information, the technical proposal developed by Martin Marietta Astro Space may have been improperly disclosed to Africom and may have been used in part, in their submission to At & T. We appreciate that At & T may have no knowledge of this situation and may not carrying out its obligations under its agreement with At & T. However, under these circumstances, it is appropriate that we inform you that (a) no authority has been given by us to permit use by Africom of any information supplied to us or developed by us, (b) that we will institute proceedings in appropriate jurisdictions seeking injunctive relief and/or restraining orders against any parties receiving, making unauthorised use, or participating in unauthorised use of such information. In any such proceedings, we will also seek damages against all relevant parties for consequential losses incurred as a consequence of such unlawful use. You will appreciate that we are also bound by confidentiality agreements with Martin Marietta in this respect." The plaintiff was aware of this letter in March 1994. No argument was advanced that plaintiff was not aware of it. Therefore, the inference is that by March 1994 itself the disputes between parties had come to the surface. There was a news item on 765 18.5.94 in Financial Times about the first defendant company placing orders with Hughes of the United States for geostationary satellite. This is only to show that in May 1994 itself the arrangement between first defendant and Hughes had become public. On 25.10.94 Mr. Prentiss Q. Yancey of Africom Telecommunications, on behalf of the plaintiff wrote to defendant No. 5/defendant No.6 asking them not to use the proprietary name "OBSIDAN" for its Mobile Satellite Base Telecommunication System. On 26.10.94 the plaintiff would appear to have written a letter to defendant No. 1. He emphasised "Each of you know that the satellite Mobile Personal Communications System project you are working on was created and authored by me-". Roger also knows that the project was introduced to both of the Us manufacturers by me long before

it was exposed to any of you. (including myself)". He further states that "Ted knows that I introduced the concept to Hughes and briefed them extensively in the U.S. once again long before any of you were involved." Therefore, Hughes knows about the system is admitted by the plaintiff in October 1994. Whether Hughes had it from plaintiff is a matter to be proved by him. The plaintiff in this letter would not also say that what exactly was his complaint except saying that the four persons came to know of 'this project' through the efforts of the plaintiff. The plaintiff for reasons best known to him would not specify what is the project in that letter. Project is a word of great import. It cannot be said a project is an invention of any person and that is not the claim of the plaintiff also. Why I am mentioning this aspect at this stage is when I refer to the pleadings and the other documents which have come on record after filing of the suit would show how the plaintiff had been labouring hard to project a case as if no one else on earth could have conceived of a particular mechanism, as it were, to go on with a project that is done by the first defendant. He would not in the letter disguise his rancour and would say that the four persons are attempting to steal and that just cannot work.

(6) By letter dated 23.11.1994 the Counsel for the first defendant Deacons wrote to the plaintiff to return the sum of Us \$ 300,000 paid under the service agreement as the plaintiff did not sign the side letter which was agreed to be signed by the plaintiff. Subsequently, it seems proceedings were initiated against the plaintiff in a Court of law in Hongkong. On 18.1.95 there was a news item in Times of India, New Delhi that Mr. Subhash Chandra will sign \$700m deal with either Hughes Aircraft Corporation or Martin Marietta for setting up a geostationary based, mobile communications system. It is also stated in the news item that new system which will be ready by 1998 will provide competition to two other satellite systems being put up: Inmarsat put up by the International Telecommunications Union and Globe star by a combined Motorola. On 23.1.95 there was a news item in the Asian Wall Street Journal stating that Hughes Aircraft Company has been given a contract by India-based Afro Asian Satellite Communications Ltd. to set up mobile telephone service to hand-held receivers in parts of the Asia as well as Africa.

(7) On 4.2.95, according to the plaintiff, he wrote to the first defendant stating "I note that inspite of several reminders you have failed and refused to settle my outstanding invoices. I also note the rather amateurish attempt by you to hijack my project and to take credit for my work, my designs and my 15 years of effort. I have already put you on notice in October that I will not tolerate this abuse. It has recently come to my notice that you have signed or are about to sign an Mou with 766 Hughes as part of an Smpc System for India. You are clearly not entitled to do so. I hereby put you on notice that any attempt to do so will be taken very seriously indeed. For the sake of the record I hereby revoke any express or implied license to use any of my confidential and or proprietary information in relation to the Smpc System and any attempt to implement such will be met with vigorous legal proceedings". It is not stated to which address the letter was sent and I am only referring to the contents of the letter to show that the mind of the plaintiff even in October 1994 itself and the plaintiff was aware of the contract between the first defendant and Hughes. He has assumed in the letter that he had the proprietary information in relation to the same P.C. System and that he was revoking any express or implied license. This shows that the plaintiff was not sure of his ground.

(8) On 24.3.95 the plaint was presented praying for the following reliefs :- "(a) declare that the plaintiff is entitled to a declaration that the information, technology, equipment and structural analysis more particularly outlined in the plaintiff's annexed Affidavit Annexure 'A' is proprietary information, know how and knowledge of a confidential nature, the proprietary rights of which vest in the plaintiff and that the defendants are not entitled to disclose, use and /or implement and /or exploit the same without prior permission; and (b) restrain the defendants, their servants and agents by an order of permanent injunction from in any manner directly and/or indirectly through themselves and/or through their business associates and/or other group of Companies in any manner disclosing, utilizing, exploiting and/or implementing the Smpc system, having the characteristics identified in the annexed Affidavit (Annexure 'A'), and based on the plaintiff's valuable and unique confidential information; and (e) to award mesne, compensatory and penal damages to the plaintiff for the sum to be computed by the plaintiff along with interest thereon at the rate of 18% per annum from the date of filing of this suit; and (d) award the costs of the instant proceedings to the plaintiff; and (e) grant such other and further reliefs as the nature and circumstances of the cases may require."

(9) The whole emphasis is laid by the plaintiff according to law on two important matters. One is that the plaintiff has been a very experienced person in the field and that he had invented a system which was not known to the humanity before and that invention by him is used by the first defendant with the help of Hughes. He would set out in detail his career right from the beginning and the projects in which he had worked and how he came to invent this system. In paragraph 6 at page 18 of the plaint he would give how he came to have the system discovered which reads as under :- "Combined with his past experience and know how including inter alia on Asia Sat and Star Tv, and Cedar wood and the years of living in Asia and Africa, the plaintiff was uniquely placed to review and evaluate Satellite based Tele-communications Systems. In this process, the plaintiff found that there were three basic approaches to 767 the problem of global satellite to transceiver communication each of which had its advantages and disadvantages: (a) By utilisation of the Low-Earth-Orbiting Satellite System (LEO) (b) By utilisation of Medium-Earth-Orbiting Satellite Systems (MEO). (e) By utilisation of Geo-Stationary-Earth-Orbiting Systems (GEO). The plaintiff concluded that Geostationary Satellite based Telecommunications Systems were in many ways the most cost effective but had been ruled out due to certain technical problems related inter alia to service area and spectrum allocation, satellite distance and Time Delay (Echo) and Satellite Distance and the size of then current and planned transceivers on Earth (for Geo Systems) and the historical evolution of this approach. The plaintiff then used his experience and know how and did some original thinking, and, also identified various available technologies and recombined and reconfigured them in a new design which would deal with the said problems above in a satisfactory manner. The plaintiff's perception of market potential and opportunity was also then at variance with others. The plaintiff thus generated the following unique solutions: (i) The plaintiff gave his system an unique name Satellite Mobile Personal Communications ("SMPC") System; (ii) and identified 3 unique satellite "FOOTPRINTS" System; (iii) combined achieve coverage of nearly 70% of the earth's population at; (iv) less than 20% of the projected cost of the Iridium Project and as much as (v) two years before any competitor; (vi) Time delays of 300 msec are in fact acceptable for this service; (vii) The elimination of Double-hop delays of more than 600 msec are accomplishable by utilisation of On Board Switching systems for "In system" handset to handset calls; (viii) The

utilization of higher power L-Band traveling Wave Tubes or the division of the Footprint into smaller spot beams would increase the radiated power on the ground; (ix) Increase in the size of the deployable parabolic antenna to greater than 5 meters; and (x) Combining the higher powered satellite with higher power L-Band traveling Wave Tubes; or (xi) the utilization of an amalgamation of smaller spot beams in conjunction with a greater than 5 meter deployable parabolic antenna; (xii) would enable the system to operate with small cellular type handsets; (xiii) Created a unique parallel construction program in order to maximize the opportunity of the earliest possible service commencement date; and 768 (xiv) minimize the historical risk of launch failure as a delay of service start; (xv) The Interconnection between the 3 Systems enables this to be extended to nearly 70% of the earth's population at a cost which contains no premium for distance of topography between to Smpc users on the system; (xvi) The plaintiff also configured a small light weight consumer transcribing device which is essentially a; (xvii) Gsm cellular device with a; (xviii) L-Band "front end" and which is flexible; (xix) multi-functional; and (xx) can be either "mobile" or "fixed" (xxi) yet accomplishes the connectivity for voice, data or fax and is not presently provided in this form by any one."

(10) He would state that he had dealt with this aspect in greater detail in his affidavit dated 24.3.95, marked as Annexure A.2 to the plaint. It is broadly stated that the plaintiff came into contact with the first defendant and the first defendant came to know about the system and using the system the first defendant is now entering into contract with Hughes. On a reading of the plaint, my impression is that the plaintiff is not prepared to disclose all the facts. He would not give particulars about how the first defendant came to know the system except stating that plaintiff was forced to disclose to the first defendant. It is not specifically stated in the plaint that the plaintiff had the documents relating to the system and those documents were given to the first defendant. The plaintiff has indulged in prolixity in setting out the facts with a view to making the reader not to see the real facts. The plaintiff does not refer to the effect of the shareholders agreement, the service agreement and the side letter to be executed by the parties. The averments in the plaint and the contents of the shareholders' agreement and the service agreement do not correlate to each other and the plaintiff is attempting to weave out a story totally different from those agreements. About the payment of 300,000 US \$, the plaintiff would state at page 35 of the plaint as under :- "The plaintiff said that he would require defendant No. 1 to make a good faith payment to him of US\$ 300,000 to underwrite the cost of his leaving Hong Kong and attempting to put a deal together between the African Smpc System and the Technical Consultancy. Defendant No. 1 agreed to make this payment as he understood the value of the plaintiff's confidential information." He would further state at page 36 as under :- "Subsequent to the above meetings an undated letter was signed by the plaintiff and defendant No. 1 in or around November 1993 recording the Agreement of Defendant No. 1 to pay the sum of US\$ 300,000 in anticipation of formal documentation being entered. The Plaintiff was to repay the sum only in certain circumstances. The Plaintiff believes that Defendants No. 1 based k7 were setting a systematic trap to unearth and extract information 769 relating to the Plaintiffs Smpc Systems from the Plaintiff in a covert and disguised fashion." The fact that on 9.12.93 the plaintiff received US\$ 300,000 is admitted in paragraph 18 of the plaint but the plaintiff, for reasons best known to him, would not refer to even the terms of the service agreement. In paragraph 19 at page 37 of the plaint how the plaintiff puts his case makes an interesting reading and it is as follows:- "The Plaintiff believes that Defendants Nos. 1, 6 and 7 were setting a systematic trap to unearth and

extract information relating to the Smpc systems from the Plaintiff in a covert and disguised fashion." This clearly shows that the plaintiff did not either of his own accord or, by mutual agreement himself and the first defendant, hand over any materials relating to Smpc system to the first defendant. The other facts related by the plaintiff in the plaint are not of any consequence when I am dealing with an interlocutory application because they require further evidence to deserve any consideration. The further case of the plaintiff is that defendants Nos. 1,6 and 7 have committed a breach of agreement. The plaintiff would not state what is the agreement. It is stated to page 53 of the plaint ignoring what he has stated in his letter dated 4.2.95 wherein he has stated that in October 1994 itself he has warned the first defendant. The plaintiff would state as under :- "It is clear that at Delhi unauthorised disclosures have been made. It was the Press Report from the Delhi (Exhibit 'B', also distributed inter alia in Delhi) with first drew the Plaintiff's attention to the misappropriation and unauthorised and un credited disclosure and to commercial exploitation in stages of the Plaintiff's said system and valuable confidential information." This itself shows that the plaintiff is not prepared to tell us the facts.

(11) The fulcrum of the plaintiff's case is his own affidavit filed as Annexure A. He would state that his meeting with Mr. Subhash Chandra, first defendant and the 7th defendant Mr. Stephen Moss were held in strict privacy due to confidentiality of his information. He would state that the business relationship did not proceed along the lines originally agreed to between the first defendant and himself. Here, I have to note that the plaintiff would not state what was originally agreed to between the parties. According to him, his experience in the field enabled him to evolve a system in which he had a proprietary right. He posed himself four problems. (1) Service Area and Spectrum Allocation; (2) Satellite Distance and Time Delay; (3) Satellite Distance and Power; (4) The Process of Solution. According to the plaintiff. Geostationary Satellite would mean the Satellite sent into the orbit to a distance of about 36,000 Kms from earth and the Satellite would have the same velocity or the speed of the earth rotating itself. In other words, the Satellite sent into the orbit would be traveling in the same speed as the earth and the effect of it would be that Satellite could be spotted in the same place and that is called Geostationary. The system evolved would make the communication very quick and from Satellite it will straight away reach the hand set without any intermediary stations. In the affidavit the plaintiff would offer solutions and he would state at page 72 of Part I of the file as under :- "In response to this aspect I evolved a unique program of parallel satellite 770 construction whereby two satellites would be constructed at the same time and three different Footprint configurations constructed so as to enable the first or second spacecraft to be employed over either of two markets. (13) Created a unique parallel construction program in order to maximize the opportunity of the earliest possible service commencement date and (14) minimize the historical risk of launch failure as a delay of service start, by construction of 3 antenna "feed horn" configurations. I evolved my own concept of Consumer utilization and product functionality for the system based upon my experience as described in above. The core proposition of the Smpc System rests upon a unique matrix evolved by me of product functionality, consumer need and systems cost as follows: (a) Connectivity-The system provides for connectivity across a large continental land mass. The interconnection between the 3 System enables this to be extended to nearly 70% of the earth's population at a (15) cost which contains no premium for distance or topography between to Smpc users on the system. (b) I also configured a small light weight consumer transcribing device which is essentially a (17) Gsm cellular device with a (18) L-Band "front end" and which is flexible.

(19) multi-functional and (20) can be either "mobile" or "fixed" (21) yet accomplishes the connectivity for voice data or fax and is not presently provided in this form by anyone. (16) Thus, I sum up my unique solutions as set out below : (i) I gave my system an unique name Satellite Mobile Personal Communications System ("SMPC"); (ii) 3 unique satellite "FOOTPRINT'S" which when; (iii) combined achieve coverage of nearly 70% of the earth's population at; (iv) less than 20% of the projected cost of the Iridium Project and as much as; (v) two years before any competitor; (vi) Time delays of 300 msec are in fact acceptable for this service; (vii) The elimination of Double-hop delays of more than 600 msec are accomplishable by utilization of On Board Switching systems for "In system" handset to handset calls; (viii) The utilization of higher power L-Band traveling Wave Tubes or the division of the Footprint into smaller spot beams would increase the radiated power on the ground; (ix) Increase in the size of the deployable parabolic antenna to greater than 5 meters; and (x) Combing the higher powered satellite with higher power L-Band traveling Wave Tubes; or (xi) the utilization of an amalgamation of smaller spot beams in conjunction with a greater than 5 meter deployable parabolic antenna; 771 (xii) would enable the system to operate with small cellular type handsets; (xiii) Created an unique parallel construction program in order to maximize the opportunity of the earliest possible service commencement date; and (xiv) minimize the historical risk of launch failure as a delay of service start; (xv) The interconnection between the 3 Systems enables this to be extended to nearly 70% of the earth's population at a cost which contains no premium for distance of topography between to Smpc users on the system; (xvi) I also Configured, as a component of the total system, a small light weight consumer transcribing device which is essentially a; (xvii) Gsm cellular device with a; (xviii) L-Band "front end" and which is flexible; (xix) multi-functional and (xx) can be either "mobile" or "fixed" (xxi) yet accomplishes the connectivity for voice, data or fax and is not presently provided in this form by any one."

(12) On 26.3.95 the plaintiff gets a letter from Mr. Prentiss Q.Yancey, which has already been extracted by me, stating that a Smpc system is to the best of his knowledge a proprietary work product created by Mr. Michael Johnson (plaintiff). The assertion by Mr. Yancey cannot prove the case of the plaintiff. After the replies filed by defendants Nos. 1 and 2 and after the affidavit of Mr. Paramjit Singh Bains was filed on behalf of the first defendant and the written statement was filed and the plaintiff had filed two big volumes of documents on 27.7.95 an affidavit from Mr. Roger Clark, stated to be by an expert, was filed in this Court. As I have noticed above, Mr. Roger Clark is one of those parties to the shareholders agreement and the service agreement along with the plaintiff, first defendant and the 7th defendant. In this affidavit he would not say anything as an expert on the Smpc system and it is very curious that he has been asked to deny the case of the first defendant and to assert that the case of the plaintiff to be true. It is dear that he has been asked to file the affidavit to support the plaintiff. In paragraph 7, Mr. Roger Clark states "Defendant No. 1 alleges that the present suit is a "counterblast" to Hong Kong proceedings issued by defendants Nos. 1 and 3. I agree with the response by the Plaintiff to such allegation. In particular I agree with the Plaintiff as to the reasons why US\$ 300,000 each was paid to myself, the Plaintiff and Moss. In my view there is no basis for a claim against the Plaintiff for repayment of the US\$ 300,000 as all conditions relating to the same were satisfied. I further concur and agree with the explanation given by the Plaintiff with regard to all the stated facts relied on by the Plaintiff with regard to such". He would go to the extent of saying that there has been a complete distortion of facts by the first defendant and he would concur and agree with the version of events and those facts set out by the

plaintiff. He would state "I agree with the plaintiff's claim in this suit, that he has, in fact, invented an unique system which is known as the Smpc system". Mr. Roger dark has not said, it is noteworthy, that the plaintiff gave any documents to the first defendant disclosing the system to the first defendant. A crucial fact is missing. To such an affidavit, the learned Counsel for the plaintiff would attach so much importance 772 and would urge that Mr. Roger Clark, who had played a vital role along with the plaintiff, has come forward with truth and his affidavit must be accepted in to to and the case of the plaintiff, prima facie, stands proved by the affidavit of Mr. Roger Clark. No doubt, Mr. Roger Clark has given full particulars about his qualifications as an Engineer and his experience but that is not relevant here.

(13) Three volumes of documents have been filed by the plaintiff. First volume consists of letters and fax messages running to 397 pages. Volume 2 in the file, the continuation of pages from 398 to 792 and volume 3 contains the pages from 793 to 1320. In Volume I, in the index items I to 13,15,78-103 they are all after suit. Other items in Volume I are relating to the correspondence and they do not throw any light on the point at issue. In Volume 2 pages are from 398 to 794. Here various diagrams and notes made by plaintiff from 3.3.93 up to 11.11.93. On this the argument by Mr. Kapil Sibal, learned Senior Counsel, is that the plaintiff using his computer had brought about these documents just to show that he had been working on it. Some of the documents show that the plaintiff had recorded those diagrams or notes even during late nights and early mornings. In the last page 792 it is noted that on 11.11.93 created by Michael Johnson at 04.21. Unless the plaintiff is able to prove all these things, the Court cannot act on these documents as they are, as they have been filed long after the filing of the suit. One may ask whether these documents would have been accepted if they had been filed along with the plaint. The answer is even then the position is the same. These documents repeat themselves. The explanation given by Mr. Ashok Desai, learned Senior Counsel is that in various editions of Text Books there will be repetitions in the subsequent editions and that would not mean that the author had not bestowed any thoughts on those things. In my view, the analogy is not at all apposite. Therefore, when I am considering the matter prima facie, these documents cannot at all be taken into consideration.

(14) Volume 3 are pages from 793 to 1320. Here also the plaintiff has noted down the notes and other diagrams and there is lot of repetition. Unless these documents are proved in accordance with law I cannot act on them. After perusing these three volumes, I feel I am not wholly unjustified in coming to a prima fade view that the plaintiff has produced these arid materials without any supporting evidence to substantiate the probative value of these documents. I may also note the oatmeal 'Eurekas' may happen.

(15) Before I go to the written statement and other materials produced by the defendants I and 2 I want to refer to the documents submitted by the first defendant to the Foreign Investment Promotion Board. The point urged on behalf of the plaintiff is that the affidavit Annexure A to the plaint and what is contained in this document submitted by the first defendant to Foreign Investment Board correspond and, therefore, it is clear that the first defendant had copied the system invented by the plaintiff. This document was submitted by the plaintiff on 17.8.95. In giving the summary of the proposed venture, it is stated in the document as under:- "This venture will create a world-class Indian company to operate and manage a state-of-the-art mobile satellite

telecommunications service called OBSIDIAN. This service has been developed by Afro-Asian Satellite 773 communications Limited (ASCOM), a company formed by an experienced group of satellite communication professionals with the support of leading satellite technology companies Martin Marietta and Hughes Communications from the United States. Ascom has the support of international financing institutions and has the expertise and capability to implement this high technology business ahead of competitive systems such as Iridium and Teledesic." The plaintiff must have come into possession of these documents even on the date of the filing of the suit. But it was not filed along with the plaint because this document was submitted in 1994. It is not the case of the plaintiff anywhere that the plaintiff came into possession of this document only in August 1995.¹ I do not go into the question whether the same document was the one filed by the first defendant. I assume for the purpose of this case for, prima facie, consideration of the materials i.e. the one filed by the first defendant before the Govt. of India. It is at all subject to proof at the time of trial of the case. The learned Senior Counsel Mr. Ashok Desai compared What is contained in page 12 of this document with the page 241 of the compilation filed by the plaintiff at the time of the argument. According to the learned Senior Counsel the first defendant had taken it from the plaintiff as contained in page 241 which was conceived by the plaintiff on 4.12.93 and what is found in page 12 of the document produced to the Government of India is the same as in page 241 of the compilation. On a perusal of these two documents, I am unable to agree with the submission of the learned senior Counsel. No material has been produced by the plaintiff to show that what is contained in page 241 of the compilation is what was thought by the plaintiff and was drawn by the plaintiff. In the absence of any clinching material, I cannot come to a conclusion that I can act on what is contained in p.241. What is not proved cannot form the basis of the plaintiff's claim?

(16) At page 55 of the document in Appendices the Hughes communication proposals is given. Therefore, what I find from this document is the first defendant has relied on the work of Hughes, United States. At page 62 reference is made to Obsidian Mobile Satellite Proposal. What is stated by the learned Senior Counsel for the plaintiff is that Obsidian is the name invented by the plaintiff and that has been now, without his permission, taken away by the first defendant. There is absolutely no material to prove this contention.

(17) A comparative study of Annexure A, the affidavit of the plaintiff filed along with the plaint and these documents submitted by the first defendant to the Foreign Investment Promotion Board does not show that first defendant has done any copying of the system, alleged to have been invented by the plaintiff. Why I am saying this before referring to what has been stated by the defendants 1 and 2 is when I notice the written statement and affidavit of Mr. Paramjit Singh Bains and Mr. Greenwood and other materials produced by the first defendant, the case of the first defendant could be well appreciated.

(18) The first defendant filed the written statement traversing the allegations in the plaint. The first defendant has also taken the point of jurisdiction. I expressed my view to the learned Senior Counsel that the point of jurisdiction cannot be gone into on mere affidavits and, therefore, I did not propose to go into that question. The learned Senior Counsel, therefore, did not address any arguments on the 774 question of jurisdiction. That will be dealt with at the time of the trial of the case.

(19) In paragraph 4 of the written statement first defendant clearly stated that the claim of the plaintiff is not at all acceptable in law and it is not true. Paragraph 4 reads as follows :- "With reference to paragraph 4 of the plaint, it is denied that based on the alleged experience of the plaintiff,, he developed the alleged unique and proprietary design for a new satellite system for providing voice, data and fax communication via a small handset and utilising a geo stationery satellite as alleged which is allegedly named as Satellite Mobile Personal Communication System (SMPC) as alleged or at all. The documents produced by the plaintiff themselves clearly prove that the joint Venture proposal he allegedly submitted through Africom similar to the one claimed in the plaint as his alleged exclusive concept and invention is based on two space craft options; Hughes Model Hs 601 spacecraft as being used by American Mobile Satellite Corporation "AMSC" or Martin Marietta Model Mm 7000 as used by Inmarsat. Defendant No. 1 states that the alleged joint venture proposal allegedly submitted by the plaintiff through Africom is a self defeating document of the plaintiff's alleged claim of Unique and Proprietary design for a new satellite system namely SMPC. The system set out in the alleged Joint Venture proposal, inter alia, states that the system is based on existing Inmarsat service or planned Iridium service. Defendant No. 1 submits that the claim of the plaintiff that he has invented the alleged telecommunication system named Smpc is devoid of any merits. In fact the press release issued by Inmarsat dated 28.7.1993 clearly shows that Inmarsat had decided to choose between Geo or Leo Systems for provision of its proposed global hand held satellite telephone service. Defendant No. 1 further states that a paper presented at the International Mobile Satellite Conference in Pasandena, California in June 1993 and published by Ios press-space communications 11 (1993) with the permission of the sponsors clearly show that what is claimed by the plaintiff as his alleged unique and invented system was in the public domain. Defendant No. 1 states that Smpc is generic and not specific. Defendant No. 1 states that the concept of geo stationery mobile communication was in the public domain and there is nothing unique or invented by the plaintiff. In fact prior to May, 1993, the Us based space and Communication Company Martin Marietta Astro Space was independently designing geostationary earth orbiting L-Band Satellite to Handset mobile communication systems and had undertaken extensive development in all aspects of technology as had been admitted by the plaintiff in his alleged proposal of Joint Venture. Defendant No. 1 submits that what is claimed by the plaintiff in the plaint appears to be only an idea conceived by the plaintiff to set up a project for setting up a telecommunication system by using geostationary satellites which are already in use. The plaintiff has not demonstrated any new concept or idea capable of being protected under the Copyright Act. Significantly, the plaintiff has deliberately omitted to produce all the documents referred to in the plaint." In paragraph 6 the first defendant has stated as under :- 775 "The plaintiff's alleged work allegedly illustrated in documents 1 and 2 appears to be a copy with minor variations from the presentation made by Hughes to the plaintiff in 1993 while the plaintiff was in the employment of Richard Li." In paragraph 6 (a) the first defendant stated thus :- "One of the major pioneers from 1988-93 of satellite to-handset Geo technology was the European Space and defense Contractor Matra Marconi; the Matra Marconi Hand Book has a major study programme dealing with Geostationary mobile satellite technology and development of L-Band systems for direct satellite to hand-set use. All of these studies were during the period prior to that claimed by the plaintiff for development of his alleged technology." In paragraph 8(c) the defendant had asserted "Indeed the so called unique solutions claimed in the plaint by the plaintiff were already well known to Hughes as a result of its development of the Amsc Project and associated research development and investment in Amt, all the technology for which

was and is the proprietary information of Hughes. The plaintiff became familiar with the research and development carried out by Hughes in this field in early 1993 when Hughes provided such a solution to the employees of the Li Shing group of companies including the plaintiff, who was an employee at the relevant time." In paragraph 8(d) the first defendant has specifically pointed out "significantly the plaintiff has not filed any document or design or technical drawing in support of his outrageous claim." At page 24 the first defendant referred to handsets in the following terms:- "The handsets claimed by the plaintiff on an original invention were in fact proposed by Marconi and Martin Marietta in their Transition System proposal to Immersed in January 1993. The defendant in any case has no idea or knowledge of any such device allegedly developed by the plaintiff, the development of which in any event is denied, and will rely on the handsets developed by the specialist suppliers, such as The Technology Partnership Ltd., P A Consultants, Loral, Ibm and Hughes Network Systems. The characteristics claimed by the plaintiff as unique are simply generic features applicable to all handsets and are not proprietary items of technology." About the payments made under the service agreement, the first defendant had referred to what exactly happened in the following terms :- "It is stated that in December, 1993, after meetings were held and discussions took place, defendant No. 7, plaintiff and the said Clark with a view to further defining the business relationship and arranging for finance by defendant No. 1, agreed that defendant No. 7, the plaintiff and the said Clark would enter into a Service Agreement with the Company of defendant No. 1. It was further agreed that the signing fee of US\$ 300,000 each would be paid to the plaintiff, defendant No. 7 and the said Clark. It was further agreed that in the event formal documentation consisting of the service agreement and letter of undertaking was not completed and signed by any of them by 15.1.1994, they would refund the said signing fee. It was further agreed that defendant No. 776 I shall have 40% of the shareholding of the joint venture and defendant No. 7, the plaintiff and the said Clark would collectively hold 60%. The Joint Venture would pay annual service fees of US\$ 5,00,000 per year to each of them. The Joint Venture would be funded to the extent of US\$ 5 Million by defendant No. 1. It was agreed that the said Esher would attempt to bring additional funds into the Joint Venture enabling the Joint Venture to repay the initially funded amount of US\$ 5 Million by defendant No. 1 so that the Joint Venture would become self-financing. It was further agreed that if this could not be achieved within 2 months i.e. by 28th February 1994 ownership interest would change and defendant No. 1 would be entitled to 60% of the Joint Venture and others would hold 40%. It was further agreed that the Joint Venture would also establish an operating Company which would develop the mobile satellite communications business in Asia. It was anticipated that if this new Joint Venture could be successfully promoted, all the parties would be able to secure direct equity interest in the new mobile satellite communications business." The first defendant also pointed out the default committed by the plaintiff (20) The fact that plaintiff, Mr. Roger Clark and the 7th defendant each of them was paid US\$ 300,000 is referred to by the first defendant.

(21) The first defendant has also stated in para 20 of the written statement how the plaintiff had acted contrary to the shareholders agreement and the service agreement, which reads as under :- 777 "The defendant No. 1 states that on around January 1994 a meeting took place when it was agreed that defendant No. 1 through his company Rubies Overseas Limited (hereinafter referred to as "Rubies") would enter into an Agreement with Esher Holdings Inc. (hereinafter referred to as "Esher") a company floated by defendant No. 7, the plaintiff and the said Clark regarding share

holding of the Joint Venture to be set up in the name of Roadgold Enterprises (hereinafter referred to as "Roadgold"). It was further agreed that Defendant No. 7, the plaintiff and the said dark would enter into a service agreement with the said Joint Venture through their respective companies. An Agreement between Rubies and Esher for controlling the shareholdings of the Joint Venture Roadgold and three agreements with the Joint Venture (Roadgold) and each of the companies of Defendant No. 7, the plaintiff and the said dark were executed on 1.1.1994. All these arrangements were prepared jointly by the Solicitors of defendant No. 1 and the said Mr. Gordon Oldham, Solicitor for Defendant No. 7, the plaintiff and the said dark. Mr. Oldham signed on behalf of Esher and the said three companies of Defendant No. 7, plaintiff and the said dark. On completion of the formal documentation agreed to, defendant No. 7 and the said dark also executed a letter of undertaking which became an integral part of the agreement dated 1.1.1994 confirming that they own their respective companies and they would provide exclusive and full time service through the said companies as provided in the service agreement. The plaintiff had also agreed to sign such undertaking but avoided signing as he had left Hongkong for an undisclosed destination. He spoke to defendant No. 1 on the phone and confirmed that he would sign the undertaking when they next met. The plaintiff in fact did not sign the said undertaking then or later."

The first defendant has also stated in paragraph 25 that "Sometime in the first week of February (1994) the plaintiff met defendant Nos. 1 and 7 in London and apologised for his behavior for the period prior thereto and requested that he may participate in the project. The defendant subsequently realised that this was a device on the part of the plaintiff to remove vital documents from the office of the defendant No. 5 relating to the mobile satellite communication project." This is a complaint by the first defendant against the plaintiff.

(22) The first defendant has categorically denied the assertion by the plaintiff that any private meeting on the evening of February 1994 in London in the residential property, belonging to the first defendant, that the plaintiff had been induced to part with his developmental ideas and information on the project and he was also induced to part with his intellectual property rights, on his ideas on the structuring, implementation and the execution of the Smpc system. The first defendant has also denied the meeting at Heathrow Airport, London in which the defendant made it clear that he was going to attempt the implementation of the plaintiff's Smpc system for India. These are all matters I may note at this stage itself can be decided only on oral evidence. In paragraph 30 of the written statement, the first defendant has also referred to the demand for US\$ 3,650,000 towards payment of license fee by the plaintiff. According to the first defendant, the demand was made in a fax received by him on 18th October, 1994 while the letter is dated 31.3.94. The first defendant has also stated that "It is also no secret that the satellite 778 manufacturers such as Hughes, Aerospace and Martin Marietta are willing to provide necessary technology and know-how on a turn key basis." I need not refer to the other averments in the written statement while I am dealing with the application for injunction as I feel they are not necessary at this moment. The averments in the reply to the application for injunction are more or less on the same terms in the written statement and it will be wholly burdening this judgment if I extract those averments also. The first defendant has secured an affidavit from Mr. Paramjit Singh Bains, stated to be an expert in the field. As stated above, the affidavit was filed in this Court on 6.7.95. Mr. Bains is stated to be a resident of 8326 Regis Way, Los Angeles, California 90045, Usa and he is the

General Manager for all Commercial Programs at Hughes Space and Communications Company, a business unit of Hughes Aircraft Company, located at California. U.S.A. According to him, he has a Bachelor of Science degree in Electrical Engineering from the University of California at Berkeley in December 1970, he received a Master of Science degree in Electrical Engineering from the University of California at Los Angeles in May 1973. He joined Hughes in August 1973. He is now aged 48 years. He has been working with Hughes for nearly 22 years. Prima facie, I feel that he is a competent person to speak about the system, now claimed by the plaintiff. About the footprint in page 8 of his affidavit, what he says is relevant and it is as under:- "The plaintiff claims that he has identified 3 unique satellite 'footprints'. In this regard I state that all satellites have 'footprints' and the identification of an appropriate 'footprint' is central to any business plan. A 'footprint' is nothing but the area of Earth covered by any satellite. Learned Judge is no doubt aware that in India, Star Tv is relayed by Asiasati, Cnn from Apstar I, and Doordarshan Channel 2 from Inset 2B. All these satellites have overlapping footprints. This is the equivalent of stating that the plaintiff has decided to locate his shop in Connaught Place, New Delhi as opposed to say South Extension, New Delhi because he believes that the Connaught Place location better suits the needs of his client. While this may be the basis of a business plan or a financial model, there can be no Intellectual Property Rights in the location of a shop or in the identification of a 'footprint'. Many satellites may use the same or very similar 'footprints'. He would explain the system in the following terms :- "In any event, I state that satellite coverage has been studied in great depth well before the first communication satellite was sent up in orbit in 1963. There is a huge wealth of published material which describe the available possibilities and the technological parameters in this regard. By way only of illustration, the following materials consider the precise claim of the plaintiff: (a) HK. Aghvami et al - "Land Mobile Satellites Using the Highly Elliptic Orbits - The Uk T-SAT Mobile Payload," 4th International Conference on Satellite Systems for Mobile Communications and Navigation. 17-19 October 1988 - which states that 3 satellites in the geostationary orbit provide virtually global coverage with latitudes + or - 75 degree latitudes. (b) J. Draim, "Three and Four Satellite continuous Coverage Constellations," J. Guidance, vol. 8, No. 6, November - December 1985 - which 779 states that continuous coverage can be provided to most of the world's populated land masses with 3 satellites. (c) J. Draim, "Satellite Continuous Coverage Constellations." U.S. Patent No. 4,809,935 (issued March 7, 1989) - which shows that 3 satellites could cover most of the earth's land masses and 4 satellites would provide continuous global coverage. (d) J. Benedicto et al.. "MAGSS-14: A Medium-Altitude Global Mobile Satellite System for Personal Communications at L-band". Esa Journal. Vol. 16, 117-133, 1992- which describes a variety of solutions and satellite positions which are capable of providing continuous global coverage. (e) M. Horstein, "Cellular Telephone Satellite System," Epa, published October 28, 1992 - which discloses many available option for positioning satellites which would be capable of providing continuous global coverage." He would state Iridium is a system utilizing satellites in Low Earth Orbit (LEO). He also explains the cost aspect and that is no invention of anything. The claim of the plaintiff that time delays of 300 msec are in fact acceptable for the service, (mille seconds). About this aspect, he says that is discussed in publication by M. Horstein, "Cellular Telephone Satellite System". Epa, published in October 28, 1992. About the claim of the plaintiff that On-Board Switching would reduce the problem of double hop delays, he would explain the position thus :- "I state that this is obvious as what is contemplated is that switching is not done on the ground. In layman's terms, this may be explained as follows. All telephonic communications must route through a telephone exchange which does the physical work

of connecting two people. The signal therefore travels from sender to satellite to exchange ('hop I') to satellite to receiver ('hop II') in one bit of conversation. It then goes in the other direction by the same process when the call receiver speaks. This is a double hop each way. It follows that one hop each way can be eliminated if the connectivity function normally provided by a telephone exchange can be performed in the satellite itself. This connectivity function can be provided in the satellite using digital electronics. The problem is twofold. The amount of digital electronics in the past have been much too large and heavy to be carried in satellites. Considerable work has been done in miniaturizing digital electronics in recent years. This is a field of high technology and the plaintiff does not claim that he is an inventor of sub-miniaturized digital electronics." He asserts that the idea of On-Board Switching is not a new one and in 1985 Nasa (USA) the Organisation which put man on the moon designed a satellite called 'SATS' which employed on board switching and this satellite was placed in orbit in 1993.

(23) The claim of the plaintiff about the utilising of higher power L-Band traveling Wave Tubes are the division of the footprint into smaller spot beams would increase the radiator power on the ground. Mr. Bains would state that the plaintiff has no detailed knowledge of mobile communication. He would characterise this as a mere idea but not a very good one. About use of multiple spot, Mr. Bains would state that already the issue had been discussed in the following works:- (a) J. Benedictoet et al., "MAGSS-14: A Medium-Altitude Global Mobile Satellite System for Personal Communications at L-Band," Esa Journal, Vol. 16, 117-133, 1992. (b) A. Mallinckrodt, "Integrated Cellular Communications System," U.S. Patent 5,073,900 (issued December 17, 1991). (c) M. Horstein, "Cellular Telephone Satellite System," Epa, published October 28, 1992." About the antenna design, the deponent in the affidavit would state this is again subject matter of discussion earlier in the following works:- "D. Sward, "Mobile Satellite Service for Canada," Proc. of the Mobile Satellite Conference, May 3-5, 1988. (b) C. Agnew et al., "The Amcsc Mobile Satellite System," (c) M. Zuliani et al., "MSAT A New Dimension in Satellite Communications," 37 Cong. of the International Astron. Fed. October 4-11, 1988. (d) J. Benedictoet et al., "MAGSS-14: A Medium-Altitude Global Mobile Satellite System for Personal Communications at L-Band" Esa Journal, Vol. 16, 117-133, 1992." Mr. Bains also referred to the two works to demolish the claim of the plaintiff, which are as under:- "(a) A. Mallinckrodt, "Integrated Cellular Communications," U.S. Patent 5,073,900 (issued December 17, 1991). (b) M. Horstein, "Cellular Telephone Satellite System," Epa, Published October 28, 1992." He asserts the whole industry has been taking about satellite to handsets communication for the last 10 years. Considerable work has been done in this field by many persons and following are the works in the field :- "(a) R. Rusch et al., "Odyssey. A Constellation for Personal Communications," 14th Aiaa International Comm. Satellite Systems Conference & Exhibit March 22-26, Aiaa 1992. (b) M. Horstein, "Cellular Telephone Satellite System," Epa, Published October 28, 1992. (c) J. Benedictoet et al., "MAGSS-14: A Medium-Altitude Global Mobile Satellite System for Personal Communications at L-band" Esa Journal, Vol. 16, 117-133, 1992." About the parallel construction programs, it is stated that the following satellite construction programs have adopted parallel construction programs :- "(a) R. Rusch et al., "Odyssey. A Constellation for Personal Communications," 14th Aiaa International Comm. Satellite Systems Conference & Exhibit March 22-26, Aiaa 1992. 781 (b) M. Horstein, "Cellular Telephone Satellite System," Epa, Published October 28, 1992. (c) J. Benedictoet et al., "MAGSS-14: A Medium-Altitude Global Mobile Satellite System for Personal Communications at L-band" Esa

Journal, Vol. 16,117-133,1992." About the claim of the plaintiff relating technology in voice, data or fax communication which is not at present provided in this form by anyone. Mr. Bains would state that plaintiff himself has not provided any such system and this is not the same as saying that industry is not moving in that direction. According to him, the following programs are currently in advance state of designing and construction for such systems:- "(a) Inmarsat (b) Iridium (c) AMSC" In any event, according to Mr. Bains the following works would show that everybody knows about it or otherwise it is in public domain :- "(a) C. Agnaw et al., "The Amsc Mobile Satellite System." (b) M. Horstein, "Cellular Telephone Satellite System," Epa, Published October 28,1992. (c) R. Rusch et al., "Odyssey. A Constellation for Personal Communications," 14th Aiaa International Comm. Satellite Systems Conference & Exhibit March 22-26, Aiaa 1992. (d) S. Shindo, "A Multi-Beam Mobile Satellite Communications System in Japan." Satellite Integrated Comm. Networks, 1988. (e) S. Shindo et al. "NTT's Program of Experimental Mobile Satellite System (EMSS) Using Engineering Test Satellite-V (ETS-V)," Review of the Electrical Communications Laboratories, vol. 36, No. 3, 1988." Mr. Bains has concluded in the following terms:- "It is my considered opinion that a composite reading of the attributes of the plaintiff's alleged Smpc system reveals a certain familiarity with the broad features that any satellite based mobile communication system would have but the material disclosed fails to address itself to a variety of technological issues that require solution before such a system can be put into operation. Each of the solutions is proprietary to these players but the plaintiff has not disclosed any such solutions. It is my considered opinion that the following organizations are in all probability in a position to launch a satellite based communications system: (a) Lockheed Martin (b) Hughes (c) Isro (d) Matra Marconi 782 (e) Loral Space Systems In fact Hughes under contract with Amsc (signed December 1990) has successfully launched a mobile communication systems satellite under the program name American Mobile Satellite Communication which is success- fully operating. Based on the data provided in the suit it is my considered opinion that the plaintiff is not one among them. I state by way of ample precaution that the foregoing opinion is based purely on the claim of the ownership of proprietary 'technology' and Intellectual Property by the plaintiff and I have neither considered nor believe myself to be an expert on any other question arising in the suit including any question of contractual liability." The first defendant has also secured an affidavit from Mr. David Alan Green Wood resident of United Kingdom. He says he has read the affidavit of Mr. Roger dark dated 17.7.95 filed in support of the plaintiff and he has also read the rejoinder of the plaintiff. About his experience he would state in the following terms :- " I was employed by Marconi Space Systems in Portsmouth, England (later Matra Marconi Space Systems after their joint venture with Matra in 1990) from June 1983 to December 1994 as a specialist in the design of telecommunications satellites for mobile applications such as are the subject of this plaint. I became Division Engineering Manager of the Communications Payload Division in May 1989, and Chief Engineer (Payloads) as well as Division Manager of the Payload Engineering Division in March 1993. In these several capacities as lead engineer for communications satellite payload design I was responsible for all of the engineering and all of the engineers working on communications satellite payload system and hardware design in the Marconi Space Systems company. This group of engineers under my direct responsibility numbered in size from 70 to 250 engineers through this period. The engineers under my direct responsibility carried out all of the design engineering of all of the communications satellite payload projects at Matra Marconi Space Systems up to my leaving the company in December 1994. These projects include communications payload designs for Military applications in the X Band such as

Skynet 4, Nato 4, and Skynet 5; communications payload designs for Fixed Service and Television applications in the C and the Ku Bands such as Eutelsat 11; Intelsat Fos, Koreasat and Europesat; as well as communications payload designs for Mobile Service applications such as Aramis, Inmarsat 3 and Inmarsat P21 in the mobile bands. Specifically of relevance in these proceedings engineers under my direct leadership carried out Payload designs for :- -The European Mobile Service payload between 1988 and 1991. -The Esa Digital Beam former Proposal, and European/Africa continental coverage payload between November 1992 and March 1993. -The Inmarsat Transition System payload proposal between September 1992 and April 1993. 783 -The Inmarsat P21 Mobile net generation Gso system and Meo system designs between February 1992 and December 1993 (in two phases)." He states in paragraph 7H his association with first defendant and how he contacted Martin Marietta and Hughes. Paragraph 7H is as follows :- " I joined Asc from Matra Marconi in December 1994 as Chief Engineer bringing my experience and understanding of Mobile satellite system with me; specifically my experience in the design of the Inmarsat Gso Transition System and also my experience in the designs of the Inmarsat Gso P21 systems. It is this background and experience which I used in December 1994 to generate an Rfp (Request for Proposal) to be sent to Martin Marietta and Hughes, and which Si have used during 1995 to help successfully bring Hughes into contract for a Turnkey system procurement. Since joining Asc in December 1994 (and prior to reading all of the historical documents at Asc during recent weeks for the purposes of understanding the Plaintiff in these proceedings) I have not come across any documents or correspondence existing at Asc which indicate that the documents relied upon in the plaintiff were submitted to Asc, or any documents before December 1994 which have bearing on the technology and system design of this mobile satellite system. The work that I have carried out since joining Asc has been based entirely on my own background and experience." In paragraph 9-C, he would state about the Turnkey System as under:- "The system design carried out by Hughes for Asc is a full turnkey system design in which Hughes retain and own all the intellectual property rights. The design uses 245 spot beams and so is well able to provide communications to a small handheld mobile terminal. The plaintiff alleged Smpc system which is merely a business plan, with only 15 spot beams as proposed by the plaintiff (apart from being entirely inadequate) makes me believe that the plaintiff has no understanding of the actual technology requirements for a system to communicate to small handheld terminals." He deals with the allegations in the rejoinder filed by the plaintiff and a reading of this affidavit gives a general idea to a layman like me that the claim made by the plaintiff is not that much an original system designed by the plaintiff. Whether the plaintiff would be able to make all these points in trial is a different matter but as things stand at present, nothing was said on behalf of the plaintiff which could persuade me to reject the affidavit by Mr. Green Wood though he is employed under the first defendant. His qualification and experience in the field cannot be doubted. His assurance, prima fade, appear to me to be full of force. I cannot reject the affidavit of Mr. Green Wood as being blindly in support of the first defendant, as contended for by the plaintiff. There is difference between the affidavit of Mr. Roger Clerk on the one hand and the affidavit of Mr. Bains and Mr. Green Wood on the other hand. I have attempted to make a brief analysis of what they have stated in their respective affidavits.

(24) Now comes the affidavit of the 7th defendant Mr. Moss. He filed the affidavit on 11.8.95. He says he has got experience in international communications for more than 30 years. He is a BSC. Economics from the London School of 784 Economics and an Mba from the Harvard Graduate

School of Business Administration. He was involved in senior level in communications projects in Europe, North America and Asia including the start up of Star TV. Between March 1991 and 1993 he was employed in various capacities by Mr. Richard Li in his various companies. He says he worked along with the plaintiff under the directions of Mr. Richard Li. The plaintiff was employed in a non-technical line function for Star as an advisor and corporate strategist and later as an advisor to Mr. Richard Li. The plaintiff's work was in non-technical areas supporting corporate and competitive strategy. Plaintiff was not routinely consulted on technical matters and when technology issues came up in general discussion, his comments were considered as non expert opinion. He states that Mr. Richard Li started a new company called Pacific Century Group (PCG) based in Hong Kong till December 1993. Plaintiff was employed on a full time basis as an employee and not as a Consultant by Companies controlled by or affiliated with Richard Li. In paragraph 11 Mr. Moss states that the plaintiff asked him to approach the first defendant to see if first defendant might be interested in financing a mobile satellite communications project for Asia and Africa. He contacted the first defendant and no materials were supplied by the plaintiff to me or to the first defendant. He states that in around the middle of 1993 a discussion took place between the first defendant and Ex. Star Team comprising myself, Mr. Roger dark and the plaintiff. The Star Team understood that the first defendant had recently completed the sale of part of his Hong Kong television interests to Mr. Rupert Murdoch and was interested in new projects. And no original materials, documents or presentations of a confidential or proprietary nature were ever provided by the plaintiff or any member of the Star Team to the first defendant. First defendant on principle accepted the Team commitment if the members of the Star Team would work with the first defendant for his project. Again Mr. Moss reiterated on Saturday, 4th December 1993 plaintiff and the 7th defendant met the first defendant at the Grand Hyatt Hotel in Hong Kong to finalise the agreement. At the meeting Mr. John Richardson, a solicitor and partner with the firm of Deacons of Hong Kong was also present. First defendant agreed to back the project provided that clear legal documentation was signed by all parties. It is again asserted by Mr. Moss, the plaintiff did not provide any documentation, materials, project plans, or business plans of any kind to the first defendant. Nor did the plaintiff make any representations about the confidentiality or proprietary nature of any information. As a matter of fact, business requirements and plans for undertaking to work were not at all discussed. Mr. Moss also states Mr. Gordon Oldham (Counsel of the plaintiff) was asked to sign the shareholders agreement on behalf of the plaintiff and other members of the Star Team. He also states that there was service agreement. One crucial aspect, about which the 7th defendant has stated is as under :- "Therefore, in specific response to the plaintiff's request, the defendant No. I agreed to make an up-front payment of US\$300,000 each to myself, the plaintiff and dark provided that each of us would sign a letter acknowledging receipt of the funds and stating that if formal documentation along the lines agreed was not entered into by 15th January, 1994, the amounts would be returned." He also states that plaintiff has no training in engineering or technology, had no 785 substantive technical or engineering knowledge and had only a layman's understanding of technical matters. He also speaks about the reason for misunderstanding. That when the plaintiff was reluctant to work for the project and insisted that the plaintiff should not take the money now given by the first defendant unless he was prepared to openly and honestly coming to the project the plaintiff became angry. He has also given an information that in early December 1993 prepared to complete agreed documentation, the plaintiff received sum of US\$ 300,000 from the first defendant. He left Hong Kong without completing the formal documentation stating that

Mr. Oldham would sign the documents on his behalf. The documents, the shareholders agreement and the service agreement were signed at Mandarin Hotel in Hong Kong with Richardson (Deacons) Oldham (lawyers of plaintiff), 7th defendant and Mr. Roger Clark. Mr. Oldham was authorised to sign the shareholders agreement and service agreement on behalf of Wittering, Yancey, Outwood. However, the side letters that each member of the service Companies was the principal officer of the respective Companies were to be signed by the members. The plaintiff left Hong Kong without signing such a side letter confirming that he was the principal officer of the service Company. Mr. Oldham, the plaintiff's lawyer promised to get the letter signed from the plaintiff. This was never done by the plaintiff. Mr. Moss would further state that since the plaintiff did not sign the said letter he should have returned the sum of US\$ 300,000 to the first defendant.

(25) The plaintiff thereafter went to U.S. to contact Martin Marietta and At & T who were interested in a mobile satellite system over Africa. Mr. Moss would state that he was under impression that plaintiff was doing all this pursuant to the shareholders agreement and the service agreement entered into by himself, plaintiff, Mr. Roger dark and the first defendant. The plaintiff also requested Mr. Roger dark and Another Consultant Mr. Gary Goodchild, who were under contract with the first defendant and were being paid on a full time basis by the first defendant to travel to Us to support plaintiff's initiative to raise funds for first defendant's project. What Mr. Moss has stated in paragraph 25 would clearly bring out the conduct of the plaintiff. Paragraph 25 reads as under :- " I then became aware that the plaintiff had been communicating with At & T solely on behalf of Africom Telecommunications Ltd. (Africom) and not on behalf of the joint venture. Moreover once dark and Goodchild were in the Us, I became aware that the plaintiff was using their presence to raise money directly and sole for Africom without the knowledge of myself and defendant No. 1. The plaintiff represented to the Us spacecraft manufacturers Martin Marietta and to At & T plaintiff that dark was part of the Africom team and included dark's name in Africom proposals to At & T. The plaintiff had dark attend meetings on behalf of Africom and with At & T. With dark's support, the plaintiff obtained funds from At & T, none of which was ever offered to the defendant No. 1, notwithstanding the fact that it was the defendant No. 1 who had at all times being paying for the professional services of dark and Goodchild."

(26) Therefore, the complaint by the first defendant against the plaintiff that he was trying to over reach the first defendant though on a first impression I had my own doubts, the assertion by the 7th defendant confirms that the plaintiff had not 786 been acting bona fide and, as a matter of fact, was acting contrary to the shareholders agreement and the service agreement. This is my, prima facie, view and whole thing would depend upon what emerges after the examination of the parties at the trial of the suit.

(27) Mr. Moss would also state that the plaintiff attempted to persuade him also to travel to Us to support his Africom project but he refused to go as that would be contrary to the agreement entered into between the parties. He would also state that he persuaded Mr. dark and Mr. Goodchild to remain with the First defendant. This was achieved, and himself. Mr. dark and Mr. Goodchild began to work for the project of the first defendant in London towards the end of January 1994. He would also state that out of US\$ 15 million to be potentially raised from At & T, the plaintiff proposed to transfer only US\$ 5 million to the joint venture and retain US\$ 10 million for himself in Africom.

This was not the intention when the shareholders agreement and the service agreement were signed. As a matter of fact, US\$ 15 million was not raised and only an amount less than US\$ one million was offered.

(28) 7TH defendant would further state that in February and early March 1994 a meeting took place at No. 11 Berkeley Court, London where the first defendant had established a project office. During the discussions it became apparent to the first defendant that the plaintiff was not willing to participate in the joint venture project which he had committed himself and it became clear to the plaintiff that the first defendant was not interested in Africom. At this point plaintiff abruptly left the apartment taking with him proprietary documents, that were lying at the Fax receiving station. These documents included a report on Satellite Tv Project and a full copy of the international regulatory filings for the first defendant's project, which were under preparation by the consultant of the first defendant, Mr. John Christensen. The 7th defendant had stated that the plaintiff had completely reneged from the service agreement and he denies the case of the plaintiff. He asserts that to his knowledge the plaintiff never supplied any information to the first defendant.

(29) The other allegations in the affidavit are not necessary for the present purpose.

(30) Mr. Roger dark, whose affidavit I had considered earlier, it may be noticed does not give any details as given by the 7th defendant, though he had also worked with the 7th defendant for the first defendant. A reading of the two affidavits would show that Mr. Roger dark who had defected to the plaintiff's side from the first defendant is not prepared to tell us the truth, for reasons best known to himself. A reading of the affidavit of the 7th defendant makes me feel that 7th defendant has come forward with the facts as they had happened and there is absolutely no motive on the part of the 7th defendant to act against the plaintiff or there is no special reason except that he is working with the first defendant, that he is completely supporting the first defendant.

(31) Therefore, on the materials placed by the parties, which have been referred to by me above, expressing my, prima fade, view then and there, I now proceed to discuss the submissions made by the learned Senior Counsel for the parties.

(32) Mr. Ashok Desai, learned Senior Counsel for the plaintiff submitted that 787 the plaintiff is not basing his claim on any copyright. The plaintiff S.No. 755/95 possesses what is called an intellectual proprietary right in the system invented by the plaintiff by a configuration on materials covered by various source by virtue of intelligence, experience, peculiar skill and a great labour. That intellectual proprietary right was given by him to the first defendant. Using that, the first defendant is trying to make a lot of money out of it. He referred to the springboard doctrine. Elaborating his arguments what he submitted that plaintiff's case involves three 'Cs', (1) confidentiality, (2) communication of information to the first defendant, (3) copying of the same by the first defendant.

(33) He referred to the decision reported in Saltman Engineering Coy. Ltd., Ferotec Ltd. and Monarch Engineering Coy. (Mitcham), LD. v. Campbell Engineering Coy., Ltd., 65 R.P.C. 203. In this case the matter was decided by the Court after full trial. Briefly stated the facts are, the plaintiffs were the owners of the copyrights in certain drawings of tools for the manufacture of leather

punches. Such drawings were delivered to the defendants by a director of the Company. At the time the drawings were delivered there was an implied condition that the defendants should treat the same as confidential. The main part of the case was based on breach of confidence and the argument was that such a right may be infringed without there being a contractual relationship. The Court on evidence held that it was satisfied that in manufacturing some sets of tools the confidential information was made use of. What the Court had observed to highlight the principle that they were considering is relevant and the same is as follows :- "I think that I shall not be slating the principle wrongly if I say this with regard to the use of confidential information. The information, to be confidential, must, I apprehend, apart from contract, have the necessary quality of confidence about it, namely, it must not be something which is public property and public knowledge. On the other hand, it is perfectly possible to have a confidential document, be it a formula, a plan, a sketch, or something of that kind, which is the result of work done by the maker upon materials is the fact that the maker of the document has used his brain and thus produced a result which can only be produced by somebody who goes through the same process. What the defendants did in this case was to dispense in certain material respects with the necessity of going through the process which had been gone through in compiling these drawings, and thereby to save themselves a great deal of labour and calculation and careful draughtsmanship. No doubt, if they had taken the finished article, namely, the leather punch, which they might have bought in a shop, and given it to an expert draughtsman, that draughtsman could have produced the necessary drawings for the manufacture of machine tools required for making that particular finished article. In at any rate a very material respect that saved themselves that trouble by obtaining the necessary information either from the original drawings or from the tools made in accordance with them. That, in my opinion, was a breach of confidence." Ultimately, injunction was granted and that is a different matter.

(34) Next Mr. Desai, learned Senior Counsel referred to the decision in 788 Cranleigh Precision Engineering Ltd. v. Bryant and Another, 1966 R.P.C. 81. The facts that are relevant to be noticed are these. An engineer of the Company invented some system by which he developed a method of above ground swimming pool. That system had two unique features namely, a plastic clamping strip clamping the inside lining to the outside wall, and an overlapping inter fit of vertical steel panels forming the frame of the pool. The very same engineer formed a different Company and after having formed the Company he started using the system owned by the Stol, erstwhile Company in which he was employed. The plaintiff Company brought the action against the engineer who was the Managing Director of the Company and his name was Stephen Bryant. The Managing Director after coming away from his Company formed that Company by name Cranleigh Production Engineering Ltd., similar to name of the plaintiff which was Cranleigh Precision Engineering Ltd. The question arose whether that Bryant was under an obligation or duty of a confidence to the plaintiff Company. It was held by the Court that the knowledge about the two special features of the tool was a trade secret of the plaintiff and was confidential, and Bryant owed a duty to the Company. At page 85 the Court noted the arguments of the Counsel for the defendant in the following terms:- "There are two distinct and separate branches of the law of confidential information: (1) Where there is a contractual obligation; (2) Where there is no contractual obligation, and the plaintiff must rely in aid and equitable doctrine to protect his interests. In most of the reported cases on, (1) the relationship was one of master and servant, and these again fell into two classes: (a) where there was an express term about confidentiality (in which case the matter becomes one of construction); and (b) where

there was none (in which case the question becomes one of deciding what term the law annexes to the contract of employment." At page 90 the learned Judge of the Queen's Bench held as under :- "In my judgment the plaintiffs are correct in their contentions upon this issue. I think the knowledge that this particular clamping strip was the right type of damping strip to use for this particular purpose, coupled with the knowledge of how to define to a plastics manufacturer what was required for this particular purpose and what plastics manufacturer could readily supply this particular form of strip, is and was a trade secret of the plaintiffs. I take the same view in relation to the inter fit of the plates, which it is worth noting that Bryant and the defendant company in their leaflet have described as "unique". Accordingly, it follows that if Bryant acquired this knowledge in confidence as the plaintiffs' Managing Director, he is not entitled to make use of it in breach of his obligation of confidence to the plaintiffs." At page 91 the learned Judge concluded as under :- "Bryant, in my judgment, acquired this information, which, as I have held, was confidential information, as the plaintiffs' managing director, and he acquired it in confidence. He has sought to take advantage of it since he left the plaintiffs to his own advantage and to that of the defendant company. In my judgment, that, on the authorities, involves a breach of his duty of confidence to the plaintiffs, and he should be restrained from committing such breach and the defendant company should also be restrained from taking advantage of that breach." Therefore, there were clear materials to base the conclusion in the above case about the nature of the invention, about the conveying of the information to the defendant and also copying of the same by the defendant. Learned Senior Counsel for the defendant also relied upon the passages from *Saltman Engineering Coy. LD/scase*. The learned Judge had no difficulty in holding on facts that a person who had obtained information in confidence cannot be allowed to use it as a springboard for activities detrimental to the interests of the persons who had made the confidential communication. Therefore, in my view, this case is of no assistance to the plaintiff.

(35) He then referred to *Merchant Adventurers Limited v. M. Grew & Company Limited (1973) R.P.C. 1*. The action was brought by the plaintiff in this case for an interlocutory injunction stating that the defendants had infringed the plaintiff's copyright in drawings for their electric light fittings named as "Trimling 1020 series" and the "Trimling 1030 series". The plaintiff claims copyrights in the drawings. Graham, J, who decided the matter, held as under ; - "Many drawings whether sectioned or not are so simple that any reasonably intelligent person can visualise what they represent in three-dimensional form. On the other hand, there are drawings, both sectioned and otherwise which are extremely difficult to understand and which many non-experts would get little or nothing out of at all. These drawings are, to my mind, in the first category and not the second, and would I think be readily understood by a non-expert, who would, in my judgment, be entitled to look at the whole series of drawings, including the legends which say in general terms what the drawings are representing. That he would be entitled to look at the series is I think clear from the "Popeye" case, where there was a very large number of drawings representing "Popeye" in various attitudes and forms, and it was not possible to say that the infringement was the same as any one drawing in particular. So here, in my judgment, an inspection of the drawings produces in the mind a clear impression of cylindrical and square fittings with clean side lines produced by the form of snap-on joints illustrated, the proportions and angles being also illustrated. This impression is embodied both in the plaintiffs' and defendants' fittings. For the reasons I have given, the plaintiffs have in my judgment made out a prima facie case of infringement of their copyright." I am not able

to see how this case helps the plaintiff. The learned Senior Counsel for the plaintiff relied on the decision reported in *Temple Instruments Limited v. Hollis Heels Limited*, (1973) R.P.C. 15. This is also a case of claim on the basis of copyright. The plaintiffs prayed for an interim injunction to restrain the defendant from infringing the copyright in a drawing of a 'divan legs' stating that the divan legs manufactured and sold by the defendant were substantially similar to divan legs produced by the plaintiff in accordance with the design shown in the drawing. Graham, J. sitting in Chancery Division granted injunction in favor of the plaintiff on the basis of the drawings produced by the parties. The learned Judge opined that the balance of convenience lay in granting injunction because the damage that would be caused to the plaintiff by continue to sale of the defendant's 790 goods and the consequence disruption of the plaintiff's business which will be very difficult to estimate. Here also, the dictum laid down by the learned Judge is different. The learned Senior Counsel for the plaintiff then relied upon the decision of the Supreme Court of South Africa reported in *Harvey Tiling Company (Pty.) Limited v. Rodomac (Pty.) Limited and Another*, (1977) R.P.C. 399. The question posed before that Court was about trade secrets in the process of manufacturing tiles. That was a case of employee using the process after his release from the employer. After referring to the *Saltman Engineering Co. Ltd.*'s case granting an injunction the Court held :- 1. There was substantial identity between the plaintiff's and the defendant company's plant; 2. The first defendant did not have to go through the expensive process of designing its own plant and suffer the effort and delay of getting into production as we had the information from the employer and that saved great deal of time and money; 3. That the first defendant had copied the drawings from the plaintiff. This is also a case not useful to the plaintiff. The learned Senior Counsel for the plaintiff then relied upon the decision reported in *Elanco Products Limited and Another v. Mandops (AgroChemical Specialists) Limited and Another*, (1980) R.P.C. 213. This is a judgment of the Court of Appeal in England.. The facts can be stated in the following terms:- "The plaintiffs are members of a group of which the parent is an American company called Eli Lilly (U.S.), which held an English patent for a selective herbicide, Trifluralin, which, unlike some weedkillers, acts not directly by application to the weeds themselves but by incorporation into the soil, and it was, I think, the first of its kind. In order to make this new product a viable commercial proposition, it was necessary for the plaintiffs to decide which weeds would be susceptible to this treatment, which plants or crops would most benefit, or indeed might be harmed, which would be likely to afford a profitable market, what would be the most appropriate method of application, what depth would be suitable, and whether it should or should not be combined with some other, and if so what, herbicides. Then they had to obtain approval from two public bodies, the Pesticide Safety Precaution Scheme, referred to as "PSPS", and the Agricultural Chemical Approval Scheme, referred to as "ACAS". The former, as its name implies, is concerned with the safety of the public, and the latter with the validity of the claims made by the producers of herbicides as to their effects. For this purpose they conducted a considerable number of field tests and carried on other research work over a very considerable period of time. They refer to it in their evidence as "a Herculean effort". Having done all that, they then compiled certain sales literature, consisting in part of what they put upon the containers and in part of separate leaflets giving on all relevant matters and such warnings as might be necessary. The action arises out of alleged copying by the respondents of the appellants' sales literature." It was contended on behalf of the plaintiff-appellant that their literature was a 791 compilation of information discovered or selected by them in which they have acquired copyright on the principles laid down by House of Lords in 1964 (1) Weekly Law Report 273 (*Football Coupon's case*). The learned Judges also noted

that the appellants had established and the respondents were not. The learned Judges concluded on facts on the evidence produced that what the respondents had produced to be a blatant copy of the plaintiff's mail and, therefore, injunction should be granted. Buckley Lord Justice posited in the following terms:- "As I understand the law in this case, the defendants were fully entitled to make use of any information, of a technical or any other kind, which was available to them in the public domain, for the purpose of compiling their label and their trade literature, but they were not entitled to copy the plaintiffs' label or trade literature thereby making use of the plaintiffs' skill and judgment and saving themselves the trouble, and very possibly the cost, of assembling their own information, either from their own researches or from sources available in documents in the public domain, and thereby making their own selection of material to put into that literature and producing their own label and trade literature." This is also not of any assistance to the plaintiff.

(36) The learned Counsel for the plaintiff referred to the decision reported in *William Hill (Football) Limited v. Ladbrooke (Football) Limited*, (1980) R.P.C. 539 the judgment of Court of Appeal in the *Football Coupon's* case which I had already referred to. It is only to be noticed that decision of Court of Appeal was affirmed by the House of Lords in (1964) 1 W.L.R. 273 : (1964) All E.R. 465.

(37) The learned Senior Counsel for the plaintiff then referred to the judgment reported in *Eraser and others v. Thames Television Ltd. and Others*, 1983 (2) All England Reports 101=1984 Q.B.D.44. The facts are as follows - "In 1973 the second plaintiffs, three female actresses, formed a rock group with the assistance of the first plaintiff, who was their manager and also their composer. The actresses and the manager developed an idea for a television series which was to portray the formation of a three-girl rock group and the members' subsequent experiences. The series was to be part fact and part fiction, the factual part being based on the actresses' own experiences, and was to focus on both the group and the individual members' lives to contrast their collective character with their individual characters. The three actresses intended that they would appear in the series as the three signers and that their manager would compose music for the series. Oral discussions took place between the actresses, the manager, a representative of the first defendant, a television company (Thames), the second defendant, the scriptwriter, and the third defendant, the producer, in which the idea for the series was disclosed to the defendants in confidence with a view to its realisation. As a result of those discussions and in consideration of a payment by Thames of pounds 500 the actresses and the manager granted Thames an oral option which was later confirmed in writing. The confirming letter stated that Thames was to 'acquire an option on your services in connection with a possible new series', that the actresses were to have first refusal should the series be proceeded with, and that if they declined the offer Thames was to have the right to make the series with three other actresses. In January 1975 one of the actresses, A, was engaged to play in a musical which was to begin in April. In February Thames renewed the option and commissioned the scriptwriter to write scripts for the series after deciding to make the series in September 1975. Unsuccessful efforts were made by A's agent to obtain her release from the musical. The actresses and the manager by letter agreed to participate in the series in accordance with the terms of the option. A stormy meeting between "Thames, the producer and the manager followed and soon after that Thames informed the manager by letter that unless A was free of all other work commitments by the next morning the parts in the series would be recast. The release from the musical was not obtained in time and the series was subsequently made with three other actresses in the leading

roles. The actresses and the manager sued Thames, the scriptwriter and the producer claiming damages (i) that the manager had acted merely as agent for the three actresses and not as a principal party to the agreement and was therefore not entitled to sue in his own right, (ii) that the contract related only to the services of the actresses and did not embrace rights in the idea for the series, (iii) that the actresses' and the manager's conduct amounted to a constructive refusal of an offer of parts, and (iv) that the law of confidence did not extend to an idea which had been expressed orally." At page 116 *Hirst J., Queen's Bench decision*, expressed the view copyright law is an essence concerned with the negative right of preventing the copying of physical material existing in the field of literature or the arts. The learned Judge also referred to *Saltman Engineering Co. Ltd. 's case*. About the reliance of mere information, the learned Judge observed as follows :- "With regard to the requirements of form and degree of development of information or ideas. Counsel for the plaintiffs placed strong reliance on *Seagerv. Copydex Ltd. (1967) 2 All ER415, (1967) 1 Wlr 923*. In this case the plaintiff, in the course of discussion with the defendants of a carpet grip which he had invented, orally volunteered to the defendants what Salmon LJ described as 'the germ of the idea' for a different form of carpet grip which the plaintiff had devised. Later the defendants developed and marketed a carpet grip which was unwittingly based on the plaintiff's alternative type of grip. The Court of Appeal concluded that the plaintiff's idea was the 'springboard' which enabled the defendants to devise their own grip and held that the defendants were liable for breach of confidence. Counsel for the plaintiffs submitted that this case is a strong authority (albeit in a different field) that confidence can attach to an oral idea and that even comparatively undeveloped ideas are capable of protection. I find this case of great assistance." In *Sir Robert Megarry V.C: Coco v. A.N. Clark (Engineers) Ltd., (1969) R.P.C. 41* the Court observed as under :- "Something that has been constructed solely from materials in the public domain may possess the necessary quality of confidentiality: for something new and confidential may have been brought into being by the application of the skill and ingenuity of the human brain. Novelty depends on the thing itself, and not upon the quality of its constituent parts. Indeed, often the more striking the novelty, the more commonplace its components." 793 In *Thomas Marshall (Exports) Ltd. v. Guinle, (1978) 3 All ER 193* the position of law is stated thus :- "if one turns from the authorities and looks at the matter as a question of principle, I think (and I say this very tentatively, because the principle has not been argued out) that four elements may be discerned which may be of some assistance in identifying confidential information or trade secrets which the Court will protect. I speak of such information or secrets only in an industrial or trade setting. First, I think that the information must be information the release of which the owner believes would be injurious to him or of advantage to his rivals or others. Second, I think the owner must believe that the information is confidential or secret, i.e. that it is not already in the public domain. It may be that some or all of his rivals already have the information; but as long as the owner believes it to be confidential I think he is entitled to try and protect it. Third, I think that the owner's belief under the two previous heads must be reasonable. Fourth, I think that the information must be judged in the light of the usage and practices of the particular industry or trade concerned." Mr. Ashok Desai, learned Senior Counsel relied on the following passage "Nor do I accept Counsel for the defendants' argument that an idea which is capable of development in more than one format is not entitled to protection. In my judgment the precise format is a matter for the writer to decide, and the fact that it is developable in more than one format in no way diminishes its intrinsic value." Ultimately, the Court granted injunction. In my view, the subject matter in that case is different from the subject matter of this case. In my view, the

quantum of proof required on the basis of the quality of the materials produced would largely depend on the subject matter in which the claim is made, especially Intellectual Property Rights. I am quite unable to understand how the view taken by the Court in the above case would be of any help to the plaintiff. Again the facts are so clear in that case. On a reading of that judgment I feel no other conclusion would be possible than that was taken by the learned Judge. He relied upon the judgment of the Court of Appeal of New Zealand where copyright was claimed in moulded plastic disk which were used for manufacture of toys which are in form supplying disk known as "Frisbee". Mr. Ashok Desai, learned Senior Counsel relied on what is stated at page 160:- "The meaning of "original" is not defined in the Act but it was discussed (in relation to literary work and his judgment is equally applicable to an artistic work) by Peterson J. in *University of London Press Ltd. v. University Tutorial Press Ltd.* (1916) 2 Ch. 601 at 608, and his judgment has been frequently cited with approval in subsequent cases :- "The word "original" does not in this connection mean that the work must be the expression of original or inventive thought. Copyright Acts are not concerned with the originality of ideas, but with the expression of thought, and, in the case of literary work', with the expression of thought in printer writing. The originality which is required that the expression must be in an 794 original or novel form, but that the work must not be copied from another work-that it should originate from the author." The question of originality was further discussed by Lord Atkinson in *Macmillan & Co. Ltd. v. Cooper (K b J)* (1923) 40 T.L.R. 186: "It will be observed that it is the product of the labour, skill, and capital of one man which must not be appropriated by Another, not the elements, the raw material, if we may use the expression, upon which the labour and skill and capital of the first have been expended. To secure copyright for the product it is necessary that labour, skill, and capital should be expended sufficiently to impart to the product some quality or character which the raw material did not possess, and which differentiates the product from the raw material." Lord Atkinson then referred, with approval, to a decision of the Supreme Court of the United States bearing on the same point, and continued: "It brings out clearly the distinction between the materials upon which one claiming copyright has worked and the product of the application of his skill, judgment, labour, and learning to these materials, which product, though it may be neither novel nor ingenious, is the claimant's original work in that it originates from him, and is not copied." The originality that is required by the Act relates to the manner in which the . claimant to the copyright has expressed his thought or ideas. The Act does not require that the work be novel in form but that it should originate from the author and not be copied from another work. The idea of a flying disc may not have been novel at the time when Wham-O produced its Frisbee but the particular forms in which they were produced were original in that they were the works of their authors and regarded as entire entities or as a whole were not copied from any other materials. In the instant case it is not simply the creation of the ribs or rings by drawing, wooden modelling, or injection moulding which is original but rather the whole of these materials which in their respective forms produce the work of their respective creators. The works are the whole works: the ribs or rings are only parts of them. The question of novelty is immaterial where the author has produced the result without reference to any pre-existing subject matter because he has not copied. Where, however, the author has made use of such pre-existing subject matter it has to be determined whether he has exercised such independent skill and labour to justify copyright protection for the result: *Martin v. Polyplas Manufacturers Ltd.* (1969) N.Z.L.R. 1046; *Ladbroke (Football) Ltd. v. William Hill (Football Ltd.* (1964) I W.L.R. 273." The learned trial Judge granted injunction and that was affirmed by the Court of Appeal. This is again on the materials placed before

the Court and on evidence. I do not find anything useful in the above case.

(38) The learned Senior Counsel for the plaintiff brought to my notice the decision of this Court reported in John Richard Brady and Others v. Chemical 795 Process Equipments P. Ltd. and Another. . The learned Judge stated the facts briefly in the first paragraph itself, which are as under :- "By this application under Order 39, Rules 1 and 2 read with Section 151 Civil Procedure Code . plaintiffs have prayed for an ad interim injunction to restrain the defendants from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in Machines that are substantial imitation and reproduction of the design, manuals and Drawings of the plaintiffs' Fodder Production Unit and thereby amounting to infringement of the plaintiffs' copyright therein, or from dealing in those Machines made on the basis of information and know how disclosed to them by the plaintiffs in conditions of strict confidence, and from doing any other thing as is likely to lead to passing off the defendants' products as those of the plaintiffs." The plaintiffs helped the defendants to set up a Fodder Production Unit in India. The plaintiffs sought quotations from the first defendant for the supply of thermal panels, manufactured by it. The panels required were of highly specialised type. To enable the defendants to send their quotations the plaintiffs supplied all technical material, detailed know how, drawings and specifications concerning the Fodder Production Unit under the expressed condition that it must maintain strict confidentiality regarding the know how. The learned Judge had noted "discussions between the parties culminated in an agreement whereby defendant No. 1 agreed to supply the specialised thermal panels, required by the plaintiffs. Terms and conditions of the agreement were set out in a letter dated 13.1.84, written by defendant No. 1 to plaintiff No. 2. The plaintiffs came forward with a complaint that the machine produced by the defendants is entirely based upon the disclosures made by the plaintiffs and they have committed breach of confidence reposed on them. The learned Judge has also extracted what the defendants had agreed relating to the confidentiality, which is as under :- "We solemnly undertake that during the pendency of the Contract we would not manufacture these panels for anybody else nor would be instrumental in divulging the details and the specifications furnished to us." Before discussing the case on the point the learned Judge opined as under:- "This is just the situation in which the Courts must enforce the general rules of equity and restrain breach of confidence as recommended in the leading Saltman's case, Saltman Engineering Coy. Ltd., Ferotec Ltd. and Monarch Engineering Coy. (MITCHAM) Ltd. v. Campbell Engineering Coy. Ltd., (1948) 65 Rpc 203, by Patrick Heam in his book the Business of Industrial Licensing, by Roskill, J. in Cranleigh Precision Engineering Ltd. v. Bryant, 1966 Rpc 81, by Lord Denning, M.R. in Seagerv. Copydex Limited, 1967 Rpc 349 and also by S. Ranganathan J. of this Court in Konrad Wiedemann Gmbh & Co. v. Standard Castings P. Ltd. and Others" The learned Judge relied upon Saltman's case. The learned Judge also had compared the work of the plaintiffs and the defendants' machine and had come to the conclusion 'that apart from the striking general similarity between the defendants' Machine and the Drawings of the plaintiffs being obvious to the eye, though the defendants' claim that there are some functional differences between their 796 Machine and the Fpu, the defendants had access to the Drawings of the plaintiffs as discussed above, and, the rapidity with which the defendants have produced the Machine lead to the inference that the defendants have copied the Drawings of the plaintiffs. It is significant to point out that the defendants have not shown how in fact they had arrived at their Machine. In such circumstances, the inference is unescapable that the plaintiffs have established a prima facie case of copying to which the defendants have to answer. This

prima facie view formed by me is supported by the principles laid down by the House of Lords in *L.B. (Plastics) Limited v. Swish Products Limited*, 1979 Rpc 551. The learned Judge expressed the view that Drawings and other technical information regarding the plaintiffs' Fpu entrusted to them under express condition of strict confidentiality, which they have apparently used as a 'spring-board' to jump into the business field to the detriment of the plaintiffs'. With great respect to the learned Judge, the view expressed by His Lordship is the only one that can be taken on the facts of that case.

(39) The learned Senior Counsel for the plaintiff then referred to the decision in *Water low Directories Limited v. Reed Information Services Limited*, 1992 Fleet Street Reports 409. That case involved the complaint of Telephone Directory. The plaintiff published the Solicitors and Barristers Directory and claimed copyright in it. The defendant published Butterworths Law Directory. Having regard to the subject matter of the case, I do not think I will be justified in dealing with it in greater detail.

(40) The learned Senior Counsel for the plaintiff referred to Cleek & Lindsell on Torts Sixteenth Edition 1989. He drew my attention to the passage at page 1648, which reads as under:- "Most confidential information actions are concerned with these. Where, for instance, two parties enter into an agreement to exploit an industrial process or invention a relationship of confidentiality is readily inferred. Likewise when apparatus, drawings, or specifications are provided for use for a specific purpose, their use for any other purpose will be restrained." The Author has referred to the springboard doctrine in the following terms:- "Very often, part of the confidential information is in the public domain and part is not, or the complete package of confidential information, as such, is not in the public domain but could be arrived at by diligent enquiry or routine research,. Where the owner of the confidential information has himself made it public, for instance by publishing it in a patent specification, no difficulty arises; relief will be refused. But where a material amount of work would have to be done to arrive at it, the position is different. It is here that the springboard doctrine arises; the Courts will not permit someone who has come into possession of such information to take a short cut and make use of it in order to steal a march on his competitors or to compete with the person from whom he obtained it in confidence. Thus, one who has obtained possession of such a package may actually be put in a worse position than his competitors; he will not be permitted to make use of it unless he obtains it independently from a legitimate source. But such a disability will not be continued indefinitely; an injunction will only be granted over the period during which the unfair advantage continues."

(41) There is no difficulty in appreciating the principles laid down on the basis of the springboard doctrine but difficulty would arise only in its application to the facts of a given case.

(42) The learned Senior Counsel for the plaintiff referred to the decision in *Mithlesh Gupta v. Mahipal and Another*, 1989 (3) Delhi Lawyer 27 by way of answer to the contentions of the learned Senior Counsel for the first defendant that documents filed by the plaintiff are not true and they have been concocted for this case. Mr. Ashok Desai, learned Senior Counsel relying upon this case contended the question whether the documents had been created or not can be decided only after the trial of the suit and prima facie the Court has to proceed on the materials made available by the plaintiff. I am not able to accept the proposition contended for by the learned Senior Counsel in its

very widest form. Even at the interlocutory stage probative value of the documents has to be considered prima facie for the purpose of deciding the interim relief. The facts of the case relied on by the learned Senior Counsel are entirely different.

(43) The learned Senior Counsel for the plaintiff relied on passages from Worldwide Trade Secrets Law. I refer to the following passages out of due deference to the learned Senior Counsel, though in my view, they do not help me in deciding the issue in this case :- "In principle, an employer's customer lists can qualify as trade secrets and a misappropriator can be enjoined from using them in his business, although the Courts tend to scrutinize closely claims involving customer lists. After termination of an agency relationship, an agent has no duty not to compete with the principal, but does have a duty "not to use or disclose to third persons, on his own account or on account of others, in competition with the principal or to his injury, trade secrets, written lists of names, or other similar confidential matters given to him only for the principal's use or acquired by the agent in the violation of duty." The agent is entitled to use general information concerning the method of business of the principal and the names of customers retained in his memory, if not acquired in violation of his duty as agent. As stated above, trade secret protection is not limited to technical and scientific information. Business information, such as cost and pricing, projected capital investments, inventory, marketing strategies, and customer lists, may qualify as trade secrets. Customer lists have been said to lie at the periphery of trade secret protection. From a policy standpoint, they are perceived as problematic, because protecting them tends to reduce competition by reducing the possibility that a former employee, or his new employer, will be able to compete effectively with the former employer. In addition, customer lists are generally prepared in the ordinary course of business and do not require the kind of extra investment in time and money that the trade secret laws are designed to encourage. 798 What the foregoing means is that customer lists may receive protection, but that claims for trade secret status will be carefully scrutinized."

(44) The learned Senior Counsel for the plaintiff also relied upon Copinger And Skonejames Copyright Thirteenth Edition 1991. At page 720, it read as under:- "There is a broad and developing equitable doctrine that he who has received information in confidence shall not take unfair advantage of it or profit from the wrongful use or publication of it. He must not make any use of it to the prejudice of him who gave it, without obtaining his consent or, at any rate, without paying him for it. It has for long been clear that the Courts can restrain a breach of confidence arising out of a contract or any right to property." The learned Author has stated the principles affecting breach of confidence were fully considered by the House of Lords for the first time in Attorney-General v. Guardian Newspapers, 1990 A.C. 109 at page 722 about the obligation of the party receiving information the learned Author has stated as under :- "In general, it is thought that in such circumstances an obligation not to use or disclose would be implied, and this would extend to a plot or elaborated idea which would not, in general, be protected under the law of copyright. Whereas copyright protects material which has been reduced to a permanent form, the general law of confidence may protect either written or oral confidential communications. Copyright is good against the world generally, while confidence operates against those who receive information or ideas in confidence. Copyright has a fixed, statutory time limit which does not apply to confidential information, though in practice the obligation of confidence usually ceases when the information or idea becomes public knowledge. There may also be differences as to the ownership of copyright in a

work and the entitlement to restrain a breach of confidence in respect of it." The learned Author has also laid down the following elements of action for breach of confidence:- "In some cases, the Courts have paid attention to considerations which also arise in cases where they have to determine whether copyright subsists in a particular work; for example, the amount of time, skill and labour expended on its creation.. Thus, it has been said that what makes a document confidential is the fact that the maker of the document has used his brain and has produced a result which can only be produced by somebody who goes through the same process; and a person breaches that confidence when he dispenses with the necessity of going through the process which has been gone through in compiling the document or collecting the information and avails himself of the fruits of the other's efforts, thereby saving himself a great deal of labour and calculation. This consideration has been emphasised in the various cases in which news agencies have sought to protect the improper acquisition and use of information supplied by them to subscribers. Thus, in the case of Exchange Telegraph Co. Ltd. v. Central News Ltd. Stirling J. said: "By the expenditure of labour and money the plaintiffs had acquired this information, and it was, in their hands, valuable property in this sense -that 799 persons to whom it was not known were willing to pay, and did pay, money to acquire it." On the other hand: "Equity ought not to be invoked to protect trivial title-tattle, however confidential. There must be brought into existence, by the application of the skill and ingenuity of the human brain, some novel or confidential information." The learned Senior Counsel for the plaintiff relied upon the following passage :- "The principle is clear enough when the whole of the information is private. Difficulties can arise when the information is in part public and in part private, as, for example, when some of the information is published in the form of a patent specification. "When the information is mixed, being partly public and partly private, then the recipient must take special care to use only the material which is in the public domain. He should go to the public source and get it, or, at any rate, not be in a better position than if he had gone to the public source. He should not get a start over others by using the information which he received in confidence. At any rate, he should not get a start without paying for it." It has been said that this "springboard" principle extends so far as to prevent a person who has received information in confidence from using that information even after it has been published by or with the consent of the person from whom the information was originally acquired .Thus in Terrapin Ltd. v. Builders' Supply Co. (Hayes) Ltd. Roxburgh J. said; "As I understand it, the essence of this branch of the law, whatever the origin of it may be, is that a person who has obtained information in confidence is not allowed to use it as a springboard for activities detrimental to the person who made the confidential communication, and springboard it remains even when all the features have been published or can be ascertained by actual inspection by any member of the public." Similarly in the Saltman case Lord Greene pointed out that while the recipient of the confidential information could, like any one else, buy the article, measure it and make his own mould, he could not lawfully shorten his labours by resort to the confidential know-how he had learned. On this view the recipient of the confidential information is placed under a special and permanent disability in the field of competition in order to ensure that he does not get an unfair start."

(45) The learned Senior Counsel also brought to my notice the Modern Law of Copyright by Hugh Laddie at page 32, the Author has stated in the following terms about the protection :- "On consideration it will be perceived that any literary or dramatic work contains a combination of detailed ideas, thoughts or information expressed in a particular language or notation; and once it is

conceded that the protection is not confined to the actual language or notation used, it must follow that what remains, and is protected, consists of that collection of ideas, thoughts or information." Nobody can take any exception to the proposition. The learned Senior Counsel then relied upon the judgment of the Supreme Court reported in R.G. Anand v. M/s. Delux Films and Others, . Mr. Kapil Sibal, learned senior Counsel for the first defendant also relied upon this case. The case of the plaintiff in that case was that his play 'Hum Hindustani' which was very popular and 800 received great approbation from the press. On coming to know of this, the defendants approached him for taking a feature film on the basis of the play. The plaintiff gave them the materials of his play. Thereafter, without his knowledge borrowing his ideas and themes produced his play as picture known it as 'New Delhi' and thus defendants infringed his rights. The Supreme Court affirmed the decision of the learned Courts negating the claim of the plaintiff after analysing the evidence on record. The Supreme Court laid down the following propositions:- "1. There can be no copyright in an idea, subject-matter, themes, plots or historical or legendry facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work. 2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the Courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted, work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy. 3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works i clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original. 4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises. 5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence. 6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case law discussed above. 7. Where, however, the question is of the violation of the copyright of stage play by a film producer or a Director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader perspective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the 801 viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved."

(46) On the basis of the above case, it was vehemently contended by Mr. Ashok Desai, learned Senior Counsel for the plaintiff, that on the materials produced by the plaintiff the confusion is irresistible that the springboard doctrine would apply and the plaintiff has made out a case for the grant of interim injunction pending the suit.

(47) The principle relating to confidentiality is succinctly stated the text book *Equity Doctrines & Remedies*, Third Edition by M/s. Meagher Gummow Lehane. At page 867 in paragraph 4105 the statement of law is in the following terms :- "There is now an abundance of decisions where there was no contract but relief was given, expressly on equitable grounds. In *Moorgate Tobacco Co Ltd. v. Philip Morris Ltd. (No. 2)* (1984) 156 Clr 414 at 438, Deane J, delivering the judgment of the High Court, said that a general equitable jurisdiction to grant relief against actual or threatened abuse of confidential information, nor involving any tort or breach of contract or some wider fiduciary duty, should now be accepted. That passage was adopted by Scott, J., at first instance, in *Attorney-General v. Observer Ltd.* [1990] 1 Ac 109 at 147, and by Bingham J in the Court of Appeal, *supra* at 216. But what seems so plain today was not always so. The first two decisions of the English Court of Appeal plainly and exclusively relying on an equitable duty of confidence are comparatively recent. The first (often quoted since) was *Saltman Engineering Co Ltd. v. Campbell* (1948) 65 Rpc 203. The defendant was restrained from manufacturing tools from drawings put into his hands by the third plaintiff for the limited purpose of manufacturing tools for the first plaintiff. The Court of Appeal (reversing Vaisey J) held "that there was a contract between the defendant and third plaintiff. But Lord Greene Mr went out of his way to hold that even if this were not so the defendant would still be accountable, because an equitable obligation of confidence could arise independently of contract. In the present case, "the defendants got those drawings into their hands, knowing or knowing shortly afterwards that they belonged to Saltman, that they were obviously confidential matter and they knew that they had got them..-for a strictly limited purpose" (65 Rpc at 216). These words were accepted and applied by the same Court in *Seager v. Copyde Ltd.* (1967) 2 All Er 415, where there was no question of any contract. The plaintiff there had a patent for a carpet grip he called the "Klent". Through the medium of a television program titled "Get Ahead", he became known to the defendants. Long negotiations ensued with a view to the defendants exploiting the invention commercially by arrangement with the plaintiff. In the course of those abortive discussions, the plaintiff, who was deaf but garrulous, volunteered (without being asked to do so) details of a new un patented grip of his devising which he called "Invisigrip". Later, the defendants sought to patent for themselves the Invisigrip and the plaintiff, appearing for himself before Lord Denning Mr, Salmon and Winn Ljj, refused an injunction to restrain use of the information imparted as to the Invisigrip, but obtained an inquiry as to damages The Master of the Rolls purported to apply the "broad 802 principle of equity that he who has received information in confidence shall not take unfair advantage of it". At page 870 the learned Authors have made a comparison between equity and common law in the following terms :-- "Equity and common law in this field operate to produce different consequences. First, equity may afford remedy where the disclosure was in the course of negotiations that never produced a contract: *Seager v. Copy (lex Ltd.* (1967) 2 All Er 415; *Ab Consolidated Ltd. v. Europe Strength Food Co.* (1978) NZLR515; *Lac Minerals Ltd v International Corona Resources Ltd* (1990) Fsr 441. Secondly, where injunctive or other equitable relief is sought in the exclusive jurisdiction, the plaintiff need not show legal remedies to be inadequate (there will be none); nor, need it be shown that the plaintiff has any proprietary right, so that, for example, the plaintiff in *Argyll v. Argyll* (1967) Ch 302 at 322 had standing to enjoin newspaper publication of matrimonial confidences without showing any proprietary right in them. Thirdly, equitable remedies are susceptible of adjustment to the particular case in a way the law does not envisage, by, for example, the imposition of terms on a successful plaintiff and equity has its own scheme of defenses, for example, unclean hands and delay, which may defeat in equity a plaintiff who would

prevail at law. If the values protected at law are seen as absolutes, those in equity tend to be relative." About the springboard doctrine, the learned Authors have expressed the following view:- "This "doctrine" is attributed to Roxburgh J in *Terrapin Ltd. v. Builders Supply Co (Hayes) Ltd.* (1967) Rpc 375; the Court of Appeal in the same case (1960) Rpc 128 at 130) expressed the principle as forbidding use of information by a defendant "as a springboard" for activities detrimental to the plaintiff, even when all the information has otherwise reached the public domain; because he has a start over other members of the public, the defendant must be placed under a special disability in the field of competition. He, therefore, may be restrained from user for that period which competitors would need to put their produce on the market by, for example, "tooling-up" and organizing production and distribution: *Potters-Balloting v. Weston-Baker* (1977) Rpc 202 at 206; *Harrison v. Project & Design Co. (Redcar) Ltd.* (1978) Fsr 81. If the defendant has only known of and has not wrongly used the information before it became public, then the doctrine does not apply to him and he is subject to no special restraint thereafter: *Peter Pan Manufacturing Corp. v. Corset Silhouette Ltd.* (1963) 3 All Er 402 at 408." The authorities on this subject were reviewed by the New South Wales Court of Appeal in *United States Surgical Corporation v. Hospital Products International Pvt. Ltd.* (1983) 2 Nswlr 157 at 228-33; rev'd on other grounds 156 Clr 41. The Court concluded that the "springboard" doctrine was "not based on some artificial or arbitrary doctrine to be applied regardless of the facts of the case" and concluded: "In a principle applied in conformity with the more general principle that a person misusing confidential information must answer for his default accord- 803 ing to his gain. A head start may often be the gain in these cases. If it is the gain, damages will be assessed accordingly and any other relief such as injunction will be moulded. If it is not the gain, the method of assessing damages or the appropriateness of some other remedy has to be considered in the light of what that gain is." The learned Authors have stated that the position in Australia is the same. They have stated at page 878 as under :- "In this welter of distinguished disputation, it was Owen CJ in *Eq* who got to the heart of the matter in seeing that equity acted on the conscience of the defendant not in aid of any proprietary right. This view now represents settled doctrine in Australia. In *Moorgate Tobacco Co Ltd. v. Philip Morris Ltd. (No. 2)* (1984) 156 Clr 414 at 437, Deane, J. said of the law of breach of confidence: Like most heads of the exclusive equitable jurisdiction, its rational basis does not lie in proprietary right. It lies in the notion of an obligation of conscience arising from circumstances in or through which the information was communicated or obtained."

(47) On 1.9.95 the learned Senior Counsel for the plaintiff submitted 'Note on Sequences of plaintiff's System Iteration'. In paragraph 2 this is what he stated :- "As a result of his own knowledge and experience, plaintiff denied a series of specifications relating to his vision for a specific Mobile Satellite System which he calls Smpcs and which are recited in the plaint paras 4 and 7 (and plaintiff's rejoinder para 4.29 pages 47 and 48, para 4.32 (iv) (v) page 51, para 7.1 page 79, para 16 (xi) page 86, para 4.10 page 116 and para 6.9 page 125 and affidavit of Roger dark). These parameters and specifications included, inter alia, what he presented to the two manufacturers Hughes and Martin Marietta in order to obtain a proposal from them relative to technical execution, costs and timing. (Plaint page 21 para 8 rejoinder page 116)." In paragraph 3, it is stated thus :- "While the plaintiffs filed documents contain an extensive and detailed progression of the iterations over time which clearly establish plaintiffs line of progressive thought. Plaintiffs own system criteria and specifications are included, embodied and given both form and content in 4 documents, I of

which was filed with the plaint as (Document No. 2 in the list of documents filed on 25.3.95) and three others (filed documents Volume 2, items 127 and 128 pages 735-791 and filed documents Volume 3, item 146 page 1255 and 1256." This is only a repetition of what the plaintiff had given in the documents in three volumes. This was only to lay emphasis on the case of the plaintiff. The thrust of the argument of the plaintiff is stated in the following terms :- "The Smpc Systems description and specifications contained in these 4 items constitute the plaintiffs intellectual property and confidential information and fulfill the requirements with which a Satellite System Customer can approach manufacturers for detailed construction proposals (Rejoinder page 86, 116, 48, 51, 52, 60)." 804 The plaintiff also gave the Iterative Sequence of plaintiffs Smpc's with Martin Marietta, Hughes, Africom and ASCOM. On 1.9.95 the learned Senior Counsel also submitted notes with a title "Plaintiffs Reply to Defendants Submission No. Iv entitled 'PLAINTIFF'S Smpc System Borrows Existing System DESIGNS'. In particular, Mr. Ashok Desai, learned Senior Counsel dealt with the affidavit of Mr. Greenwood. He submitted that no doubt others in the Field knew about the system now protected by the plaintiff but according to him they also kept it confidential. Therefore, we have to infer that the plaintiff has been aware of the fact that he was not the originator of the system or the ideas but had already become a matter of public domain. The fact that the plaintiff's system is unique is a matter for evidence. The plaintiff did not make any attempt to disguise that he is not an Engineer by profession in electronics or related subjects or has had any practical training in the manufacture of electronics goods or any other allied products. His case is that he has been in the business of telecasting including its viability and that gave him an incitation to innovate and his constant and persistence cudgeling his brains over the process made him conceive of the ideas to evolve a system which he thought he could give to the world towards the end of the 20th century. Mr. Ashok Desai, learned Senior Counsel for the plaintiff, contended that Mr. Greenwood has spoken to very important aspects of the system from documents which are confidential for Matra. It is not for the plaintiff to make a grievance about it. Mr. Greenwood, according to the learned Senior Counsel, has made the position of Matra most vulnerable. The point is whether Mr. Greenwood had disclosed to the Court about the existence of the system elsewhere and this Court is not concerned with the propriety or the conduct of Mr. Greenwood in informing this Court about what others had done in the field. In the notes the plaintiff states that Mr. Greenwood has been kind enough to share with us all of his confidential documents from Matra. What is stated in the notes would make the position in this case very transparent, which read as under:- "What is clear from all of this is that during January- March 1993 INMAR- Sat was studying all its possible alternatives (GEO, Meo And LEO) and that one of its many contractors was Martin Marietta while the European Space Agency was also studying its possible alternatives {Global v. Regional etc.) and that the Esa issued an invitation to Tender on 21 January 1993 regarding digital beam framing techniques for a possible payload configuration which Matra Marconi Space responded to-on the 24 March, 1993 with a highly confidential proposal. One month later on the 6 May, 1993 Martin Marietta Astro Space and its subcontractor Matra Marconi made a presentation to Inmarsat which combined two elements: The beam framing techniques of Matra developed in response to the Esa tender, and The Geo concept given to Martin Marietta by Inmarsat in its direct contract to study a Geo based system. Fearing a negative decision on Geo by Inmarsat, Martin and Matra presented with Eric son the proposal to be found as Annexure 13 of the Greenwood Affidavit page 189. 805 Mr. Greenwood had access to these documents by virtue of his employment. See page 125 of Annexure 12 - This document was a highly confidential document and not available to the public or in the public

domain. See page 189 of Annexure 13 - This document was a confidential document and was not available to the general public or in the public domain."

(48) What the plaintiff wants to convey, I feel is that each person knowing the system kept it secret to himself and it has not become a matter of public domain. I find it difficult to accept this case of the plaintiff.

(49) The first defendant had produced before this Court a booklet captioned "Inmarsat Transition System". In the first page giving the contents of the booklet it is stated as follows :- "Prepared for: International Maritime Satellite Organization Prepared by: Martin Marietta Astro Space Proposal No. 104290-A Submitted: May 6, 1993 Martin Marietta Confidential and Proprietary: Information contained in this document is considered as confidential and proprietary to the Offerer and shall not be copied, disclosed, or used, in whole or in part, except by Inmarsat for evaluation purposes, without the express written authorization of Martin Marietta Corporation. Inmarsat may disclose this document, including proprietary information, in confidence to appropriate persons only for evaluation purposes. The foregoing does not apply to information obtainable lawfully without restriction from another source or which either is or becomes available in the public domain." I have to state that Ericson is one of the leading manufacturers of hand sets. At page 30 of the booklet in the beginning itself, the following information is given :- "Our users terminal concept, developed by Ericsson Ge provides features essential to the handheld market." The publishers of the booklet did not consider this as confidential. The original book was shown to me by Mr. Kapil Sibal, learned Senior Counsel for the first defendant and later on a copy was furnished to the Court.

(50) On 16.8.95 the plaintiff filed 'Brief, Preliminary Affidavit by Plaintiff in response to the Reply Affidavit by defendant No. 7.' In paragraph 10 that is what he states:- "That I have no personal knowledge of any presentations (pages 3 & 4) as alleged, or otherwise by Hughes or Martin Marietta to Pcg in late 1993. To the best of my personal knowledge and understanding of the industry position at the time and based on the first systems offered by Hughes and Martin Marietta to me up to 1994 I would not credence such alleged presentations 806 and I say that Mr. Moss must prove his affirmations or be held liable for perjury." He also states that he was not required to sign the letter of undertaking.

(51) It is really surprising to notice that the plaintiff contrary to what is stated in the shareholders agreement that each of the party should sign a letter of understanding or what is described as side letter would now say a different thing.

(52) The argument by Mr. Kapil Sibal, learned Senior Counsel, was that the party was bound by the shareholders agreement and the service agreement and the plaintiff is saying something what was not agreed to by the parties as disclosed in the documents and he further submitted that the documentation itself provides that whatever that was agreed orally would stand superseded. In this affidavit the plaintiff recognises that, but attempts to apply to different stand to the 7th defendant and altogether a different stand to himself. In paragraph 13 at page 8 this is what he states :- "That I deny any Verbal Agreement as alleged by Mr. Moss. I specifically deny that I either initiated contact with Mr. Chander (page 5 and 21), or that I induced him to participate in the Joint Venture (page 6)

or that I committed myself to repay his investment (page 6) or to work exclusively with him on a mobile satellite telecommunications project for Asia or any other region (page 8) and I say that Mr. Moss must prove the same in this Hon'ble Court. Indeed I have never believed that Mr. Chandra is capable of executing such a project. In any event I am advised by Counsel that any such unproved verbal agreement as alleged (and denied) would have been superseded by the express provisions of the formal documentation."

(53) Therefore, the plaintiff admits that the rights and obligations of all the parties to the documentation are governed by it. And to my mind, the plaintiff is aware that the averments in the plaint run counter to the former documentation signed by the parties. This affidavit betrays the real intentions of the plaintiff.

(54) I am not able to appreciate the stand of the plaintiff with what he states in paragraph 19 of the affidavit :- "I say that during the chain of events described by me above and in my earlier pleadings I disclosed to the defendants in terms of expressed, written and oral confidentiality, my inherently confidential and original Smpc System and in terms of implied confidentiality since it was acted upon by the defendants for commercial gain. It is from their access to my Smpc System that the defendant's have developed their so called project in infringement of my rights in my Smpc 'System as described by me. All the meetings between the parties were held in privacy due not to my alleged employment with Richard Li at such time but arose strictly to protect such confidentiality of such information." On the same day (16.8.95) the plaintiff filed "Brief, Preliminary Affidavit by plaintiff in response to the Affidavit by Mr. Greenwood, of Asc (Defendant No. 5) filed on behalf of defendants No.'s 1 and 2". At page 5 that is what the plaintiff states:- "Mr. Bains from Hughes was an Expert in "Feed Horns" a part of the Antenna 807 Assembly of a Satellite and Mr. Greenwood is a specialist in Payloads which are once again a Component of a satellite which is of course is yet a Component of a Satellite SYSTEM. Mr. Greenwood (like Mr. Bains) have together placed before the Court credentials which would appear to make them indisputable "Experts' on Satellite (capital "S") System (capital "S") as they are endlessly opining on such, however this is simply not the case as: (a) Deponent is a highly specialised engineer who has by his own Admissions dedicated his life and career to an individual facet of a satellites' (small "S") construction, "...The design of mobile satellite payloads is an extremely specialised and limited field of expertise..." (see para 7F page 5) (b) Deponent now attempts to take his entirely Micro engineering experience and apply it across the board to the realm of complete Satellite Systems, by which I mean the Social, Commercial, Cultural and Political aspects whereby any given technology connects to society and Deponent has, out of a pedantic lack of experience and complete ignorance of this crucial interface - not simply ignored it but sought to be-little it - "They are neither engineers nor experts in the field..." (page 5 para 7E) "Their business plan does not address in any way systems design and engineering of a mobile personal satellite system..." (page 5 para 7E) "...the alleged experience of the plaintiff and Roger dark does not in any way qualify them to design Mobile Satellite systems..." Even allowing for the obvious prejudice of a deponent who is dependent for his living on the defendant No. I in this case, these statements are ludicrous and are denied. The credentials of Plaintiff are well covered in the plaint and the rejoinder and Roger Clark's Cv and engineering credentials are annexed to this Affidavit. (e) I maintain that the deponent has absolutely no experience whatsoever in the establishment of a Satellite System irrespective of the particular configuration of its given "payload". What is stated in para 7 appears to

me to be very important. Para 7 runs as follows:- "I state that in all the 699 pages of submissions and exhibits by Greenwood not one complete "Satellite System" with the same specific combination of essential technical and commercial elements as those arrived at by me for my Smpc System has been identified as either in existence or antedating my Smpc System, though there is one unidentified exhibit which contains a number of pages which does resemble one of my early drafts of the Smpc System. The deponent must explain how he came to exhibit the said document from the records of the Defendant No. 5." Mr. Ashok Desai, learned Senior Counsel did not say anything when addressing arguments on behalf of the plaintiff. Mr. Kapil Sibal, learned senior Counsel for the first defendant, in his reply stated in the affidavit filed by Mr. Greenwood he has referred to a document which contained number of pages which is similar to the 808 drafts filed by the plaintiff. It was argued that the plaintiff had taken the documents with other documents from the person originally conceived the system.

(55) In answering Mr. Sibal, learned Senior Counsel, Mr. Desai, learned Senior Counsel argued stating that the first defendant must have taken it from the plaintiff. On this aspect of the case, I cannot come to any decision on the mere averments and it can be decided only after the evidence is taken as to who has come forward with the truth. But the plaintiff is not justified in saying what he has stated in the last sentence in the above para extracted. In para 15 the plaintiff would state:- "It is of great significance that Mr. Greenwood has exhibited a number of documents which the owners appear to consider highly confidential and proprietary and of current value."

(56) I do not understand why should the plaintiff harp upon his theory that others kept their things also confidential.

(57) Submitting that the Court should not accept the affidavit of Mr. Greenwood and he is not an expert at all and he has given only his opinion, Mr. Ashok Desai, learned Senior Counsel cited the decision reported in *Florence A. Deeks v. H.G. Wells and Others* Air 1933 Privy Council 26. The Privy Council held - "Depositions of expert witnesses as to the result of their opinions, and as to the effect of them, does not come within the domain of expert evidence at all." He also cited the decision reported in *Balkrishna Das Agarwal v. Smt. Radha Devi and Others*, . The Division Bench of the Allahabad High Court was dealing with the evidence of the handwriting, here the situation is entirely different. Mr. Bains and Mr. Greenwood have tried to explain the system now to be performed by the plaintiff and has apprised this Court about system already existing in the field. They are persons competent in their fields cannot be doubted. The plaintiff's main argument is that they depend upon the first defendant for their livelihood, therefore, affidavits have to be taken with a pinch of salt. I am afraid, that the plaintiff is feeling very desperate and desolate in the light of the materials placed by the first defendant before this Court. Otherwise, the phraseology used by the plaintiff in condemning the affidavits of these two persons is not understandable.

(58) The learned Senior Counsel Mr. Ashok Desai referred to *Bal Gangadhar Tilak and Others v. Shrinivas Pandit and Another*, 42 Indian Appeals 135, *Bisnudeo Narain & Another v. Seogeni Rai and Others*, and *TJie Union of India v. P.K. More*, 1962 S.C. 630 about the case of fraud set up by the first defendant and contended that the first defendant has not satisfied the requirements of Order 6 Rule 4 Civil Procedure Code . and, therefore, first defendant has not made out any case on this

aspect of the matter. But I do not want to deal with in case of fraud at the moment. That is a matter to be decided at the time of the trial of the case.

(59) In answer to the arguments of Mr. Sibal that the rejoinder filed by the plaintiff cannot form part of the pleadings, relying on the decision of this Court reported in *Anant Const. Co. vs. Ram Niwas*, 1995 R.L.R. 20 Mr. Desai, learned Senior Counsel, submitted that the rejoinder was filed pursuant to the orders passed by this Court and the Rules of this Court for filing of rejoinder. I have also 809 referred to the averments in the rejoinder. Therefore, there is little difficulty in rejecting arguments of Mr. Sibal, learned Senior Counsel, that rejoinder cannot at all be entertained.

(60) Mr. Ashok Desai, learned Senior Counsel relied upon the decision reported in *Sri-la Sri Subramania Desika Gnanasambanda Pandarasannidi v. State of Madras and Another*, that the plea raised in the rejoinder should be accepted. The Supreme Court had to deal with a question whether the point raised in the rejoinder in a writ petition can be ignored, as was done by the High Court. The Supreme Court setting aside the judgment of the High Court observed as follows :- "That takes us to the consideration of the question as to whether the two reasons given by the High Court in support of this decision are valid. The first reason, as we have already indicated, is that the High Court thought that the plea in question had not been raised by the appellant in his writ petition. This reason is no doubt, technically right in the sense that this plea was not mentioned in the first affidavit filed by tile appellant in support of his petition but in the affidavit-in-rejoinder filed by the appellant this plea has been expressly taken. This is not disputed by Mr. Chetty, and when the matter was argued before the High Court, the respondents had full notice of the fact that one of the grounds on which the appellant had challenged the validity of the impugned Order was that he had not been given a chance to show cause why the said notification should not be issued. We are, therefore, satisfied that the High Court was in error in assuming that the ground in question had not been taken at any stage by the appellant before the matter was argued before the High Court."

(61) The point in the instant case is different. Whether the point is taken in the rejoinder or in the plaint I had considered the points on the merits and I don't think I should get detained on this technical point.

(62) Mr. Desai, learned Senior Counsel, filed a Note to bring to the notice of this Court about the Hongkong proceedings wherein first defendant is stated to have taken action to recover money from the plaintiff. It was also contended by Mr. Sibal that some case is pending against the plaintiff in the United States also. I want to make it very clear I don't want to go into the question of the conduct of the parties at the stage without enough materials on record to come to a conclusion one way or the other.

(63) On 4.9.95 Mr. Ashok Desai, learned Senior Counsel filed two volumes of typed sets. Volume I contains replies to notes submitted by the first defendant. In Volume Ii he has culled out materials from the pleadings as written submissions of the plaintiff. I don't think it necessary again to refer to the contents of these two documents. While winding up his arguments, learned Senior Counsel Mr. Ashok Desai submitted that the three elements, confidential, communication and copying have been prima fade proved by the plaintiff and the plaintiff has made out prima fade case on merits. It is also

contended that the balance of convenience is in favor of the plaintiff in the facts and circumstances of the case. It was contended by the learned Senior Counsel though the plaintiff had claimed some amounts in his letter dated 31.3.94 that was only up to that point and that cannot form any basis for assessing the damages. Suppose injunction is not granted, the learned senior Counsel argued, the first defendant would complete his projects and at the time of the trial of the case the claim of the plaintiff may become stale and this Court would not be in a position to put him in the same position that he had on the date of the suit. On the other hand, the argument ran if interim injunction is made absolute the first defendant would not be put to any prejudice if an early date is fixed for trial of the case, where all the matters could be thrashed out in the trial. The learned Senior Counsel for the plaintiff submitted that damages would not be an adequate relief for the plaintiff. He maintained that the interim order should be made absolute.

(64) Mr. Kapil Sibal, learned Senior Counsel also addressed arguments at length running to a few days. He formulated the following propositions for argument:- (1) The plaintiff in this case does not rely upon any copyright law; (2) For an action under copyright law to succeed, the following must be established before a Court of law :- (a) The infringing literary/artistic work is a reproduction or a substantial copy of the original literary /artistic work of the plaintiff; (b) There must be evidence on record which is not disputed and there exists a literary/artistic work which was given to the defendant; (c) It must be established that the infringing copy is a reproduction of the literary/artistic work and the source is that of the plaintiff. (3) While dealing with a claim of copyright the Court must have before it the original literary/artistic work and the infringing copy and the Court should determine for itself looking at the two as to whether the latter is an infringement of the former; (4) It is well established proposition of law that a concept or an idea cannot be subject matter of protection by a Court of law. The relief sought for by the plaintiff is neither with reference to a product nor with reference to the form of the concept and, therefore, neither the patent law nor the copyright law would apply to the case of the plaintiff; (5) On the claim of confidentiality, the plaintiff must prove that there is an agreement of confidentiality and that the information know-how and knowledge was disclosed to the defendant on the basis of agreement of confidentiality and that the quality of information know-how and knowledge is such that it can be regarded as confidential in nature."

(65) The agreements namely, the shareholders agreement and the service agreement dated January 1, 1994 are contrary to the claim of the plaintiff and the plaintiff cannot be heard to say anything contrary to the terms of those documents.

(66) The plaintiff seeks an injunction directing the defendant not to disclose use, employment and exploit the information and there is no evidence that the Turnkey Project of the first defendant on contract with Hughes, Arrow Space Communication Ltd. is based on the system of the plaintiff. 811

(67) The grievance by the plaintiff can be only against Hughes because it is Hughes that is doing the Turnkey Project and the relief claimed by the plaintiff against the defendants is of no avail to him.

(68) The documents filed by the plaintiff do not show that information know-how and knowledge are of confidential nature owned by the plaintiff.

(69) The case of the plaintiff that the defendants committed the breach of the agreement dated 1.1.94 is not within the scope of the suit.

(70) The reliefs claimed in the suit are not on the basis of any contractual obligations.

(71) At best the plaintiff allegedly undertook an exploratory study and is now seeking an injunction to prevent the manufacturers, who are in the field, from using their own information, technology and know-how. The learned Senior Counsel filed a note of transaction between the parties. It is stated that on 9.12.93 the plaintiff was paid 300,000 Us Dollars. The other two parties, who were signatories to the shareholders agreement and under the service agreements Mr. Roger dark and Mr. Stephen Moss, were also each paid 300,000 Us Dollars. It was specifically agreed that if the undertaking letter or side letter was not executed the money should be returned. I have already dealt with these aspects and I do not want to relate them over again.

(72) The learned Senior Counsel submitted a note 'plaintiff's averments in the plaint with respect to alleged transmission of documents and information in relation to the Smpc system to the defendants.' It was emphasised that at page 31 para 15 of the plaint, plaintiff has stated :- "Plaintiff was induced to show defendant No. I a copy of his Smpc presentation." Therefore, it is submitted by the learned Senior Counsel that no documents were given by the plaintiff to the first defendant. The averments in the plaint, which is extracted above, is not true. No contemporaneous document by way of evidence is produced by the plaintiff to substantiate his averment in the plaint.

(73) The learned Senior Counsel filed a note "Documents filed in Court which refer to the alleged Smpc system." I have already referred to the documents filed in three volumes by the plaintiff running into 1320 pages. They have to be proved in accordance with law before anything could be said on the basis of those documents.

(74) It was also contended by Mr. Kapil Sibal, learned Senior Counsel for the first defendant that in the list of dates given by the learned Senior Counsel for the plaintiff a remark is made that 'documents later on given to the first defendant' is not proper and no documents were given by the plaintiff to the first defendant. This is a matter for proof by the plaintiff in the trial of the case.

(75) The learned Senior Counsel then submitted a note 'Plaintiff's Spmc System Borrows Existing System License'. First defendant has given a comparative study of the systems existing with that of the plaintiff. I have already referred to the affidavit of Mr. Greenwood and, therefore, except staling that there is nothing on record to show that the first defendant had been supplied with any material by the plaintiff, no comparative study need be made now. 812 (76) The learned Senior Counsel then gave a note 'Plaintiff's System Borrows Heavily from a Proprietary Proposition made by Martin Marietta to Hutchison in July 1993. This is again based on affidavit of Mr. Greenwood, which I have already referred to.

(77) The learned Senior Counsel submitted a note 'Analysis of Project the Africom with reference to Pleadings and Correspondence exchanged between the parties'. The point that was attempted to be made was that the plaintiff agreed to work as per the shareholders agreement and the service

agreements and he acted quite contrary to them and, therefore, analysis of the Africom Project was put forth before me only to show that the plaintiff had undertaken himself prejudicing the interest of the first defendant and others. To come to a decision on this aspect would require a lot of evidence and I do not want to say anything on this aspect now. The main point is whether the first defendant had committed the breach of confidential agreement in entering into a contract with Hughes for the Turnkey Project.

(78) The learned Senior Counsel submitted a note on 'Use of the Obsidian name'. Mr. Greenwood in his affidavit has clearly stated that the name Obsidian was thought of earlier and there is no evidence to show that the name Obsidian was taken from the plaintiff.

(79) The learned Senior Counsel next submitted a note "Inconsistencies between the Plaintiff and Rejoinder", I. Hongkong PROCEEDINGS: ^ (i) Plaintiff No mention of the Defendant No.1's suit in Hongkong against the plaintiff for recovery of US \$300,000 (ii) Rejoinder Plaintiff states that he came to know about the Hongkong proceedings on or around March 30, 1995 when defendants' advocate informed Plaintiff's advocate, (page 8, para 4.2) [This could not be so since the instant suit was filed on March 25, 1995 and admittedly the Defendants Nos. 1 and 2 were served only on March 28, 1995. II. Joint Venture 2.1 Verbal Agreements: (i) Plaintiff No mention of "verbal agreement" in November, 1993 or at all. (ii) Rejoinder (a) Plaintiff states that a "verbal agreement was reached in or about the last week of November" [page 18 para 4.9(i)] (b) Plaintiff refers to paras 16, 14, and 15 at pages 27-33 of the plaintiff for the terms of the verbal agreement [pages 18 and 19, para 4.9(i)] [However, these paragraphs contain no averment of an agreement 813 having been reached by the Plaintiff, Defendant No. 1 and Roger Clark] 2.2 Time for Plaintiff to Bring US\$ 5 million (i) Plaintiff No mention of number of days in which Plaintiff was to bring in US\$ five million. (ii) Rejoinder Plaintiff states that it is 120 days from verbal agreement, i.e. from December 14, 1993 to April 14, 1994 [page 20, para 4.9(i)(e)]. Whereas in the Shareholders Agreement, it is up to February 28, 1994 and it is for Esher and not the Plaintiff. 2.3 Undated Letter: (i) Plaintiff states that the undated letter was signed in or around November, 1993 and thereafter Defendant No. 1 made the payment to him of US\$ three hundred thousand [page 36, para 17(e)]. (ii) Rejoinder Plaintiff states that undated letter signed some 7 days or so after the verbal agreement on or around 14th December, 1993 [page 22, para 4-9(ii)]. 2.4 Use of Plans, Charts, Drawings, etc. (i) Plaintiff In paras 14, 15, 16 and 17, Plaintiff does not state that J.V. would use his plans, charts, drawings etc. (ii) Rejoinder Plaintiff states that J.V. would use plans, charts, drawings, etc. [page 20, para 4.9(i)(f)] 2.5 Five Agreements (i) Plaintiff No mention of the five agreements. (ii) Rejoinder Plaintiff states that formal documents comprised of five agreements, i.e. verbal. Shareholders, Service, license and Confidentiality Agreements [page 44, para 4.23 (ii)] 2.6 Defendant No. 2 Signing Agreements (i) Plaintiff states that various agreements signed between Defendant Nos. 1, 2 and 7 and Mr. Clark for the Technical Consultancy while he was not in Hongkong. Plaintiff does not give dates (page 37, para 20). (ii) Rejoinder 814 Plaintiff states that agreements between Defendants No. 1, 7 and Clark and for and on behalf of Plaintiff on January 6, 1994 and the agreements were back dated to January 1, 1994 (page 23, para 4.9(vi)) 2.7 Details and Circumstances of various Agreements (i) Plaintiff does not provide details and circumstances in which the various agreements were signed. (ii) Rejoinder Plaintiff now provides details and circumstances in which the agreements were signed [page 24, para 4.9(vii)] 2.10 Averments in Plaintiff (i) Plaintiff No averments that

documents, charts, illustrations, etc. given to Defendant No. 1. (ii) Rejoinder Plaintiff states that the documents, charts, illustrations, etc. were given to Defendant No. I (page 38, para 4.13; page 53, para 4.33). III. Smpc Technology: 3.1 (i) Plaintiff states that he developed a unique and proprietary design for a new Satellite System (page 14, para 4). (ii) Rejoinder Plaintiff states that Smpc is an outgrowth of previously existing technology (page 47, para 4.29) 3.2 Receipt of Information by Hughes (i) Plaintiff states that Defendant No. 6, the then Far East representative of Hughes has received the technology [page 30, para 14(e)] (ii) Rejoinder Plaintiff states that certain employees of Hughes, including Defendant No. 6, obtained the Smpc technology. Plaintiff has commenced proceedings against Hughes which are pending [page 53, para 4.32 (x)] 3.3 Allegation of Plaintiff against Hughes (i) Plaintiff No allegation of theft against Hughes (ii) Rejoinder Allegations of theft of Smpc technology by Hughes [at page 51, para 4.32(vi) page 52, para 4.32 (xi), page 53, para 4.32 (x), page 115, para 409]. 815 IV. Confidentiality Agreement 4.1 (i) Plaintiff No reference to Confidentiality Agreement. (ii) Rejoinder A whole section of Confidentiality Agreement (pages 53-57, paras 4.33-4.40). Above analysis would show that the plaintiff has been prevaricating and he has no consistent case on any aspect of the matters.

(80) Mr. Kapil Sibal, learned Senior Counsel relied upon a few cases in support of his submissions. He referred to Nichrothem Electrical Company Ltd. and Others v. Percy, 1957 R.P.C. 207. The facts are as follows - "It was during a conversation between Mr. Drew, one of the Plaintiffs, and Mr. Percy, the Appellant, on the 6th June, 1952 that the idea was born, to use a neutral phrase, of the artificial pig rearer with which we are concerned. For some five and a half months the Plaintiff. Mr. Drew and his Co-plaintiff, Mr. Cox, who own and control between them the Plaintiff Company. Nichrothem Electrical Coy., Ltd. and its business of heating engineers, on the one hand and the Appellant on the other hand, collaborated in confidence together towards the end of producing and marketing a satisfactory device. They had reached the stage when working drawings for commercial manufacture of the pig reader in the form of what has been called prototype No. 2 had been prepared. Could they have gone on a little further in the way they had done previously, they might well together have provided a useful article for agriculture at a good reward to themselves; but on the 24th November, 1952, they quarrelled. The breach was not healed, and I am indeed not sure that they any attempt was made to heal it. The Appellant went headlong upon his own course of manufacturing and marketing in his own name a device which substantially, if not exactly, was copied from prototype No. 2 and from the working plans, being, as the learned Judge thought, and as I think also, firmly convinced that he was entitled to do what he did. The result has been this litigation." At page 211 it was noticed by the Court in the following terms:- "Meanwhile, working drawings-over 40 of them-had been prepared by the last plaintiff. Mr. Francis, on instructions or on behalf of the other Plaintiffs. Of those drawings, one of them called P.I, which I understand was a comprehensive drawing of prototype Np. 2, was, apparently, on an occasion about the 22nd November left accidentally at the appellant's house. The other drawings were handed by the Plaintiffs to the Second Defendant for manufacturing purposes about the 26th November." At page 213 the passage relied on by Mr. Ashok Desai in reply is as follows:- "If, on the other hand, the confidence infringed is one imposed by the rules of equity, then the remedy would be, prima fade, by way of injunction or damages in lieu of an injunction under Lord Gaim's Act." 816 The Court referred to Saltrnan Engineering's case. Except the general propositions which cannot be disputed by anybody, this case cannot be said to be closer to the case.

(81) Learned Senior Counsel Mr. Kapil Sibal then referred to John Zinc Company Limited v. Lloyds Bank Limited and Air oil Burner Company (G.B.) Limited, 1974 Fleet Street Report 401. Mainly the action was by defendants to strike out a statement of plaint and mainly the complaint was by the employer against the erstwhile employee. Therefore, there is no use in discussing this case in detail.

(82) The learned Senior Counsel for the first defendant then referred to Joanna Christina Glee-son and Glee-son Shirt Company Limited v. H.R. Denne Limited, 1975 R.P.C. 471. This is a judgment of Court of Appeal in England. At page 482 Whitford,). referred to the claim of the plaintiff relating to the drawing about the shares. This case mainly dealt with the law of copyrights and I do not want to say anything more on this.

(83) The learned Senior Counsel then referred to the judgment of the Supreme Court reported in R.G. Anand v. M/s. Delux Films and others, which I have already referred to.

(84) The learned Senior Counsel referred to L.B. (Plastics) Limited v. Swiss Products Limited, 1975 R.P.C. 551 judgment of the House of Lords. The facts are as follows:- "The plaintiffs were the designers and manufacturers of a plastic knock- down drawer system known as the Sheer glide. The Sheer glide design was from the ti me it first went into production a success in the field of knock-down plastic furniture. Much of the plaintiffs' business was done with furniture makers who purchased Sheer glide drawers in component form for the purpose of fitting them into car cases of their own manufacture. One such customer was G.P. Ltd., a company linked with the defendants by common ownership of shares. In December 1972, after the Sheer glide had been in production for approximately fourteen months. G.P. Ltd. suggested that the defendants might embark upon the production of a knock-down drawer system suitable for use in furniture car cases produced by G.P. Ltd. G.P. Ltd. required any drawer produced by the defendants to be interchangeable with the Sheer glide drawer in G.P. Ltd.'s existing range of car cases. Between 1972 and 1975 the defendants made four separate attempts to produce an acceptable design. In March 1975 the defendants produced a design known as the Swish design. The plaintiffs sued for infringement of artistic copyright in the production drawings which depicted their Sheer glide design. A number of the features present in the Swish design were also present in some one or more of the defendants' earlier unsuccessful designs. Although they admitted having had access to the plaintiffs' products and those of other manufacturers, the defendants denied copying and further denied that the Swish design reproduced anything more than the idea behind the Sheer glide design. In addition they relied on the defense afforded by Section 9(8) of the Copyright Act, 1956. At first instance it was held that the defendants had infringed the plaintiffs' 817 copyright by copying many of those features which gave the Sheer glide drawer its specific individuality; it was further held that the defendants were unable to resist a finding of infringement by relying on Section 9(8) of the Copyright Act, 1956. In so holding, the trial Judge rejected the defendants' contention that the plaintiffs' production, drawings were neither original nor artistic within the meaning of the Copyright Act, 1956. The defendants appealed. It was conceded in the Court of Appeal that artistic copyright subsisted in the drawings relied on by the plaintiffs and that the plaintiffs were the owners of that copy right. The Court of Appeal held that the plaintiffs had failed to discharge the onus of establishing that the defendants had copied the Sheer glide design to any substantial extent, and held in the alternative that Section 9(8) of the Copyright Act, 1956 afforded the defendants a defense against the claim for infringement of copyright even

assuming that to have been established. The plaintiffs appealed to the House of Lords." This case again is of a copyright action. At page 602 Buckley, L.J. referred to the original character of the work. At page 610 dealing with the role of the Court the learned Judges observed that there must be such a degree of similarity as would lead one to say that the alleged infringement is a copy or reproduction of the original. But that is not the situation here at all. The basis according to the Court is that the basis of copyright is that a defendant should not appropriate the property of another, that property is the skill judgment and labour which goes into a work. In other words, the Court had in mind the springboard doctrine. At page 619 the Court observed as under :- "That copying has taken place is for the plaintiff to establish and prove as a matter of fact. The beginning of the necessary proof normally lies in the establishment of similarity combined with proof of access to the plaintiffs' production." At page 624 the Court observed as follows :- "My own view, fortified by this concurrence, is that they were so alike as to give rise to the shift in the evidential burden described by Lord Wright in *King Features Syndicate Inc. v. O & M. Kleeman Ltd.* (1941) A.C. 417 when he said at page 436: "Here the only evidence of actual copying, direct or indirect, is similarity with regard to the figure, which is a substantial part of the sketch, between the copyright work and the alleged infringement. I think, however, that where there is substantial similarity, that similarity is prima facie evidence of copying which the party charged may refute by evidence that notwithstanding the similarity, there was no copying but independent creation." In reply Mr. Desai, teamed Senior Counsel relied upon the observation of Lord Salmon (Lord Right). At page 633 the Court observed as follows :- "There is, of course, an idea or concept behind every working drawing. It is trite law that there can be no copyright in an idea or concept; but it is hardly necessary to say that this does not mean that once the idea or concept has been translated into a working drawing the drawing cannot enjoy copyright. 818 otherwise it would mean that copyright could not attach to any drawing; for every drawing is the child of an idea or concept." The House of Lords really approved of the view taken by the Courts in earlier cases.

(85) The learned Senior Counsel referred to *Kleeneze Ltd. and Another v. D.R.G. (U.K.) Ltd. and Another*, (1984) Fleet Street Reports 399. This case involved the infringement relating to letterbox draught excluder. The learned Judge on facts held that the plaintiff has failed to establish copying and otherwise this case is of no use to the first defendant.

(86) The learned Senior Counsel Mr. Kapil Sibal submitted that in the facts and circumstances the plaintiff has miserably failed to prove that whatever the name we give it to the plaintiff's system, he has not established the same. The plaintiff has not produced any document to show that any materials were given to the first defendant showing his system. The plaintiff has not produced any document to show confidential nature of the system. The plaintiff has not established and that his system and Turnkey Project of Hughes resemble each other. I had already discussed this aspect and I do not want again to go into it.

(87) It is a misnomer to call the right claimed by the plaintiff as an intellectual property right. May be putting the best in his favor he is the 20th century Archimedes. But that would not cloth him with any proprietary right in the so called system. I ask myself the question what are the parameters of the intellectual property rights, and whether opening new frontiers and making innovations would make them a property of an individual. In the soft and hardware technology the speed with which

improvements and innovations are made is staggering and it is also mind boggling. Man's quest for excellence will be halted if anyone makes an attempt to claim a right over a trivial addition to an existing system assuming that there was any. We see in the field of medicine the strides made which are tremendous. The ailments which were considered to be incurable in the past are cured within a short time with no suffering to the patients by employing tools which have been discovered by man. Man's sojourn on earth is made happier by the innovative thinking process bestowed on him. The exploration in all fields by human ingenuity is infinite. Man cannot boast of having reached a final stage in any matter. When such is the position of man on this planet, towards the end of the 20th century a person claiming intellectual property right in a part of a gigantic process and that too which is well-known in the field, *prima facie*, is not appreciable. And that he should hope that Court should recognise his rights can be characterised only as dreamy.

(88) The learned Senior Counsel for the plaintiff took pains to explain to me various aspects of the plaintiff's action, ideas striking him late nights and plaintiff's continuous bestowal of thoughts over the matters. I was waiting to hear from the learned Senior Counsel for the plaintiff as to how did the plaintiff fit in his work with intellectual property right. I am free to confess that from the arguments of the plaintiff's Counsel I could not get any tangible idea that the plaintiff had intellectual property right in the system projected by him. I know the plaintiff thought that he had attempted to charter a course to a place where thus far human beings had not even thought of treading. I appreciate the approach of the plaintiff but alas, the Courts are not the right place for adventurers. The Courts have to function within the bounds of law and the materials placed before it. I do not suggest for a moment that novelty should not be tested on the anvil of the principles of jurisprudence. But the question is whether the novelty in the instant case is so arresting, awesome provoking the thinking of the Court. I am not able to say having heard the matter at length and having gone through the documents filed in this case that the plaintiff has proved his case. I am very happy to note that the principles evolved by great Judges in the past have helped me to understand the problems posed in this case. For the purpose of understanding the question I also read the following cases :- *Pitman's Application* 1969 R.P.C. 646 *Improver Corporation v. Remington Consumer Products* 1989 R.P.C. 69 (Court of Appeal). I had read the affidavit of Mr. Roger dark. No doubt he is an engineer in the field. From his affidavit I am not able to get any assistance. I had already referred to the Affidavits of Mr. Paramjit Singh Bains and Mr. David Greenwood filed on behalf of the first defendant. I cannot ignore their affidavits as contended for by the learned Counsel for the plaintiff. Their affidavits definitely made me appreciate the question and but for the affidavits I would have found it difficult to follow the case of the plaintiff in the light of voluminous documents filed by the plaintiff, after the filing of the suit. As I have already observed, I do not attach any importance to the affidavits of the 7th defendant, except to the extent indicated by me above. I took into consideration each of the affidavits with reference to what and how facts have been stated in the affidavits and I was not swayed by the deponents of the affidavits. And this is only a *prima facie* view.

(89) In England the general view is that a patents give temporary protection to the technological inventions and designs right to the appearance of mass produced goods, copyrights case long-lasting rights in, for instance literary, artistic and mistake creations; trade mark are protected against imitations so long as appearance as it continue to be employed in trade and there is no single generic term that satisfactorily covers them all. Now people use "Intellectual Property Rights". It

does not take him trade marks and other rights. It is said that this is a branch of law which protects some of the finer manifestation of human achievements. The United Nations Organisation has established an Organisation for this purpose i.e. called World Intelligent Property's Rights Organisation.(WIPRO) (90) Having regard to the voluminous documents filed by the plaintiff and the affidavits filed by the parties, I had to consider the matter in detail. We have to have our weather eye open in the context of the persons who are trying to exploit the situation in the world. I have to sift materials flowing from all quarters to decide on the rights of the parties. As stated in 1973 R.P.C. I (supra) the question still remains one of facts and the Court must do the best it can to put itself into the position of a non-expert in which unfortunately it usually is, and must come to a conclusion on the matter having regard to the evidence and all the relevant surrounding circumstances. I have no hesitation in coming to the conclusion that the plaintiff has not proved his case that he is the originator of the system, that he had anything of confidential nature, that the plaintiff communicated the same to the first defendant and that the first defendant had copied the system from the plaintiff. I may note here that in the Hindustan Times dated 2nd of October 1995 at page 19 there is an advertisement in the following terms :- 820 "Odyssey telephone system launched" New Delhi: Odyssey Telecommunications International Inc., a joint-venture Trw and Teleglobe, has announced the launch of a satellite-based telecommunications system- Odyssey. Odyssey is a telephone system by subscription, composed of 12 satellites with the capacity to offer telephone services, guaranteeing access anywhere in the world, even in areas that are now outside the reach of conventional or cellular telephone systems." This is also a system. Therefore/it is clear there is nothing new in what the plaintiff claims.

(91) Mr. Kapil Sibal, learned Senior Counsel, submitted that after all, the first defendant had entered into a contract with Hughes for a Turnkey Project and the entire work is being done by Hughes and it is quite understandable as to how the plaintiff can seek an injunction against Hughes by praying for an injunction against the first defendant. The plaintiff cannot pretend that he is not aware of the Turnkey Project because the plaintiff himself had filed the documents submitted by the first defendant to the Govt. of India. The plaintiff claims to be in close contact with Hughes also. Therefore, I feel there is considerable force in the arguments of Mr. Kapil Sibal, learned Senior Counsel, the plaintiff is trying to do something indirectly by trying to praying for a relief against first defendant alone leaving Hughes. In that way, I would say that the plaintiff is praying for a relief, even if it is granted, would become futile. The arguments of Mr. Kapil Sibal, learned senior Counsel, for the first defendant are irrefragable.

(92) The assertion of the plaintiff about his invention of a system by his own exertions reminds me for what is said in 88 Quarterly Law Review page 507; that sweat of a man's brows and the exudations of a man's brains, are as much a man's own property as the breeches upon back side.

(93) Therefore, I find that the plaintiff has not established a prima facie strong case on the merits. He is not entitled to an order of injunction.

(94) I still thought over the matter whether damages would be an adequate relief for the plaintiff in the event of his succeeding after the trial of the case. The learned Senior Counsel for the plaintiff contended in this case damages would not be an adequate relief because the first defendant would

complete the project and would commence business before the matter is decided by this Court. As I had already said that the plaintiff can claim damages, therefore, here is a matter where the plaintiff can be compensated in money in the event of his succeeding ultimately in the suit. There will be no difficulty in assessing the damages at the time of the trial of the case. Principles relating to the assessment of damages in similar matters are laid down by the House of Lords in *General Tire and Rubber Co. v. Firestone Tyre and Rubber Co. Ltd* 1975 2 All England Report 173 : 1975 1 WLR 1139 : 1976 R.P.C. 187.

(95) About the copyright law and claims made by persons without any justification whatsoever had been subject of comment by Justice Per Thomas of the High Court of New Zealand. He said in *Franklin Machinery Ltd v. Albany Farm Centre Ltd* (1991), 23 I.P.R. 649 "The law relating to copyright has got quite out of hand. Claims for copyright protection are all too often raised and applied in circumstances which do not serve the objectives of copyright law... Copyright has now invaded the field of industrial design in a manner which has been dramatic. The most banal of industrial or technical drawings, which involve little more originality than that which accompanies many routine domestic tasks, has come to attract an aggressive claim to copyright protection... the Courts, lawyers, commentators and textbook writers have created a regime which no longer serves its legitimate purpose and is thought by many to operate to the detriment of the public interest. Like ants in the forest, they have constructed a misshapen anthill of enormous proportions which is of no use nor value to anyone or anything save other ants and the parasites that feed upon their indulgent labours. It serves no social or economic purpose, and it demeans the Courts to be called upon to examine the fine distinctions which have become necessary for defendants to draw."

(96) The scope of the exercise of discretion by Courts at the interlocutory stage has been considered by the Supreme Court in a number of cases. In *Dalpat Kumar and Another v. Prahlad Singh and others*, . The Supreme Court has posited in paragraph 5 at page 505 in the following terms:- "Therefore, the burden is on the plaintiff by evidence filed by affidavit or otherwise, that there is "a prima facie case" in his favor which needs adjudication at the trial. The existence of the prima facie case is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that noninterference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favor of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief of injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status

quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit." The Supreme Court further observed in the following manner :- "The phrases "prima facie case"; "balance of convenience and irreparable loss" are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice." In *Shi-v Kumar Chadha v. Municipal Corporation of Delhi and Others*, the Supreme Court again laid down in the following manner:- "It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favor of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The Court grants such relief according to the legal principles-ex debito justitiae. Before any such order is passed the Court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favor and refusal of injunction would cause irreparable injury to him." It is also well known that the House of Lords in *American Cyanamid case* (1975) 1 All Er 504 had laid down the principles in a beautiful way. When I put my pen to paper to write this order I tried my best to be very brief, as far as possible. But having regard to the documents filed by the parties, affidavits tendered by the parties and the arguments advanced by the learned Senior Counsel for the parties I thought I should consider all the materials placed before me. And that is the reason for this long order. I hope I have not omitted to refer to all the materials. I have come to my own conclusion and naturally it would be against one of the parties. I agree with the views expressed by Justice Kitto of the Court in Australia when he said in *Wolanski's Design* (1953) 88 Clr 278 (Aus) - "It is no doubt true, as, in *Leatheries Ltd. v. Lycett Saddle & Motor Accessories Co Ltd.* (1909) 26 Rpc 166 at 171, Eve) rejoiced to find himself able to say on the authority of Lord Herschell, that when the Judge has arrived at a conclusion upon such an issue of fact, it is not to be expected that he will be able, at any rate satisfactorily to the litigants or to one of the litigants, to indicate in detail the grounds which have led him to the conclusion. And I cannot say that the present case is any exception to the rule that the eye, like the heart according to Pascal, has its reasons that reason does not know."

(97) In fine, on the materials placed before me, I find no difficulty in coming to the prima facie conclusion that the plaintiff has not established that he had any intellectual property rights in any system, he did not hand over any materials to the first defendant in respect of the system and there is no question of first defendant copying from any system of the plaintiff.

(98) For all these reasons, IA.2773/95 for injunction is dismissed. However, there shall be no order as to costs.