

T.Sudhakar Pai vs M/S Manipal Academy Of Higher Education on 17 July, 2023

Author: Alok Aradhe

Bench: Alok Aradhe

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17th DAY OF JULY, 2023

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

COMMERCIAL APPEAL NO.404 OF 2022

BETWEEN:

1. T.SUDHAKAR PAI,
S/O LATE RAMESH PAI,
AGED MAJOR,
N-701, NORTH BLOCK,
MANIPAL CENTRE,
47, DICKENSON ROAD,
BENGALURU - 560 042.
2. MOHAMMED SAMIULLA,
S/O LATE MOHAMMED
HASHIM,
AGED ABOUT 48 YEARS,
NO.302, NORTH BLOCK,
MANIPAL CENTER,
47, DICKENSON ROAD,
BENGALURU - 560 042.
3. DR.RITU CHAUHAN,
D/O J.S.CHAUHAN,
AGED ABOUT 43 YEARS,
#24, LAKSHMI SAGAR ROAD,

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CHANDAPURA,
BANGALORE - 560 099. ... APPELLANTS
(BY SRI JAYAKUMAR S. PATIL, SR. COUNSEL FOR
SRI SREEVATSA S., SR.COUNSEL FOR
SRI TUSHAR GIRI &
SRI AMRUTESH N. P., ADVOCATE FOR A2 AND A3,
SMT.SANJANA S. UMESH, ADVOCATE FOR A1)

AND:

1. M/S MANIPAL ACADEMY OF
HIGHER EDUCATION,
A PUBLIC TRUST,
HAVING ITS REGISTERED
OFFICE AT MADHAV NAGAR,
MANIPAL, KARNATAKA - 576104,
REPRESENTED BY ITS
TRUSTEE DR.H.S.BALLAL.
2. MANIPAL ACADEMY OF
HIGHER EDUCATION
(DEEMED UNIVERSITY)
HAVING ITS REGISTERED
OFFICE AT MADHAV NAGAR,
MANIPAL, KARNATAKA - 576104,
REPRESENTED BY ITS
AUTHORIZED SIGNATORY
DR.VINOD V THOMAS.
3. MANIPAL INTERNATIONAL SCHOOL,
CHANDAPURA, ANEKAL ROAD,
SURYANAGAR PHASE I,
ELECTRONIC CITY,
BANGALORE - 560 099.
4. MANIPAL E-COMMERCE LIMITED,

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HAVING OFFICE AT N-701,
NORTH BLOCK, MANIPAL CENTRE,
47, DICKENSON ROAD, BENGALURU - 560 042.

5. M.M.SHERIFF,
S/O ISMAIL SHERIFF,
AGED ABOUT 54 YEARS,
#24, LAKSHMI SAGAR ROAD,
CHANDAPURA,
BANGALORE - 560 099. ... RESPONDENTS
(BY SRI A.N.S.NADKARNI, SR. COUNSEL FOR
SRI SAHIL CHARNIYA, ADVOCATE FOR R1

SRI DHYAN CHINAPPA, SR.COUNSEL A/W
SMT.ANNAPOORNA S,
SRI ABRAHAM JOSEPH,
SRI ASHOK PANIGRAHI ADV'S FOR
SRI MANU PRABHAKAR KULKARNI, ADVOCATE FOR R2,
V/O DT: 06.10.2022 NOTICE TO R3 AND R4 ARE
DISPENSED WITH
NOTICE TO R5 IS DISPENSED WITH V/O/DT:17.07.2023)

THIS COMMERCIAL APPEAL IS FILED UNDER
SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015
R/W ORDER XLIII RULE 1(r) OF CODE OF CIVIL
PROCEDURE, 1908 PRAYING TO (a) CALL FOR RECORDS
AND SET ASIDE THE JUDGMENT/ORDER DATED:
28.09.2022 PASSED BY THE X ADDITIONAL DISTRICT AND
SESSIONS JUDGE, BENGALURU RURAL DISTRICT,
BENGALURU IN COMMERCIAL MISC. NO.246/2021 AT
ANNEXURE-A AND ETC.,

THIS COMMERCIAL APPEAL HAVING BEEN HEARD
AND RESERVED FOR JUDGMENT ON 28.06.2023, COMING
ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY,
ANANT RAMANATH HEGDE J., DELIVERED THE
FOLLOWING:

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JUDGMENT

This appeal under Section 13(1)(A) of the Commercial Courts Act, 2015 read with Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'Code' for short) is filed against the order dated 28.09.2022 passed by X Additional District Judge, Bengaluru Rural District in Commercial Misc. No.246/2021.

1.1 In the aforesaid order, the Commercial Court, exercising powers under Order XXXIX Rule 2(A) of the Code, held that the appellants are guilty of disobedience of the order of temporary injunction, dated 21.02.2019. Consequently, appellant No.1 is sentenced to undergo civil imprisonment for three months and held liable to pay Rs.1,00,000/- as compensation to the plaintiffs. Further, appellants No.2 and 3 and respondent No.5 of this appeal, (respondent No.3 in Misc. No.246/2021) are sentenced to undergo civil imprisonment for one month and each of them is held liable to pay a compensation of Rs.50,000/-, to each of the plaintiffs. Further, the plaintiffs are permitted to apply to attach the movable and immovable properties of the contemnors to recover the compensation amount, if not paid by the appellants.

2. Among other issues, the proportionality of punishment, power to award compensation for disobedience or breach of an interim order of the Court and the procedure to be followed under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 ('Code' for short) before awarding compensation, do arise for consideration in this appeal.

3. The applicants in the Commercial Misc. No.246/2021 are the plaintiffs. Respondents No.1 and 2 in the said Misc. No.246/2021 are defendants No.1 and 3 in the suit. Respondents No.3 to 5 in Misc. No.246/2021 are not parties to the suit.

Facts in brief:

4. O.S. No.1244/2019 is filed by the Manipal Academy of Higher Education (Trust) and the Manipal Academy of Higher Education (Deemed University) before the City Civil Court at Bengaluru, seeking the relief of permanent injunction, to restrain the defendants from using certain trade names/trademarks individually, or in conjunction with the trade name of defendant No.1. Initially, the suit is filed against three defendants viz., Manipal International School, Manipal E-commerce Limited and T. Sudhakar Pai. Later, on 04.11.2020, two more defendants were impleaded.

- On 21.02.2019, the Court passed an ex parte order of temporary injunction against the three defendants in the suit. Said order reads as under:

"Defendants are hereby restrained by an order of ex parte injunction restraining them from infringing the plaintiffs registered trade mark by using identical trade mark like "MAHE"

or "Manipal groups" in conjunction with any trademark, service mark and advertisement for their services or business papers".

5. Later, on 02.03.2019, the case is ordered to be registered as Commercial Suit. On 11.03.2019, the above- mentioned suit is registered as Commercial Suit in O.S. No.15/2019. Defendant No.3 appeared on 03.04.2019 and contested the suit by filing a written statement and filed an application under Order XXXIX Rule 4 to vacate the interim order dated 21.02.2019.

6. On 05.04.2019, respondents No.1 and 2 of this appeal moved the Commercial Court under Order XXXIX Rule 2A of the Code, alleging willful disobedience of the interim order dated 21.02.2019, by the appellants. Said application is registered as Com. Misc. No.9/2019.

7. On 04.11.2020, the plaintiffs' application dated 7.6.2019, under Order I Rule 10 of the Code is allowed and Manipal Academy of Health and Education, (Defendant No.4) and Kurl-On Ltd. (Defendant No.5) are impleaded in the suit.

8. By order dated 27.5.2021, the matter is transferred to Commercial Court, Bengaluru Rural and the suit is renumbered as O.S. No.960/2021. The application under Order XXXIX Rule 2A of the Code which was earlier registered as Com. Misc. No.9/2019 is renumbered as Misc. Application No.246/2021. Appellants of this appeal filed a statement of objection in Misc. 246/2021, and contested the allegations of willful disobedience.

9. After hearing the parties to the suit, vide order dated 22.4.2022, the application to vacate the interim order was rejected and the ex parte order of temporary injunction was made absolute. Later,

in terms of the impugned order dated 28.9.2022, the Commercial Court held that appellant No.1 (defendant No.3 in the suit) and appellants No. 2 and 3 and respondent No.5 of this appeal (who are not parties to the suit but parties to Misc. No.246/2021) are guilty of willful disobedience of the ex parte interim order dated 21.02.2019. This appeal arises out of the said order dated 28.09.2022.

10. It is relevant to state that, in the meantime, the Commercial Appeals No.267/2022 and 284/2022 challenging the order of temporary injunction were dismissed by this Court vide order dated 03.06.2022. The Special Leave Petitions No.1738 and 1749 of 2023 challenging the aforementioned order were not entertained and were dismissed vide order dated 12.01.2023. Submissions on behalf of the appellants

11. Sri Jayakumar S. Patil, learned Senior Counsel appearing for the appellants assailing the order under appeal, urged the following contentions:

(i) The order dated 21.2.2019 was passed by the City Civil Court in O.S. No.1244/2019. The e-portal reveals that on 11.03.2019 the case is disposed of. Later, the case was registered in the Commercial Court as Comm. O.S. No.15/2019. Thus, the ex parte order granted on 21.2.2019 by the City Civil Court spent its life on 11.03.2019 as the Civil Suit in O.S. No.1244/2019 is disposed of as closed. Therefore, appellants cannot be punished alleging disobedience of a non-existent order.

(ii) The respondents No.1 and 2 sought a prohibitory injunction order from using several trade names/trademarks. However, the Court granting the ex parte order, restricted the ex parte order to only two trade names/trademarks viz., MAHE and MANIPAL GROUPS. And no prohibitory order is passed in respect of other alleged trade names/trademarks mentioned in the interim applications. Thus, the ex parte order cannot be made applicable to tradename/trademark other than MAHE and MANIPAL GROUPS.

(iii) The Commercial Court while passing the impugned order erred in expanding the scope of the interim order to say that it restrains appellants from using all or any names/trademarks mentioned in association with Manipal.

(iv) The suit is filed, deliberately omitting to implead MANIPAL ACADEMY OF HIGHER EDUCATION - a Company ('Company' for short) which holds registered trade mark MAHE and MANIPAL GROUP. Unless the prohibitory order is obtained against the Company, the prosecution under Order XXXIX Rule 2A of the Code does not lie against the appellants, as appellant No.1 is the Chairman, and appellants No. 2 and 3, are the Chief Executive and the President of the Manipal International School respectively.

(v) The use of trademarks/trade names viz. MAHE and MANIPAL GROUP post ex parte order by the Company cannot be construed as an act of violation of interim order against appellants.

(vi) Order XXXIX Rule 2A of the Code, contemplates willful disobedience of the order and not just disobedience. The element of willful disobedience of the order by the appellants is not established,

thus the order under challenge is liable to be set aside. Since appellant No.1 on the first date of appearance filed a written statement and an application to vacate the ex parte interim order and was diligently contesting the matter, it cannot be said that the disobedience, if any, is willful.

(vii) The trademarks/tradenames viz. MAHE and MANIPAL GROUP were in use even before the ex parte order. The ex parte order dated 21.2.2019 does not mandate the removal of the trademarks/trade names viz. MAHE and MANIPAL GROUP.

(viii) The appellants have complied with the order by removing the trademarks/tradenames viz. MAHE and MANIPAL GROUP and have submitted the compliance affidavit on 17.04.2023.

(ix) Considering the language employed in Order XXXIX Rule 2A, the Court should be slow in imposing civil imprisonment, when the provision provides a discretion to attach the properties of the contemnor.

12. In support of his contentions, the learned Senior Counsel has relied upon the following judgments:

(i) ANEETA HADA vs GODFATHER TRAVELS AND TOURS PRIVATE LIMITED ((2012)5 SCC 661)

(ii) U.C.SURENDRANATH vs MAMBALLY'S BAKERY ((2019) 20 SCC 666).

(iii) HIMANSHU vs B SHIVAMURTHY AND ANOTHER ((2019)3 SCC 797).

(iv) MAWAZZAM ALI KAN AND ORS. vs SHEBASH CHANDRA PAKRASHI AND ORS. (MANU/WB/0212/1927)

(v) HINDUSTAN UNILEVER LIMITED vs STATE OF MANDHYA PRADESH ((2020)10 SCC 751).

(vi) STATE OF BIHAR vs RANI SONABATI KUMARI ((1961)1 SCR 728) Submissions on behalf of respondent No.1

13. Sri. A.N.S. Nadkarni, the learned Senior Counsel appearing for respondent No.1 urged that;

(a) Appellants were served with a copy of the interim order and were aware of the interim order. Despite the interim prohibitory order granted by the Court, the appellants willfully disobeyed the order by using the above said trademark/trade name.

(b) In view of the interim order passed by the Court, appellants were required to take immediate steps for the removal of the aforesaid trademark/trade name wherever it was used before passing the interim order. However, such action is not taken till the order was confirmed by the Hon'ble Apex Court. And the disobedience continues even today though the appellants claim compliance

with the order in the month of April 2023, after the dismissal of the Special Leave Petitions.

(c) The application for breach of an interim order under Order XXXIX Rule 2A of the Code is maintainable against all the appellants as the interim order is passed against appellant No.1 and other appellants being aware of the order, aided and abetted the disobedience by appellant No.1.

(d) The ex parte order is not just confined to the use of expressions 'MAHE' and 'MANIPAL'. It prohibits the use of the words 'MAHE' and 'MANIPAL GROUPS' in conjunction with other words.

(e) The ex parte order granted must be understood in the context of 9 registered trademarks described in the plaint, in the name of plaintiff No.2, and in the light of the definition of "trade mark" found in Sub Section (2) of Section 2 of The Trade Marks Act, 1999.

(f) The ex parte order granted by the Court does not entertain two or more interpretations. The order is clear and unambiguous and the Commercial Court has not expanded the scope and meaning of the order.

(g) Assuming that the order is passed by the Court without jurisdiction, unless and until that order is set aside, it binds the party against whom the order is passed and in case of a breach, the party cannot raise a defence that the Court which passed the order had no jurisdiction.

14. Learned Senior counsel in support of his contentions has relied upon the following judgments:

(i) TAYABBHAI M.BAGASARWALLA AND ANOTHER VS. HIND RUBBER INDUSTRIES PVT. LTD AND OTHERS REPORTED IN (1997) 3 SCC 443

(ii) PATEL RAJNIKANT DHULABHAI AND ANOTHER VS. PATEL CHANDRAKANT DHULABHAI AND OTHERS REPORTED IN (2008) 14 SCC 561 Submissions on behalf of respondent No.2:

15. Learned Senior Counsel Sri Dhyana Chinappa appearing for respondent No.2, in addition, urged the following contentions:

(i) The ex parte order of injunction extended to the use of the word MANIPAL in conjunction with any other words. Even assuming that the order of injunction was only confined to the use of the trade names/trademarks MAHE and MANIPAL GROUPS, and then also the appellants should be held for disobedience or breach of interim order as the appellants, willfully, in defiance of the interim order used the trade names/trademarks MAHE and MANIPAL GROUPS.

(ii) The order was passed against appellant No.1 who is a party to the suit. Being a director of a Company and the Chairman of the Manipal International School, he has played the role in the use of the prohibited trade name/trademark, by the Company or its franchisee.

Hence appellant No.1 is guilty of breach and the remaining appellants are also guilty as abettors.

(iii) Order XXXIX Rule 2A of the Code, uses the expression "Person" and not "Party" unlike Order XXXIX Rules 1 and 2 of the Code. Thus, any person who is made known of the Court order, though not a party to the suit, is bound to obey the same.

(iv) If an order is passed against a person preventing him from doing certain acts, the same person against whom an order is passed, cannot do the restrained act in a different capacity or cannot cause it to be done by another person/entity/company, more so when the person against whom the order is passed is controlling another person/entity/company under whose name/ banner the prohibited act is done.

(v) The order passed by the City Civil Court in the first instance was an order passed by the Court of competent jurisdiction as it was a designated Court for Trade mark related cases, and later, on the establishment of the Commercial Court, the case is transferred to the Commercial Court. Thus, the order throughout is the order passed by the Court of competent jurisdiction and must be obeyed.

(vi) The order of injunction passed by the Court did not suffer from any ambiguity. Assuming that there was any ambiguity in the order, it was incumbent upon the persons against whom the order is passed to seek clarification from the Court. No such clarification is sought by the appellants and it is not open for them to interpret the order in a way that suits them.

(vii) The statement of objection filed to the application under Order XXXIX Rule 2A of the Code does not contain the defence relating to vagueness and ambiguity in the order.

16. In support of his contentions, the learned Senior Counsel for respondent No.2 has relied on the following judgments:

1. Krishna Gupta vs. Narendra Nath & Another, 2017 SCC ONLINE DELHI 10990

2. Mohd. Sharfuddin by LRs vs. Mohd.

Jamal & others 2003 SCC online AP 184

3. Vidya Charan Shukla vs. Tamil Nadu Olympic Association Represented by its General Secy & others, AIR 1991 Mad

4. Jiben Kumar Banerjee & Another vs. State of West Bengal, 1993 SCC Online

5. Sri.Badri Singh & Another vs. The State of Bihar & others, 1995 SCC online Pat Reply on behalf of the appellants:

17. Learned Senior counsel appearing for the appellants by way of rejoinder urged that the suits were filed by the respondents in O.S.No.8203/2014 and in

O.S.No.8204/2014 against the Company and no order of injunction was passed against the Company in the said proceedings. However, now an injunction is obtained in O.S. no. 960/2021 against one of the directors of the said Company (defendant No.3), in his individual capacity.

Since they failed to obtain any order in the said suit, indirectly the plaintiffs tried to obtain an order against the Company by impleading defendant No.3, in his individual capacity. Thus he urged that the act committed by the Company against which there is no order should not be treated as an act of disobedience by the appellants.

18. We have considered the contentions raised at the bar and perused the records and judgments cited. Points for consideration:

(a) Whether the appellants establish that the acts complained do not amount to disobedience or breach of the interim order dated 21.02.2019, in the light of partial/limited ex parte interim relief granted by the Commercial Court?

(b) Whether the appellants establish that the acts complained are the acts committed by the Company against which there was no ex parte order of injunction, as such, there is no disobedience or breach of the order of injunction by the appellants?

(c) Whether the respondents prove that appellants have willfully disobeyed the interim order dated 21.02.2019?

(d) Whether the Commercial Court justified in ordering civil imprisonment, payment of compensation and attachment of property if the compensation is not paid? Discussion regarding the scope of the interim order dated 21.02.2019:

19. In light of the contentions raised to answer point (a) relating to alleged disobedience, the Court has to first consider the scope and ambit of the interim order.

20. It is a settled principle of law that the order passed by the Court is to be understood in the context of pleading and prayer made. Hence it is necessary to refer to the prayer in the plaint. On a reading of the prayer, it is apparent that the suit is filed to restrain the use of trade names/marks, MANIPAL INTERNATIONAL SCHOOL, and/or MAHE and/or MANIPAL ACADEMY OF HEALTH AND EDUCATION and/or any other word(s) identical or deceptively similar to the Plaintiffs registered trademarks MAHE (DEEMED UNIVERSITY), MANIPAL ACADEMY OF HIGHER EDUCATION (DEEMED UNIVERSITY), MANIPAL UNIVERSITY, MIS.

21. Restraint order is sought to restrain the defendants from using the above said trademarks singularly or in conjunction with any other words or monogram/logo as a trademark, service mark, trade name, trading style, corporate name and domain name, or in any other manner whatsoever or in relation to any goods and/or services whatsoever advertising business papers etc.

22. From the written statement, it is apparent that the 3rd defendant contested the plaintiffs' claim. In substance, the defence is that the MANIPAL ACADEMY AND HEALTH EDUCATION which is later added as defendant No. 4 has the right to use the said words "MAHE" and "MANIPAL". It is also contended that "MANIPAL" is a geographical name and is being used by many including the defendants and the plaintiffs cannot claim exclusivity in its use.

23. The interim ex parte order of injunction is sought in 6 different applications and the relief of temporary injunction sought can be summarized as under.

23.1. In I.A. No.1, the plaintiffs sought a restraint order against the defendants from using:

MANIPAL INTERNATIONAL SCHOOL and/or MAHE and/or MANIPAL ACADEMY OF HEALTH AND EDUCATION and/or in another word(s) identical or deceptively similar to the plaintiffs registered trade mark MAHE (DEEMED UNIVERSITY)/MANIPAL ACADEMY OF HIGHER EDUCATION (DEEMED UNIVERSITY)/MANIPAL UNIVERSITY; singularly or in conjunction with any other words or monogram/logo or as a trade mark, service mark, trade name, trading style, domain name or other manner what-so-ever; or in relation to or any good and/or services what-so-ever, advertising, business papers etc. until disposal of this application. 23.2. In I.A. No.2, the plaintiffs sought a restraint order against the defendants from using, MANIPAL INTERNATIONAL SCHOOL and/or MIS and/or MAHE and/or MANIPAL ACADEMY OF HEALTH AND EDUCATION and/or other marks comprising of MANIPAL or any other mark/name/words identical or deceptively like the plaintiff's trade mark/mark(s)/name. MIS/MAHE (DEEMED UNIVERSITY)/MANIPAL ACADEMY OF HIGHER EDUCATION (DEEMED UNIVERSITY)/MANIPAL UNIVERSITY/MANIPAL, singularly or in conjunction with any other words or monogram/logo or as a trade mark, service mark, trade name, trading style, domain name or other manner what-so-ever; or in relation to or any good and/or services what-so-ever, advertising, business papers etc. until disposal of this application.

23.3. In I.A. No.3, the plaintiffs sought a restraint order against the defendants from using:

MAHE (DEEMED UNIVERSITY)/MANIPAL ACADEMY OF HIGHER EDUCATION (DEEMED UNIVERSITY)/ MANIPAL UNIVERSITY AND/OR OTHER MARKS comprising of MANIPAL or any other mark/name or words identical or deceptively similar thereto, singularly or in conjunction with any other words or monogram/logo or as a trade mark, service mark, trade name, trading style, domain name or other manner what-so-ever; or in relation to or any good and/or services what-so-ever, advertising, business papers etc. until disposal of this application.

23.4. In I.A. No.4, the plaintiffs sought a restraint order against the defendants from using "MANIPAL GROUP" singularly or in conjunction with any other words, in relation to any goods or services or business or in any manner whatsoever until disposal of this application.

23.5. In I.A.No.5, the plaintiffs sought a restraint order against the defendants from using:

"MANIPAL GROUP" (Logo displayed in I.A.) in relation to any other goods or services or business or in any manner whatsoever until disposal of this application.

23.6. In I.A.No.6, the plaintiffs sought a restraint order from using the domain name "manipalschool-ecity.com" and pass an order/direction to defendant No.2 to transfer the domain name "manipalschool-ecity.com" in favour of plaintiff No.1 until disposal of this application.

24. After considering the aforementioned applications, the Court on 21.02.2019, passed an order which reads as under.

"Defendants are hereby restrained by an order of ex parte injunction restraining them from infringing the plaintiffs registered trade mark by using identical trade mark like "MAHE" or "Manipal groups" in conjunction with any trademark, service mark and advertisement for their services or business papers".

(Emphasis added)

25. It is forthcoming from Ex. P26 and P37 that the trade names/trademarks namely MAHE and MANIPAL GROUP were used by a company by the name MANIPAL ACADEMY OF HEALTH AND EDUCATION, the fourth defendant which was impleaded vide order dated 04.11.2020 (Hereinafter referred to as the 'Company' for short). The prayer in the plaint as well as the prayer in the application is to restrain the defendants from using several alleged trade names/trademarks either singularly or in conjunction with some other names. In paragraph No. 31, the plaintiffs claim to be the registered holder of 9 specific trade names/trademarks. Though the prayer is made in respect of several trade names/ trademarks, the ex parte order is confined to the use of "MAHE" or "Manipal groups" not only individually but also in conjunction with any trademark, service mark and advertisement for their services or business papers".

26. Considering the contentions in the pleading, and the ex parte order granted by the Court, it has to be concluded that the use of the trade name/trademarks "MAHE" or "Manipal groups" individually or in conjunction with any other business names amounts to disobedience or breach of the ex parte order of temporary injunction.

27. Now the question is whether the appellants disobeyed or committed a breach of the interim order dated 21.02.2019 by the appellants?

28. To answer the above question, the Court has to consider the following:

(a) whether the appellants were aware of the ex parte interim order;

(b) whether the appellants were bound by the ex parte interim order and;

Discussion on the question (a):

29. So far as question (a) is concerned the appellants in their statement of objection before the Commercial Court did not raise a defence that they were not served with a copy of the interim order. The evidence on record (discussed infra) also reveals that the appellants were aware of the ex parte Court order. Hence the question (a) referred to above is answered in the affirmative.

Discussion on the question (b)

30. "Whether the appellants are bound by the order"?

31. The appellant No. 1 is arrayed as defendant No.3 in the suit. The ex parte order of injunction is passed against all three defendants. Thus, it binds appellant No.1/defendant No. 3 in the suit.

32. As far as appellants No.2 and 3 are concerned, admittedly they are not parties to the suit. However, the prosecution under Order XXXIX Rule 2A is launched against them on the premise that appellants No.2 and 3 aided and abetted the disobedience or breach of the order by appellant No.1, despite being aware of the restraint order against appellant No.1. Thus, the question is whether the prosecution lies against the persons who are not parties to the proceeding, is to be answered by considering the provision, i.e., Order XXXIX Rule 2A of the Code, which reads as under:

Order 39 Rule 2-A. Consequence of disobedience or breach of the injunction.-- (1) In the case of disobedience to any injunction granted or other order made under Rule 1 or Rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.] (Emphasis supplied)

33. The word used in the provision is "person" and not "party". It is relevant to note that the expressions "any party to the suit" or "defendant" are used in Order XXXIX Rules 1 and 2 of the Code, which provides for interim prohibitory order.

34. The wisdom of the parliament in using the expression "person" in Order XXXIX Rule 2A of the Code, instead of the words 'party' or 'parties' is obvious. The expression "person guilty of such disobedience or breach" will have a wider connotation than the expression "party guilty of such disobedience or breach". The intention is to ensure that the party to the proceeding does not circumvent the order of the Court, disobey or commit the breach of the order, through a person who is not a party to the proceeding. The provision also aims in ensuring that the Court order is obeyed or implemented both in its letter and spirit. Thus, Order XXXIX Rule 2A of the Code is wide enough in its scope and amplitude to punish the person who is guilty of disobedience or breach of a Court order though not a party to the suit. However, to prosecute and punish him, it must be established that;

(a) he was aware of the Court order,

(b) he willfully disobeyed the Court order.

35. In the case of SITA RAM VS BALBIR (2017) 2 SCC 456 the Hon'ble Apex Court held that the Courts have the power to punish the person who willfully violates the Court order despite being aware of the court order, though such a person is not a party to the proceeding which passed the order. In the instant case, it is not the case of the appellants that they were not aware of the order of injunction. In the cross-examination (referred infra) the appellants admit that they were served with a copy of the order or were aware of the Court order at least. Hence this Court is of the view the order dated 21.02.2019 binds all the appellants and accordingly the question (b) referred to above is answered in the affirmative.

36. Now the question is whether the appellants have disobeyed the interim order and if so whether disobedience or the breach is willful disobedience of the order. This question is to be considered in the light of the contention that the prohibited use of trade name/trade mark is said to be used by the Company or the franchisee, (as per the version of the appellants) which were not parties to the suit when the ex parte order was passed.

37. To answer the question, the following points are required to be considered.

(a) Whether appellant No.1 participated in the decision-making process of the Company which authorized the use of the trade mark/trade name covered by the interim order.

(b) Whether appellants No. 2 and 3 aided and abetted appellant No.1 and the Company in using the trade mark/trade name covered by the interim order.

38. Evidence reveals that the trade name/trade mark MAHE and MANIPAL and MANIPAL GROUP were used in several publications by the Company or its franchisees. The evidence of RW-3/appellant No.1 in unmistakable terms would lead to the conclusion that appellant No.1 has allowed the use of the trade name/trade mark covered by the interim order. From the tenor of the defence raised, it is evident that the appellants are not denying the publication of the trade name/trade mark MAHE and Manipal GROUP. However, it is urged that the use of the said trade

mark/trade name by the Company does not amount to a breach of the interim order on the premise that there is no order against the Company.

39. It may be noticed that the publications of the words 'MAHE' and 'MANIPAL GROUPS' either singularly or in conjunction with some other trade name/trade mark or business/service name by the Company are never in dispute. The appellants essentially contended that it was used by the Company which was not a party to the suit when the ex parte order was passed and such use of the trade name/trade mark by the Company cannot be termed as disobedience or breach to punish the appellants on the principle that agent is also liable for the act of master. Such being the position, it is not necessary for the Court to dwell deep to consider whether the prohibited trade names/trademarks are published post interim order. Admittedly they are published post interim order.

40. It is to be noticed that defendant No.4 (impleaded after ex parte order) is a Company incorporated. It is a juristic person but not a real person but managed by real persons. Thus, the Company acts through real persons. Appellant No.1 is one of the directors of the Company and being the director, he has played a conscious role in allowing the publication of the trade name/trade mark by other persons/entities.

41. There is nothing on record to show that appellant No.1 distanced himself from the decision-making process when the decisions are taken to allow the third parties/franchisees to use the trade name/trade mark covered by the interim order. It is his stand that he is arrayed in the suit in his individual capacity and not as a Director of the Company. It is contended that appellant No.1 is not prevented from participating in the proceedings of the Company as a director, and any decision taken by the Company where he has participated as a director should be treated as a decision/act of the Company, and not the decision/act of the appellant No 1. This contention does not merit elaborate consideration as it runs contrary to the underlying spirit and object of Order XXXIX Rule 2 A of the Code, discussed supra, which empowers the Court to proceed against any "person" who violates the order of the Court. If such a contention is accepted, it defeats the salutary object behind Order XXXIX Rule 2A of the Code. Hence appellant No.1 is guilty of disobedience or breach of the interim order of injunction.

42. The learned Senior counsel appearing for the appellants placed reliance on the judgements of the Hon'ble Apex Court in the case of ANEETHA HADA, HIMANSU, and HINDUSTAN UNILEVER (supra). Referring to the decisions, it was urged that the Company was not a party to the proceeding when the ex parte order was passed and in effect, no order is passed against the Company. Thus the use of Trade name/Trade Mark by the Company does not amount to a breach and no prosecution lies against the appellants who are in some way connected to the Company. This Court is of the view that the ratio laid down in the aforementioned case is not applicable, as the law laid down in the case of ANEETHA HADA, HIMANSHU and HIMANSU (supra), is in the context of Section 141 of the Negotiable Instruments Act. And the law laid down in the case of HINDUSTAN UNILEVER (supra), is in the context of Section 17 of the Food Safety and Standards Act, 2006. The Hon'ble Apex Court in the aforementioned cases has decided the question relating to the liability of a Director or Officer in charge of a Company in an entirely different factual and legal context. In

ANNETHA HADA, and HIMANSU (supra), the Apex Court has taken a view that to hold the directors or officers in charge of the Company liable for the offence under Section 138, of N.I. Act, the liability of the Company is to be established and the Company is to be made a party. That principle has no application to the present case, where the Court is examining the culpability of the persons against whom an interim order of the Court is served and who are accused to have committed the breach. This Court is not examining the liability of the Company, but is examining the role/acts/omissions of the appellants said to have been committed, behind the shield of the Company. Hence, the ratio laid down in the aforementioned cases does not apply.

43. The law laid down in the case of STATE OF BIHAR VS SONABATI and MAWAZZAM ALI KAN supra, interpreting Order 39 Rule 2(3) of the Code, is of little assistance to the appellants who are held guilty of disobedience under Order XXXIX Rule 2A, even assuming that the philosophy of both the provisions is the same, as facts obtained are entirely different.

44. Hence the appellants are also guilty of disobedience of the interim order dated 21.02.2019. REGARDING WILFUL DISOBEDIENCE.

45. Having dealt with the question of disobedience and having held that the appellants are guilty of disobedience, now this Court will consider whether the disobedience or breach is willful. This question has to be considered by analysing the evidence on record.

46. Appellant No.2 is examined as RW1 in the miscellaneous proceedings. In his cross-examination, RW1 is stated as under:

"We started our first franchise school in the year 2018 as I remember. The said institution is running two franchise schools as of now, one in Bengaluru and the other one at Anantpur (AP). The school by name of Manipal of my affidavit situated at Chandapur is now closed. Since we have differences with the franchisee, we have closed the said school. Our Bengaluru franchise school by name Manipal International School is situated at Laxmisagara Road, Chandapur. It was established in May 2020.

(Underlining by the Court) I was aware that, in May- 2020 there was an injunction order by the Court in respect of MAHE and Manipal Groups." Witness volunteers that, the injunction order is not against MAHE and Manipal Groups, but it was against Manipal International School as per my knowledge. I know that Mr Sudhakar Pai is a party to the said proceeding.

Mr Sudhakar Pai has established the said institution as per my knowledge".

(underlining by the Court)

47. From the admission extracted above, it is evident that RW1 in his cross-examination, admits opening the school in May 2020 under the name of MANIPAL INTERNATIONAL SCHOOL. It is

further evident that Mr Sudhakar Pai (appellant No.1) is the Chairman of the institution and he has taken a decision in approving the franchise school.

48. The relevant portion of the evidence of RW2 (appellant No.3) in cross-examination reads as under:

I came to know about the passing of injunction orders by the court in respect of Manipal International School in the year 2019. It was somewhere in June-2019. I have not received any notice from the advocate regarding the passing of the interim order of injunction by the court. I have not raised the issue of court proceedings/injunction order with respondent No.4 while starting Lakshmisagar Road School. Witness volunteers that, the management of the school told me that they will take care of it. There were several persons in the management. Respondent No.4 told me about it.

I do not know the names of the trustees of the MEF trust. It is true to suggest that I report to Respondent No.4. Witness again says that she reports to the HR department and Finance department daily. It is false to suggest that Ex.P38 is the e-mail sent by Miss. Sowmya at my instructions. We recruited teachers for Suryanagar school in April-May of 2019. It is true to suggest that I am involved in day to day management of the Manipal Academy of Health and Education and I know all the proceedings of the case. Witness volunteers that, at present, she is involved in the management of the Manipal Academy of Health and Education and knowing about this case. It is true to suggest that the document now shown to me is the website printout of our school. The same is marked as Ex.P40.

(underlining by the Court)

49. From her evidence, it is apparent that appellant No.3 came to know about the ex parte interim order in June 2019. It is also evident that she has understood that the order is against MANIPAL INTERNATIONAL SCHOOL. It is forthcoming that appellant No.3/RW2 has stated that the management assured that it will take care of the interim order passed by the Court.

50. The evidence of RW3 who is appellant No.1 in the cross-examination reads as under:

"We have started two schools under the company during the period from 2007 to 2018 one in Lucknow and the other one is in Bhopal.

The said schools are not owned by the
company. Witness volunteers that the

company is the only service provider and schools are owned by the respective trusts in the said places. One M N Sudheer, Chartered Accountant of Delhi has decided that the company shall be in its present name. He was the founder and director of the company. I will allow any person to use Manipal as his corporate name if he does

good work and for good purpose. There were 5-6 names before the Board of Directors of the company before the formation of the Manipal International School and the said name was selected among them. I do not remember how many directors were there on the Board when we selected the name for Manipal International School. It could be correct to say that there were only two directors in the company at any point of time including myself. I have allowed a person to form a trust in the name of Manipal after receiving the temporary injunction order by the court in Com.OS No.960/2021 (OS No.15/2019). I do not remember whether the said trust has established its office in one of my establishments".

We started MANIPAL INTERNATIONAL SCHOOL at Chandapur in the year 2019 and it was stopped in the year 2020. It was shifted to Suryanagar in the year 2020. The school in Chandapur was a franchise school owned by Educrysal Trust. We have issued a licence to the said trust to use Manipal as the name of the Manipal International School. Manipal Education Foundation is the trust which took over the said school and started it in Suryanagar. We have executed a new franchise agreement in favour of the Manipal Education Foundation. We have issued a licence to Manipal Education Foundation to use the work of Manipal for their said school. As I remember there are 4 or 5 trustees in the said Manipal Education Foundation. I do not remember that Educrysal Trust has issued a notice to me stating that I have misrepresented them as being part of Manipal University and MAHE. Witness volunteers that in the first meeting with the Educrysal Trust, I told them that we are not part of Manipal University and MAHE.

Q: Have you started any school in the name of Manipal in Dharbanga, Bihar and in Coimbatore?

A: Our company might have started the schools in the name of Manipal in Dharbanga and in Coimbatore.

Q: Have you permitted as a member of Board of Directors for the usage of the word Manipal, Manipal Group, MAHE by third parties after the passing of the interim order by this court?

A: As a company, we have permitted for usage of the word Manipal, Manipal Group, MAHE by third parties after the passing of interim order by this court as there was no injunction order against the company.

(underlining by the Court)

51. Thus, from the evidence of RW-3/the appellant No.1, it is explicit that he was aware of the interim order passed against him in the year 2019. And RW-3 in his capacity as the director of the Company has consciously and deliberately allowed the franchisee to use the name MANIPAL GROUP and MAHE. Appellant No. 1 now seeks to take shelter under the banner of the Company in which he is one of the directors and played a decisive role to permit the use of the enjoined name/trade mark. It is urged that the Company has issued authorisation to the franchisee to use the name MANIPAL GROUP and he has not authorised in his capacity as defendant No.3. However, what is to be noticed is that the 4th defendant is only a Company and it is managed by the board of

directors. The evidence also discloses the fact that the wife and two daughters of appellant No.1 are the remaining directors of the Company along with appellant No.1.

52. The order of the Court is required to be obeyed not only in letter but also in its true spirit. The specious plea of the contemnor that he did the acts complained in a different capacity or role than the one described in the proceeding where the order is passed against him, is wholly misplaced. On the other hand, such an act of imposter speaks aloud about wilful disobedience. This Court is of the view that the act of appellant No. 1, in publishing the injuncted trade name/trademark in the name of the Company/franchisee amounts to wilful disobedience of the Court order dated 21.02.2019.

53. It is also forthcoming from the records which are marked at Ex.P.23 and Ex.P.26 that the expression "MANIPAL GROUP" and "MAHE" are used by MANIPAL INTERNATIONAL SCHOOL even after service of ex parte order on the defendants. These documents are not disputed. These documents are publications by MANIPAL INTERNATIONAL SCHOOL.

54. It is also evident from Exs.P.39 and 40 that trademarks MAHE and MANIPAL GROUP are used by appellant No.3. These are the publications by MANIPAL INTERNATIONAL SCHOOL and the publication of these documents which contain the expression MAHE and MANIPAL GROUP are not disputed by the appellants.

55. Under these circumstances, there is no difficulty in holding that the MAHE and MANIPAL GROUP, the expressions which are covered in the interim order are used by the appellants even after service of notice of the interim order.

56. The evidence placed on record and the stand taken by the appellants demonstrate that appellant No.1 wilfully used the expression "MAHE" as well as "MANIPAL GROUP" after being served with the notice of the interim order. Other appellants aided and abetted appellant No. 1.

57. Again, this Court has to keep in mind that the suit is filed on the premise that the defendants are misusing the registered trade mark of the plaintiffs and in this context, being satisfied that prima facie case made out by the plaintiffs, the Court passed an interim order. The appellants are all well-educated, well-informed and occupying responsible positions. It can be safely concluded that they were certainly aware of the true import of the interim order passed by the Court.

58. The contention of the appellants that no order is passed against the Company and use of injuncted expressions by the Company is not disobedience of the court order is untenable for the simple reason, the appellant being the director of the Company has not distanced himself from any of the decisions of the Company or MANIPAL INTERNATIONAL SCHOOL in allowing the franchisee/s to use the name MAHE and MANIPAL GROUP. It is not his case that the decision is taken by the Company without his knowledge or despite his objection to use such names. On the other hand appellant No.1 took part in selecting the franchisees and allowed the trade name to be used by them. This being the position, this Court has to take a view that appellant No.1 has wilfully participated in the decision- making process of the Company and permitted the use of the prohibited Trade name/Trade Mark, by the MANIPAL INTERNATIONAL SCHOOL and the

franchisees. The conduct of appellant No.1 is nothing but an attempt to hoodwink the interim order passed by the Commercial Court. This being the position, in the considered opinion of this Court, the publications complained about are published in blatant violation of the interim order passed by the Court.

59. The evidence of RW1, in unmistakable terms reveals that despite bringing to the notice of the management the order passed by the Court, the management (obviously comprising appellant No.1 as he is the Chairman of the Manipal International school) has gone to the extent of saying that it will take care of order passed by the Court. This statement by RW1 in the cross- examination is not disputed by appellant No.1. This again would establish the fact that appellant No.1 has wilfully disobeyed the interim order and has no respect for the Court order.

60. The evidence on record if analysed carefully would lead to the inevitable conclusion that appellant No.1 has calculatedly misused the injuncted trade mark/trade name in the name of MANIPAL INTERNATIONAL SCHOOL to give an impression that the decision is taken by the Company and he is not a party to the said decision. However, his defence is demolished in his cross-examination. The evidence on record points towards the intention of appellant No.1, who tried to make a mockery of the Court order and intentionally disobeyed the order, hiding behind the veil of the Company. Under the circumstances, this Court is of the view that the violation is brazen, wilful and deliberate which has to be viewed seriously.

61. So far as submissions that the ex parte order is passed by a Court without jurisdiction and the same came to an end as the case is closed, on transfer to the Commercial Court, are concerned, it is evident that there is no order in the order sheet to hold that the case is closed. Since the case is transferred to Commercial Court on the establishment of Commercial Court, vide notification dated 26.06.2008, and having regard to the fact that it was initially filed before the designated court dealing with intellectual property cases, this Court is of the view that the ex parte order was passed by the competent Court. Even otherwise, in terms of the law laid down in the case of TAYABBHAI M.BAGASARWALLA supra, even the order passed by the court having no jurisdiction, is to be obeyed, otherwise, consequences as prescribed under Order XXXIX Rule 2A of the Code would ensue. Hence the appellants' contentions in this regard are rejected. ON PUNISHMENT IMPOSED AND ITS PROPORTIONALITY

62. As already noticed, the Commercial Court has passed an order for payment of compensation. The order also permitted the plaintiffs to apply for the sale of the attached property if compensation is not paid. In addition, civil imprisonment is also ordered. To decide the question on the punishment and its proportionality the Court has to consider Order XXXIX Rule 2A of the Code. The Order XXXIX Rule 2A of the Code is extracted in paragraph 32.

63. On reading XXXIX Rule 2A (1) of the Code, it is evident that the Rule provides for;

(a) attachment of the property of the wrongdoer,

(b) civil imprisonment not exceeding three months. The sub-rule (2), referred to above provides for;

(a) The attachment shall not remain in force for more than a year.

(b) If disobedience continues at the end of the period for which the order of attachment is passed, the Court may sell the property attached and pay suitable compensation to the injured party. Balance amount if any has to be returned to the contemnor.

64. As can be noticed, the provision does not empower the Court to award compensation by attachment and sale of the property, immediately after pronouncing the verdict of guilty. To sell the property attached, the Court has to wait till the expiry of the period of attachment, specified in the order which can be one year, at the maximum. The property attached can be sold if the disobedience or the breach complained of continues at the end of the period of attachment. It is again noticed, even if the breach continues, the Court is not bound to sell the property, but at its discretion may order the sale of the property attached and pay compensation to the injured.

65. The provision enables to Court to provide an opportunity to the contemnor to mend his acts and omissions. Despite the completion of tenure of the attachment order, if the contemnor persists in disobedience, the Court may sell the attached property and pay compensation to compensate the wrongdoer. Before selling the property attached, there has to be a finding recorded that disobedience or breach continued even after the issuance of an order of attachment. This can be done only after hearing the contemnor. From the measured procedure contemplated in the provision, the carrot and stick policy is writ large in Order XXXIX Rule 2A(2) of the Code.

66. In this case, payment of compensation is ordered on the day of pronouncing the verdict of guilty, which is impermissible under Order XXXIX Rule 2A of the Code. The opportunity for the contemnors to make amends for their acts and omissions is denied. Instead of ordering attachment to secure possible order for payment of compensation, in the event of disobedience or breach continuing at the end of the tenure of the order of attachment, the Court straight away ordered payment of compensation and permitted the plaintiffs to apply for attaching the property of the contemnors if payment is not made. By doing so, the Commercial Court put the cart before the horse which is impermissible. Hence the order for payment of compensation has to be set aside as the same is in ultra vires the provision of Order XXXIX Rule 2A of the Code.

67. Now we may advert to the question, whether the Commercial Court is justified in directing appellant No.1 to undergo civil imprisonment of 3 months and civil imprisonment of one month each to the appellants and respondent No.3 in Commercial Misc. No.246/2021.

68. The underlying philosophy of the provision is curative and to enforce the compliance of the Court order rather than to punish the wrongdoer. The measured steps and procedures provided in Order XXXIX Rule 2A of the Code, discussed supra, support the view. At the same time, it is equally important that any party to the litigation should not carry the impression that one who violates the interim order is entitled to a long rope. The provision also has a very important role to play in upholding the rule of law, the majesty of the Court, and ensuring the credibility of the Court order.

69. Needless to say, under Article 21 of the Constitution of India, liberty is a cherished fundamental right. While ordering civil imprisonment, the court should bear in mind the fundamental right guaranteed in Article 21 of the Constitution of India. However, it does not mean that the punishment by way of civil imprisonment is ruled out and can be ordered only after exhausting the option of attachment and sale of the property.

70. In terms of the law laid down by the Apex Court in SAMEE KHAN vs. BINDU KHAN reported in (1999) 7 SCC 59 it is held that the Court has the power to order attachment as well as civil imprisonment simultaneously. From the very language employed in the provision, it is apparent that the discretion lies with the Court to impose either of the two punishments as well. However, the discretion is not absolute or unfettered. Every wide power conferred on the Courts has inherent limitations and inbuilt checks and balance mechanisms. Likewise, the discretion under Order XXXIX Rule 2A has its inherent limitations as the power to order civil imprisonment under Order XXXIX Rule 2A curtails an individual's fundamental right, albeit through a process of law.

71. For the aforesaid reasons, considering the object of the provision, an order directing civil imprisonment should not be passed as a matter of course. To pass an order for civil imprisonment, the Court has to take into account one or more factors or circumstances namely;

- (a) the nature/gravity of the disobedience or breach, and the manner in which order is violated,
- (b) the loss caused to the party on account of disobedience or breach,
- (c) whether the damage caused can be restored in some way or the other or is something irreversible,
- (d) circumstances under which the breach or disobedience is committed,
- (e) whether the breach or disobedience complained is an isolated act or it is a continuous act,
- (f) previous history, if any, where the contemnor is held guilty of breach or disobedience of the Court order,
- (g) whether the case calls for a situation where the message is to be sent, by passing an order of civil imprisonment, that willful breach or disobedience of the Court order will be viewed seriously,
- (h) and more importantly, the Court has to consider whether civil imprisonment is an effective way to prevent a further breach,
- (i) the timing of the apology if any, tendered by the contemnor, the tenor and tone of the language used in the affidavit tendering the apology,
- (j) the compliance if any, made to undo the disobedience or breach complained,

(k) to an extent, the educational qualifications/ positions of the contemnor and whether the acts committed by the contemnor make mockery of the Court order.

72. This Court also makes it clear that the criteria mentioned above are not exhaustive but are illustrative and this Court is not saying that all the criteria have to be satisfied before ordering attachment of the property or civil imprisonment of the contemnor.

73. After considering the aforementioned factors or circumstances, if the Court is of the view, that the evidence led before it warrants civil imprisonment, then the Court can impose civil imprisonment on the contemnor for such duration not exceeding three months. Again, the duration of civil imprisonment depends on the circumstances referred to above.

74. Keeping in mind the above-said principles, this Court has examined the evidence and the proportionality of punishment imposed.

74.1. Appellant No.1, holding a responsible position, used his position to induce other appellants to disobey the order. In the process, the appellant No.1 has shown utmost disrespect to the order of the Court and the disobedience committed is in the public domain as the injuncted tradename/trademark is published in electronic social media. As far as the contention based on the judgment of the Hon'ble Apex Court in the case of Surendranath is concerned, the same is an authority for the proposition that only in case of wilful disobedience; the Court will punish the wrongdoer. The materials placed on record demonstrate that the appellants wilfully disobeyed the order. Hence the judgment does not come to the aid of the appellants.

74.2 In the case of PATEL RAJINIKANTH DHULABHAI supra, in paragraph number 77 it is held as under:

77. We are also satisfied that the so-called apology is not an act of penitence, contrition or regret. It has been tendered as a "tactful move"

when the contemnors are in the tight corner and with a view to ward off the Court. Acceptance of such apology in the case on hand would be allowing the contemnors to go away with impunity after committing gross contempt of Court. In our considered opinion, on the facts and in the circumstances of the case, the imposition of a fine in lieu of imprisonment will not meet the ends of justice.

74.3. Now we may advert to the issue, whether appellants have complied with the order of injunction. The affidavit is filed on 17.04.2023 claiming compliance of the order dated 21.02.2019. However, the compliance of the order is disputed by the respondents. It is pointed out that one more application is filed under Order XXXIX Rule 2A of the Code alleging further disobedience and the same is pending consideration before the Commercial Court. It is not necessary to express any opinion on the alleged continued disobedience of the order, as the same is required to be adjudicated by the Commercial Court. However, it is to be noticed that the alleged

compliance dated 17.04.2023 has come too late in the day, four years after the interim order. Even the affidavit filed does not properly reflect remorse on the part of the contemnors.

74.4. In the same judgment in PATEL RAJANIKANT DHULABHAI supra in paragraph No. 62, the Apex Court has extracted the observation of Lord Diplock in the celebrated decision of Attorney General v. Times Newspaper Ltd. [(1974) AC 273 : (1973) 3 All ER 54 : (1973) 3 WLR 298 (HL)] which reads as under.

"There is an element of public policy in punishing civil contempt since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity."

74.5. The public policy in punishing Civil Contempt is the same across all jurisdictions. None should carry the impression that the Court orders, even if disobeyed, will have no consequence. The binding Order of the Court must be obeyed not only with a sense of respect and duty but also with a sense of responsibility, and not just with a sense of subordination.

74.6. This Court considering the parameters set out supra, has taken into account the nature of the violation, the manner in which the order is violated, repeated violation at multiple places, its wide publicity, and an element of deception found in the act, the high and responsible position of the appellant no.1, and his act in inducing the other appellants to flout the order of the Court. After considering these facts, though this Court is of the view that the Commercial Court is justified in ordering Civil imprisonment as far as appellant No.1, three months civil imprisonment ordered against appellant No.1 is unjustified.

74.7. In the case of PATEL RAJNIKATH supra the Apex Court imposed civil imprisonment for 15 days. In the said case, the contemnor violated the interim order which prohibited him from alienating the property. In the instant case, the contemnors used the injuncted trade name/trade mark. Having due regard to the underlying philosophy of Order XXXIX Rule 2 A of the Code, discussed supra, and having regard to the age of appellant No.1, who is 63 years (as per the age mentioned in the affidavit dated 8.3.2022), this Court is of the view that three months civil imprisonment, imposed to appellant No.1, which is the maximum period allowed under Order XXXIX Rule 2A of the Code is on the higher side. In the facts and circumstances of the case discussed above, this Court is of the view that the ends of justice would be met if appellant No.1 is directed to undergo civil imprisonment of 15 days.

74.8. As far as appellants No.2 and 3 are concerned, it has to be noticed that their acts have to be analysed in a different yardstick given the fact that they were not parties to the proceeding when an interim order was passed. Appellant No.2 claims to be the Chief Executive Officer of the MAHE, and Appellant No.3 claims to be the Vice President of MAHE. Considering their positions in the institution it can be held that they are not part of the decision-making process of the Company. Nevertheless, they are very much aware that the order is passed against appellant No.1 restraining him from using the trade mark MAHE and MANIPAL GROUP and they were bound to respect the

order of the Court. This being the position, the Court has to consider whether the act of appellants 2 and 3 in aiding and abetting the act of appellant no. 1 amounts to wilful disobedience of the Court Order. On analysis of evidence, it has to be held that appellants no. 2 and 3, though on their own accord did not disobey the order, certainly aided and abetted the appellant No.1, seemingly under the directions of appellant No. 1 who held a dominating position.

74.9. However, taking into consideration the precarious position of appellants No.2 and 3, where appellant No.1 instructed them to continue to use the prohibited trade mark, and having regard to the parameters discussed in paragraph No.71, and keeping in mind that the primary underlying object of the provision preventive and curative, this Court is of the view that the order of civil imprisonment against the appellants No. 2 and 3 is disproportionate and unjustified and has to be set aside.

74.10. Since the appellants are guilty of disobedience of the order passed by the Court, the Commercial Court, on securing the details of the properties of the appellants, shall attach the properties (to the extent required to realise the compensation) for a period of six months, and in case, the breach or disobedience continues at the expiry of six months, then the attached properties of the appellants, be sold and the compensation of Rs.1,00,000/- be paid to each of the plaintiffs from the sale of the properties of the appellant No.1, and Rs.50,000/- be paid to each of the plaintiffs from the sale of properties of each of the appellants No. 2 and 3.

75. By way of a separate order, this Court has allowed the application at I.A.No.2/2023 seeking permission to raise additional grounds is allowed and those grounds are considered in this order. By way of a separate order, the application at I.A.No.3/2022 seeking the production of additional documents is rejected.

76. Hence the following:

ORDER

(a) The impugned order dated 28.09.2022 passed by X Additional District and Sessions Judge, Bengaluru Rural district, Bengaluru in Commercial Misc. No.246/2021 directing Civil imprisonment of appellants No.2, 3 is set aside.

(b) The impugned order dated 28.09.2022 passed by X Additional District and Sessions Judge, Bengaluru Rural district, Bengaluru in Commercial Misc. No.246/2021 directing three months imprisonment of appellant No.1 is modified and appellant No.1 is ordered to undergo civil imprisonment of 15 days.

(c) The properties of the appellants are to be attached for 6 months.

(d) In case, the breach or disobedience continues at the expiry of six months, then the attached properties of the appellants be sold and compensation of Rs.1,00,000/- be paid to each of the plaintiffs from the sale of the properties of the appellant No.1, and

Rs.50,000/- be paid to each of the plaintiffs from the sale of properties of each of the appellants No.2 and 3.

(e) Since the details of the properties of the appellants are not furnished, the same shall be furnished to the Commercial Court to pass the necessary order as directed in clauses (c) and (d).

(f) Accordingly, the appeal is allowed in part as indicated above.

Sd/-

JUDGE Sd/-

JUDGE BRN/GVP