

MANU/DE/0850/1998

Equivalent Citation: 77(1999)DLT392, (1998)ILR Delhi870, (1998)ILR 2Delhi870

IN THE HIGH COURT OF DELHI

Suit No. 1761 of 1998 and I.A. Nos. 7260, 7261 and 8087 of 1998

Decided On: 00.09.1998

Appellants: **Rajni Dua and Ors.**
Vs.

Respondent: **Bhushan Kumar and Ors.**

Hon'ble Judges/Coram:

Dalveer Bhandari, J.

Counsels:

For Appellant/Petitioner/plaintiff: Arun Jaitley, Mukul Rohtagi, A.K. Sikri, Senior Advs., Maninder Singh and Pratibha M. Singh, Advs

For Respondents/Defendant: V.P. Singh, Sr. Adv., Pravin Anand and Binni Kalra, Advs.

Subject: Intellectual Property Rights

Acts/Rules/Orders:

Code of Civil Procedure, 1908 (CPC) - Order 39 Rules 1, Code of Civil Procedure, 1908 (CPC) - Order 39 Rules 2

Cases Referred:

Kale and Ors. v. Deputy Director of Consolidation and Ors., 1976 (3) SCC 199; Madho Das v. Mukand Ram, A.I.R. 1955 SC 481; Ram Chander Dass v. Girja Nandini Devi, AIR 1966 SC 323; Power Control Appliance and Ors. v. Sumit Machine Private Ltd., JT 1992 SC Page 70, 53 (1994) DLT 723 (SC); Swaran Singh Bedi Appliance Emporium v. Usha Industries, AIR 1986 Delhi 343; Magnum Films and Ors. v. Gokha Properties, A.I.R. 1983 Delhi 392; Chandulal v. Delhi Municipality, AIR 1978 Delhi 174

Case Note:

The case debated on the grant of mandatory injunction under Order 39 Rules 1&2 of the Civil Procedure Code, 1908, in relevance to the permission to use trade mark – The plaintiffs were permitted to use the specified trade mark for manufacturing of detergent powder, detergent cakes and soap also they were permitted to manufacture and sell havan samagri – The business terms were settled according to the family arrangement made by the proprietor of the trade mark – However after five days of the arrangement there were complaints of deterioration in quality of the products of the plaintiffs – It was ruled that family arrangement made by the proprietor would continue and the defendants would not interfere in usage of the trade mark in regards to items manufactured by the plaintiff – Also it was ruled under Section 106 of the Trade and Merchandise Marks Act, 1958, the plaintiff was not allowed to use the trade mark and logo for any other products excepts manufactured by them

JUDGMENT

Dalveer Bhandari, J.

1. The dispute among the family members over the use of trade mark/logo "T-Series" is the foundation of this litigation.

2. plaintiffs 1 and 2 are very closely related to defendants No. 1 to 4. The present litigation has to be appreciated in the perspective of a litigation inter se family members. Admittedly, late Mr. Gulshan Kumar was the chief architect of this family. He alone ought to get the entire credit for developing the immense family business. Unfortunately he died in very tragic circumstances on 12th August, 1997. The dispute involved in this litigation also started immediately after his demise. It is abundantly dear that during his lifetime late Mr. Gulshan Kumar kept the family members in good discipline and the entire family worked as a team. Late Mr. Gulshan Kumar conceived of trade mark, logo and artistic works "T-Series". The business was initially started in a humble manner with the trade mark and logo T-Series but within a short span of time it flourished immensely. Late Mr. Gulshan Kumar acquired the name of 'king of cassette industries' in India. The Super Cassettes Industries was the first business venture of the family which was carried with the trade mark and

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logo "T-Series" but later on because of tremendous success in the business, the family business was diversified and they started manufacturing other goods with the same trade mark and logo "T-Series".

3. plaintiff No. 2 is the brother and plaintiff No. 1 is the sister-in-law of late Mr. Gulshan Kumar. During the lifetime of late Mr. Gulshan Kumar, "Gopal Soap Industries", was started by plaintiff No. 2, Gopal Krishan in the year 1988. It started manufacturing, marketing and selling 'Detergent Powder, Detergent Cake, Soaps', etc. plaintiff No. 1, Mrs. Rajni Dua also in the lifetime of late Mr. Gulshan Kumar started manufacturing 'Dhoop, Agarbatti, Havan Samagri and allied goods' since 1996. The plaintiffs since its inception, started using the trade mark/logo "T-Series". It may be pertinent to mention that only plaintiffs No. 1 and 2 in the entire family have been manufacturing the aforesaid goods and no one else has manufactured or marketed these items till date. According to the plaintiffs, the defendants started creating serious problems in the day-to-day functioning of their business and the plaintiffs have been compelled to approach this Court.

4. Admittedly, plaintiffs 1 and 2 are the proprietors of plaintiff Nos. 4 and 3 respectively. According to the plaintiffs all the disputes and controversies, among the family members, were finally settled by a family settlement dated 21 st February, 1998. It is submitted on behalf of the plaintiffs that according to the letter and spirit of the agreement, the plaintiffs shall continue to carry on their business exclusively. According to the settlement, the plaintiffs were to have a perpetual license for the exclusive use of the trade mark/logo "T-Series" only with regard to the aforementioned products manufactured by them. In consideration of the above perpetual license or arrangement, plaintiff Nos. 1 and 2 would relinquish their shareholdings in the various companies and firms, which are under the control of the defendants, namely, Super Cassettes Pvt. Ltd, Laxmi Video Private Limited, Tony Electronics Pvt. Ltd., Mandakini Acqua Pvt. Ltd., Super Electronics, etc. plaintiffs 1 and 2 were to further lease out some properties in their possession to defendant No. 5. It is incorporated in the plaint that all these obligations have been fully carried out by the plaintiffs as per the agreement.

5. The further case of the plaintiffs is that defendant Nos. 1 and 5 in complete violation and utter disregard to the family settlement dated 21st February, 1998 addressed a legal notice to the plaintiffs on 26th February, 1998. Defendants 1 and 5 called upon the plaintiffs to stop using the trade mark/logo "T-Series" on their products. However, the settlement talks, again ensued between the parties and it was agreed that the plaintiffs shall continue to use the trade mark/logo "T-Series" for the goods which are being manufactured by them and consequently the notice was withdrawn by defendants No. 1 and 5. It was made clear that the plaintiffs would have a perpetual exclusive right to use trade mark/logo "T-Series" as far as manufacture and sale of their products were concerned. Further the plaintiffs have mentioned that because of their tremendous hard work and dedication their sales had reached to the tune of Rs. 36.85 crores in the year 1996-97.

6. The plaintiffs submitted that on 7.8.1998 defendants No. 1 and 5 again served a letter calling upon the plaintiffs to immediately stop the use of the trade mark/logo "T-Series" on their products.

7. It is further mentioned that defendant No. 1 has given an interview in a leading English National, Times of India newspaper on 18th August, 1998 that he plans to manufacture products which have always been exclusively manufactured and sold by the plaintiffs under the trade mark/logo "T-Series" with regard to the aforesaid products.

8. The plaintiffs submitted that the above conduct, activities and actions of the defendants are completely contrary to the agreement between the parties. The plaintiffs submit that they have an established running business in relation to the goods mentioned above and from the very inception and even during the lifetime of late Mr. Gulshan Kumar the plaintiffs have been using trade mark/logo "T-Series" exclusively. There was a clear understanding among the family members from the very inception that for the aforementioned products the trade mark/logo "T-Series" have always been exclusively used by the plaintiffs and the plaintiffs shall continue to use the same perpetually.

9. It is mentioned that the cause of action arose on 11th August, 1998 when the plaintiffs received the letter dated 6th August, 1998 and cause of action further arose on 16th and 17th August, 1998 when the notices were published by the defendants in the newspapers. In this view of the matter, the suit filed by the plaintiffs is well within limitation. The defendants also reside within the territorial jurisdiction of this Court. The cause of action arose within the jurisdiction of this Court and this Court has the jurisdiction to entertain this suit

10. The plaintiffs have prayed that by a decree of mandatory injunction the defendants, (their officers, distributors and all those directly and indirectly associated with the defendants) be restrained from interfering in the business and use of trade mark/logo 'T-Series' by the plaintiffs and it was also prayed that the defendants be also restrained from using the trade mark/logo 'T-Series' in relation to 'Detergent Powder, Detergent Cake, Dhoop, Agarbatti, Havan Samagri' and allied goods which have been manufactured from the inception by the plaintiffs.

11. The defendants filed a caveat in this suit and on their request the preliminary hearing of the suit was adjourned from 21st August to 24th August, 1998. The plaintiffs' factories were locked during 21st and 24th August, 1998 and the entire business of the plaintiffs came to a grinding halt. It is not necessary to deal with this controversy because the real issues involved in the suit can be decided without determining this controversy and fixing the responsibility.

manupatrl 12. The case of the defendants is that defendant No. 5 is the registered proprietor and owner of the trade mark and logo 'T-Series'.

13. It is also submitted by the defendants that after their business was diversified, the plaintiffs were given license to manufacture the aforesaid items under the trademark and logo 'T-Series' but the defendants never gave up their right to manufacture or sale these items which have been manufactured by the plaintiffs.

14. According to the defendants, the plaintiffs are mere licensees of the defendants and the license is liable to be revoked at Will. The further case of the defendants is that the plaintiffs began neglecting the quality of the product being manufactured and marketed under the trade mark and logo "1 Series" and despite the warning given by defendant No. 5 in the month of February, 1998 giving them an opportunity to rectify their wrongs, the plaintiffs failed to check the deterioration of quality. The plaintiffs did not even care to reply to the letter sent to them on 26th February, 1998.

15. The defendants also submitted that the plaintiffs are damaging the good name and reputation of the defendants' business as well as all the ventures of late Mr. Gulshan Kumar by dragging its family in the controversy before the public. The defendants further submitted that the plaintiffs' conduct and behavior have resulted in an automatic termination of the family agreement with the plaintiffs' and they cannot use the family trade mark and logo 'T-Series'. The defendants have also filed a written statement on 25th of August, 1998 and on the same day they have also filed a counterclaim, for the grant of permanent injunction. In the application for the grant of ad interim ex parte injunction filed Along with the counter claim the defendants have prayed that the plaintiffs be restrained from manufacturing, selling and marketing their products under the trade mark and logo 'T-Series'.

16. The undisputed facts and issues which emerge from the pleadings of the party are reproduced as under :

(a) The plaintiffs 1 and 2 are the close relations of defendants 1 to 4.

(b) In the lifetime of late Mr. Gulshan Kumar, the plaintiffs 1 & 2 with his blessings started manufacturing, marketing and selling 'Detergent Powders, Detergent Cakes and Soaps from the year 1988 and also started manufacturing Dhoop, Agarbatti, Havan Samagri and allied goods since 1996 exclusively.

(c) plaintiff No. 2 Gopal Krishan and defendant No. 1 (Bhushan Kumar s/o Late Mr. Gulshan Kumar) finally resolved their disputes by spelling out the terms of settlement in their respective notes in their own handwriting on 19.2.1998 and immediately thereafter family settlement was arrived at on 21.2.1998.

16.1 Both the handwritten notes of plaintiff No. 2 and defendant No. 1 are reproduced as under:

Hand written note of Bhushan Kumar (defendant No. 1)

I, Bhushan Kumar hereby agree to decide the family dispute wherein I along with my uncle Krishan Kumar, Darshanji on the one side and Mr. Gopal Krishan on the other wherein it is agreed that I shall give the following properties and units to Mr. Gopal Jee:

(i) W-108 - G.K.II.

(ii) S - 501.

(iii) 94 Bunglow.

(iv) A-31-32.

(v) A-289

(vi) Rajni Industries with no liabilities to group companies.

(vii) Gopal Soap Industries with no liabilities to group companies.

(viii) Rs. 2.5 Crores.

(ix) Further agreed that Mr. Gopal will transfer all shares in other group companies viz. SCIL and Toy etc (all shares) in the name of Krishan Kumar.

Hand note of Gopal Krishan (plaintiff No. 2)

I, Gopal Krishan agree to settle the family dispute of myself on one side and Mr. Bhushan Along with Mr. Krishan Kumar, Darshanji and Gopal Krishan on the other with the following assets given to me.

(i) Gopal Soap Industries with no liabilities to the group.

(ii) Rajni Industries with no liabilities to group.

(iii) W-108GK-II.

(iv) 94 Banglow.

(v) A-31-32.

(vi) A-289.

(vii) E-501.

(viii) Rs. 2.5 crores.

(ix) Further I will transfer all my shares in group companies viz. in SCIL, Toy etc. (all shares) in the name of Mr. Krishan Kumar.

17. These handwritten notes of plaintiff No. 2 Gopal Krishan and defendant No. 1 Bhushan Kumar clearly reveal the intention of the parties. Thereafter, an agreement was entered into between plaintiffs 1 and 2 with defendants 1 to 4 on 21st February, 1998. The agreement was duly signed by plaintiffs 1 and 2 and defendants 1 to 4. The detailed terms of compromise have been reduced into writing. Plaintiffs 1 and 2 were required to transfer the entire shareholding to the defendants. According to the agreement the plaintiffs agreed to relinquish their 3% shares which they were holding in the partnership firm Super Electronics, and had undertaken to retire from the partnership concern. According to the agreement plaintiff No. 2 Gopal Krishan undertook to lease out his premises No. H-10, Masjid Moth, Greater Kailash, Part-II, New Delhi to Super Cassettes Industries Limited. According to the agreement the defendants were to lease out half portion of the house No. E-501, Greater Kailash, Part-II to the party No. 2 plaintiff. According to Clause 5 of the agreement the plaintiffs who have been using the trade mark and logo "T-Series" with respect to certain products under the license deed shall continue using the said trade mark and logo. The Clause 5 reads as under:

5. M/s. Super Cassettes Industries Limited is the owner of trade mark 'T-Series' and logo/artistic works 'T-Series' and has licensed them to M/s. Gopal Soap Industries and M/s. Rajni Industries for the products manufactured by the said two concerns under a license deed. These two firms shall continue using the said trade marks and logos.

The other clause on which reliance has been placed by the defendants is Clause 9. Clause 9 reads as under :

9. It is also agreed that the party of the second part of this contract shall maintain harmonious relations amongst the family members and shall not interfere or create any problems directly in the business of the party of the first part and in case any problem or interference in the business and/or is found engaged in any activity either directly or indirectly which is detrimental to the interest of the business of the party of the first part, this agreement shall automatically stand terminated forthwith without any notice to the party of the second part.

18. Mr. Arun Jaitley, and Mr. Mukul Rohatgi, learned Senior Advocates appearing for the plaintiffs submitted that the disputes between the parties were finally resolved by the 'family settlement' dated 21st February, 1998. It was submitted by the learned Counsels for the plaintiff that the foundation of this family settlement was laid in the hand written notes of defendant No. 1 (Bhushan Kumar) and plaintiff No. 2 (Gopal Krishan) reproduced above. The learned Counsel for the plaintiffs submitted that admittedly the plaintiffs are the proprietors of Gopal Industries and Rajni Industries. Plaintiffs 1 and 2 have been exclusively manufacturing items mentioned above since 1988 and 1996 respectively during the lifetime of late Shri Gulshan Kumar.

19. It is submitted that from the very inception there was clear understanding among the family members that plaintiffs 1 and 2 shall only manufacture, sell and market the above mentioned products and all other remaining products could be exclusively manufactured and/or marketed by the defendants. Perpetually, According to the understanding that the products which are being manufactured, sold and marketed by the plaintiffs shall not be manufactured, sold or marketed by the defendants and similarly the plaintiffs shall not manufacture, market or sell the products of the defendants in any manner. This has been the understanding among the family members from the very beginning. This family understanding was first formally finalised by the two separate notes written on 19th February, 1998 by defendant No. 1 and plaintiff No. 2 and thereafter, finally on 21st February, 1998 by an agreement among the family members. Mr. Jaitley submitted that the plaintiffs never created any problems nor tried to interfere directly or indirectly in the business of the defendants and consequently the plaintiffs cannot be blamed for destroying the peace and harmony of the family. According to the plaintiffs, the defendants are trying to destroy the family peace, amity and harmony by interfering and creating problems in the business of the plaintiffs, by giving interviews in the leading daily national newspapers and threatening the plaintiffs that the defendants shall start manufacturing the products which have been exclusively manufactured, sold and marketed by the plaintiffs.

20. Mr. Jaitley placed reliance on the judgment of the Supreme Court MANU/SC/0529/1976 : [1976]3SCR202 ,

Kale & Ore. v. Deputy Director of Consolidation and Ors.. Their Lordships of the Supreme Court emphasised the value and importance of the family arrangements. Their Lordships observed that the "family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend". Their Lordships further mentioned that "the object of the arrangement is to protect the family from long-drawn litigation or perpetual strife which mars the unity and solidarity of the family and creates hatred and bad blood between the various members of the family. Today, when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, Therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equally divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice".

21. In the said judgment their Lordships further observed that "the term 'family' has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that the future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the society. The Courts have, Therefore, leaned in favor of upholding a family arrangement instead of disturbing the same on technical or trivial grounds.

22. Mr. Jaitley also placed reliance on another judgment of the Supreme Court MANU/SC/0132/1955 : AIR1955SC481 , Madho Das v. Mukand Ram. Their Lordships of the Supreme Court observed that the principle can be carried further and the "Courts lean in favor of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all, that they have no hesitation in taking the next step (fraud apart) and upholding an arrangement under which one set of members abandon all claims to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only one of their number (provided he or she had claimed the whole and made such an assertion of title) and are content to take such properties as are assigned to their shares as gift pure and simple from him or her, or as a conveyance for consideration when consideration is present".

23. In another judgment Ram Chander Dass v. Girja Nandini Devi, MANU/SC/0358/1965 : [1965]3SCR841 , their Lordships of the Supreme Court observed that the consideration for a family settlement will ensure amity and goodwill amongst the relations.

24. In the background of the settled position of law as crystallized in the abovementioned cases Mr. Jaitley submitted that there has been an arrangement among the family members regarding the use of trade mark and logo "T-Series" for certain items in favor of the plaintiffs. This arrangement was given a formal shape by the family settlement dated 21st February, 1998. The plaintiffs who have already been using exclusively certain items were given irrevocable perpetual license to manufacture, market and sell those very items mentioned above. The defendants were given the right to manufacture, sell and market all items other than those given to the plaintiffs. According to the spirit and intention of the family arrangement both the plaintiffs and the defendants shall not interfere with each other's business. As a matter of fact this arrangement was done during the life time of late Mr, Gulshan Kumar but a formal shape was given by the said family agreement.

25. Mr. Jaitley submitted that plaintiffs 1 and 2 have always been the proprietors of Gopal Soap Industries and Rajni Industries. Mr. Jaitley also submitted that there can only be one proprietor and to strengthen his submission he placed reliance on the judgment of the Supreme Court JT 1992 2 SC 70 : (1994) XIII DLT 723, Power Control Appliance and Ors. v. Sumit Machine Private Ltd.

26. Mr. V.P. Singh, learned Senior Counsel appearing for the defendants submitted that late Mr. Gulshan Kumar, father of defendant No. 1 was the only person in the family who, with his sheer hard work and great dedication developed the entire family business. Late Mr. Gulshan Kumar wanted to help the other members of the family. Mr. Singh submitted that all other members of the family are on one side and the plaintiffs are on the other side. According to him the plaintiffs are guilty of destroying peace, amity and harmony of the family. Mr. Singh submitted that the defendant Company Super Cassettes Industries Pvt Ltd. was established in the year 1982 by late Mr. Gulshan Kumar. The Trade Mark "T-Series" was adopted by Mr. Gulshan Kumar in 1982. He further submitted that the defendants are the registered proprietor of "T-Series" (word) and "T-Series" (label). He also submitted that the defendants are also the owners of the copyright of "T-Series" (Logo).

27. He further submitted that each of these business ventures was started with the financial capital and resources by late Mr. Gulshan Kumar including Gopal Soap industries and Rajni Industries. Late Mr. Gulshan Kumar's desire was to settle all his other family members in business.

28 Mr. Singh submitted that according to Clause 9 of the agreement, the agreement shall automatically stand

manupatra terminated without notice to the parties of the second part (plaintiffs 1 and 2) in case they fail to maintain harmonious relations among the family members and if they (plaintiffs) interfere and create any problems or engage in activities which are directly or indirectly detrimental to the business then the said family agreement shall automatically come to an end. According to Mr. Singh because of the activities and conduct of the plaintiffs, the family agreement came to an end and cannot be enforced.

29. Mr. Singh submitted that the plaintiffs have also failed to maintain quality control and because of that the reputation of the trade mark and logo "T-Series" has been adversely affected. On 26th February, 1998 the defendants called upon the plaintiffs to check the deterioration in quality of their products. On 6th August, 1998 the defendants called upon the plaintiffs to immediately stop the use of trade mark "T-Series". The defendants submitted that because of the clandestine and other criminal activities of plaintiff No. 2 the business of the defendants is adversely suffering. Mr. Singh submitted that the plaintiffs are merely licensees and when no definite period is mentioned in the license then it can be revoked at Will. The defendants because of the undesirable activities of the plaintiffs have revoked the license and now the plaintiffs cannot manufacture, sell or market the aforesaid products under the trade mark and logo T-Series.

30. Learned Counsel for the defendants also placed reliance on Me Cathy on Trademarks and Unfair Competition to highlight the principle that the licensee was not entitled to sue the owner/licensor of the trade mark. Mr. Singh also cited some judgments of the District Court, New York in support of his submissions. It is not necessary to refer to those judgments because in my opinion these judgments have no bearing on the real controversy involved in this case.

31. Mr. Singh submitted that the licensee cannot file a case against the registered owner and in any event the licensee is not entitled for a mandatory injunction even if there is any breach of the terms of licence, the licensee at most is entitled for damages and not for injunction. Mr. Singh learned Counsel for the defendants placed reliance on a Division Bench judgment of this Court Swaran Singh Bedi Appliance Emporium v. Usha Industries, MANU/DE/0366/1985 : AIR1986Delhi343 . In this case their Lordships have observed that the effect of registration is to give an exclusive right of user to the proprietor of the trade mark. He also placed reliance on Magnum Films and Ors. v. Gokha Properties, A.I.R. 1983 Delhi 392 in which it is observed that a temporary injunction can be issued only in case of extreme hardship and compelling circumstances and mostly in those cases where status quo is existing on the day of the institution of the suit is to be restored. The learned Counsel for the defendant placed reliance on the Full Bench judgment of this Court reported in Chandulal v. Delhi Municipality, MANU/DE/0024/1978 : AIR1978Delhi174 . In this case Court explained the distinction between lease and license the Court observed that:

"A lease is not a mere contract but envisages and transfers an interest in the demised property creating a right in favor of the lessee in rem. A license only makes an action lawful which without it would be unlawful but does not transfer any interest in favor of the licensee in respect of the property."

32. I have carefully gone through the plaint, written statement, counter claim, and applications under Order 39, Rules 1 and 2 filed by both the plaintiffs in the suit and the defendants in their counter claim. I have also considered the cases cited at Bar by the learned Counsel for the parties. There is no quarrel with the propositions which have been laid down in various judgments cited by Mr. V.P. Singh relating to the principles of grant of injunction, distinction between lease and licence, the rights of the owner of the trade mark and the restriction on the licensee to sue the proprietor of the trade mark and logo, etc. etc.

33. The real controversy involved in this case has to be looked into and appreciated in the light of the facts of this case and in view of the principles of the law laid down in various judgments. Otherwise, there is every likelihood of there being an injustice.

34. If the facts and circumstances of this case are kept in view then certain conclusions are irresistible. Admittedly, the plaintiffs are proprietors of the Gopal Soap Industries and Rajni Industries. The family business was set up by late Mr. Gulshan Kumar and the entire credit should rightly go to late Mr. Gulshan Kumar exclusively. During the lifetime of Mr. Gulshan Kumar he diversified the business and permitted plaintiffs 1 and 2 to use the trade mark and logo 'T-Series' only for the manufacturing of Detergent Powder, Detergent Cakes, and Soap. In 1996 he further permitted the plaintiffs to manufacture and sale of Dhoop, Agarbatti and Havan Samagri and allied goods exclusively. Other than these items all other items could be manufactured, marketed and sold exclusively by the defendants. According to the family arrangement the plaintiffs could not interfere in the manufacture of the main family business Super Cassettes or any other business carried out by the defendants except the above mentioned items which the plaintiffs were permitted to manufacture. The arrangement which has been going on during the lifetime of Mr. Gulshan Kumar shall continue. This arrangement was reduced in writing by plaintiff No. 2 and defendant No. 1 in their written notes reproduced above. This understanding and arrangement was formally reduced into writing as a family arrangement on 21st February, 1998 which is duly signed by the plaintiffs and the defendants. The intention of this family arrangement is very clear and explicit. plaintiff No. 1 shall exclusively manufacture, sell and market only the aforesaid items. Other than these the defendants shall manufacture, market and sell all other items by using 'T' mark, the trade mark 'T-Series' and logo 'T-Series'. Their Lordships of the Supreme Court in the judgments mentioned above have clearly enunciated that the family arrangement should not be disturbed as

manupatra far as possible. The peace, amity and family harmony can be restored if the family arrangement is adhered to and respected.

35. In the instant case, the family arrangement has taken place on 21st February, 1998. Immediately after five days of that family agreement the defendants had Sent legal notice dated 26.2.1998 which the defendants have complained about the deterioration in the quality of the products of the plaintiffs. No foundation of the complaint has been laid in the agreement. It is beyond comprehension how the quality of the products of the plaintiffs suddenly deteriorated in five days to an extent that the defendants were compelled to send a legal notice? The case of the defendants is that because of the said complaints coupled with the other activities the family arrangement now cannot be acted upon.

36. I am of the considered view that the arrangement which had been going on during the lifetime of late Mr. Gulshan Kumar and which has been again reiterated in the notes prepared in the hand writing of defendant 1 and plaintiff No. 2 and later on given a concrete shape in the form of family arrangement must continue. Looking to the peculiar and exceptional facts and circumstances of this case, in the interest of justice it has become imperative to direct the defendants not to interfere in the use of the trade mark and logo "T-Series" as far as items which are being manufactured by the plaintiffs are concerned. The defendants are further restrained from using the trade mark logo "T-Series" in relation to the plaintiffs' products. Similarly, the plaintiffs shall not use the Trade Mark or Logo "T-Series" for any other products except the products which the plaintiffs have been manufacturing, selling or marketing during the lifetime of Mr. Gulshan Kumar.

37. Nothing said and observed shall prejudice the rights of either of the parties in any manner to have their pleas determined on merits on the full trial.

38. Both the applications filed by the plaintiffs and the defendants under Order 39, Rules 1 and 2 and the application filed Along with counter claim are, accordingly disposed of. The parties are directed to bear their own costs.

39. Suit shall be listed on 16th November, 1998 for further proceedings before the Joint Registrar.