:a Sawant

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 5177 OF 2026
IN
COMMERCIAL SUIT NO. 97 OF 2026

Phantom Studios India Private Limited ..... ***Plaintiff***

: Versus :

1. Jiostar India Private Limited

2. Trigger Happy Entertainment Limited

3. Digital 18 Media Pvt. Ltd. .... ***Defendants***

Mr. Darius J. Khambata, Senior Advocate and **Mr. Sharan Jagtiani, Senior Advocate** with Ms. Naira Jejeebhoy, Mr. Rohan Dakshini, Ms. Samridhi Lodha, Ms. Nishtha Gupta, Ms. Shweta Jaydev, Ms. Nishi Doshi and Mr. Jai Sanyal i/b Rashmikant & Partners *for Plaintiff.*
Mr. Ravi Kadam, Senior Advocate with Mr. Rashmin Khandekar, Mr. Anand Mohan, Mr. Ameet Naik, Ms. Madhu Gadodia, Mr. Aman Saraf, Mr. Vivek Dwivedi, Ms. Fatima Ali, Ms. Unnati Gambani and Ms. Sakshi Dube i/b Anand Naik & Co. *for Defendant No.1.*
Mr. Ashish Kamat, Senior Advocate with Mr. Varun Dhond, Mr. Vikramaditya Chavan, Ms. Udita Kanwar Chavan and Mr. Suryadeep Nanda i/b Willow Legal *for the Defendant No.2.*
Dr. Birendra Saraf, Senior Advocate with Ms. Saloni Shah, Ms. Shivani Khanwilkar and Ms. Dhun Vinod Santosh i/b Khanwilkar & Shah Associates *for Defendant No.3.*

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CORAM : SANDEEP V. MARNE, J.
JUDGMENT RESD. ON: 21 SEPTEMBER 2026
JUDGMENT PRON. ON: 14 OCTOBER 2026

ORDER:

1) Plaintiff believes that the film '*Queen*' (2014) is a timeless cult classic of the modern Indian cinema and the word 'queen' has acquired a secondary significance in relation to the films and that therefore, making of another film using the same word in its title would amount to common law tort of passing off. Plaintiff's belief is further strengthened by the fact that the film of Defendant Nos. 1 and 2 titled '*Queen Full Power*' engages the same lead actress and director who featured in the film '*Queen*' and it believes that both the films have the same theme of woman's self-discovery and empowerment. Plaintiff alleges that that use of the same title, lead actor-director duo and theme is not a mere coincidence and is aimed at encashing upon the goodwill of its film '*Queen*'. Plaintiff sees the proposed film '*Queen Full Power*' as a commercial device of 'spiritual sequel', which tells a different story, introduces different characters and avoids direct narrative continuation while deliberately preserving sufficient features of the film '*Queen*' by including part of its title, thematic identity, central idea, principal actress, and other recognizable elements to invoke familiarity in the minds of the audience. Plaintiff additionally believes that the Defendant No. 1, who is the co-producer of the proposed film '*Queen Full Power*', is a veritable party to the Co-Production Agreement **(CPA)** executed between Plaintiff and Defendant No. 3 in relation to the film '*Queen*' and that since the proposed film is a derivative work based upon

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and/or a spiritual sequel of the film '*Queen*', there is also a breach of the contract, under which Plaintiff is the joint owner of the intellectual property rights in the film '*Queen*'.

2) This is how the Plaintiff has brought twin actions for passing off and contractual breach in the present Suit. Plaintiff accordingly seeks injunction against Defendant Nos. 1 and 2 from making, producing, releasing, distributing, broadcasting etc. of the second installment of the film '*Queen*' under the title '*Queen Full Power*' by way of a sequel, prequel, adaptation or derivative work by using title of the film '*Queen*'.

3) The Interim Application is filed by the Plaintiff seeking temporary injunction to restrain the Defendants from making, producing, releasing, developing, producing, shooting, completing, distributing, broadcasting, streaming, marketing, promoting, advertising, exploiting etc. the second installment of the film by way of a sequel, prequel, remake, adaptation or derivative work based on the original film-*Queen* under the title of '*Queen Full Power*' or '*Queen 2*'. Plaintiff has also sought temporary injunction to restrain the Defendants from using the story characters, underlying works, including but not limited to literary, dramatic and artistic works and any other elements of the film in relation to the film '*Queen Full Power*' or any other sequel, prequel, remake, adaption or derivative work based upon the film 'Queen'.

4) Plaintiff's pleaded case in the plaint can be summarised thus: Plaintiff-Phantom Studios India Pvt. Ltd (**Phantom**) is a private limited company engaged in the business of production, acquisition, distribution

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and exploitation of cinematograph films and other media and entertainment content. The Plaintiff was formerly known as Mad Man Film Ventures Pvt. Ltd. **(Mad Man)**. In 2012, Phantom Films Pvt. Ltd. (*Phantom Films*) conceived and developed the idea for the film-*Queen*. The film-*Queen* was conceived as a crazy musical journey of a middle-class woman who travels from Delhi to Europe on her honeymoon 'alone'. The lead actress of the film was Ms. Kangana Ranaut, which was directed by Mr. Vikas Bahl. Phantom Films had approached Viacom 18 Media Pvt. Ltd **(Viacom 18)** to fund the cost of production of the film. Mad Man and Viacom 18 entered into Co-production Agreement dated 9 August 2012, under which it was agreed that Phantom Films and Viacom-18 shall equally and jointly own all the intellectual property rights in respect of the film, including right to make sequel, prequel or remake rights. By way of Deed of Novation for Amendment dated 20 January 2022, Plaintiff Phantom acquired all rights and obligations of Phantom Films in the film. This is how Plaintiff claims 50% ownership in the intellectual property rights of the film-*Queen*. The film was theatrically released across India on 7 March 2014 and registered a net collection of approximately Rs.61.47 crores at the Indian box office and Rs.95.04 crores worldwide against production budget of approximately Rs.20 crores. According to the Plaintiff, the film *Queen* received various recognitions and awards including the National Award for the Best Feature Film in Hindi and various other industry awards.

5) According to the Plaintiff, in July 2022, Viacom-18 brought a proposal to the Plaintiff to explore the opportunity for creating derivative work of the film by developing a graphic novel and animated series derived from the film. The proposal was dropped in 2023. According to Plaintiff, in

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early 2025, it came across reports by entertainment news portals citing an interview with the director of the film and a video interview with the lead actress of the film, hinting that the work on sequel of the film was in progress. Plaintiff refers to interview of Mr. Vikas Bahl of 2024 in which he stated that a sequel to the film was under development. On 15 January 2025, a video interview was given by Ms. Kangana Ranaut which was published on YouTube channel of "Mirchi Plus", in which she suggested that *Queen 2*, a sequel to the original film *Queen* was in the making. These statements made by Mr. Bahl and Ms. Kangana Ranaut created an apprehension in the mind of the Plaintiff that a sequel to the film *Queen* was being made without its consent.

6) On 28 May 2025, Plaintiff addressed clarificatory letter to Mr. Vikas Bahl calling upon him to confirm that no sequel or derivative work based on the film was being developed, to which Mr. Bahl did not respond. According to the Plaintiff, towards the end of August 2025, there was a flurry of media reports reporting on purported sequel of the film. Plaintiff issued advocate's letter dated 9 September 2025 to Defendant No.1 and Mr. Vikas Bahl to confirm in writing that no such activity of making sequel of the film was underway.

7) In February 2026, representatives of the Plaintiff and Defendant No.1 were in touch about re-release of the film on account of women's day. In April 2026, Plaintiff allegedly came across reports in the trade press regarding a sequel/derivative work of the film for which Mr. Vikas Bahl was confirmed as the director and Ms. Kangana Ranaut was confirmed as the lead actress. Defendant No. 2 - Trigger Happy

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Entertainment Private Limited **(Trigger Happy)** was suggested as the producer of the film along with Defendant No.1 - Jiostar India Pvt. Ltd. **(Jiostar).** Plaintiff accordingly issued a formal caution notice dated 07 April 2026 to Defendant Nos. 1 and 2 and to Mr. Vikas Bahl reiterating ownership in respect of 50% intellectual property rights and stated that the sequel of the film cannot be made without Plaintiff's consent. By reply dated 21 April 2026, Jiostar responded to the caution notice raising a plea that the film tentatively titled *Queen Forever* was an original creative work having no connection with the original film *Queen*. By letter dated 29 April 2026, Plaintiff responded to reply of Defendant No.1 disputing the claim of proposed film being an independent creative work. Plaintiff sought discovery of material particulars such as storyline, narration structure, positioning and marketing strategy in relation to the proposed film. Plaintiff issued caution notice dated 29 April 2026 cautioning the public at large not to enter into arrangement regarding sequel/derivative work based on the original film *Queen*.

8) Defendant No.1 issued reply dated 07 May 2026, reiterating its earlier stand of proposed film being an independent creative work having no connection with the original film-*Queen*. Plaintiff responded on 12 May 2026, calling upon Defendant No.1 to cease and desist from the proposed work.

9) In the above background, Plaintiff has instituted the present Suit initially against Defendant Nos. 1 and 2 seeking permanent injunction against them from producing second installment of the film *Queen* by way of sequel, prequel, remake, adaptation or derivative work based upon the

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film *Queen* under the title *Queen Forever or Queen 2* or any other title without prior written consent of the Plaintiff. Plaintiff also sought injunction to restrain Defendant Nos.1 and 2 from using story across underlying works such as literary, dramatic or artistic works or any other elements of the film *Queen* for making their film Queen *Forever* or *Queen 2* or any other title.

10) The Suit, as originally filed, was premised on Plaintiff's belief that Defendant No.1-Jiostar is a successor to Viacom 18. It believed that Viacom 18 merged with Star India Pvt. Ltd. in 2025 and the resultant company was renamed as Jiostar India Pvt. Ltd. Plaintiff believed that all rights and obligations of Viacom 18 in the CPA read along with the Deed of Novation stood transferred to Defendant No.1-Jiostar. Copies of the plaint and application for temporary injunction were served on Defendant Nos.1 and 2. They filed their respective affidavits-in-reply and it transpired that under the composite scheme of arrangement, the business of production and distribution of motion pictures of Viacom 18, as well as the corresponding contractual rights and obligations in respect of the film *Queen* now vests in Digital-18 Media Pvt. Ltd. **(Digital 18)**. Defendant No.1 also sought to distance itself from the CPA contending that Defendant No.3 is the holder of balance 50% rights in the film *Queen* under the CPA.

11) Plaintiff accordingly filed application for amendment of the plaint and impleaded Digital 18 as Defendant No.3 to the Suit. While Plaintiff initially believed that Defendant No.1-Jiostar was the contractual counterparty, in the amended plaint, it has changed its stance by describing Defendant No.1-Jiostar as a 'veritable party' to the CPA.

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Accordingly, several amendments are carried out in the plaint in pursuance of the order passed by this Court on 18 August 2026. Defendant Nos.1 and 2 have accordingly filed their additional affidavits-in-reply. After the plaint and interim application are amended, Defendant No.3 has also opposed the interim application by filing its affidavit-in-reply. Plaintiff has filed an affidavit-in-rejoinder. Since pleadings in the interim application are complete, the same is taken up for final disposal.

SUBMISSIONS ON BEHALF OF PLAINTIFF

12) Mr. Khambata, the learned Senior Advocate appearing for the Plaintiff has submitted that Plaintiff's suit is an action in passing off in the title of the film *Queen*, as well as action for commission of contractual breach of the CPA by Defendant No.1. He first presses the claim for passing off by submitting that the film currently titled *Queen Full Power* is deceptively similar to the original film *Queen* in which Plaintiff holds rights. That the two films have several deceptive similarities. That the original film was titled as *Queen* after its main character Rani Mehra (played by Ms. Kangana Ranaut), whereas proposed film, *Queen Full Power* is based on the main character being referred to in Marathi as '*queen zoraat*', which translates into 'queen full power'. That the lead role is played in both the films by Ms. Kangana Ranaut. That the director of both the films is the same viz. Mr. Vikas Bahl. That both Ms. Kangana Ranaut and Mr. Vikas Bahl have publicly spoken about the proposed film being a sequel of the original film. That both the films have the same theme and/or genre. That Defendant No.2 itself admits that the core of the proposed film

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is a journey of the lead character in rediscovering a sense of power and confidence, which she had forgotten/sacrificed in the course of being a mother/wife. Mr. Khambata takes me through the interviews of Mr. Bahl and Ms. Ranaut to bring home his plea that the proposed film to be a sequel/derivative work of the original film *Queen*. He also relies on other entertainment publications as well as social media reports in that regard.

13) Mr. Khambata then submits that though under Indian Law, copyright does not subsist in film titles alone, the Apex Court in ***Krishika Lulla vs. Shyam Vithalrao Devkatta and Anr.***[1] has held that the Plaintiff is entitled to relief in action for passing off or in respect of the registered trade mark comprising of title in a film. He relies on judgment of Privy Council in ***Francis Day & Hunter Ltd. vs. Twentieth Century Fox Corporation Ltd.***[2] in support of his contention that an action of passing off can lie based on title of the film. Mr. Khambata strenuously relies on judgment of Hon'ble Delhi High Court in ***Kanungo Media (P) Ltd. Versus. RGV Film Factory & Ors.***[3] in support of his contention that a secondary meaning is acquired in respect of the title of the original film *Queen*. He submits that the present case fulfills the twin tests of acquisition of secondary title and confusion. That the film *Queen* has acquired secondary meaning on account of (i) length and continuity of use, (ii) extent of advertising and promotion and amount of money spent, (iii) sales figure of purchases or admissions or number of people who bought or viewed plaintiff's work, and (iv) the closeness of the geographical and product

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1 (2016) 2 SCC 521
2 1939 SCC Online PC 50
3 2007 SCC Online Del 314

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markets of plaintiff and defendant. He submits that Plaintiff also fulfills the important test recognised in ***Kanungo Media*** about likelihood of confusion of source, affiliation, sponsorship or connection of potential buyers / audience / viewers. That the judgment in ***Kanungo Media*** (supra) has been followed by the Delhi High Court in ***Sholay Media Entertainment and Anr vs. Yogesh Patel and Ors.***[4]

14) Mr. Khambata relies on judgment of the Delhi High Court in ***Vishesh Films (P) Ltd. v. Super Cassettes Industries Ltd.***[5] in support of his contention that once the film title achieves this level of recognition and becomes synonymous with a particular series or producer, it effectively functions as a trademark. He submits that in ***Vishesh Films*** (supra), Hon'ble Delhi High Court restrained the defendant therein, who was proposing to make the film using the title "*Tu Hi Aashiqui*" / "*Tu Hi Aashiqui Hai*" in a passing off action initiated based on title of the original film- *Aashiqui* and *Aashiqui-2*. He relies on judgment of Division Bench of this Court in ***K.M. Multani vs. Paramount Talkies of India Ltd.***[6] in support of the claim of passing off based on title. He also relies on judgment of this Court in ***Anil Kapoor Film Co. Pvt. Ltd. vs. Make My Day Entertainment & Anr.***[7]

15) Mr. Khambata also submits that the proposed film is a spiritual sequel of the original film *Queen*. He submits that it is not necessary that

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4 2022 SCC Online Del 1994
5 2024 SCC Online Del 6117
6 (1943) 13 Comp Cas 90
7 2017 SCC Online Bom 8119

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the second installment of the film must carry the story forward and spiritual sequel of the film can be made having no connection with the story of the earlier film. He gives examples of recent successful spiritual sequels in the form of movies like *Good Newwz* (2019) and *Bad Newz* (2024), *Cocktail* (2012) and *Cocktail 2* (2026), *Love Aaj Kal* (2019) and *Love Aaj Kal* (2020) and lastly, *Taare Zameen Par* (2007) and *Sitare Zameen Par* (2025). That Ms. Kangana Ranaut and Mr. Vikas Bahl have never worked together after the original film *Queen*. They are coming up together for the first time since then, clearly creating a confusion in the minds of the moviegoers that the proposed film is a derivative work/sequel. That both the films have the same theme or genre and there are wide spread media reports conflating the two films and have styled the impugned film as a sequel.

16) Mr. Khambata submits that the key determinative factor is "public perception" and not "unilateral description of the unreleased film" as the key factor is whether cinemagoers are likely to get confused by linking the proposed film with the original film *Queen*. By using the same title, Defendant No.1 and 2 are exploiting the goodwill developed by the Plaintiff in the original film. Therefore, mere alleged difference in the story of the two films does not mean that an action in passing off based on title of the film would not lie. Mr. Khambata further submits that the central theme of both the films is essentially the same viz. discovery of empowerment by women. That therefore a perfect case of passing off is made out in the facts and circumstances of the present case, entitling the Plaintiff to interim injunction as sought for by it in the application.

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17) Mr. Khambata also presses the point of breach of contractual arrangement under the novated CPA. He submits that the CPA dated 09 August 2012 executed between Plaintiff and Viacom-18 makes the Plaintiff the owner of the 50% rights in the intellectual property and the assigned rights. That clause 1.1.2 expressly includes derivative rights within the assigned rights. That therefore no person bound by the contract can unilaterally develop, produce or exploit any derivative rights in the film without the other party's consent. However, Jiostar, along with Trigger Happy are producing the impugned film titled *Queen Full Power*, which is nothing but a derivative work based on the original film *Queen*. Mr. Khambata further submits that Defendant No.1-Jiostar is bound by the novated CPA even though it is not a signatory to the same. He submits that Digital 18 is a part of group of companies of Defendant No.1-Jiostar. That Digital 18 is wholly held by Studio18 Media Pvt. Ltd. **(Studio 18)**. That Studio 18 is effectively wholly held by Reliance Industries Ltd. **(RIL)** which holds 46.82% of Jiostar. That RIL directly and indirectly holds stake in Studio 18 and consequently in Digital 18. That RIL actually represents/identifies Jiostar, Digital 18 and Studio 18 within the consolidated structure. That the structure clearly indicates that Jiostar and Digital 18 are part of same economic entity.

18) Mr. Khambata relies on judgment of Constitution Bench in ***Cox and Kings Ltd. Versus. SAP India Pvt. Ltd & Anr.***[8] in support of his contention that a non-signatory to a contract can be treated as a veritable party thereto once it is proved that non-signatory has participated *inter alia*

[8] (2024) 4 SCC 1

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in performance of the contract. He submits that since November 2025, Jiostar has completely taken over all functions under the contract. That Jiostar negotiated and proposed to conclude exploitation transactions under Clauses-5.1 to 5.3 of the novated CPA. He takes me though the relevant email correspondence to bring home the point that Jiostar is exercising exploitation rights under the contract. He further submits that Jiostar has actively participated in administration and performance of the contract. That Business Statement for the film *Queen* as on 31 March 2026 is furnished by Jiostar on 11 July 2026. That Jiostar even sought to withhold the payments that Digital 18 was obligated to make, thus gaining benefits from the contract. That the payment was stopped by Jiostar referring to GST dispute concerning a separate and independent Film *Loveyapa* for which separate exploitation agreement exists between Jiostar and the Plaintiff.

19) Mr. Khambata therefore submits that Jiostar has performed Company's exploitation functions under Clauses 5.1 and 5.3, has performed the statement obligation under Clause 13.3, has administered Plaintiff's entitlement and payment under Clause 7, and asserted control over payments for its own commercial purpose. That thus, participation by Jiostar in performance of the contract is fully established and therefore, privity has been imparted to Jiostar by its conduct. He relies on judgment of the Delhi High Court in ***Utair Aviation vs. Jagson Airlines & Anr.***[9] in support of contention of conduct of Jiostar making it a veritable party to the contract. He relies on judgment in ***Medicalgorithmics S.A. Versus.***

[9] 2012 SCC OnLine Del 2114

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AMI Monitoring, Inc. d/b/a Spectocor & Spectocor LLC[10] in support of his contention that an affiliated non-signatory to a contract who has accepted benefits under commercial relationship can be treated as a veritable party. Mr. Khambata submits that Jiostar is bound by the contract since it has corporate and operational relationship with Digital 18 and secondly its conduct exercising rights *qua* the film under the CPA. He relies on judgment of the Apex Court in ***KKH Finvest Pvt. Ltd. and Anr. vs. Ashiesh Shukla and Ors.***[11] in support of his contention that involvement in the performance of the underlying contract makes the entity a veritable party. He also relies on judgment of this Court in ***Urban Infrastructure Trustees Limited Versus. Mr. Bhavik Bhimjiyani & Ors.***[12] On above broad submissions, Mr. Khambata prays for grant of temporary injunction as sought for in the Interim Application.

SUBMISSIONS ON BEHALF OF THE DEFENDANTS

20) Mr. Kadam, the learned Senior Advocate appearing on behalf of Defendant No.1 opposes the Application. He takes me through the averments in the plaint in support of his contention that the Suit is principally an action for breach of the novated CPA. That even allegation that Defendants' film Queen Forever is a sequel or derivative work is essentially a claim in contract. That the entire thrust of the case in the plaint is on breach of CPA. This is a reason why the Suit has been correctly styled as a simplicitor 'Commercial Suit' and not a 'Commercial IP Suit'.

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[10] C.A. No. 10848-CB (Del.Ch. 18 August 2016)
[11] 2026 SCC OnLine SC 1498
[12] Commercial Arbitration Application No. 14 of 2016 decided on 12 August 2026

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That even the case/averments regarding passing off are directly and solely anchored to the case on breach of contract. That the holistic reading of the plaint would indicate that even the allegations relating to passing off are completely and clearly anchored to / premised upon the principal case that Defendants' film is a derivative work, which is in violation of Plaintiff's right under the novated CPA. That the said frame of the suit is also reflected in pre-suit correspondence, as well as in the final reliefs claimed in the plaint.

21) Mr. Kadam further submits that the plaint contains negligible material which could be said to be in the aid of Plaintiff's passing off claim. That reliefs claimed in the plaint clearly show that there is no injunctive relief envisaged at all for passing off and/or as regards title, *de hors* the case of derivative work. That reliefs sought for permanent injunction under prayer clauses (a) and (b) are focused/predicated on restraining Defendants from making a sequel/derivative work or restraining use of story, characters and other underlying works under any other title. That use of the words '*any other title*' establishes beyond doubt that the claim for injunction is also premised on allegation of breach of CPA. That the injunctive reliefs are thus sought against the contents of the work/film i.e., not to make any derivative work based on the film. That there is absolutely no prayer seeking any relief or permanent injunction in respect of passing off by use of the title *Queen*. That the Plaintiff does not have qualms about use of the title *Queen* for the impugned film so long as it is not a derivative work. That since there is no final injunctive relief of passing off, the question of granting any interim relief does not arise. In support, he relies on judgment

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of the Apex Court in ***Cotton Corporation of India Ltd. vs. United Industrial Bank Ltd. & Ors.***[13] and ***State of Orissa Versus. Madan Gopal Rungta.***[14]

22) Mr. Kadam further submits that Defendants' film is otherwise not a derivative work, nor there is any other breach of the CPA. The Defendants' film does not use any creative or expressive element of the Plaintiff's 2014 film nor is based on Plaintiff's 2014 film. That Defendants' film is in no way a sequel, prequel or otherwise a work based upon Plaintiff's 2014 film. He tenders synopsis appended to the CPA to demonstrate that there is absolutely no similarity between the two films. That Defendants' film is mainly a thriller-drama based primarily in Mumbai, whereas Plaintiff's film is a drama set abroad with romantic arcs. That there is no romantic angle at all in the Defendants' film. That apart from Ms. Kangana Ranaut, there is no other member of the cast who is even the same. That Defendants' film is primarily comprised of cast largely from the Marathi film industry. That in any case, mere co-occurrence of caste/crew members, who are independent professionals, cannot furnish or aid any cause of action nor render a work a derivative work.

23) Mr. Kadam further submits that themes and central ideas are incapable of protection. That there cannot be a monopoly in idea, in a subject matter, in a theme or a plot and the protection is confined to the manner, arrangement and expression of the idea. That general or common theories and situation and incidents which necessarily flow from a common

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[13] (1983) 4 SCC 625 : AIR 1983 SC 1272

[14] AIR 1952 SC 12

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premise cannot found a case of infringement. He relies on judgment of the Apex Court in ***R.G. Anand vs M/s. Deluxe Films and Ors***.[15]

24) Mr. Kadam further submits that the orally argued case of spiritual sequel does not form part of the plaint and in any event, is untenable. That there are no pleadings in support of the orally canvassed case of spiritual sequel. That unprotectable subject like theme and ideas cannot be sought to be protected through back door by canvassing a case of spiritual sequel where no proprietary right is shown to be infringed.

25) Mr. Kadam further submits that Plaintiff's case in relation to passing off based on title is premised on false/misleading claim and *ex facie* unreliable inadmissible material. That Defendants' film does not use the same title as the 2014 film. That Defendant Nos.1 and 2 have never made any publication or announcement that their film would be titled "*Queen 2*" or that the same would be a sequel to the 2014 film. That material relied upon by the Plaintiff is in the form of third party/media speculations. That title of the Defendants' film was determined only after completion of the principal photography in consultation with the creative team and that the same arises from a scene in the screenplay itself. That there is no proprietary right in the title '*Queen*' nor any goodwill is demonstrated so as to ascribe a secondary meaning.

26) Mr. Kadam submits that the word '*Queen*' is otherwise non-distinctive word and that no secondary significance is shown to maintain a

[15] (1978) 4 SCC 118

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claim for passing off. "Queen" is a common English word and, in popular usage, a laudatory and descriptive term for high feminine virtue. That the standard for establishing secondary significance is generally high under common law of passing off and even higher in case of film titles where commonly used words form title of the film. He relies on judgments in ***K.M. Multani*** (supra) ***People Interactive (India) Pvt. Ltd. vs. Vivek Pahwa***[16], and ***Anil Kapoor Film Co. Pvt. Ltd*** (supra). That mere popularity/success of the film does not render a common word as having achieved high threshold on secondary significance so as to displace its primary or common use. That films bearing identical title and films built around same common word are made year after year by wholly unconnected producers and the audiences have not been misguided. He gives illustrations of film titles like *Golmaal*, *Khiladi*, *Yaadein*, *Deewaar*, *Shandaar/Shaandaar*, *Aankhen*, *Agent Vinod*, *Gladiator*, *Twilight* etc. That Ms. Kangana Ranauat herself has played characters such as Jayalalithaa, Indira Gandhi, queen of Jhansi etc. That several other actors are also referred to as queens and relies on supporting material. That Plaintiff's reliance on judgment of the Delhi High Court in ***Kanungo Media*** (supra) is misplaced as the judgment does not set out exhaustive tests but mere illustrative material. That full statement of law is contained *inter alia* in the judgment in ***People Interactive*** (supra).

27) Mr. Kadam further submits that engagement of same actor or director is *per se* not actionable nor can support the case of passing off absent failure to show the essential ingredients/proprietorship entitling the Plaintiff to maintain a claim. That Ms. Ranaut has played several strong

[16] 2016 SCC OnLine Bom 7351

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female lead roles before and after plaintiff's 2014 film and is a National Film Awardee. Similarly, Mr. Vikas Bahl is also an established writer and director, who has his own body of works. Plaintiff cannot appropriate to itself the goodwill that personally belongs to the lead actor or director of the 2014 film. That the monikers and followings usually attach to individuals and travel with them and not with producers. That therefore mere engagement of same lead actor and director does not make out a case for passing off.

28) Mr. Kadam further submits that there is otherwise no misrepresentation by Defendant No.1. He submits that reliance by plaintiff on third-party material and press reports is impermissible. That unverified and misinformed claims of Defendants' film being *Queen 2* on social media and bollywood entertainment website articles are relied upon by the Plaintiff in support of plea of misrepresentation. That the material is highly unreliable and speculative. That new material sought to be relied upon in rejoinder cannot be permitted under Order XI of the Code of Civil Procedure, 1908 **(the Code)**. The said material was well within plaintiff's power, possession and custody prior to and at the time of filing of the suit.

29) Lastly, Mr. Kadam submits that no case for equity or injury is made out by the Plaintiff warranting grant of any interim reliefs. That in the last 12 years, there is no sequel, prequel, remake etc. of Plaintiff's 2014 film. That audiences are not likely to be misrepresented in any manner by conflating Defendants' work as a derivative work of Plaintiff's film. Since the impugned case itself has no basis, the pleaded injury falls with the

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impugned claim. Mr. Kadam accordingly prays for dismissal of the Interim Application.

30) Mr. Ashish Kamat, the learned Senior Advocate appearing for Defendant No.2 also opposes the Interim Application. He submits that the Plaintiff does not have any cause of action against Defendant No.2 in respect of the CPA, which is executed between the Plaintiff and Defendant No.3. That Defendant No.2 is admittedly not a party to the said agreement and therefore the terms thereof cannot be enforced by the plaintiff against Defendant No.2. That plaintiff's pleaded case primarily proceeds on breach of CPA which does not bind Defendant No.2. That the impugned film *Queen Full Power* is being co-produced by Defendant Nos.1 and 2 which is an original and independent work entirely unconnected to the CPA of the 2014 film. That even the case of passing off is squarely anchored to the allegation that Defendants' film is a derivative work. That no permanent injunction is sought in connection with the claim of passing off. That the two works have nothing in common.

31) Mr. Kamat further submits that the plaintiff's failure to identify and prove proprietary interest is fatal to its claim. That passing off claim requires establishment of actionable goodwill, actionable similarity and injury and that each independent link must be established. That in the present case, the first integer of actionable goodwill itself is not satisfied. The Plaintiff explicitly disclaims any monopoly in the word/title 'Queen' *per se*. However, Plaintiff has attempted to add non-proprietary integers to its claim of goodwill contrary to law. That the Plaintiff has expressly admitted that recurring professional combinations are not actionable by

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themselves. Plaintiff does not claim monopoly in the idea/theme of female transformation. That despite claiming proprietorship in these integers, a baseless case is sought to be raised by combining these integers for making out a case of actionable goodwill.

32) Mr. Kamat further submits that since there can be no copyright in a monopoly or title in an idea, in a theme, or in a plot, the same are not protectable as held in ***R.G. Anand*** (supra). That even engagement of lead actor or the director also cannot feature in the assessment of proprietorship or goodwill. That though Plaintiff disclaims any monopoly in engagement of Ms. Kangana Ranaut or Mr. Vikas Bahl either singularly or in combination yet sues the Defendant on a baseless claim of passing off. That this is not a personality right action. That mere film's success is not a relevant factor for establishing goodwill. That therefore there is nothing proprietary in the engagement of Ms. Ranaut and/or Mr. Bahl.

33) Mr. Kadam further submits that the word 'Queen' *per se* is admittedly non-distinctive and that no secondary significance is shown so that a goodwill can inure in favour of the Plaintiff under it. That the threshold for secondary significance for a non-distinctive title/term is very high in the general law of passing off. He relies on judgment of the Apex Court in ***Pernod Ricard India Pvt. Ltd. and Anr. vs. Karanveer Singh Chhabra***[17] in support of his contention that mere duration of use, turnover or marketing expenditure is insufficient to displace the term's inherent, descriptive or laudatory character. Mr. Kamat further submits that once

[17] 2025 SCC OnLine SC 1701

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Plaintiff adopts a common word as a title, it knowingly assumes the risk of the same not being entitled to an easy protection as a mark or as a source indicator.

34) Mr. Kamat submits that the Plaintiff cannot be permitted to rely upon documents not filed along with the plaint as per the provisions of Order XI of the Code and relies on judgment of the Apex Court in ***Ambalal Sarabhai Enterprises Ltd. vs. K.S. Infraspace LLP and Anr.***[18] That those documents were always in possession, power, custody and control of the Plaintiff. Without prejudice, he submits that even if the said material is taken into consideration, the same does not make the case of the Plaintiff any better.

35) Mr. Kamat further submits that while basing its claim on engagement of same lead actor or director, the Plaintiff has preferred not to implead Ms. Ranaut and Mr. Bahl to the suit, which is fatal. That Ms. Ranaut has not been addressed even a single correspondence by the Plaintiff. While relying on alleged media statements of Ms. Ranaut and Mr. Bahl, Plaintiff has chosen not to implead them. Mr. Kamat further submits that the case of "spiritual sequel" sought to be set up by the Plaintiff is alien to law. That the case of spiritual sequel is sought to be set up only in the rejoinder. That no case is made out for injury or equity warranting interference. Mr. Kamat accordingly prays for dismissal of the Interim Application.

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[18] (2020) 15 SCC 585

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36) Dr. Saraf appears on behalf of Defendant No.3 who is the contracting party under the CPA executed with the Plaintiff. He clarifies that Defendant No.2 is not involved in any manner in production of the impugned film of Defendant Nos.1 and 2. He submits that Defendant No.1 is neither party to nor bound by the CPA. He raises strong objection to Plaintiff's contention of Defendant Nos.1 and 3 being part of the same economic unit or that Defendant No.1 has administered, exercised or asserted rights and obligations of Defendant No.3 in relation to the CPA. He submits that since the case set up by the Plaintiff has wide-reaching business consequences, it is necessary to clarify that there is absolutely no connection between Defendant Nos.1 and 3. That financial operations of Defendant Nos.1 and 3 are entirely separate and that there is no overlap. That mere common shareholding by certain entities does not make Defendant Nos.1 and 3 the same economic entity. That Defendant No.3 is an independent corporate entity managed by a completely different set of board of directors. That employees of Defendant No.1 may have merely facilitated some correspondence and provided administrative assistance, which does not make the two companies part of same economic unit. That emails relied upon by the Plaintiff may at the highest, suggest certain administrative assistance/facilitation rendered by Defendant No.1 to Defendant No.3, which does not satisfy the test of positive, direct and substantial involvement as set out in ***Cox and Kings***.

37) Dr. Saraf further submits that Defendant No.3 has absolutely no involvement in production, making of the impugned film and that therefore, there is no question of Defendant No.3 committing breach of obligations under the CPA. That the story line, as well as theme of the

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proposed film is entirely different and therefore no case is made out for breach of the CPA. That Plaintiff has filed the present suit under an erroneous belief that the impugned film is a sequel/prequel/derivative work of the 2014 film. That once it is demonstrated that belief of the Plaintiff is factually incorrect, the Interim Application must necessarily be rejected and Plaintiff must not be permitted to make a spiritual sequel, which is not even pleaded in the plaint.

38) Dr. Saraf further submits that though Defendant No.3 is not involved in making of the impugned film, it is necessary to deal with Plaintiff's case of passing off since the same has an impact on the contractual relations between the Plaintiff and Defendant No.3. That Plaintiff has failed to establish that the title 'Queen' has acquired secondary meaning by loss of primary meaning or has achieved secondary meaning. That the threshold to establish so is extremely high. He gives illustration of the film 'S*holay*', which word has primary meaning of "burning coal". Relying on judgment of the Delhi High Court in ***Sholay Media Entertainment*** (supra) Dr. Saraf submits that the title of the film '*Sholay*' has indeed achieved secondary meaning since in common conversations several concepts, dialogues, characters etc. of the film are often quoted in public. That the goodwill acquired in respect of the title '*Sholay*' has displaced the primary meaning of the word 'burning coal'. That such is not the case with the title of the film '*Queen*'.

39) Dr. Saraf submits that there is no likelihood of confusion between the title of the two films. That the two titles are completely distinct and are not likely to confuse the moviegoers. Dr. Saraf submits that

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the social media material is extremely unreliable and lacks credence. He relies on judgments of US District Courts in ***Texas Precious Metals, LLC Versus. Valaurum, Inc.***[19], ***Nordstrom, Inc. vs. NoMoreRack Retail Group, Inc.***[20], and ***Echo Drain Versus. Newsted***[21] in support of his contention that evidence of anonymous internet users is not persuasive and reliance on some unauthenticated emails and posting on websites have no probative value to establish confusion. He relies on judgment of the this Court in ***Indian Express and Commercial Ventures and Projects Pvt. Ltd. vs. Fundamental Hospitality Pvt. Ltd. and Anr.***[22] in support of his contention that anonymous sources and social media comments cannot be relied upon to establish secondary significance. On above broad submissions, Dr. Saraf prays for rejection of the Interim Application.

40) In rejoinder, Mr. Khambata submits that the Plaintiff has independently and expressly pleaded the case of passing off and that contention of Defendant Nos. 1 and 2 that Plaintiff's case is solely a contractual dispute or that passing off was never its case is totally baseless. That the entire plaint needs to be read holistically. That even Defendants' pleadings bear out that Plaintiff has pleaded the case of passing off. In support, he relies on judgment of the Apex Court in ***Ram Sarup Gupta vs. Bishun Narain Inter College***[23] in support of his contention that the best test to bear out plaintiff's pleaded case is to examine what the opposite

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[19] Case No. 3:26-cv-157-SI
[20] Case No. C12-1853-RSM
[21] 307 F.Supp.2d 1116
[22] 2025 SCC OnLine Bom 5298
[23] (1987) 2 SCC 555

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party has understood as plaintiff's case. That the claim of passing off was raised even in pre-litigation correspondence.

41) Relying on judgment of the Apex Court in ***T.V. Venugopal vs. Ushodaya Enterprises Ltd.***[24], Mr. Khambata submits that even a descriptive or generic work can be afforded protection, if it has assumed secondary meaning i.e., acquired a strong association within a given field of activity or market. That Plaintiff's title '*Queen*' is not a descriptive or laudatory word as the words '*Shaadi*' or '*Jodi*' for matchmaking services. That displacement is not an absolute factor. He submits that the title '*Queen*' has indeed acquired a secondary meaning in connection with films. It is an admitted position that the film has emerged successful in the history of Indian cinema featuring a female protagonist and has achieved an iconic status being a cult classic in the Indian cinema. That the film's cultural influence has extended beyond cinema. That it has registered net collections of approximately Rs.61.47 crores and has developed goodwill through direction of Mr. Bahl and performance of Ms. Ranaut. That the title has been continuously used for 12 years and title of the film emanates from single source. That since the above tests are met, it can easily be inferred that the title 'Queen' has acquired secondary meaning. That all factors necessary for acquisition of secondary meaning as discussed in ***Kanungo Media*** are established. He relies on judgment in ***Tri-Star Pictures Inc. Versus. Unger***[25] in support of his contention that a motion picture title can receive trademark protection if it gains secondary meaning. That *Queen* is

[24] (2011) 4 SCC 85
[25] 14 F. Supp. 2d 339

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neither generic of cinematographic films nor shown to be common to the relevant trade. That merely third-party titles using '*Queen*' do not aid the case of the Defendants. In support, he relies on judgment of this Court in ***Jagdish Gopal Kamat and Ors. vs. Lime & Chilli Hospitality Services***[26], where it was found that the words '*Cafe*' and '*Madras*' were common to the trade and 24 establishments were found to be using the said 'words', including 7 in Mumbai. He submits that Viacom 18 made attempts to register the mark '*Queen*' which contradicts the plea that the title '*Queen*' is incapable of protection.

42) Mr. Khambata further submits that Defendants' film is creating confusion and misrepresentation. He submits that media reports are relevant to establish reputation and confusion. That Defendants' synopsis of the impugned film does not allay the likelihood of confusion. On the other hand, the synopsis suggests that Defendants' film was always intended as a sequel. That Plaintiff is entitled to rely on blogs which are not in its power, possession, control or custody.

43) Lastly, Mr. Khambata submits that the conduct of Defendant No.1 clearly binds it to the CPA. That correspondence of Defendant No.1 cannot be trivialised as a mere use of an email address. That the email correspondence establishes beyond any doubt that Defendant Nos.1 and 3 are a part of same economic unit. He submits that the balance of convenience favours the plaintiff and that refusal of protection would

[26] 2015 SCC OnLine Bom 531

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cause irreparable loss. He accordingly prays for grant of interim injunction as sought for in the Interim Application.

CONSIDERATION OF SUBMISSIONS, REASONS AND ANALYSIS

44) Plaintiff, who is a co-producer with Defendant No.3 in respect of the 2014 film *Queen,* seeks to injunct the Defendants from making the second installment of the film by way of a sequel, prequel or a derivative work under the title '*Queen Full Power*'. Plaintiff's case is based on twin grounds of passing off tort based on title of the film *Queen* and breach of contractual obligations under the CPA. The prayers sought for in the Interim Application read thus:

> a. Pending the hearing and final disposal of the present Suit, grant a temporary injunction restraining the Defendants, their servants, representatives, agents and any other person claiming through or under them from taking any steps in any manner towards making, developing, producing, shooting, completing, releasing, distributing, broadcasting, streaming, marketing, promoting, advertising, exploiting or otherwise in any manner whatsoever, the second instalment of the Film by way of a sequel, prequel, remake, adaptation or Derivative Work based upon the Film, under the title 'Queen Forever', 'Queen Full Power' or some other derivative or combination using the title of the original Film 'Queen' or 'Queen 2' or any other title, without the prior written consent of Applicant;
>
> b. Pending the hearing and final disposal of the present Suit, grant a temporary injunction restraining the Defendants, their servants, representatives, agents and any other person claiming through or under them from in any manner using the story, characters, underlying works including but not limited to literary, dramatic and artistic works, and any other elements of the Film, in relation to 'Queen Forever', or 'Queen Full Power' or some other derivate or combination using the title of the original film 'Queen' or any other sequel, prequel, remake, adaptation or Derivative Work based upon the Film, whether under the title 'Queen Forever', 'Queen Full Power" or some of derivative combination using the title of the original Film 'Queen' or 'Queen 2' or any other title, whether solely by or 'Queen 2' or any other title, whether solely by themselves or themselves or

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in conjunction with any other person, on any platform and/or medium whatsoever, without the prior written consent of the Applicant

c. Pending the hearing and final disposal of the present Suit. Order and direct the Defendants to produce on oath all agreements of assignment, licence or other arrangements purporting to grant in favour of any of the Defendants any right, or interest in relation to the original Film Queen and/or the film purportedly titled as "Queen Forever" or "Queen Full Power" or any other title using the word Queen or any Derivative Work based upon the Film under any other title;"

c-1. Pending the hearing and final disposal of the present Suit restrain Defendant No. 3, its servants, representatives, agents and any person claiming through or under it from assigning, transferring, licensing, alienating, parting with or otherwise creating any right or interest in respect of its rights under the novated Co-Production Agreement in any manner which prejudices or impacts the Applicant's jointly-owned rights or facilitates the authorized development or exploitation of the Impugned Film or y other Derivative Work

c-2. Pending the hearing and final disposal of the present Application, restrain the Defendants from in any manner breaching the novated Co-Production Agreement including but not limited to restraining them from creating third party rights in and/or releasing the film purportedly titled as Queen Forever' or "Queen Full Power' any other title using the word Queen Derivative Work based upon the Film under any other title using any element of the Film including but not limited to the title of the Film as part of its title;

d. Pending the hearing and final disposal of the present Suit, order and direct the Defendants to disclose on oath or otherwise the script, concept note, character treatment, synopsis and all other creative and development documents relating to 'Queen Forever' or "Queen Full Power' or some other derivative or combination using the title of the original Film 'Queen' or 'Queen 2' or any Derivative Work based upon the Film, as well as the full terms of all arrangements entered into between the Defendants in connection with the development, production, financing, distribution and exploitation of 'Queen Forever' or 'Queen Full Power' or some other derivative or combination using the title of the original Film Queen or 'Queen 2' or any Derivative Work based upon the Film under any other title;

e. Grant ad-interim reliefs in terms of prayer clauses (a) to (d) above;

f. For costs of this Interim Application

g. For any other reliefs as this Hon'ble Court may deem fit in the facts of the case and in the interests of justice.

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45) It appears that initially when the suit was filed, Plaintiff was unaware about the exact title of the Defendants' impugned film and as the suit progressed, it has now transpired that the new film of Defendant Nos.1 and 2 is titled '*Queen Full Power*'. Thus, in effect, Plaintiff seeks to temporarily injunct Defendant Nos.1 and 2 from making and exhibiting the film *Queen Full Power* as the plaintiff believes that the film *Queen Full Power* is being passed off as a sequel or a derivative work of plaintiff's film *Queen*. The second grievance of the plaintiff is that Defendant No.1 is effectively exercising rights under the CPA executed between Plaintiff and Defendant No.3 and that the new film *Queen Full Power* is being made by Defendant No.1 in association with Defendant No.2 in breach of the contractual covenants of the CPA noticing that Defendant No.1 is not a signatory to the CPA. Plaintiff has sought to bind Defendant No.1 to the CPA contending that Defendant No.1 is a veritable party to the same. This is how plaintiff has pressed the Interim Application for temporary injunction on twin claims of passing off and breach of covenants of CPA.

PLAINTIFF'S CASE OF PASSING OFF:

46) According to the Plaintiff, the film of Defendant Nos.1 and 2 titled *Queen Full Power* is deceptively similar to the film *Queen* in which the plaintiff holds rights. The belief of deceptive similarity in the two films is raised on the basis of the following factors:

(i) The original film was titled as '*Queen*' after its main character '*Rani Mehra*' (*played by Ms. Kangana Ranaut)* because the Hindi word 'rani' literally translates to 'queen' in English. The proposed film has

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been titled '*Queen Full Power*', which is on the basis of the main character being called as '*queen zoraat*' by her father in Marathi, which translates into '*Queen Full Power*' in English.

(ii) The lead role is played by Ms. Kangana Ranaut in the original film, as well as in the proposed film.

(iii) Both original film as well as the proposed film are directed by Mr. Vikas Bahl.

(iv) Ms. Kangana Ranaut and Mr. Vikas Bahl have only ever worked together on the original film and that therefore the return of actor-director duo for the proposed film is likely to cause confusion and affiliation of the proposed film to the original film.

(v) That the underlying theme of the upcoming film is similar to that of the original movie, being one of a strong female lead coming from a conservative set-up who goes through a journey of transformation to find her power and confidence.

47) Plaintiff has also relied upon public utterances made by the lead actor and director of the proposed film to the effect that they were working on a derivative work and/or sequel of the original film *Queen*. According to the plaintiff, at the time of making public utterances by the lead actor and the director, the proposed film was described as '*Queen 2*'. Plaintiff has also relied on several entertainment publications in support of its plea that media speculation is made that the proposed film is a sequel to and/or remake / continuation of / derivative work connected to the film *Queen*.

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OBJECTION OF NON-PLEADING OF CASE OF PASSING OFF INDEPENDENT OF PLEA OF CONTRACTUAL BREACH

48) Before considering plaintiff's claim for passing off, it is first necessary to deal with the objection raised by Defendant Nos.1 and 2 that plaintiff has not independently pleaded the case of passing off and that its claim of passing off is essentially anchored to the claim for breach of covenants of CPA. It is contended by Defendant Nos.1 and 2 that though few references to passing off are peppered across the plaint, a holistic reading thereof shows that even the allegation of passing off is anchored to and premised upon the principal case that the proposed film is a derivative work in violation of plaintiff's right under the CPA. Defendant Nos.1 and 2 therefore contend that though the plea of passing off based on title of the film-Queen is the main thrust of the plaintiff while arguing the Interim Application, the pleaded case is otherwise. According to them, in the pleadings, the main thrust and the principal claim of the plaintiff is under the contract; alleging breach of novated CPA by making a sequel or derivative work of the film-Queen. According to Defendant Nos.1 and 2, even the claim for passing off sporadically raised in the plaint is firmly anchored to the claim that the proposed film is a derivative work. It is therefore contended by Defendant Nos.1 and 2 that if plaintiff fails to establish that the proposed film is a derivative work, it must fail in the application for temporary injunction and cannot be permitted to argue the case of passing off based on title of the film *Queen*.

49) In support of the above objection, Mr. Kadam has taken me through the averments in paras-13, 16, 20-30, 35, 37, 39, 40, 43, 43A, 47, 48, 50-54, 56, 57 and 59 of the plaint. After going through the above

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averments, it does appear that the main thrust of the plaintiff is on the allegation of breach of CPA by making a derivative work of the film *Queen* by using same proprietary / creative elements such as story / character / underlying works of the film *Queen*. This Court also noticed the fact that the suit has been styled and casted as a simplicitor "*Commercial Suit*" and plaintiff itself has not branded the suit as "*Commercial IP Suit*".

50) Mr. Kadam has also taken me through the averments in paras-8, 9, 9A, 11, 12, 13, 36, 42, 44, 45, 46 and 55 of the plaint in support of his contention that even the passing off averments are anchored to the case of derivative work. After going through the averments in those paragraphs, an impression is undoubtedly created that the allegation of passing off is squarely anchored to the allegation that the proposed film is a derivative work borrowing protectable creative elements from the film *Queen*.

51) However, at the same time, one must not forget the elementary principle that the plaint has to be read holistically. In para-8 of the plaint, the plaintiff has pleaded independent case of the title of the film *Queen* acquiring distinctiveness, secondary meaning and recognition. Para 8 of the plaint contains necessary averments to make out a case of passing off in the title of the film *Queen*. It would be apposite to reproduce para-8 of the plaint, which, after amendment, reads thus:

> 8. In view of its iconic status, the Film continues to generate revenues for the Plaintiff and its contractual counterparty under the novated Co-Production Agreement. The title of the Film itself has acquired distinctiveness, a secondary meaning and recognition inter alia on account of the length of time over which the Film has been a commercial and critical success.] Extensive advertisement and promotion have taken place in respect of the Film, and consequently the Film 'Queen', remains well known in Indian popular culture. The use of the word

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> 'Queen', in context of Hindi cinema, immediately brings to mind the Film. Therefore, the title of the Film 'Queen' has acquired goodwill and is entitled to protection from passing off or any other attempt to usurp it reputation and recognition for commercial gain, to the exclusion of the Plaintiff. As such, there is no other reason for the Defendants to use the title 'Queen Forever or "Queen Full Power" or some other derivative or combination using the title of the original Film "Queen' other than to benefit from the goodwill developed by the Film, at the cost of the Plaintiff. The use of the word "Queen" in the title is not only likely to, but in fact has created confusion not just in the mind of the public but also in the minds of persons closely associated with the proposed film titled "Queen Forever" or "Queen Full Power" or some other derivative or combination using the title of the original Film 'Queen'.

52) In para-12 of the plaint also, the plaintiff has pleaded that '*Independently the acts of the Defendants complained of herein further constitute passing off and infringement for the reasons set out below*'. There are also averments in paras-50 and 52 of the plaint in support of the claim of passing off. If any doubt remained, para-55 of the plaint once again contains specific averments of acquisition of secondary meaning in the title of the film *Queen* and possibility of cause of confusion in the minds of public on account of similarity in the title. Para-55 of the plaint reads thus:

> 55. Without prejudice to the foregoing, the Plaintiff submits that the title "Queen" has acquired associated, in the perception of the Hindi film-going public, exclusively with the Film and its makers. This is so, as (i) the title "Queen" has been in use for the Film for over 12 years, since its release on 7 March 2014, including its theatrical re-release in 2025 and its continuous availability on streaming and other platforms to date as the film co-produced by the Plaintiff and Defendant No. 1; (ii) substantial sums were expended on the world-wide marketing, promotion and publicity of the Film; and (iii) the Film was released across approximately 1,100 screens, earned approximately Rs. 61.47 crores net in India and Rs. 95.04 crores worldwide, won the National Film Award for Best Feature Film in Hindi and numerous other honours, and has been seen by a very large number of viewers in cinemas and on streaming platforms. By reason of the foregoing, the title "Queen" has come to denote to the public a film emanating from a single source, being the makers of the Film. The Film and 'Queen Forever', or 'Queen Full Power or some other derivative or combination using the title of the original Film Queen are both Hindi feature film directed at the audience and exploited through the identical theatrical and streaming channels, which is not only likely to but in fact has caused confusion in the trade and minds of the public

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> who are being deceived into thinking that the film 'Queen Forever' or 'Queen Full Power' or some other derivative or combination using the title of the original Film Queen is based on the Film and/or is an authorized sequel to and /or a continuation of the Film and/or of the Film's creative universe.

53) What also bears mention is the fact that Defendant Nos.1 and 2 have both correctly understood the fact that plaintiff has set up an independent case of passing off. Para-28 of the main reply and paras-34, 50, 57, 58, 68 and 70 of additional reply of Defendant No.1 clearly bear out the fact that Defendant No.1 has responded to plaintiff's independent case of passing off. It would be apt to reproduce para-70 of the additional reply of Defendant No.1 which reads thus:

> 70. With regard to paragraph 20-A (Rider VI) of the IA, I say that the contents thereof are denied. It is denied that any independent claim for passing off is made out against Defendant Nos. 1 and 2, whether independent of the contractual position between Defendant Nos. 1 and 3 or otherwise. **The essential ingredients of passing off, namely misrepresentation, damage and the requisite goodwill/reputation attaching exclusively to the Applicant in the title 'Queen' as a source identifier, are not made out on the facts pleaded, for the reasons set out in the Reply and in the Additional Affidavit.**
>
> *(emphasis added)*

54) Thus, Defendant No.2 has denied that '*any independent claim for passing off*' is made out by the plaintiff in para-70 of its additional affidavit in reply. Defendant No.2 also has dealt with Plaintiff's case of acquisition of secondary meaning in the title of film *Queen* by pleading in para-12.8 of its affidavit in reply that there is no secondary meaning in the title of plaintiff's 2014 film.

55) No doubt, pleading serves as a foundation of a lawsuit and delineate the boundaries of the claim. Pleadings are aimed at narrowing

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down the controversy to specific identifiable issues, preventing parties from drifting into irrelevant arguments. Pleadings also give a fair notice to the opposite party about the exact case that it needs to meet. Therefore ordinarily, a party is not permitted to travel beyond the pleadings while leading the evidence or while arguing a case. [SEE: ***Srinivas Raghavendra Desai Vs, Kumar Vamanrao alias Alok & Ors***[27]]. Therefore, in order to have a fair trial, it is imperative that the party should set out the essential material facts so that other party may not be taken by surprise. At the same time, Courts cannot adopt a pedantic approach and must liberally construe the pleadings.

56) ***Ram Sarup Gupta*** (supra) is an illustrative authority on the principle of Court concentrating on the 'substance' of the pleadings and not the 'form'. The Apex Court has held that it is the duty of the Court to ascertain the 'substance' of the pleadings and it is not desirable to place undue emphasis on the 'form' and that instead substance of the pleadings should be considered. It has further held that whenever the objection about lack of pleadings is raised, the Court must find out whether in substance, the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings, parties knew the case and if they proceeded to trial on those issues by producing evidence, it is not open to a party to raise the question of absence of pleadings in the appeal. The Apex court held in para-6 of the judgment as under:

[27] 2024 SCCOnline SC 226

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6. The question which falls for consideration is whether the respondents in their written statement have raised the necessary pleading that the licence was irrevocable as contemplated by Section 60(*b*) of the Act and, if so, is there any evidence on record to support that plea. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should settle the essential material facts so that other party may not be taken by surprise. **The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Some times, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings; instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence in that event it would not be open to a party to raise the question of absence of pleadings in appeal.** In *Bhagwati Prasad* v. *Chandramaul* [AIR 1966 SC 735 : (1966) 2 SCR 286, 291] a Constitution Bench of this Court considering this question observed:

> "If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. **What the court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter.** To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of

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prejudice, and in doing justice to one party, the court cannot do injustice to another."

(emphasis and underlining added)

57) Applying the tests in ***Ram Sarup Gupta***, there can be no doubt to the position that Defendants have understood the case of passing off set up by the by the plaintiff. They have dealt with the claim of acquisition of secondary meaning in the title of the film *Queen*. Therefore, apart from the fact that there are necessary pleadings in the plaint in support of independent claim of passing off in the title of the film (*unconnected to the claim for contractual breach*), Defendants themselves have understood the claim and they have dealt with the same in their affidavits-in-reply. They are now estopped from raising the plea of absence of pleadings.

58) As observed above, holistic reading of the plaint may create an impression that the main thrust of the plaintiff in the pleadings is on contractual breach. It does appear that even the case of passing off is anchored, to some extent, to the main plea of contractual breach. While claiming that Defendants' impugned film is a derivative work, Plaintiff has essentially suggested that derivative work based on the film-Queen cannot be made without Plaintiff's consent in view of acquisition of intellectual property rights in the film *Queen* by it under the novated CPA. May be the averments in support of independent plea of passing off are not as prolific as expected, particularly as compared to the averments relating to the plea of contractual breach. However, the Court cannot compare the percentage of pleadings raised in support of multiple pleas and proceed to reject a particular claim only on the ground that pleadings in support thereof are comparatively lesser than the other plea. What needs to be considered is

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whether there are pleadings in support of that claim or not. Once a satisfaction is reached that there are pleadings to support the claim, the Court would not go into the issue of comparative analysis of quantum of pleadings in support of multiple claims. In fact, going by strict rule of pleading under Order VI Rule 2 of the Code, a pleading needs to be a statement in a concise form of the material facts on which the party pleading relies for his claim or defence. Beyond a concise statement of material facts, nothing more needs to be pleaded. I am satisfied that the plaint contains a concise statement of material facts on which Plaintiff proposes to establish the claim for passing off based on acquisition of secondary meaning to the title of the film-Queen. The objection sought to be raised by Defendant Nos.1 and 2 therefore deserves rejection.

WHETHER THE PROPOSED FILM '*QUEEN FULL POWER*' IS A DERIVATIVE WORK OF THE FILM '*QUEEN*'

59) It must be observed here that ordinarily, allegation of opponent's work being a derivative work based on the original work leads to the sequitur of copyright infringement action. However, Plaintiff has consciously not pleaded or argued the case of copyright infringement. Plaintiff's suit comprises of twin actions for passing off and breach of contract. Its claim that the proposed film is a derivative work based on the film *Queen* is essentially anchored to the allegation of breach of contract and no case of copyright infringement is argued. Since the claim of derivative work is necessary to decide the case of contractual breach, I proceed to examine the same. Examination of the claim of derivative work

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would also assist the Court, to some extent, in deciding the other issues of passing off based on film title and spiritual sequel.

60) Under clause 2.3 of the CPA, Plaintiff and Defendant No.3 jointly and equally own the assigned rights and works in the film *Queen*. Clause 2.3 of the CPA reads thus:

> 2.3. The Parties shall jointly and equally own all the Assigned Rights and Works in the Film including but not limited to the Intellectual Property during the Term and for the Territory.

Under the CPA, the term '*Assigned Rights*' is defined thus:

> 1.1.2. "Assigned Rights" includes all rights in relation to and associated with the Film (including but not limited to all development work, physical material including negatives) including Intellectual Property Rights including Derivative Rights in the Film as recognized in the entire world, save and except the Exploitation Rights.

Thus, Plaintiff claims 50% ownership even in derivative works under the CPA. The term '*Derivative Rights*' is defined in the CPA as under:

> 1.1.8. "Derivative Rights" shall mean the right to create Derivative Works based on the Film.

The term '*Derivative Work/s*' is defined in the CPA thus:

> 1.1.7. "Derivative Work/s" means any work based upon the Film or any characters therefrom or story or other elements thereof, including without limitation, sequels, prequels, remakes, television productions, stage plays in any language. It is clarified that Derivative Works do not include marketing materials, subtitling, dubbing the film in any other Indian or foreign languages etc. in respect of the Film.

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CPA also defines the term '*work*' as under:

> 1.1.34. "Work" will mean the said Film and all underlying works in the said Film including the literary works such as story, screenplay, dialogue, songs in the Film and all literary and musical works comprised therein, characters, titles etc. and all Intellectual Property Rights comprised in the underlying works.

61) When the Suit was filed, Plaintiff did not have access to the underlying literary works in respect of the proposed film *Queen Full Power*. Its claim that the proposed film is a prequel/sequel/derivative work was speculative one, based on media reports, and particularly the interviews given by the lead actress, Ms. Kangana Ranaut and the director Mr. Vikas Bahl. However, to quell the apprehension that the proposed film *Queen Full Power* is a derivative work/sequel/prequel, Mr. Kadam has placed before me the synopsis of the film *Queen Full Power*. He has also fairly shared the copy of the film synopsis with the counsel appearing on behalf of the Plaintiffs with the caveat that the same may not be shared with the attorney and the client.

62) I have gone through the synopsis of both the films. The synopsis of the original film *Queen* is appended to the CPA under the heading 'Story/Concept'. As observed above, Defendant No, 1 has placed on record the synopsis of the proposed filed *Queen Full Power*.

63) The story/concept appended at Annexure-F to the CPA indicates that the original film *Queen* is a story of journey of a young 24 year old girl named Rani Mehra from Delhi, who belongs to a well to do conservative Punjabi family. Rani is so protected that her little brother goes everywhere with her for her safety. Rani falls in love with a young man

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named Vijay when she is in college and does not have life beyond him. Vijay, however, falls out of love and decides to breakup with Rani a day before the wedding. Rani is shattered to bits. As a kid, Rani had dreamt of a honeymoon and despite cancellation of the wedding, Rani decides to pack her bags and go for honeymoon alone in the heat of the moment. What happens with the girl who has never travelled within India by herself, when she goes to Paris and Amsterdam alone is the story of the film *Queen*. When Rani lands up at Paris, she meets Vijaylaxmi who is half Indian and half French and a girl full of life, carefree and who does not believe in marriage. Rani along with Vijaylaxmi has a crazy time and, in the process, Rani starts to forget her past and move on. She lands up in a backpacker's hostel in Amsterdam and finds that she is supposed to share a room with 3 boys. Rani who initially dreaded to live with the 3 boys, becomes good friends with them and four of them have a blast. She also meets an Italian guy who owns a restaurant and starts giving him tips to improve his food. At this juncture, Vijay shows up in Amsterdam and Rani has to take a call whether she chooses life full of opportunities and fun or marriage with Vijay.

64) Above is the broad synopsis of the story of the original film *Queen* which is described as a crazy musical journey of a middle-class girl from Delhi to Europe for her honeymoon alone. As observed above, synopsis of the film *Queen Full Power* has been shared with the counsel who have appeared on behalf of the Plaintiff and they have had an opportunity to go through the same. Since the proposed film *Queen Full Power* is yet to be theatrically released, it would be inappropriate to reproduce the entire synopsis of the film nor to make a very detailed reference to the story

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thereof. Otherwise, the entire curiosity of the cinemagoers would vanish, thereby subjecting Defendant Nos.1 and 2 to a prejudice. However for the purpose of recording reasons in support of finding of derivative work, I am making a very brief reference to the broad theme of the proposed film *Queen Full Power*.

65) Synopsis of the proposed film Queen Full Power prima facie indicates that the proposed film is essentially a kidnapping thriller drama not involving the element of travel or journey by the protagonist through which she discovers a sense of power or confidence. The film revolves around Pooja Raut, a middle-aged Marathi woman living an ordinary middle-class life with her husband and young son, whose otherwise routine family life is disrupted by unforeseen circumstances, i.e., kidnapping. The story appears to centre on her response to the ensuing situation, with elements of suspense and comedy unfolding across various urban settings in Mumbai. The synopsis, however, does not indicate any significant travel or journey undertaken by Pooja beyond Mumbai through which she discovers a sense of independence, confidence or empowerment.

66) It would not be appropriate to refer to further details of the film synopsis. Suffice it to observe that comparison of synopsis of the two films does not indicate any similarity or commonality in the stories of the two films. As against the original film *Queen* revolving around a young Punjabi unmarried girl, the protagonist in the proposed film *Queen Full Power* is a Marathi, married, middle aged woman. There is no element of travel involved in the proposed film, which was the central theme (travel for honeymoon) of the original film Q*ueen*. A young shy Punjabi girl

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'honeymooning alone' can be said to be the central theme of the film *Queen*. Whereas the central theme of the proposed film is how a married Marathi woman deals with situation of kidnapping of her husband and son. While the drama in the original film *Queen* was set abroad with romantic arcs (*between Rani and Vijay, as well as between Rani and the Italian Chief*), there is apparently no romantic angle in the proposed film *Queen Full Power*. It is a kidnapping and comic thriller. Apart from Ms. Kangana Ranaut, all the other key characters and cast of the proposed film *Queen Full Power* are played mainly by Marathi film industry actors, whose names find place in the film synopsis.

67) It must be observed here that after Plaintiff's counsel went through the synopsis of the film *Queen Full Power,* there is a noticeable shift in the approach of the Plaintiff while pressing the claim for passing off as a derivative work during rejoinder submissions. After going through the synopsis of the proposed film *Queen Full Power*, though Plaintiff's claim of Defendants' film being derivative work is not given up altogether, the intensity with which the same was originally pressed, has definitely reduced. After going through the synopsis, the note submitted towards rejoinder submissions on behalf of the Plaintiff indicates that the main thrust towards passing off claim is now on the title of the original film acquiring a secondary meaning and the proposed film being a 'spiritual sequel' of the film *Queen*, and the claim of the film *Queen Full Power* being a direct derivative work has taken a backseat. However, since the claim of derivative work is not given up, I need to *prima facie* decide the same.

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68) After going through the synopsis of the proposed film, Plaintiff has raised three contentions in support of its claim that the synopsis does not allay the likelihood of confusion viz. (i) that the synopsis is unreliable as it is not put on affidavit; (ii) knowledge of different story cannot cure initial confusion and (iii) the synopsis itself suggests that the proposed film was intended as a sequel.

69) So far as the *first* objection is concerned, it is contended by the Plaintiff that the synopsis tendered by Defendant No.1 is unreliable and unproved. The contention is attributable to not placing the synopsis through affidavit and that the synopsis being a mere typed note, not signed by any party to the proceedings. It is also contended by the Plaintiff that Defendants have not produced any screenplay or the underlying documents containing the operative synopsis. I am not impressed by these submissions canvassed on behalf of the Plaintiff. As a matter of fact, to quell the speculative allegation of similarity of films, Defendant Nos.1 and 2 were not even obliged to place before the Court the synopsis of the film. This is because, beyond media speculation, Plaintiff does not have any concrete material to establish similarity between the two films. However, since Defendant Nos. 1 and 2 firmly believe that their work has absolutely no connection with the Plaintiff's work, they have come out clean and have disclosed the synopsis not just to the Court but also to the Counsel of the Plaintiff. The only reason for not putting the synopsis on Affidavit is to maintain the secrecy and curiosity about the film's story as the film is still in the making. Therefore, mere non-production of synopsis on affidavit cannot be made a ground at this juncture to discard the same altogether and to record a speculative finding that the proposed film *Queen Full Power*

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may be a derivative work of Plaintiff's original film *Queen,* when it is factually not.

70) At this juncture, the Court is only considering whether it is necessary to injunct the Defendants from making, releasing or exploiting the film *Queen Full Power*. For the purpose of consideration of Plaintiff's prayer for injunction, this Court would be justified in taking into consideration the synopsis tendered during the course of arguments. Defendant Nos.1 and 2 are fully justified in not disclosing the synopsis of the film on affidavit or else, the same would fall in public realm thereby destroying film's curiosity. Just because Plaintiff files a speculative claim of passing off, it is not mandatory that the producers of the proposed work must disclose on affidavit the storyline, screenplay, etc. of their film nor the Court would be justified in granting injunction in favour of Plaintiff's speculative claim by drawing an inference adverse to the Defendants on account of their failure to put the synopsis of the proposed work on affidavit.

71) After the film is released, if it transpires that the synopsis of the film submitted by Defendant No.1 is false or that there are any elements of similarity between the two films, the Plaintiff is not remediless. Apart from seeking action against Defendant Nos. 1 and 2 for producing false or misleading synopsis, it can also seek damages. The plaint contains a prayer for recovery of damages of Rs 253.55 crores. In my view therefore, while considering Plaintiff's claim for temporary injunction, this Court would be justified in taking into consideration the synopsis of the proposed film submitted by Defendant No.1.

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72) The *second* objection of subsequent knowledge of cinemagoers not curing initial confusion, apart from being baseless, contains an implied admission of the difference between the two films. It is contended by the Plaintiff that since passing off concerns the likelihood that the public will perceive an association, connection or continuity when confronted with the proposed film, the inquiry arises 'before' the viewers have watched the film. When there is absolutely no commonality between the two films, it is difficult to believe as to why the viewers would connect the two films. *Prima facie* it becomes difficult to believe that the film *Queen* is so engrossed in the minds of cinemagoers even today that the moment they notice Ms. Kangana Ranaut featuring in the film, Mr. Bahl directing it and the word 'queen' appearing in the title, they would instantly develop a connect between the two films and buy tickets under a belief that what they may get to watch is a sequel / derivative work of the film *Queen*. Whether the three integers of common lead actress, common director and one common word in the title, taken together, satisfy the test for actionable passing off is being considered in the latter part of the judgment. Plaintiff's reliance on the judgment of Delhi High Court in ***Vishesh Films*** in this regard is inapposite. While non-applicability of the judgment to the facts of this case is discussed in greater details in the latter part, suffice it to observe here that the observations in para 43 of the judgment, rendered in the context of *Aashiqui* franchise films, involving registered trademark and negotiations between parties for new film, cannot be picked up out of context for suggesting that in film related cases, the trademark law test of 'likelihood of confusion' must be imported and applied to every speculative claim in absence of any commonality between the two films.

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73) The *third* objection by the Plaintiff is about the synopsis itself suggesting that the proposed film 'was intended' as a sequel. Use of the words 'was intended' in the rejoinder note contains an implied admission that the intention of Defendant Nos. 1 and 2 might be to make a sequel, the film is actually not a sequel. Use of the word 'rani' while giving list of the cast and characters of the proposed film is described as a significant Freudian slip about the intention to make a sequel. However, in reality the name of the lead character of the film which Ms. Ranaut plays is not Rani, but is Pooja. Therefore, not much importance can be given to use of the word 'Rani' while listing the cast and characters of the film.

74) As observed above, there appears to be no similarity between the two films. The stories, plots, themes of the two films do not have anything common in them. The purposed film *Queen Full Power* is admittedly not a linear continuation of the story of the film *Queen* and is therefore not a sequel. It is also not a prequel or a spin-off or a reboot of the film *Queen*. To constitute a derivative work, the new film must be a new motion picture that reinterprets, transforms, or adapts elements from an existing, pre-released film. The new film must be a new creative work that is recast, transformed, or adapted from the existing movie. There is no material on record to draw a *prima facie* conclusion that the proposed film borrows the essential elements or structural fabric of the film *Queen*.

75) In view of the above discussion, I am of the view that Plaintiff has failed to make out a *prima facie* case of the film of Defendant Nos.1 and

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2 *Queen Full Power* being a derivative work based on the 2014 original film *Queen*.

PLAINTIFF'S CLAIM OF THE FILM TITLE '*QUEEN*' ACQUIRING SECONDARY MEANING

76) Since the word 'queen' appears in title of the proposed film *Queen Full Power*, Plaintiff has sued the Defendants by raising a claim for passing off. It is Plaintiff's claim that by use of title of the original film *Queen* in the title of the proposed film, Defendants are encashing on Plaintiff's goodwill in the original film. Plaintiff believes that the moviegoers and viewers will be confused on account of inclusion of the word 'queen' in the title of the film of the Defendants and that they are likely to believe that the two films have connection with each other. The claim of the Plaintiff is also based on interviews given by the lead actor and the director of the proposed film in addition to media reports and social media posts establishing alleged connection between the two films. I accordingly proceed to examine Plaintiff's case of passing off the title of the film.

77) Before doing so, it must be observed that the prayers in the Suit seek injunction against Defendants to make any derivative work under 'any other title'. Thus, Plaintiff appears to be confused in relation to its claim for passing off based on title of the film *Queen*. Plaintiff apparently has an objection to making of any film by the Defendants which is a derivative work (sequel/prequel/spiritual sequel) under 'any other title'. Thus, the plaint appears to be a confused document where it raises a claim

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based on title and also seeks to injunct the Defendant Nos.1 and 2 from making their film by using 'any other title'. I momentarily ignore this aspect and proceed ahead to examine Plaintiff's case of passing off based on title.

78) The titles of films no longer act as mere labels and have evolved into powerful symbols that carry immense commercial significance. The titles, through their consistent use, often acquire secondary meaning that transcends the individual works they originally represented. Once the film title achieves this level of recognition and becomes synonymous with a particular series or producer, it effectively functions as a trademark. In a given case, even if there is nothing in common in the story of the two films, sometimes use of title of an immensely successful film in another film can create confusion in the mind of viewers who are likely to connect the two films with each other. To illustrate, since the franchise films Dhurandhar are immensely successful during 2025-26, if another film is made containing same title such as '*Dhurandhar-3*' or '*New Dhurandhar*' or '*Dhurandhar-Next Chapter*' etc., even though there is no similarity between the storyline of the two films, the viewers are likely to get confused that the new film is a sequel or a prequel to the two franchise films- *Dhurandhar* and *Dhurandhar: The Revenge*. This is particularly because of the short time gap between making of the two films. As of today, the word '*Dhurandhar*' is so deeply engrossed in the minds of the viewers that they are likely to associate any new film containing the word '*Dhurandhar*' in the title with the two franchise films already released. This impression may continue for a longer time

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depending on the success of the film. To illustrate, the film '*Sholay*' released in the year 1975 is still engrossed in the minds of cinemagoers that any new film containing the word '*Sholay*' may (*not must*) create confusion in the minds of the moviegoers. In fact, the Delhi High Court in ***Sholay Media Entertainment*** (supra) has dealt with a case where the domain name '*www.sholay.com*' was registered for creation of entertainment portal. While granting injunction in favour of the Plaintiffs therein, the Delhi High Court has briefly described as to how the film *Sholay* has transcended generations of Indians and how the film's dialogues, sets etc. have created a long-lasting impact on the minds of the Indians. The concept of the film title '*Sholay*' being acquiring secondary meaning is being discussed in the latter part of the judgment. Suffice it to quote paras-2 to 5 of the judgment at this juncture, in the context of creation of impact by the title of the film in the minds of the moviegoers and even of those, who do not intend to watch the movie, but intend to avail the services not associated with that movie. In paras-2 to 5 of the judgment, the Delhi High Court has described the impact of the film *Sholay* on the minds of Indians as under:

> 2. If there is one film that transcends generations of Indians, it is 'SHOLAY'. The said film, its characters, dialogues, settings, box office collections are legendary. Undoubtedly, 'SHOLAY' is one of the biggest, record-breaking films that India has ever produced, in the history of Indian cinema.
>
> 3. The present suit has been filed by Sholay Media and Entertainment Pvt. Ltd. and Sippy Films Pvt. Ltd. against Defendant Nos. 1 to 8 who are described hereinbelow. Defendant Nos. 1 to 3 are members of the Patel family : Mr. Yogesh Patel, Mr. Jayesh Patel and Ms. Bhavna Patel and Defendant No. 4 is 'Sholay.com Pvt. Ltd'. The said Defendants have registered the domain name 'www.sholay.com', published a magazine using the mark/name Sholay and have put on sale various merchandise, using scenes and names from the movie 'SHOLAY'. Defendant No. 5 - Netangle.com Pvt. Ltd. is a company registered by Defendant Nos. 1 to 3 as well. Defendant Nos. 6, 7, and 8 are controlling entities of the domain name 'Sholay.com'.

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4. The film 'SHOLAY' was produced by Mr. G.P. Sippy and the censor certificate for the film was issued on 8th August 1975, who was running M/s. Sippy Films. It was released on Independence Day i.e., 15th August 1975. Several well-known actors and actresses namely, Mr. Sanjeev Kumar, Mr. Amitabh Bachchan, Mr. Dharmendra, Ms. Hema Malini, Ms. Jaya Bhaduri, and Amjad Khan, featured in the said film. It would not be inapposite to state that 'SHOLAY' has acquired a cult status and the film's appeal has cut across geographical boundaries, language, ideology, class, etc. It has been rightly described as a film which is a part of India's heritage. Some of the dialogues used in this film such as *'Jo dar gaya, samjho mar gaya', 'Ai chhammia', 'Arre o Sambha', Kitne aadmi the*?' are part of colloquial language in the Hindi heartland. It received unbeatable reviews which led to the movie being run 'Housefull' for more than five years. As per the Plaint, the movie is stated to have very unique features some of which are:

i. 'SHOLAY' was the first Indian movie to market its background music/songs and dialogues.

ii. The film made use of several cinematic innovations, such as the use of 70 mm format with 6 track stereophonic sound.

iii. SHOLAY chalked up the record of maximum shows and the highest number of prints (1100) among Indian movies. In fact, it continues to have over 100 prints in circulation even today.

5. Enormous investment went into the making of the film. The mention of the word 'SHOLAY' immediately creates a connection with the movie 'SHOLAY'. There are industry estimates which claim that, although the words 'SHOLAY' may have a dictionary meaning in Hindi (specifically, 'burning coal'), upon the movie going public, the word 'SHOLAY' came to be associated only with the film.

79) Thus, in a given case, it is possible that use of the same title for making of another movie or even for selling goods and services by using a trade name containing the title of the film can create a confusion in mind of service seekers, but it all depends on facts of each case. No straitjacket formula can be laid down. It mainly depends on the impact that the title of the film may leave on the service seekers and moviegoers. Otherwise, in title alone, there is no copyright. This position is now well settled by judgment of the Apex Court in ***Krishika Lulla*** (supra), in which the Apex Court has held in para-19 of the judgment as under:

19. We are thus, of the view that no copyright subsists in the title of a literary work and a plaintiff or a complainant is not entitled to relief on such basis except

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> in an action for passing off or in respect of a registered trade mark comprising such titles. This does not mean that in no case can a title be a proper subject of protection against being copied as held in *Dicks* v. *Yates* [*Dicks* v. *Yates*, (1881) LR 18 Ch D 76 (CA)] where Jessel M.R. said "there might be copyright in a title as for instance a whole page of title or something of that kind requiring invention" or as observed by Copinger (supra).

80) Following the judgment of the Apex Court in ***Krishika Lulla***, this Court has held in ***Sunil Darshan Saberwal vs. Star India Pvt. Ltd.***[28] that no copyright subsists in a title of a cinematograph film. However, as clarified by the Apex Court in ***Kanungo Media*** (supra), an action for infringement in case of a registered trademark in film title or an action for passing off based on the title of the film is maintainable. This position is also made clear in judgment of Privy Council in ***Francis Day & Hunter Ltd*** (supra) wherein it is held that any general title is not protectable as a copyright. However, in a particular case, title of a film can enjoy protection against being copied where the title is on an extensive scale and important to a character. The Privy Council held thus:

> ...Their Lordships do not wish to be taken to say that in no circumstances can there be a "passing off" by the use of the same title for a literary, artistic or musical work though it is difficult to imagine such a case where there are no circumstances calculated to mislead other than the mere title. A title may however be used in the case of a book or newspaper under such conditions that persons may be deceived into buying the defendant's book or newspaper under the impression that they are buying that of the plaintiff. Similarity of name may be strengthened by similarity in make up, and in subject-matter, and by other circumstances. Nor is such a claim limited to things sold, though it is commoner in that class of cases. It is not impossible that there might be "passing off" of such a nature that persons might pay to go to a performance of the defendants' work under the impression that they were going to witness the plaintiff's work. Such cases are perhaps not very likely to occur, but there may conceivably be the same element of likelihood of deception, whether designed or not, as to involve an invasion of the plaintiff's common law rights and a disturbance of his business

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> interests. But in their Lordships' opinion it is enough to state these elementary principles to see how inapplicable they are to the subject-matter of this appeal...

81) Thus, in a given case, an action for passing off in respect of an unregistered title of a film and/or of infringement in respect of a registered title is maintainable depending on facts of each case. In exceptional cases, Courts have imported the concept of words acquiring secondary meaning, usually applicable in cases of trademarks, to film titles. In the present case, Plaintiff has contended that the title of the film *Queen* has acquired a secondary meaning in relation to films and that therefore, use of the word *Queen* in the film of the Defendants amounts to an actionable claim for passing off. I proceed to consider this claim of the Plaintiff.

THE CONCEPT OF FILM TITLES ACQUIRING SECONDARY MEANING / SIGNIFICANCE

82) The concept of 'secondary meaning' or 'secondary significance' involves loss of the original meaning associated with the word and the word assuming an altogether different meaning. The concept occurs when the word or the expression no longer means what it once did and that it acquires an altogether different and distinct meaning. The concept occurs when the word has transcended the original connotation and has a different connotation / meaning in the minds of the public when it comes to particular products, goods or services. A common illustration can be of the word 'Apple' which ordinarily connotes or means a fruit. But when it comes to electronic products such as computers, mobile phones etc, the word 'Apple' has lost its primary meaning and has acquired a secondary significance in the public mind who instantly associate the word

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'Apple' to the electronic products that are manufactured by Apple Inc. Thus, in relation to electronic products, the word 'Apple' has lost its primary meaning and has acquired a secondary significance. Similar is the case with the mark 'blackberry' which again connotes a fruit. However, when it comes to mobile phones, the word has lost its primary significance and the only thing that comes to the minds of consumers in relation to mobile phones is the Blackberry mobile phones. This is broadly the concept of secondary meaning or secondary significance, which implies that the word or the expression, which had a more commonplace meaning, has got lost and that the word or expression has acquired altogether different meaning *qua* the products sold. The concept has been explained by this Court in ***People Interactive (India) Pvt. Ltd.*** (supra) in paras 15 to 18 of the judgment as under:

> 15. That takes us directly to the question of 'secondary meaning' or 'secondary significance'. When does an expression acquire a 'secondary meaning' and how does it acquire it? Again, this is a phrase much bandied about, and I do believe we need to pause to consider what is meant by all this. What do we mean when we say that an expression has 'acquired a secondary meaning'? This must necessarily mean that the primary meaning of the expression, the one with which it began, has been lost. It is left behind. The expression no longer means what it once did. It has assumed a new avatar. It has transcended its original connotation and now references exclusively in the public mind the claimant's products, goods or services, *i.e.*, that there is an identification of the mark with the claimant rather than with the goods or services in and of themselves.[28] The claim of a 'secondary meaning' posits *a priori* that the expression once had a more commonplace, ordinary meaning — this is the meaning that is now lost. In its first iteration, the expression found place lower on the *Indchemie/Miller Brewing* scale. It has since moved upward by acquiring a secondary meaning. That is the claim.
>
> 16. How is the acquisition of a secondary meaning to be shown or established? Does commercial success, even a high degree of success, always result in the acquisition of a 'secondary meaning'? I do not believe this can be so. There is no presumption of secondary meaning acquisition. That needs proof; and the proof must be of uninterrupted use of considerable longevity *without a competitor attempting to use it*. When a person uses a common phrase, he runs the risk that

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others might also use the same expression or another very like it. In *British Vacuum Cleaner Company Limited* v. *New Vacuum Cleaner Company Limited*, on which Dr. Tulzapurkar relies, Parker J held that there is a distinction between ordinary descriptive words and a 'fancy word', one that does not primarily relate to the article, but perhaps to the person manufacturing it. There can be no restraint against the use of general words. The decision in *Office Cleaning Services Ltd.* v. *Westminster Window and General Cleaners Ltd.*, too, supports Dr. Tulzapurkar's contention. The expression in dispute was 'office cleaning'. The appellants claimed the expression was identified with their business to such an extent that any other traders who wished to use the expression as part of their trade name would have to differentiate it. Simons J held that where a trader adopts words in common use for his trade name, some risk of confusion is inevitable. But that risk must be run, or else the first user would be allowed to unfairly monopolise the words. In matters of this nature, courts accept even the smallest differences sufficient to avert confusion.

17. As to this question of risk of similar use by others, the material on record is, in my view, against the Plaintiff. Annexed to the Affidavit in Reply is a very long list of rival or competing marks, at various stages. All use the word *shaadi* in some form or the other. Many are opposed by the Plaintiff. Several use the name of a community before the word *shaadi* (agarwalshaadi, konkanishaadi, patelshaadi and so on). I do not think Mr. Khandekar's response is of much use; he says that the Plaintiff has obtained domain name registrations for a very large number of variants. This is hardly evidence of exclusivity. In fact, it points to the contrary, viz., that others have, and continue to, use the word *shaadi* almost at will. The Affidavit in Rejoinder does not further matters when it says that many of these users have been issued cease-and-desist notices by the Plaintiff. The fact is that there are many ventures, including online ones, that use the word '*shaadi*' as part of their corporate or trading name or as their domain names. Paragraph 12 of the Affidavit in Rejoinder tabulates companies that use the word 'shaadi' in their names. I do not think it is at all possible for a claimant to say that there are no competitors or rival users because the claimant has moved against or restricted virtually every rival user. The test in such cases must be whether rivals have *attempted* to use the same commonly descriptive or generic (class 1) expression. If it is shown that they have, then the claims to exclusivity and to a secondary meaning must both fail. This is axiomatic : these rival uses show non-exclusivity, and establish that there are indeed many who use the word. This is precisely the risk the law says an adopter of a generic or commonly descriptive expression must expect to suffer. The test of exclusivity, an essential ingredient of the claim based on a 'secondary meaning' can hardly be said to be satisfied.

18. Exclusivity claims based on secondary meaning acquisition must be established by cogent material. References to sales and promotional expenses may be used to establish the acquisition of reputation and goodwill, i.e., to show the popularity of a mark. Mere use and statements of sales and expenses do not, of their own, establish the acquisition of a secondary meaning. That proof is always required of goods or services in the second category, 'merely descriptive' expressions; for these are not ordinarily registrable without such proof. That

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> proof must be directed to establishing that the 'merely descriptive' expression in question is now firmly established in the public imagination with the claimant and its goods and services. High sales and expenses will not do; the claimant must show from carefully neutralized market surveys, etc., that this is indeed how the public perceives the mark — not as a mere description, but a pointed reference to the origin, *viz.*, the claimant. Use itself does not establish distinctiveness. The extent to which a mark has lost its primary meaning and the extent to which it has acquired a secondary one are conclusions to be drawn from evidence. That evidence, showing the displacement of the primary meaning by the secondary meaning, must be of the members of the public as well, not merely those specially placed to attest to its uniqueness.

83) In ***People Interactive (India) Pvt. Ltd.*** this Court was dealing with a case where the word '*shaadi*' was used by the defendant therein in its domain name relating to matrimonial matchmaking services, which was held to be a vice of passing off by this Court in relation to Plaintiff's domain name *www.shaadi.com*.

84) In relation to film titles, the earliest case appears to be in ***K.M. Multani*** (supra), a judgment delivered by the Division Bench of this Court in the year 1942. In the case before the Division Bench, the Plaintiff was carrying on business of producing and distributing cinematographic motion pictures and had written or procured the writing of a story for the film which was to bear the title of '*Virginia*'. The film was complete and its advertisement had commenced. The defendants had also conceived the idea of the picture under the title *Virginia* and the title was registered by the defendants in America. The Plaintiff commenced the suit seeking injunction to restrain the defendants from distributing and exhibiting its motion picture imported by it containing the name and title of '*Virginia*'. Referring to the judgment of Privy Council in ***Francis Day*** (supra), the Division Bench held:

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6. Francis Day and Hunter, Ld. v. Twentieth Century Fox Corporation, Ltd. [1940] A.C. 112 ...The Privy Council held that there could be no possibility of deception of the public by producing a film under the name of a well-known song.... peculiarity of a film is that its life is comparatively short. It is not like a book which The evidence in this case is that the title of a film is very important; and another of a film under a particular title, and its association in the public mind with the may be in circulation for years. It might be very difficult to establish the reputation plaintiff, by evidence of the actual production of the film..

7. **In this case I am clearly of opinion that the plaintiff fails to prove either of the matters necessary to his success. On the first point, he has not established that the title "Virginia" is associated in the minds of the public interested in films, with his film.** I do not think he has established that fact even in relation to the limited public of Bombay, and he has not attempted to establish it in relation to the public in any other part of the world, though he has claimed an injunction in general terms. There is no evidence of extensive advertisement, though, no doubt, he did advertise on the wall of the cremation ground at Oueen's Road, which is a prominent place. But there is no evidence that he spent large sums of money in advertisement... **In my opinion, it is essential for the plaintiff to go much further than he has gone to establish that when the public go to a film called Virginia, they expect to see the plaintiff's film, and none other.**

8. He has entirely failed to prove that the use by the defendants of the title Virginia in connection with their film is in any way calculated to deceive..

9. **In my opinion, there can be no possibility of deception between two things so essentially different. It is, no doubt, unfortunate that two films should have exactly the same title, and the fact may lead to some confusion and inconvenience in the booking and production of the films. But the inconvenience to the plaintiff is no greater than the inconvenience to the defendants.** Both parties have without any intention to deceive taken the same title for their films, and the plaintiff has no right to restrain the defendants from using the title, unless he can show that it has become associated in the minds of the public with his film and nobody else's, He has called virtually no evidence at all.... There was no attempt to prove any actual deception, or any likelihood of deception by reason of the identity of these two titles..."

(emphasis added)

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85) Thus, the Division Bench in ***K.M. Multani*** held that mere same title in the two films was no ground for grant of injunction when there is no possibility of deception between the two films. The Division Bench held that the Plaintiff therein was unable to demonstrate that the title in the film had become associated in the minds of the public with only the Plaintiff's film and nobody else's.

86) The issue of legal protection for literary title of a film is discussed more elaborately by the Single Judge of Delhi High Court (*A.K. Sikri, J. as His Lordship then was*) in ***Kanungo Media*** (supra). The controversy was in respect of the film produced by defendant No.1 therein with the proposed name '*Nishabd*'. Plaintiff therein was aggrieved by adoption of title by the defendants for their cinematographic film. Plaintiff claimed rights over the title on the ground that it had already produced film with the title '*Nishabd*' which had won various awards and that embracement of the same name by the defendants was nothing but an attempt to usurp Plaintiff's rights over the title *Nishabd*. The case did not involve allegation of usurpation of work of the plaintiff by the defendants since plot and storyline of the two films was altogether different and there was not even a semblance of similarity between the two.

87) In ***Kanungo Media***, the Delhi High Court has held that film titles are entitled to legal protection in the field of trademark. The Delhi High Court has laid down twin tests of (i) the title acquiring secondary meaning and (ii) likelihood of confusion of source, affiliation, sponsorship or connection of potential buyers/audience/viewers. It would be apt to

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reproduce discussion of law on the subject by the Delhi High Court in paras-10, 13, 14, 15, 16, 17, 18, 22, 23, 24 and 25 of the judgment as under:

> LAW ON THE SUBJECT:
>
> **10. The case relates to the alleged appropriation of a title. It is not a case where there is any allegation of usurpation of the work of the plaintiff by the defendants. In fact, as seen above, the plot and storyline of the two films is altogether different and there is not even a semblance of similarity between the two.**
>
> xxx
>
> 13. **However, legal protection for literary titles lies in the field of trademark and unfair competition. In general, such titles are protected according to the fundamental tenets of trademark and unfair competition law.** McCarthy has described this and even provided the test which has to be applied while determining the infringement in the realm of trademark as under:—
>
>> "In general, such titles are protected according to fundamental tenets of trademark and unfair competition law. That is, such titles cannot be used by a junior user in such a way as to create a likelihood of confusion of source, affiliation, sponsorship or connection in the minds of potential buyers. **For these purposes, titles of literary and entertainment creations and works are treated in much the same way as the trademarks of other commercial commodities.**
>
> 14. Titles may relate to two types of works, i.e. titles of single literary works and titles of series of literary works. Titles of series of books, periodicals or newspapers do function as a trademark to indicate that each edition comes from the same source as the others and, therefore, such titles are even registrable as trademark. Such 'series titles' enjoy the same protection as usual trademark. The title of a newspaper serves a trademark function to the reader who is shopping among competing newspapers, just as when he or she is shopping among competing newspaper, just as when he or she is shopping among competing household products. Or, for example where a term has been used in the title of a series of books, it may come to identify and distinguish a source to buyers. If so, it is a trademark for a series of books and is registrable as such. This trend is picked up even in television plays and motion pictures. We have television serials which run into hundreds of episodes. **We have the examples of particular motion pictures made in series. The trend which started in Hollywood with 'The Godfather', 'Rocky', 'Die Hard', 'Mission Impossible', 'the Matrix', 'Jurrasic Park' etc. has percolated in Indian film industry as well with the movies 'Hera Pheri-Phir Hera Pheri, 'Dhoom — Dhoom II and 'Munna Bhai**

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MBBS — Lage Raho Munna Bhai'. It is easy to give trademark protection to such titles of series of literary work etc.

15. **That is not to say that titles of single literary work do not enjoy trademark protection, but in order to become entitled to this protection, it is necessary to prove that such a title has acquired secondary meaning.** To quote McCarthy one again:

> "The law of literary titles is unique in one important respect. That is, the courts have given trademark protection to literary titles of one-shot, single works only upon a showing of secondary meaning, even though the title is not descriptive of the contents of the work. Regardless of the arbitrary or fanciful nature of the title as compared with the contents of the single book, play, movie, record, etc., secondary meaning is required. **Thus, unlike ordinary marks, literary titles of single works which are inherently distinctive are not accorded immediate protection, absent proof of secondary meaning and consumer recognition."**

16. Underlying assumption behind this rule is that only if such title has acquired the secondary meaning and is capable of associating itself with the particular work or source, the question of likelihood of confusion of source, affiliation, sponsorship or connection in the minds of potential buyers/users would arise. This aspect shall be considered in some detail later in the discussion.

17. Title of a literary work may be descriptive of the literary work itself or the title may be such which has no relationship with the nature of work to which it is attached.

18. Whether titles of single literary works can be registered as trade mark or not has itself become debatable in the US, though in the case of titles of series of literary work, judicial opinion is that they are registrable. However, it is not necessary to go into this debate inasmuch as the plaintiff's title 'Nisshabd' for its film is not registered as trademark. The case at hand is, therefore, while applying the legal protection given to such titles under the Trade Marks Act is to be considered on the principle applicable in the cases of passing off of such trademarks. **In passing off, necessary ingredient to be established is the likelihood of confusion and for establishing this ingredient it becomes necessary to prove that the title has acquired secondary meaning. Thus, in case of unregistered title following ingredients are to be proved in order to triumph in an injunction suit:—**

> **(i) Title has acquired the secondary meaning;**
> **(ii) There is likelihood of confusion of source, affiliation, sponsorship or connection of potential buyers/audience/viewers.**

xxx

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22. **What is the evidence needed to establish secondary meaning for a literary work? In *International Film Service Co. Ltd.* v. *Associated Producers Inc.* (supra) following simple, but at the same time most eloquent parameter is laid down by the court:—**

> **"The plaintiff succeeds as soon as he shows as audience educated to understand that the title means his play."**

23. Even if the work has not been released, a sufficient amount of pre-release publicity of the title may cause a title to acquire recognition sufficient for protection. **Relevant evidence form which secondary meaning for a literary title may be inferred as a question of fact include: (1) the length and continuity of use; (2) the extent of advertising and promotion and the amount of money spent; (3) the sales figures on purchases or admissions and the number of people who bought or viewed plaintiff's work; and (4) the closeness of the geographical and product markets of plaintiff and defendant.**

24. In so far as test of likelihood of confusion of literary titles is concerned, it is the same as applied to trade marks in general. In considering the likelihood of confusion similar literary titles, the court often takes into consideration the total visual impression of the whole item reaching consumers. It is held by courts that little assistance can be taken from a meticulous comparison to words letter by letter, syllable by syllable pronounced with clarity to be expected from a teacher of elocution. **The two marks are to be compared in totality and stress is to be laid on common features rather than on distinctive features.**

25. **Therefore, what follows is that while considering the application for temporary injunction and pendente lite relief, the plaintiff has the burden of proving probable existence of secondary meaning in the title leading to likelihood of confusion and a likelihood of success at trial.** Where the plaintiff cannot make a strong case of secondary meaning or likelihood of confusion, a preliminary injunction has to be denied. **However, in a case where plaintiff introduces sufficient evidence on secondary meaning and likelihood of confusion, defendant's use of literary title need to be preliminarily enjoined.** Where a dramatic work alleged to be infringement is about to be widely disseminated among the public, the need for preliminary injunctive relief may be great. In *Chappell & Co* v. *Fields*, 210 F. 864 (2nd Cir. 1914) as far back as in 1914 the US Court had observed that "preliminary injunctions are granted more readily in dramatic than in other cases because the delay involved in waiting a final decree would generally amount to a denial of justice."

(emphasis and underlining added)

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88) Thus, in para-18 of the judgment, the Delhi High Court has held that in passing off actions, the necessary ingredient that has to be established is likelihood of confusion and for establishing that ingredient, it becomes necessary to prove that the title has acquired secondary meaning. Thus, proof of acquisition of secondary meaning and likelihood of confusion are treated as the two important ingredients for maintaining passing off action based on film titles. In ***Kanungo Media***, the Delhi High Court thereafter went on to consider how the tests of secondary meaning in respect of literary title can be established. In para-23 of the judgment, the Delhi High Court has enumerated a list of non-exhaustive factors (*on account of use of the word* '*include*') for inference of secondary meaning for a literary title of (i) length and continuity of use, (ii)extent of advertising and promotion and amount of money spent,(iii) sales figures on purchases or admissions and the number of people who bought or viewed the work, and (iv) closeness of geographical or product markets of plaintiff and defendant. However, in ***People Interactive***, this Court appears to have struck a discordant note with regard to the factor of sales figures laid down in ***Kanungo Media***. The coordinate Bench of this Court in ***People Interactive*** (supra) has later held that high sales expenses is not a test to establish distinctiveness nor is a relevant factor for displacement of the primary meaning by the secondary meaning. For this purpose, it would be necessary to revert to the judgment in ***People Interactive.*** Findings recorded in paras-17 and 18 of the judgment in ***People Interactive,*** which are quoted above, indicate that this Court has held that the test of exclusivity is an essential ingredient of a claim based on 'secondary meaning'. This Court held that exclusivity claims based on secondary

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meaning acquisition must be established by cogent material. It is held that references to sales and promotion expenses may be useful to establish acquisition of reputation and goodwill. However, mere use and statements of sales/expenses do not, on their own, establish acquisition of secondary meaning. It is emphatically held that mere high sales and expenses do not prove acquisition of secondary meaning by displacement of primary meaning in a word or an expression.

89) I am in agreement with the statement of law in ***People Interactive*** and it is difficult to accept that the four factors discussed in para 23 of the judgment in ***Kanungo Media,*** by themselves, would establish acquisition of secondary meaning in a film title in every case. A film may be successful at the box office, which factor is not a very relevant for determining acquisition of secondary meaning in the title of that film. To decide the claim of acquisition of secondary meaning in the title, film's success is not a monolith. When it comes to acquisition of secondary meaning in a film title, there is conceptual difference between a successful film at the box office and the film needs to be a cult classic, the one which has developed loyal and passionate fan base over the time and has left a legacy. Several films cross box office collection of Rs. 100 crores in the first week itself and exit the cinemas a week or two thereafter. Do the titles in such films acquire secondary meaning by displacing the primary meaning of the word/expression? The answer, to my mind, appears to be in the negative. Therefore, for establishing a claim of acquisition of secondary meaning in relation to film title, what needs to be established is the firm engrossment of the word/expression used in the film title in the minds of

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cinemagoers/viewers and whenever they think of a film containing that word/expression, the only thing that must come to their mind is the claimant's film. This is particularly because use of same titles for making different movies appear to be an established trade practice in the film/entertainment industry.

90) Also, the judgment of the Delhi High Court in ***Kanungo Media*** does not discuss the important difference between use of generic or common or laudatory words as compared to uniquely styled titles. In the present case, what is used is a common, generic and laudatory word "queen" and threshold for establishing acquisition of secondary meaning to the title *Queen* requires extremely high threshold. As compared to generic or laudatory words, the burden to prove acquisition of secondary meaning is much lighter in case of unique film titles such as *Matru Ki Bijli Ka Mandola*, *Jumanji*, *Life of Pi*, *Humpty Sharma Ki Dulhania*, *Tanu Weds Manu* etc. These are specially coined film titles, which are not common words or expressions and when such uncommon word/expression is fully incorporated in title of another film, the likelihood of confusion is much higher than use of generic words like 'queen' in title of multiple films. This aspect is discussed in detail in latter part of the judgment. Also, what the judgment in ***Kanungo Media*** ignores is the trade practice in Bollywood film industry to make multiple films using same titles. There have been instances of multiple films made by different producers and directors using same titles and the audience have not been misguided. The title of the famous film '*Gol Maal*' (1979) starring Mr. Amol Palekar and Mr. Utpal Dutt is used by Mr. Rohit Shetty to make 4 franchise films *Golmaal*: *Fun Unlimited* (2006), *Golmaal Returns* (2008), *Golmaal -3* (2010) and *Golmaal*

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Again (2017). Similarly, the word 'Khiladi' is used in making of atleast 8 films by different producers and directors viz. *Khiladi* (1992), *Main Khiladi Tu Anari* (1994), *Sabse Bada Khiladi* (1995), *Khiladiyon Ka Khiladi* (1996), *Mr. and Mrs. Khiladi* (1997), *International Khiladi* (1999), *Khiladi 420* (2000), *Khiladi 786* (2012) and in most of these films Mr. Akshay Kumar has featured. Similarly, the title of the film '*Yaadein*' (1964) was used to make another film with same title '*Yaadein*' (2001). Even the title of the cult classic film '*Deewar*' (1975) was used by completely different set of writers and directors in 2004 film '*Deewar: Let's bring our Heros Home*' and both films starred Mr. Amitabh Bachhan. Similarly, the title *Aankhen* has been used to make atleast unconnected four films in 1950, 1968, 1993 and 2002. History is replete with the trade practice of use of same film titles such as *Shandar* (1990) and *Shaandar* (2015), *Agent Vinod* (1977) and *Agent Vinod* (2012), etc. It therefore becomes difficult to hold that the usual tests applicable to trademark passing off actions in relation to goods and services would squarely apply to passing off actions in relation to film titles. In relation to passing off actions relating to film titles, ordinarily the claim of acquisition of secondary meaning would meet rejection if the stories of the two films are different and when they use generic/laudatory words in title, unless a concrete case of displacement of primary meaning of the word/expression used in the title is made out.

WHETHER THE WORD 'QUEEN' HAS ACQUIRED SECONDARY SIGNIFICANCE IN RELATION TO FILM TITLES?

91) Plaintiff has not claimed exclusivity in use of the word 'queen'. It has not claimed exclusivity in use of the word 'queen' even in relation to

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film titles possibly because several films have already been made in the past using the word 'queen' in the title. Therefore, merely by use of the word 'queen' in the title of the proposed film, there is no question of likelihood of confusion of source, affiliation, sponsorship or connection by the potential users. The test of length and continuity of use cannot be held to be satisfied in the present case as the film *Queen* was released in the year 2014 and no sequel/prequel/derivative work based thereon has been made during last 12 long years. It is difficult to hold that the word 'queen' is so engrossed in the minds of the cinemagoers that the moment they think of that word in relation to a film, they only think of Plaintiff's movie '*Queen*'. Availability of the film *Queen* on OTT platforms cannot be taken as a factor for establishing the test of length and continuity. OTT platforms themselves are replete with several films/programs using the word 'queen' in their titles. When one types the word 'queen' in the search engine of the App Netflix, the result includes films and web series with titles '*Queen'*, '*Queen of Tears*', '*Queen's Gambit*', '*Queen Charlotte*', '*Mr. Queen*', '*Queen of Chess*', '*Clash Queens*', '*Queen Mantis*', '*Queen Cleopatra*', etc. Also, if one searches the word 'queen' on the App 'Prime Video', on which the Plaintiff's film *Queen* is currently available for viewing, the results include movies and programs under titles '*Queen*' (*biographical drama web series on former Chief Minister of Tamil Nadu*), '*Queen*' (*2018 Malayalam film*), '*Mary Queen of Scots*', '*Queen Elizabeth*', '*The Queen Merry*', 'Queens' (*Bengali web series, also available in Hindi*), etc. Thus, the OTT platforms themselves are replete with several films and programs carrying the word 'queen' in their titles. Dispute availability of material to cause confusion on OTT platforms, if the viewers do not get confused and are well informed as to what exactly

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they desire to watch, the question of a cinema hall goer getting confused after noticing Plaintiff's film on OTT Platforms and expecting a continuity or connection when the film 'Queen Full Power' is released simply does not arise. The test of likelihood of confusion thus completely fails in the facts of the present case.

92) Since the word 'queen' is used in several films and programs across India and across the world, there is no question of the same acquiring any distinctiveness. There is no question of the primary meaning of the word 'queen' getting displaced even to a slightest extent by virtue of success of and accolades received by the film '*Queen*'. Thus none of the two tests of ***Kanungo Media*** of secondary meaning or likelihood of confusion or even the four factors discussed in para 23 therein are established in the present case.

93) The sheet anchor of the Plaintiff in the present case is the judgment of Single Judge of the Delhi High Court in ***Vishesh Films*** (supra). The case before the Delhi High Court involved a claim by the plaintiff therein, who held proprietary rights in the renowned film franchise *Aashiqui,* to injunct the defendant from making any sequel in respect of the film which was tentatively titled *Aashiqui 3 / Tu Hi Aashiqui / Tu Hi Aashiqui Hai*. Plaintiff had already made two films *Aashiqui and Aashiqui-2* and defendant was attempting to make the third installment of the franchise, after negotiations between Plaintiff and defendant did not fructify. The Delhi High Court held in paras 13 and 14 of the judgment as to how the titles of films have transcended their original function as mere labels and have evolved into powerful symbols that carry immense commercial

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significance. It is held that the titles have acquired substantial goodwill and brand value, warranting legal protection. Plaintiff relies on findings recorded by the Delhi High Court in paras 13 and 14 of the judgment, which read thus:

> 13. **In the modern cinematic landscape, the titles of films have transcended their original function as mere labels, having evolved into powerful symbols that carry immense commercial significance.** With the proliferation of film franchises/series, where multiple instalments are released under a consistent title or theme, often spanning decades, the titles themselves have become integral to the identity and success of the brand. Such titles, through their consistent use, often acquire a secondary meaning that transcends the individual works they originally represented. These titles encapsulate the essence of the series, invoking the memories, emotions and expectations of audiences who have followed the journey of these films over the years. Audiences come to immediately recognise and associate these titles with specific themes, characters and storylines, creating an enduring connection that extends far beyond the initial release of a single film. As a result, these titles acquire substantial goodwill and brand value, transforming into assets that are worthy of legal protection.
>
> 14. Under the TM Act, a trade mark is defined to be any mark capable of distinguishing the goods or services of one person from those of others. **When a film title achieves this level of recognition and becomes synonymous with a particular series or producer, it effectively functions as a trade mark. The distinctiveness of such titles, coupled with the secondary meaning and goodwill they acquire through extensive use and public recognition, justifies their protection under trade mark law. The significance of these titles in the context of a series is particularly pronounced because they serve as a bridge between the various instalments, ensuring continuity and maintaining a connection with the audience.** The mere mention of such a title immediately conjures up the thematic elements and emotional experiences associated with the previous films in the series. This powerful quality and the emotional investment of the audience, all of which association is the result of sustained marketing efforts, consistent contribute to the title's evolution into a valuable trade mark.
>
> *(emphasis and underlining added)*

94) Thus, the judgment of the Delhi High Court essentially highlights the importance of title protection in relation to franchise

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films/series. It is held that when a film title achieves distinctive level of recognition and becomes synonymous with a particular series or producer, it effectively functions as a trade mark. In my view, however, the judgment of the Delhi High Court is clearly distinguishable at least on three factors and the observations made therein cannot be made applicable either to the facts of the present case or for holding that in every case, there would be acquisition of secondary meaning in the film title merely because the title may have achieved some level of recognition. The first and the most distinguishing factor in ***Vishesh Films*** is the fact that the plaintiff therein was the proprietor in respect of the trademarks (*Aashiqui* and *Aashiqui ke liye*), which is not the case here as the Plaintiff is not the owner of trademark in the word *Queen*. In this regard, the observations made by the Delhi High Court in paras 25 and 26 of the judgment, relevant part of which reads thus:

> 25. The concept of deceptive similarity in trademark law involves assessing whether the disputed mark is so similar to the protected mark that it is likely to confuse or deceive the public. The determination of whether the Defendant's proposed film title "Tu Hi Aashiqui"/ "Tu Hi Aashiqui Hai" is deceptively similar to the Plaintiff's registered trademark "Aashiqui" hinges on the application of the well-established test of deceptive similarity which has been articulated in several landmark cases....
>
> 26. The Defendant's proposed film title – "Tu Hi Aashiqui"/ "Tu Hi Aashiqui Hai" – evidently incorporates the word "Aashiqui" in its entirety. Nonetheless, the Defendant contends that the Plaintiff's trademarks are registered as device marks and not word marks, and therefore, due to their presentation in a particular font/ style, there cannot be said to be any deceptive similarity. However, in the opinion of the Court, this argument lacks merit. The Plaintiff's registration under No. 2563752 is for the mark "Aashiqui". Pertinently, while this mark is registered as a device, it comprises only of the word "Aashiqui", which is represented in a standard font without any accompanying images, symbols, or designs that could divert attention away from the word itself. It is not as if there is a graphic presentation of a person or an object alongside the word "Aashiqui" that might shift the focus of the consumers to the accompanying device. The entire focus of

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> consumers is on the word "Aashiqui", which will be read, spoken, and recognized as the primary identifier of the mark. The Plaintiff has also applied for registering "Aashiqui" as a word mark, which has been opposed by the Defendant during the pendency of the present proceedings. Be that as it may, since the Plaintiff's registered device mark is nothing but the word "Aashiqui", the anti-dissection rule, which requires the Court to assess a mark as a whole rather than in parts, does not come into play here. Thus, notwithstanding the registration being classified as a device mark, it must follow that protection has been granted to the term "Aashiqui", regardless of the font, design, or stylistic presentation in which it is used. The reference to word marks as device marks for registration purposes does not diminish the protection afforded to the word "Aashiqui", which is the core element of the brand identity of the Aashiqui Franchise.
>
> *(underlining added)*

95) The second important factor in ***Vishesh Films*** was that there was successful *Aashiqui* film franchise in that *Aashiqui* (1990) and *Aashiqui 2* (2013) were already made. On account of making of franchise films using the same title, it was held that the title '*Aashiqui*' was not generic or common to trade and that it had acquired distinctiveness and goodwill. It was therefore held that the word 'Aashiqui' when used in the title of the film, was immediately recognisable to the public as it being associated with highly successful romantic film series. The findings of the Delhi High Court about development of strong brand identity on account of films forming part of *Aashiqui* franchise are found to be in para 23 of the judgment which reads thus:

> 23. The defendant also argues that "Aashiqui" is common to trade, implying that its use by various entities in the film industry has diluted its distinctiveness. For a term to be considered common to trade, there must be substantial evidence that it is used by multiple entities in the industry to such an extent that it loses its ability to identify a single source. However, the court does not find merit in the defendant's contention in this regard. The plaintiff has provided evidence that the films in the Aashiqui Franchise have not only achieved commercial success but have also created a strong brand identity that is recognised by the public, such that the term "Aashiqui" has become uniquely associated with their successful film series spanning multiple decades. On the other hand, the

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> defendant has sought to bolster their argument that the plaintiff's trade mark should be considered "weak" by citing 26 instances of use. However, as pointed out by Mr Sethi, only eight of the 26 instances cited by the defendant are films utilising the term "Aashiqui", of which two films belong to the Aashiqui Franchise itself. As noted by the court in Pankaj Goel v. Dabur India Ltd. [2008 SCC OnLine Del 1744], to establish a plea of common to trade, the defendant must show that the use is substantial. Merely citing isolated instances of third-party use of "Aashiqui" in film titles, without demonstrating that such use has achieved the same level of recognition or association with a specific source so as to pose a threat to the distinctiveness of the plaintiffs trade mark, would not be sufficient to undermine the plaintiff's rights over the said mark. Moreover, the defendant's argument fails to recognise that trade mark law does not require a trade mark owner to pursue legal action against every instance of potential infringement, especially when those instances are isolated, minor, or do not pose a significant threat to the brand's identity. The fact that the plaintiff has not sued every third-party who has used the term "Aashiqui" in some form would not in itself diminish the strength or validity of their trade mark. The plaintiff's decision to prioritise action against the defendant, who is using the term in a way that directly impacts the plaintiff's established brand, is both strategic and legally sound.
>
> *(underlining added)*

Thus, Plaintiff's proprietorship in the mark is considered as an important factor for rejecting defendant's plea of the word 'Aashiqui' lacking distinctiveness.

96) The third factor considered relevant by the Delhi High Court was negotiations between the plaintiff and defendant for joining *Aashiqui-3* project. This is clear from the following findings in para-28 of the judgment which reads thus:

> 28. The significance of the defendant's proposed use of "Aashiqui" in this context is further heightened by the specific association between the parties. The plaintiff and defendant have a history of collaboration on the Aashiqui Franchise and have, in the recent past, publicised their Intention to collaborate for the production of a third instalment of the series. In this context, the deceptive similarity is compounded by the fact that the production team of the defendant's proposed film comprises of the same director and lead actor who were previously associated with the joint Aashiqui 3 project. The overlap in the production team, coupled with the media narrative suggesting that the defendant's film might be part of the Aashiqui Franchise, only Intensifies the likelihood that the public will perceive any film utilising the term "Aashiqui" as being a continuation or spin-

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> off of the established series, in view of the joint announcement by the parties. Additionally, it must also be noted that, as pointed out by the plaintiff, this proposed title "Tu Hi Aashiqui Hai" corresponds to the refrain/hook line of the hit song "Tu Meri Zindagi Hai" from the film Aashiqui (1990). While the defendant relies on the agreements executed between the parties to assert its exclusive rights over the music in the said film, it cannot be denied that such a direct reference would inevitably create a perceived connection to the Aashiqui Franchise in the minds of the public/audience. In such circumstances, the average consumer, when encountering the title "Tu Hi Aashiqui Hai", is likely to associate it with the Aashiqui Franchise, given the established reputation of the brand and the fact that the production team that was announced for the third instalment remains the same. The court must also consider the target audience for the films in question. The Aashiqui Franchise has, prima facie, built a strong following amongst viewers who are likely to be misled by the defendant's use of a similar title, particularly given the overlap in the thematic content suggested by both titles and the history of association between the parties.

97) Thus, in ***Vishesh Films***, the Delhi High Court considered three distinctive factors of (i) Plaintiff being the registered owner of the mark *Aashiqui* and *Aashiqui* Ke *Liye*, (ii) existence of *Aashiqui* franchise on account of making of two films in 1990 and 2013, and (iii) defendant negotiating making of the third film with the plaintiff. It is on account of combination of these three factors that the Single Judge of the Delhi High Court proceeded to grant injunction in favour of the plaintiff in ***Vishesh Films***.

98) None of the above three factors are remotely present in the instant case. Plaintiff is not the registered owner of the trademark in the word 'queen'. Except one film made in 2014 using the title *Queen*, there has been no sequel/prequel/derivative work made by the Plaintiff using the word *Queen* in the title. Therefore, there is no question of development of a strong brand around the title *Queen* as was the case in *Aashiqui* franchise films. Lastly, there have been no past negotiations / discussions between

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the parties hereto with regard to making of any derivative work / sequel based on the 2014 film titled Q*ueen*. Therefore, the case does not involve Defendant Nos.1 or 2 first approaching the Plaintiff for making the proposed film and then taking a *volte face* by excluding the Plaintiff from making of the film. In my view therefore, the ratio of the judgment of Delhi High Court in ***Vishesh Films*** has no application to the facts of the present case.

99) Reliance by Mr. Khambata on judgment of the Delhi High Court in ***Sholay Media,*** far from assisting Plaintiff's case, actually militates against it. The manner in which the film title S*holay* is engrossed in the minds of Indian moviegoers has already been discussed by referring to paras-2 to 5 of the judgment infra. The word '*sholay*' in Hindi means 'burning coal'. However, today, as soon as the word '*sholay*' is uttered, the only thing that comes to the mind is the movie *Sholay* and not its primary meaning 'burning coal'. In fact, *Sholay* is a perfect example of acquisition of secondary meaning in a film title. Even today, the word '*sholay*' is so synonymous with the film released on 15 August 1975 that Indians have forgotten the primary meaning of the word '*sholay*' as burning coal. The word '*sholay*', for all practical purposes, has acquired secondary meaning. Can it be said that when one utters the word 'queen', the only thing that comes to the minds of Indians is the 2014 film *Queen*? The answer is in the emphatic negative. On the other hand, the moment the word 'queen' is uttered, what may come to the mind are several other meanings of that word like a female monarch, wife of a king, a woman of prominence, the most powerful piece in the chess game, a card in playing cards, an attractive

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girl/woman, adorable daughter, etc. The word 'queen' is a laudatory and descriptive word for high feminine virtue. Parents often refer to their daughter as their queen or *rani*. A woman excelling in business, profession, education etc. may also be referred to as a queen in her domain. Thus, the word 'queen' still signifies its ordinary and primary meaning, which is not displaced even by some degree on account of the alleged success of Plaintiff's film *Queen*. When the word 'sholay' is randomly searched on Google, the most prominent result is to the film '*Sholay*', whereas if the word 'queen' is searched on Google, what is prominently shown in the result are many other things including the legendary British rock band '*Queen*'. Even in relation to films, the moment the word 'queen' is uttered, Plaintiff's film *Queen* may not immediately come to the mind of Indians as the word has been used in several other films, both before and after Plaintiff's film. Thus, Plaintiff's case of acquisition of secondary meaning in respect of film title does not even come remotely closer to the illustration of the film *Sholay*. This is why reliance on judgment of Delhi High Court in ***Sholay Media*** actually militates against it.

100) Mr. Khambata has relied on judgment of Coordinate Bench of this Court in ***Anil Kapoor Film Co.*** (supra), in which an application was filed for injunction in passing off in respect of title of the film "*Veere Di Wedding"* in which Plaintiff was claiming rights. According to Plaintiff, the first defendant had also made a film with the title "*Veerey Ki Wedding*". Both the films were unreleased. Mr. Khambata has relied on findings of this Court in paragraph 20 of the judgment, which read thus:

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20. Finally, there is the title itself. It is a common place phrase in one or more of our many vernacular tongues. It means "my best friend's wedding". There are, I imagine, titles of some books and movies (and songs or melodies) that by themselves are sufficiently unique : *Gravity's Rainbow*, perhaps, or *The Catcher in the Rye, To Kill A Mockingbird*, and so on. In cinema, too, this may be so : *Citizen Kane, Blade Runner*, many of the Bond movies (*Goldfnger, Thunderball, The Quantum of Solace), Aguirre the Wrath of God, Fitzcarraldo*, etc. But the fact that the title is unique is not in itself sufficient to establish reputation, nor is the fact that there has been a previous book or a film with the same name. **There is absolutely no shortage of films that have exactly the same title but are very different otherwise and share nothing else in common**.[4] These instances put us squarely within the frame of the ration in *KM Multani:* in that case, too, there were two competing films with the same name but nothing else. There exist many films with exactly the same title but different contents. It is not shown, or even urged, that for these films an action in passing off succeeded, was ever filed, or even could have been filed merely because the two titles were the same. George Tillman Jr's 2009 *Notorious* is about as far as it is possible to be from Alfred Hitchcock's 1946 work of the same name; and this is true too of several others. There is not a suggestion in the plaint that, apart from the title, there is any commonality between the Plaintiff's forthcoming film and that of the 1st Defendant. **When therefore the Plaintiff argues that an action in passing off lies in respect of a title of a film, though not in copyright infringement, this is inaccurate.** A work may gain reputation on publication or release. **In showing reputation, a plaintiff must show that his work with that name is associated in the public mind only with that film or book, one that exists. <u>When the title is unusual or unique, it might make the task of a plaintiff somewhat easier, but I think it is difficult to conceive of a reputation attaching to a non-existent thing - a film not made or a book not written - no matter how unique the title. Where the title is more commonplace, the burden of establishing a reputation might lie heavier</u>**; but that burden is never discharged by saying only, as the present Plaintiff does, that it has plans to make a movie with a particular title and others have spoken of it. Films with names *Gaslight, Birth of a Nation, Casablanca, Bicycle Thieves*, or hundreds of others; and, closer home, of films with commonplace titles like *Zanjeer, Deewar, Anand, Pyaasa* or *Sholay* - the list is endless - are all instances of film that, with possibly ordinary titles, acquired a reputation in those titles upon their release. The 'reputation' of these films has, over time, been so established that the titles uniquely connote these films and no other. I do not think that is even remotely true of the Plaintiff's yet-to-be-made film. Thus, when a plaintiff claims passing off in a title *simpliciter*, independently of any content similarity, he reaches well beyond the considerations of *KM Multani* (where, incidentally, there was, in relation to reputation, an overview of the content). **It is, I think, *prima facie* exceedingly difficult to conceive of reputation attaching to a title alone, of a thing not in existence, divorced entirely from content**. This burden is not, *prima facie*, sufficiently discharged to warrant an ad-interim injunction.

(emphasis added)

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101) Thus, in ***Anil Kapoor Film Co.***, this Court has held that films with commonplace titles like *Zanjeer*, *Deewaar*, *Anand*, *Pyaasa* and *Sholay* have acquired reputation in those titles upon their release and that reputation of those films has, over the time, been so established that the titles uniquely connote those films and no other. However, this Court has also held, by referring to the judgment in ***Francis Day*** (supra), that Court must not lightly assume that public is so gullible, so infantile and capable of being so easily deceived that it does not know what it wants to see, hear or read. The Court highlighted the factor of impermissibility to underestimate the intelligence and understanding of the moviegoers. This Court highlighted the importance of information available on the internet and online material on mobile phones for holding that persons going to movies know exactly what they are about. This Court held that the information overload has made deception far more difficult. In paragraph 16 of the judgment, this Court held that the plaintiff must show that he has a proprietary right transgressed by some action by the defendant and that the name/description/getup which the defendant puts about is associated in the public mind and imagination with the goods or services of the plaintiff. This Court held in paragraphs 15, 16 and 18 of the judgment as under:

> 15. Dr. Chandrachud for the Defendant No. 1 relies on the decision of the Privy Council *Francis Day & Hunter Ltd.* v. *Twentieth Century Fox Corporation Ltd.* This is of course a well-known and celebrated decision that held there was no possibility of deception of the public by producing a film under with the title of a popular song. The Privy Council found that while it cannot be said that there can never be passing off in such a case, these cases are not only rare, but must be approached with caution and circumspection. **A court must not lightly assume that the public is so gullible, so infantile, and quite so easily deceived that it does not know what it wants to see, hear or read.** Not to put too fine a point on things, it seems to me hardly likely that any avid movie goer headed for a film

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starring Ms. Sonam Kapoor will dive headlong into a darkened auditorium showing a film with Mr. Shergill; or will mistake Mr. Shergill's film for Ms. Kapoor's (let alone he for she). There are such things are movie posters and marquees, after all. **And, as the commercial fate of so many films tells us, our movie goers are not to be underestimated. The entire edifice of this argument on deception seems to me to be built on some archaic imagining of movie going from the 1950's or 1960's. It does not account for the Internet, the proliferation of online material, that all of this is available on common mobile phones, and that persons going to movies know exactly what they are about. This information overload has made deception far more difficult. It has, therefore, raised the bar when it comes to establishing passing off in situations like this.**

16. The case in a passing off action is always that others, i.e., persons other than the plaintiff himself, and usually the anonymous public, have been deceived or are likely to be deceived; and that the defendant's actions are calculated to deceive. To succeed, the plaintiff must show that he has a proprietary right transgressed by some action by the defendant. Reputation is the primary factor. The plaintiff must show that name, description or get up that the defendant puts about are associated in the public mind and imagination with the goods or services of the plaintiff. The defendant must be shown to be acting in a way likely, or calculated, to deceive the unsuspecting public into believing that it are buying or using (or in this case, seeing) that which is the plaintiff's, although in fact it is buying, using or seeing something put out by the defendant. No person may represent his or her goods or services as those of another.

18. All these observations are of particular interest, even if our film industry is no longer in its infancy. It is true that in the case before the Division Bench the films were in two different languages. But both films existed and were in distribution. In the present case there is no evidence of the Plaintiff's film even being in existence yet. **The mere fact that there is another film in the making with the same title but a completely different star cast is not necessarily evidence of it being 'calculated to deceive', or of the Defendants 'passing off' their film as having been made by the Plaintiff.** There is a tiered structure to passing off actions, and a plaintiff and the court he approaches, must proceed down that well-worn path : first, reputation; then, misrepresentation; and then all the rest. It will not do for any plaintiff to allege misrepresentation and on that basis to try and establish reputation. As I have noted, other than third party news reports (which must be proved), and a desultory statement of expenses that is far from compelling, there is nothing to show reputation. No one has seen the film. There is no film to see. It is wholly wrong to describe this as a *quia timet* action. That expression relates to an action brought before misrepresentation can be made, not before reputation is established.

(emphasis added)

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102) In ***Anil Kapoor Film Co.*** *(*supra), this Court was concerned with uniqueness of title but still held that the same name merely made the task of the Plaintiff somewhat easier, though not relieving the Plaintiff of the task to establish reputation. This Court held that when the title is more commonplace, the burden of establishing a reputation would always lie heavier. In my view, the ratio of the judgment in ***Anil Kapoor Film Co.*** (supra) actually assists the case of the Defendants more than aiding the case of Plaintiff. Firstly, Plaintiff has not been able to prove establishment of reputation in the film titled '*Queen*' on higher threshold like in the case of legendary titles such as *Zanjeer*, *Deewaar*, *Anand*, *Pyaasa* or *Sholay*. As observed above, when moviegoers hear of the word '*Queen*', they do not associate the word only with Plaintiff's film '*Queen*'. Secondly, Plaintiff's film title is commonplace. It uses a generic and laudatory word, making the task of the Plaintiff heavier. Thirdly, the information overload available on internet and easily accessible through mobile phones makes it difficult to deceive the moviegoers. Today's moviegoers cannot be easily mistaken as being capable of easily deceived. They exactly know what they want to view and it is difficult to hold that when the viewers would buy tickets to see Defendants' movie *Queen Full Power*, they would go with an expectation in mind that the same is bound to be a derivative work of the film *Queen* released in the year 2014. I am therefore unable to hold that Defendant Nos.1 and 2 are in any manner encashing on Plaintiff's alleged goodwill or reputation in the film *Queen* or that the word 'queen' is deliberately inserted in the title of their film with the ulterior motive of encashing on Plaintiff's alleged goodwill or reputation in its film title.

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103) The recent judgment of the Apex Court in ***Pernod Ricard*** (supra) is an authoritative ruling on the issue of non-exclusive right over common or descriptive terms. The Apex Court was concerned with the issue of entitlement of the plaintiff selling whiskey under the brand names "BLENDER'S PRIDE", "IMPERIAL BLUE" and "SEAGRAM'S" (all registered trademarks) seeking to injunct the Respondent from marketing whiskey under the mark "LONDON PRIDE". The Apex Court considered whether Plaintiff could own any proprietorship in respect of a common and descriptive term '*Pride*'. While rejecting the case of acquisition of secondary meaning to the word '*Pride*', the Apex Court held that even extensive use of a descriptive term does not justify exclusivity unless such use has displaced the word's primary meaning so that it now serves as a source identifier in the minds of the consuming public. It is held in paragraphs 34.2 and 34.5 as under:

> 34.2. **The word 'PRIDE' is a laudatory and commonly used English term, typically employed to suggest notions of excellence, heritage, or national identity. Within the alcoholic beverages industry, it is extensively used as part of various trademarks.** Judicial notice may be taken of multiple registrations under Class 33 - such as McDowell's Pride, Highland Pride, Royal Pride, and Pride of India - all incorporating the term 'PRIDE'. **This widespread usage illustrates that the word is *publici juris*, not inherently distinctive, and therefore incapable of exclusive appropriation in the absence of compelling evidence of secondary meaning.**
>
> 34.5. In the present case, the appellants have failed to produce cogent evidence - such as consumer surveys, brand recognition studies, or consistent third-party references - to demonstrate that the term 'PRIDE' has acquired secondary meaning exclusively pointing to their product. **Mere duration of use, turnover, or marketing expenditure is insufficient to displace the term's inherent descriptive or laudatory character. As judicial precedent makes clear, even extensive use of a descriptive term does not justify exclusivity unless such use has displaced the word's primary meaning, so that it now serves as a source identifier in the minds of the consuming public.**
>
> *(emphasis added)*

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Thus, the judgment of the Apex Court in ***Pernod Ricard*** also holds that integers of duration of use or turnover are insufficient to prove acquisition of secondary meaning in relation to descriptive term. Therefore, the factor of 'sales figures' discussed by the Delhi High Court in ***Kanungo Media*** for deciding acquisition of secondary meaning can no longer be treated as valid after the judgment of Apex Court in ***Pernod Ricard***.

104) In the present case, there is no *prima facie* material to indicate that the word 'queen' has acquired secondary significance, by displacing the primary meaning thereof. The displacement has not occurred even in relation to films. The record is replete with showing that *Queen* is a commonly used word in film titles, both by itself as well as in combination with other words without any association with the Plaintiff or its film. Plaintiff never objected to the use of the word 'queen' when the film *Manikarnika: The Queen of Jhansi* was made after release of 2014 film *Queen*. Significantly, Ms. Kangana Ranaut played the role of queen in that film, the title used the word 'queen' and the film did carry the theme of woman empowerment portraying the protagonist's journey from spirited young girl to fearless leader, a theme in which Plaintiff claims proprietorship. Similar is the case of the film *Thalaivii*, which means queen, where again Ms. Ranaut played the lead role and portrayed the character of a strong woman. The third film is 'Revolver Rani', in which again Ms. Ranaut featured. Despite having elements of same lead actress, use of common name 'queen' in film title and involving the theme of strong female character, Plaintiff did not object to the film being made and released. Plaintiff cannot be permitted to selectively sue only the Defendants by raising a baseless claim of the film title *Queen* acquiring secondary significance. The word 'queen' has not lost its primary

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significance, which is still a laudatory and generic word and the same cannot be monopolized, unless the higher threshold of establishing secondary significance is achieved.

105) It is contended on behalf of the Plaintiff that even a descriptive or generic word can be afforded protection if it has assumed a secondary meaning or has acquired strong association in the given field of activity or market. Reliance is placed on the judgment of Apex Court in ***T.V. Venugopal***, in which it has held as under:

> 73. In Halsbury's Laws of England, Vol. 48, 4th Edn, at p. 190, it is stated that it is possible for a word or phrase, which is wholly descriptive of the goods or services concerned, to become so associated with the goods or services of a particular descriptive another trader is capable of amounting to a representation that his goods or services are those of the first trader and that although the primary meaning of the words is descriptive, they have acquired a secondary meaning as indicating the products of a particular trader.
>
> 74. In McCarthy on Trademarks and Unfair Competition, Vol. 2, 3rd Edn. in Para 12.5(2) it is stated that in order to obtain some form of relief on a "passing off claim, the user of a generic term must prove some false or confusing usage by the newcomer above and beyond mere use of generic name.
>
> 75. The contention of the defendant is that adjectives are normally descriptive words and nouns are generic Hoord. However, McCarthy has said that the said "part of speech" test does not accurately describe the case-law results, therefore, such a criteria cannot be accepted as a safe and sound basis to ascertain as to whether a particular name is generic or descriptive. Besides, even assuming that the said word is generic yet if it is found by the court that such a mark has attained distinctiveness and is associated with the business of the plaintiff for considerable time and thereafter the defendant adopts a similar word as one of his two marks to induce innocent internet users to come to the website of the defendant, which establishes dishonest intention and bad faith, would the court still be not granting injunction to protect the business of the plaintiff? The answer to the said question has to be an emphatic "No". User of similar word by a competitor coupled with dishonest intention and bad faith would empower a court to restrain such user/misuser to do equitable justice to the aggrieved party.
>
> 81. From the above discussions, the following two situations arise:

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(i)Where the name of the plaintiff is such as to give him exclusivity over the name, which would ipso facto extend to barring any other person from using the same viz. Benz, Mahindra, Caterpillar, Reliance, Sahara, Diesel, etc.
(ii) The plaintiff's adopted name would be protected if it has acquired a strong enough association with the plaintiff and the defendant has adopted such a name in common field of activity i.e. the purchaser's test as to whether in the facts of the case, the manner of sale, surrounding circumstances, etc. would lead to an inference that the source of the product is the plaintiff.

90. The respondent Company's mark "Eenadu" has acquired extraordinary reputation and goodwill in the State of Andhra Pradesh. "Eenadu" newspaper and TV are extremely well known and almost household words in the State of Andhra Pradesh. The word "Eenadu" may be a descriptive word but has acquired a secondary or subsidiary meaning and is fully identified with the products and services provided by the respondent Company.

106) In the judgment in ***T.V. Venugopal***, the Apex Court was concerned with mark of respondent therein "*Eenadu*", which in English means "today" and was being used for publication of newspaper. The Apex Court held that the word *Eenadu* had acquired extraordinary reputation and goodwill in state of Andhra Pradesh. Relying on ***T.V. Venugopal***, it is contended on behalf of the Plaintiff that though *Queen* is treated to be a descriptive or generic word, the same does not disentitle the Plaintiff from claiming protection since the word 'queen' has attained secondary meaning or strong association within given field of activity/market of film industry. There can be no dispute about the proposition that even a commonplace and descriptive word is capable of acquiring secondary significance. However, as observed earlier, the threshold for proving acquisition of secondary meaning in respect of a generic and laudatory word is extremely high. In ***T.V. Venugopal*** that high threshold was crossed, which is not the case here. It must also be observed here that judgment of Apex Court in ***T.V. Venugopal*** has been considered in the subsequent judgment in ***Pernod Ricard*** (supra), in which the Apex Court has refused to

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grant protection in respect of laudatory and commonly used English term "PRIDE" by holding that it had not acquired secondary meaning exclusively pointing out to plaintiff's product. The Apex Court held that even extensive use of a descriptive term does not justify exclusivity unless such use of the word has displaced the primary meaning so that it now survives as a source identifier in the minds of the consuming public. Similarly, the judgment of Apex Court in ***T.V. Venugopal*** is also considered by Coordinate Bench of this Court in ***People Interactive*** (supra) and in para 9 of the judgment, this Court recorded submissions on behalf of plaintiff about the word *Shaadi,* not being inherently distinct, but acquiring a secondary meaning / distinctiveness in relation to matrimonial services. This Court, however, did not grant injunctive relief in favour of the plaintiff in ***People Interactive***, holding that the word *Shaadi* had not acquired secondary meaning to such an extent that it had displaced the primary meaning in the public mind even in relation to matrimonial services.

107) In the present case, can it be said that the word 'queen' has acquired secondary meaning to such an extent in relation to films that the moment the word 'queen' is used, the only thing that comes to the mind of cinemagoers is the Plaintiff's film? The answer to my mind appears to be in negative. If Plaintiff's contention is accepted, no one would ever be able to make a film using the word 'queen' in its title. As observed above, Plaintiff itself has permitted making of various films containing the word 'queen' in the title, thereby admitting non-acquisition of secondary meaning even in relation to films. Therefore, Plaintiff's reliance on Apex

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Court's judgment in ***T.V. Venugopal*** does not make Plaintiff's case any better.

108) It is sought to be suggested by Mr. Khambata that the word 'queen' is not a descriptive or laudatory and that it is not necessary to prove complete displacement of original meaning of the term. The contention of non-requirement of complete displacement of primary meaning is premised on judgment of Single Judge of Madras High Court in ***Free Elective Network*** (supra). However, Mr. Khambata has fairly pointed out that judgment of Single Judge in ***Free Elective Network*** has been set aside by the Division Bench of the Madras High Court by judgment and order dated 11 August 26 and SLP filed against the order of Division Bench has been dismissed as withdrawn by order dated 7 September 2026. Therefore, ratio of that judgment need not be discussed.

109) Thus to prove acquisition of secondary meaning/significance in relation to a film title, it is necessary for the Plaintiff to establish that the word used in the film title has lost primary meaning in the minds of cinemagoers. Therefore, requirement of establishing displacement of primary meaning at least in relation to the category of product / services is imperative.

110) Mr. Khambata has relied on judgment of the US District Court in ***Tri-Star Pictures Inc. vs Unger*** (supra) in support of his contention that a motion picture title can receive trademark protection if it gains secondary meaning. The judgment is delivered in the context of a distinctive film titled "*The Bridge on the River Kwai*" and injunction was sought in respect

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of film titled as "*Return to the River Kwai*". The judgment, in my view, is clearly distinguishable in the light of the fact that the film contained a unique title and the use of the word '*Return*' in the impugned film clearly suggested a link between the two films. The judgment is clearly distinguishable on facts and has no application to the present case.

111) Mr. Khambata has relied on judgment of Coordinate Bench of this Court in ***Jyothi Labs Ltd. vs. Dabur India Ltd.***[29] in support of his contention that the word "*NEEM*" was not held to be generic in nature. However, since the judgment is stayed by the Division Bench, it is not necessary to consider the ratio thereof.

112) Mr. Kamat has relied on judgment of Coordinate Bench of this Court in ***Dilip Dhanwani vs. Luv Ranjan Films Pvt. Ltd.***[30] in support of his contention that the title '*Vadh*' was held to be not inherently distinctive and that therefore the test for acquisition of secondary meaning was held to be even more stringent. This court considered the ratio of judgment of the Delhi High Court in ***Kanungo Media*** and held in paras 11, 12 and 13 of the judgment as under:

> 11. There is substance in the contention raised on behalf of the defendant Nos.1 to 4 that while recognizing the aforesaid test in the context of the question as to whether a title has acquired secondary meaning, reference was made in the above quoted portion of the judgment to a title that was inherently distinctive. **In the present case, the title 'Vadh' means 'to kill' and it is indeed descriptive in nature and prima facie this Court is unable to agree with the plaintiff that the title 'Vadh' itself, either could be said to be inherently distinctive or that due to the reputation earned by the film produced by the plaintiff, it had acquired a distinctive meaning associated with the said term. In such a**

[29] IA No.1880 of 2021 in Comm. IP Suit No.240 of 2021 decided on 10 August 2026

[30] Interim Order in IA(L) No. 38107 of 2022 in COMIP (L) No.38106 of 2022

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situation, the test to be satisfied by the plaintiff becomes even more stringent and it is all the more necessary to examine as to whether material on record demonstrates that the plaintiff has satisfied the test of having acquired secondary meaning. A perusal of the plaint shows that the plaintiff simply claims that the movie 'Vadh' produced and released by him in March 2002 was successful and that over a period of time it had gained sufficient renown in the film world. Much reliance is placed on Google Search and the fact that in social media, if a search was carried out of the title 'Vadh', the results indicated the movie produced by the plaintiff. At this stage, prima facie, this Court is not satisfied with such pleadings or that the material placed on record, would be enough to satisfy the stringent test that the plaintiff faces, particularly when the title 'Vadh' is descriptive in nature and it cannot be said to be inherently distinctive.

12. The emphasis placed on monetization of the movie over a period of twenty years is not sufficiently supported by the material on record. In fact, the assignment agreement of the year 2016, placed on record, shows that it was executed in favour of a third party, only for an amount of Rs.20 Lakhs for a period of 10 years.

13. The insistence on measuring the goodwill of the movie simply based on Google Search results and number of hits on You Tube would not be enough for the plaintiff to demonstrate that a strong prima facie case is made out in its favour. In this context, reliance placed on judgment of this Court in the case of People Interactive (India) Private Limited Vs. Vivek Pahwa (supra), on behalf of the defendants is justified. The position of law recognized in the judgment of this Court in the case of Shamoil Ahmad Khan Vs. Falguni Shah and Ors. (supra) also supports the case of the defendants, for the reason that the movie produced by the plaintiff prima facie does not show that it belongs to the category of extremely well known literary or creative work.

(emphasis added)

113) Thus, when a film title uses a generic and laudatory word which is not inherently distinctive, the test for Plaintiff to prove acquisition of secondary meaning of that word becomes even more stringent. In the present case, the word 'queen' is not inherently distinct. It is used by commonly both within film titles as well as outside the films. The Plaintiff has not been able to cross the threshold of the basic test itself

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and therefore the question of considering the Plaintiff meeting the higher threshold in relation to non-distinctive word does not arise.

114) Mr. Khambata has sought to salvage the situation of Plaintiff not objecting to use of the title *Queen* in their films by submitting that mere existence of other titles using same word does not establish that *Queen* is common to the trade in the relevant market. He has relied on judgment of this Court in ***Jagdish Gopal Kamat*** (supra), in which this Court rejected the contention that "*Café*" and "*Madras*" were common to trade and considered irrelevant the fact that there were 24 establishments named *Cafe Madras* while granting injunction in favour of the plaintiff. In my view, the ratio of judgment in ***Jagdish Gopal Kamat*** is wholly irrelevant to Plaintiff's case of the word 'queen' acquiring secondary meaning in relation to film titles. It was not the case of Plaintiff in ***Jagdish Gopal Kamat*** that the word "*Café Madras*" had acquired secondary meaning and this Court had no occasion to consider the argument of acquisition of secondary meaning. It is settled law that a judgment is an authority for what it decides and not what can be logically deduced therefrom. Therefore, Plaintiff's reliance on judgment in ***Jagdish Gopal Kamat*** is inapposite.

115) Therefore, mere use of same generic word in the title of two films having no connection with each other does not make out a case for actionable passing off by accepting the claim of acquisition of secondary meaning in the film title. Considering the trade practice of making multiple films with same title coupled with the fact that the word used in the film title is generic, the threshold for proving acquisition of secondary meaning

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is extremely high. In such case, Plaintiff can succeed in action for passing off only if it is established that the primary meaning of the word is displaced and the word used in the film title is so strongly engrossed in the mind of cinemagoers that they cannot think of primary meaning of the word and would think of only Plaintiff's film.

116) In view of the above discussion, it is difficult to accept Plaintiff's claim of film title *Queen* acquiring secondary meaning so as to maintain its claim for passing off in relation to the film's title.

PLAINTIFF'S CASE OF 'SPIRITUAL SEQUEL'

117) Faced with a situation that Plaintiff has not been able to establish that the film of Defendant Nos.1 and 2 is a direct sequel or a derivative work of 2014 film *Queen*, Plaintiff has sought to suggest that the film *Queen Full Power* is a 'spiritual sequel' of the film *Queen*. It is contended by the Plaintiffs that the commercial device of a spiritual sequel permits a latter film to tell a different story, introduce different characters and avoid direct narrative continuation while deliberately preserving sufficient features of earlier intellectual property, including part of its title, thematic identity, genre, central idea, principal actors, or other recognizable elements to invoke familiarity in the minds of the audience. It is contended that sequel in a film industry is no longer limited to linear sequels like *Dhurandhar* and *Dhurandhar: The Revenge* or the sequels like *Drishyam*, *Drishyam-2*, and *Drishyam-3*. It is contended that even in absence of a linear continuity, audience may recognize connection between the two films and filmmakers do draw upon pre-existing recall, nostalgia,

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accumulated goodwill, and audience memory, reducing the burden of introducing an entirely unfamiliar intellectual property and securing an advantage in first-day opening footfalls. Plaintiff has given examples of recent successful spiritual sequels like *Good Newwz* (2019) and *Bad Newz* (2024), *Cocktail* (2012) and *Cocktail 2* (2026), *Love Aaj Kal* (2019) and *Love Aaj Kal* (2020), and *Taare Zameen Par* (2007) and *Sitare Zameen Par* (2025). According to Plaintiff, even with the change in the character name and a different timeline in the proposed film, the subsequent film can always be confused as a spiritual sequel of the original film. Plaintiff accordingly contends that the film of Defendant Nos.1 and 2 *Queen Full Power* is a spiritual sequel of the film Queen.

118) The case of spiritual sequel, I must say, is not the one pleaded in the plaint or even remotely suggested therein. On the other hand, the pleaded case in the plaint is that the proposed film is a sequel or a derivative work based on the original work titled *Queen*. Upon failing to establish that the proposed film is a sequel or derivative work (*which is the pleaded case in the Plaint*), the case of spiritual sequel is sought to be introduced without making any averment to that effect in the Plaint. If one considers the averments in para 8 of the Plaint, it is seen that the factors of (i) use of same director, (ii) same lead actress, (iii) drawl upon central theme and creative universe of the film *Queen*, and (iv) public and official description of the proposed film as a sequel by the director and actress are all pleaded to prove that the proposed film *Queen Full Power* is a derivative work within the meaning of novated CPA. The pleadings in Para 45 of the plaint read thus:

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> 45. Defendant No. 1 has further contended that the word 'Queen' is a common word over which no party can claim exclusivity, and that mere use of this word in a title does not render any project a sequel or derivative work of the film. The Plaintiff submits that Defendant No. 1's contention is incorrect and inter alia misses the point that the totality of circumstances i.e. a film titled 'Queen Forever' or 'Quen Full Power or some other derivative or combination using the title of the original film Queen, **directed by the same Director who made the Film, featuring the same lead actress who starred in the Film, drawing upon the Film's central themes and creative universe, and publicly and officially described as a sequel to the Film by its own Director and lead actress, is nothing but a Derivative Work of the Film within the meaning of the novated Co-Production Agreement.**
>
> *(emphasis added)*

119) Thus, contrary to the orally argued case of preservation of sufficient features of the film *Queen* like part of its title, thematic identity, genre, central idea, principal actors, or other recognizable elements to invoke familiarity in the minds of the audience amounting to a 'spiritual sequel', the pleaded case is that preservation of those elements makes the impugned film a '*Derivative Work of the Film within the meaning of the novated Co-Production Agreement*'. Thus apart from the fact that the case of spiritual sequel is not pleaded in the plaint, the pleaded case is that preservation of elements of the film *Queen* makes the proposed film a derivative work thereby breaching the contractual covenants. In absence of supporting pleadings for the case of spiritual sequel, this Court would ordinarily not permit raising such a plea directly in oral arguments. However, to allay any complaint that this Court has shut the doors on the Plaintiff on its argued case of spiritual sequel, this Court proposes to consider the same.

120) No doubt, the films in the modern era are not necessarily connected by linear timeline in the story like usual sequels or prequels,

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which tend to tell the viewers one story in different parts through multiple films. In typical sequels or prequels, there is continuity in the story, which often uses same characters. The illustration is the films *Drishyam*, *Drishyam 2* and *Drishyam 3*. However, in the modern age films, film producers may not use linear continuation of the story or character or may even use different story or different characters but tell the world that what they are making is a sequel. The case of *Cocktail* and *Cocktail 2* is a perfect example quoted by Mr. Khambata of sequels of a different type which he calls 'spiritual sequel'. In both the films, there is no commonality in the story. *Cocktail 2* is not a linear continuation of story of the film *Cocktail*. The characters are not the same. The lead actors are also different. However, there is some purpose why the film producer made a representation to the moviegoers that what is being produced is a sequel to the original film. This was done possibly to encash on the goodwill of the original film. If the original film was successful and was still alive in the minds of the moviegoers, telling them that the new movie has connection with the movie made earlier may assist the producer in encashing upon goodwill and reputation of the film already made. Thus, though the sequel is not in reality, but the same is in the spirit. This is what a spiritual sequel in relation to a film is.

121) To constitute a spiritual sequel, the later film must abandon the literal narrative continuity such as returning characters, specific plot lines, and the same shared universe, while actively mirroring the soul of the original film. A "spiritual sequel" is a film which is not directly related to a previous film but seems to share a lot of elements with it. Sharing of substantial elements between the two films is an essential ingredient of a

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spiritual sequel. Mere thematic similarity is not enough to brand the subsequent film as a spiritual sequel to the earlier film, though it may be one of the ingredients. Many times after watching a film, the cinemagoers do express that the film that they watched was similar to some old film. However, mere drawal of uncanny parallel between two films is not sufficient for accepting the case of spiritual sequel. Usually in a spiritual sequel, the producer makes an express representation to the public that the subsequent film is a sequel of the earlier film. This is important because the producer himself knows that the film does not contain continuation of the storyline of the earlier film, but he still wants to encash upon the reputation and goodwill earned by the earlier film. Also, in spiritual sequels, the titles indicate that the later film is a spiritual sequel for encashing upon the goodwill of the earlier film. In the case of the film *Cocktail*, the latter film was titled *Cocktail 2* thereby making an explicit representation to the public that the latter film is a second installment of the earlier film and a deliberate act to encash upon the goodwill of the film *Cocktail*.

122) Also, to constitute a spiritual sequel, there needs to be some element of explicit callback or reference of the earlier film in the subsequent film. For example, in *Cocktail* and *Cocktail 2*, the hit song "*Tumhi Ho Bandhu*" has been repeated, which makes the audience instantly identify a connection between the two films even though the storyline and characters and actors are different. Similarly in *Love Aaj Kal* (2009) and *Love Aaj Kal* (2020), the hit song "*Yeh Dooriya*" was repeated to establish connection between the two films. In a spiritual sequel, though the story is

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different, atleast the central theme needs to be the same. The central theme of Cocktail and Cocktail 2 was modern, messy urban love triangle dealing with commitment, friendship, and temptation. Similar was the case in the films *Love Aaj Kal* (2009) and *Love Aaj Kal* (2020), whose central theme was the same viz. concept of love across 'then' and 'now'. In *Good Newwz* (2019) and *Bad Newz* (2024), the theme was common i.e. reproductive anomaly and pregnancy-parenthood comedy. In *Ishq Vishk* (2003) and *Isq Vishk Rebound* (2024), the central theme was youth romance triangle, and both the films contained recreated title song.

123) Thus, a case of spiritual sequel essentially involves an element of express representation both by maker of the films as well as through the title and some elements like song etc. for establishing a connect between the two films. As observed above, the cinemagoers need to be expressly told that the latter film made has a connect to the earlier film so as to encash upon its goodwill. The cinemagoers do not presume commonality in the two films even though they may contain same word in the title or even when the title is exactly the same, especially when the stories of the two films are different altogether. When *Deewar: Let's Bring Our Heros Home* was made in 2004 casting same lead actor Mr. Amitabh Bachchan, the cinemagoers did not presume any connect with the iconic film *Deewar* (1975) in which also Mr. Bachchan was the lead hero, because the producer of the 2004 film never represented to them that the two films have any connect between them. The illustration of the films with the generic word 'golmaal' (*meaning chaos/confusion/mess or deception/fraud*) in the title makes this even clearer. The iconic film '*Gol Maal*' released in 1979 was

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directed by Mr. Hrishikesh Mukherji. From 2006 onwards Mr. Rohit Shetty has made four successful franchise films using the word 'Golmaal' in their title. The producers and director of the Golmaal franchise films did not represent the viewers that the first film '*Golmaal: Fun Unlimited*' was a sequel to the original film *Gol Maal* (1979). The viewers exercised their wisdom and drew distinction between the two films. However, when the second installment of the *Golmaal* franchise was made, a specific representation was made to the viewers that the same is a sequel. Similarly specific representation of sequel was made for the third and the fourth installments as well. The storylines and plots of all the four films are different, but the central theme is the same viz. situational chaos/confusion, friendship-driven rivalry, small misunderstandings snowballing into disasters. Despite different storylines, the latter installments of Golmaal franchise films encashed upon the goodwill of the earlier installments, but not of the original film '*Gol Maal*'(1979). Thus, in spiritual sequel films, there needs to be an express representation to the viewers that what is made is a film having thematic connection to the earlier film.

124) In the present case, Defendant No.1 and 2 have never told the world that they have made a sequel of the film *Queen*. There is no distinctive element of the film *Queen* which is repeated in the film *Queen Full Power*. The lead actor and the director making representation in their interview about possibility of Defendants' film being a sequel is not sufficient. This aspect has been discussed in greater details in latter part of the judgment. When the story and the plot of the two films is different, and

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when the producer does not make an express representation that the proposed film is a sequel or has any connection with the earlier film, possibility of confusion does not arise. In the present case, Defendant Nos. 1 and 2 do not intend to encash upon the goodwill of the film '*Queen*'. In relation to their film *Queen Full Power* containing different story, plot and the theme, they want to stand on their own legs, spend money on promotion of the film and try their luck at the box office. When the producers themselves do not wish to connect their film to the film *Queen*, it becomes difficult to presume that the proposed film is a spiritual sequel of the film *Queen*.

125) Also, by quoting the examples of spiritual sequels of movies such as Cocktail, Good Newwz, etc., Plaintiff highlights the fact that spiritual sequel does not involve same lead actors. To illustrate, the first installment of the film *Cocktail* had Saif Ali Khan, Deepika Padukone and Diana Penty as lead actors. *Cocktail 2* featured none of them, and instead featured Shahid Kapoor, Rashmika Mandanna and Kriti Sanon as its lead actors. Same is the case with *Good Newwz* and *Bad Newz*, where the first installment had Akshay Kumar, Diljit Dosanjh, Kiara Advani, and Kareena Kapoor in lead role, whereas the second installment featured Triptii Dimri, Vicky Kaushal and Ammy Virk. In the present case, the major factor by which Plaintiff seeks to draw parallels between the two films, is featuring of Ms. Kangana Ranaut in both the films. Plaintiff has thus confused itself completely in the present suit. Its main pleaded case in the plaint is that the proposed film is a derivative work in breach of the CPA. Once it turns out that the there is nothing common in the story of the two films, it

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presses the claim for passing off in relation to the title, by citing the element of Ms. Ranaut starring in both the films. Upon discovering that there are several films made with the same word 'queen' in the title (and one of them featuring Ms. Ranaut), it suggests the case of spiritual sequel during oral arguments, ignoring that both films feature same lead actress.

126) As observed above, even the central theme of the proposed film is different than the one of *Queen*. The central theme of Plaintiff's film is 'self discovery' of young woman, whereas even if the argued case of Plaintiff is accepted, the central theme of film of Defendant Nos.1 and 2 is 're-discovery' by mother/wife. Plaintiff's film is about young woman discovering for the first time power and confidence. The film of Defendant Nos.1 and 2 is about a mother/wife rediscovering the power/confidence which she had forgotten/sacrificed. Therefore, even if 'discovery' by a woman is treated as a common factor in the two films, still there is a conceptual difference in the two themes. There is absolutely no commonality between the theme of 23 year young, unmarried Punjabi girl going alone on honeymoon to discover herself and the theme of a 45 year married Marathi woman whose otherwise daily routine is disrupted by kidnapping drama. Since the central theme and creative universe of the two films are different, and there is no explicit callback or reference (like a song) of the film *Queen*, it cannot be held that Defendant Nos.1 and 2's film *Queen Full Power* is a spiritual sequel of the film *Queen*.

127) In view of the above discussion, I am unable to accept Plaintiff's argued case of the proposed film *Queen Full Power* being a spiritual sequel of the film *Queen*.

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NO PROPRIETORSHIP IN A THEME

128) Plaintiff has contended that the central theme of both the films is the same viz. discovery of a simple woman setting out on an unexpected journey of independence and self-realization that transforms her life. This Court has disagreed with Plaintiff's contention that there is thematic similarity between the two films. However, even if there was any thematic similarity in the two films, Plaintiff's claim for passing off would still have failed as Plaintiff cannot claim monopoly in the theme of woman empowerment.

129) In a passing off action, theme alone cannot enter assessment. It is well settled position in law that there can be no copyright or monopoly over a theme, idea, subject matter, plot or genre. The protection is confined only to the form, manner, arrangement, and expression of an idea. Plaintiff's own pleaded case is essentially premised on "assigned rights" under the novated CPA, which presupposes that there is something to "own" i.e., a proprietary and enforceable interest in some aspect of its 2014 film. Since there can be no proprietary ownership in a theme or idea, Plaintiff's case of passing off would fail even in this respect. In ***R.G. Anand*** (supra), the Apex Court has held that even if the theme is the same but is presented and treated differently so as the subsequent work becomes a completely new work, there can be no violation of copyright. The Apex Court held in paragraphs 46(1) to 46(7) of the judgment as under:

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46. Thus, on a careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge:

1. There can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.
2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.
3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.
4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.
5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.
6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case-law discussed above.
7. Where however the question is of the violation of the copyright of stage play by a film producer or a director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.

130) It was contended before the Apex Court in ***R.G. Anand*** that there were as many as 18 similarities in the two films. However, the Apex

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Court also took into consideration several dissimilarities and held that the defendants did not commit colourable imitation of the play nor violated the copyright of the Plaintiff.

131) In the present case, after failing to establish protectable elements which are common to the two works, Plaintiff has attempted to claim that the central theme between both the films is 'women empowerment', where a female lead coming from a conservative setup goes through a journey of transformation and self-discovery to find her power and confidence. Mr. Khambata has submitted a detailed note on thematic similarities between the two films, which contains the following table:

Sr. No.	Queen	Queen Forever/ Queen Full Power	Similarities
1.	The original Film was titled as "Queen" after its main character, Rani Mehra (played by Ms. Kangana Ranaut), because the Hindi word "Rani" literally translates to "queen" in English. Further, the male protagonist of the Film calls "Rani", the female protagonist of the Film as "Queen" or "my Queen", as a term of endearment which is also the reason behind the title of the Film.	"In a pivotal scene, the protagonist's father affectionately addresses her as "Queen Zorat", Marathi expression conveying that she is a "full-power queen", that is, a young woman of strength, courage and confidence. The expression organically from arises the screenplay as part of the relationship between father and daughter, description the of the and is reference of the film.	The title of both films is derived from the terms of endearment used for the Female lead of the films.
2.	The Film revolves around a 24 year old girl from do Delhi belonging to a well-to-conservative Punjabi family, who doesn't have a life beyond her fiancé Vijay. However, on the	The proposed Film is "a female character-driven film wherein a 45-year old mother of one, who makes a great deal of sacrifices for the betterment of her family, finds herself in	Both films women are centric and how "one day" or one life altering event that sets the female lead character on a self-growth journey. Thus,

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	eve of their wedding Vijay calls off the engagement. Unable to deal with the break up, at the spur of the moment, she decides to go on her "Honeymoon" alone, which results in her character evolving.	difficult circumstances "one day" and how her character evolves in the process".	the theme in both films is of a woman going through a journey of transformation or character evolution.
3.	The Film is a story of self-discovery of a young woman during a solo journey abroad.	"The film's core is a journey of the lead re-discovering a sense of power and confidence which she had forgotten/scarified in the course of being a mother /wife."	The words used by Defendant No. 2 in its reply such as "re-discovering and "confidence a sense of "power which she had forgotten" evidently denote that this is a sequel to the original film.

132) The above underlined words would clearly distinguish the themes of the two films. To overstretch, one may say that 'discovery of power and confidence' by a woman is the common element in the two themes. Plaintiff cannot claim ownership in the theme of 'discovery of power and confidence by a woman'. Anyone can make a film or a work based on this theme. Merely because Plaintiff made a film based on woman's journey of self discovery, the same does not mean that the world at large cannot make any film or work based on the said theme. There have been several films which contain the theme of discovery of power and confidence by a woman. Illustration can be of films like *English Vinglish*, *Thappad*, *Laapataa Ladies* etc. In fact, the film *Thalaivii*, featuring same lead actress Ms. Kangana Ranaut, also contained the theme of an ordinary woman turning out to be a powerful politician by fighting against the established forces. The Tamil word *Thalaivii* means 'queen' in English. Plaintiff never complained about making and release of the film *Thalaivii*,

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which also contained the theme of woman empowerment, even though the film involved the same lead actress and the title involving same meaning. Similar is the case of the film *Manikarnika: The Queen of Jhansi*, which also contained the central theme of Rani Lakshmibai fighting a brave battle against the mighty British empire. Here again, the film involved the use of the word "queen" as well as featuring of the same lead actress Ms. Kangana Ranaut. '*Revolver Rani*' is yet another example of a woman centric film using the word 'Rani' and featuring Ms. Kangana Ranaut. There thus appears to be a pattern where Ms. Kangana Ranaut has consistently featured in films involving woman centric roles and many of those films have carried the word 'queen' in English or other languages.

133) In my view therefore, Plaintiff cannot claim any proprietorship or monopoly in the alleged theme of discovery of power and confidence by a woman. Plaintiff cannot stop the world from making films based on the said theme, even by including in the title of the work the word "queen" or by engaging the same cast. Even combination of the three viz. title, theme and lead actor would not create any monopoly in favour of the Plaintiff once it is established that there is absolutely no connect in the story of the two films.

WHETHER ENGAGEMENT OF SAME ACTOR/DIRECTOR MAKES OUT A CASE FOR PASSING OFF?

134) Plaintiff contends that Defendant Nos.1 and 2 have deliberately engaged the same lead actress and the director for their proposed film *Queen Full Power* with a view to create confusion in the minds of the viewers by passing off their film as a derivative work of the original

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film *Queen*. It is contended that Ms. Kangana Ranaut and Mr. Vikas Bahl have not worked together ever, except when they came together in making of the Plaintiff's film.

135) Plaintiff obviously does not claim exclusivity in engagement of Ms. Ranaut or Mr. Bahl, either independently or in combination. However, it claims that since these two persons are engaged together in a film carrying word 'queen' in its title, the moviegoers are likely to be confused. It is further claimed that when Ms. Ranaut features in and Mr. Bahl directs a film using the word 'queen' in the title and when the film carries the theme of a conservative woman's discovery of her power and confidence through experiences, case of derivative work or of spiritual sequel is made out by applying the test of confusion. The contention is baseless to the core. The third element of common theme is not established in the present case. There can never be any prohibition in engagement of Ms. Ranaut and Mr. Bahl in combination for making of a film. Once it is established that the two films have nothing common between them, even use of the word 'queen' in the title of a film starring Ms. Ranaut and direction by Mr. Bahl would still not make a case for actionable passing off.

136) What Ms. Kangana Ranaut has earned through Plaintiff's film *Queen* is her personal success and recognition, which cannot be sought to be monopolized by the Plaintiff. A film generates goodwill not only for its producer. It simultaneously generates goodwill which belongs to, is associated with, and travels with the individual professionals who make and perform in it, such as its writer, director, lead actors, composers, each of whom may generate individual reputation for themselves. The film

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Sholay is a classic illustration of this phenomenon. Late Amjad Khan created the legendary character of '*Gabbar*'. Similarly, Mr. Amitabh Bachchan and Mr. Dharmendra made legendary characters of '*Jai and Veeru*'. Several dialogues in the film have become a part of colloquial language in Hindi heartland. Thus, the film *Sholay* has not made reputation and goodwill only for its producer, but has created a reputation for its actors, writers, composers, etc. Similarly, Ms. Kangana Ranaut may have established a reputation for herself by repeatedly playing strong women-centric roles in the films. But every time a producer engages Ms. Ranaut in a woman-centric role, can Plaintiff cry of passing off? The answer is in the emphatic negative.

137) Monikers and followings arising out of films attach to individuals and travel with them, and not with any producer. Illustrations are the monikers such as "*Angry Young Man*" associated with Mr. Amitabh Bachchan, "*Khiladi Kumar*" associated with Mr. Akshay Kumar, "*Dream Girl*" associated with Ms. Hema Malini, "*Khamosh*" associated with Mr. Shatrughan Sinha, "*King Khan*" associated with Mr. Shah Rukh Khan; and "*Thalaivaa*" associated with Mr. Rajinikanth. In the same sense, Ms. Kangana Ranaut may carry with herself the moniker 'queen'. But she does not appear to be alone to carry the moniker of queen. There are several other actors who are also referred to as queens in Bollywood industry. To illustrate, Ms. Madhuri Dixit is often referred to as Bollywood Queen or Dancing Queen or Queen of Queens. Defendant No. 2 has relied on material to indicate that other actresses have also been referred to as queens.

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138) But let us proceed on an assumption that Ms. Kangana Ranaut has earned the moniker of 'queen' on account of the role of Rani Mehra played by her in the film '*Queen*'. Let us give full credit to the makers of the film '*Queen*' for attachment of the moniker 'queen' to Ms. Kangana Ranaut. But that is her personal achievement and that moniker would travel personally with her. In fact, in the interview on which Plaintiff places strong reliance, she talks of establishing a cafe "*Queen Kangana Love*" in Himachal Pradesh. Can Plaintiff restrain her from using the word 'queen' for the label of her restaurant? Obviously, no. This is because if Ms. Ranaut has acquired the moniker 'queen', it is not restricted to Plaintiff's film *Queen* (*though the film may have played a major role in conferring her the nickname*), and she has developed a reputation of making strong women-centric characters over the years. Ms. Kangana Ranaut appears to be widely celebrated for her fierce women-centric films, *Queen* being only one amongst several films such as *Tanu Weds Manu*, *Manikarnika: The Queen of Jhansi*, *Thalaivii* (portraying Ms. Jayalalithaa, former Chief Minister of Tamil Nadu), *Emergency* (portraying Ms. Indira Gandhi, former Prime Minister of India), *Simran* (2017), *Revolver Rani* (2014), etc. She is also a Member of the Parliament and a vocal public figure. She won the award for the best actress for herself and similarly Mr. Bahl won the award for the best Director for himself. These are personal achievements of Ms. Ranaut and of Mr. Bahl. A film's success cannot be measured by a single metric. The success also travels with actors, writers, directors, composers, etc. To borrow the words of Krishna Iyer, J. in ***Indian Performing Rights Society vs. Eastern Motion Picture Association***[31], a cinematograph film is a felicitous

[31] (1977) 2 SCC 820

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blend and an ensemble which is finished product of orchestrated performance by each of the several participants, although the components may, sometimes, in themselves be elegant entities.

139) Therefore, there is nothing proprietary in engagement of Ms. Kangana Ranaut and Mr. Vikas Bahl. Plaintiff thus cannot seek to injunct every producer casting Ms. Ranaut and engaging Mr. Bahl as a director in a film involving strong woman-centric character or a film which uses the word 'queen' in its title, when the storyline of the two films is entirely different. Thus, mere casting of the same lead character or engagement of the same director, or even combination of the duo, does not make out a case for actionable passing off for the Plaintiff.

WHETHER SOCIAL MEDIA POSTS SUFFICIENT FOR ACCEPTING PLAINTIFF'S CASE OF THE IMPUGNED FILM BEING A DERIVATIVE WORK OR A SPIRITUAL SEQUEL

140) Plaintiff has relied on host of material on social media for presuming that the film now titled *Queen Full Power* is a sequel or a derivative work of the original film *Queen*. The material includes interviews given by the lead actor Ms. Kangana Ranaut and Director Mr. Vikas Bahl, as well as reports on various web portals, as well as comments and public facing statements on social media posts.

141) Plaintiff has relied on article published on 11 December 2024 titled '*Exclusive: Vikas Bahl and Kangana Ranaut to reunite for Queen 2; Director confirms, "We have something concrete"*'. In that article, the director-Vikas Bahl is quoted as saying '*we have been working on Queen 2 for a while now and finally we have something concrete*'.

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142) Plaintiff has also strenuously relied on statements made by Ms. Kangana Ranaut in her interview dated 15 January 2025 published on the YouTube channel "Mirchi Plus". The interviewer had asked Ms. Ranaut and she had replied thus:

> GT: Abhi mai naam elke unke sawaal puchunga aapko theek hai. Inka naam hai Queen Kanga, Instagram pe account name hai. Will she continue after Emergency movie or will she leave it?
>
> KR: Nahi, I will continue, meri ek aur bhi film ki shooting abhi abhi shuru ho rahi hai. Jan se shuru hai. So I will definitely continue my work as an artist also
>
> GT: Next jo sawaal hai voh mera bhi sawaal hai. Okay ye page ka naam hai kangana kite. Tanu Weds Manu 3 and Queen 2 kab aayegi ye mera bhi sawaal hai.
>
> KR: Hopefully soon. Kyunki unn scripts pe dono pe kaam chal raha hai. Queen 2 ki toh maine ek, ek poori line bhi sunn li hai, one liner bhi suna hua hai, I quite liked it. So hopefully soon.
>
> GT: Matlab dono confirmed hai.
>
> KR: Yes, yes

143) Based on the above statements made by Ms. Ranaut and Mr. Bahl, Plaintiff has contended that there are express admissions by the lead actress and director of the proposed film being a sequel of the original film *Queen*. According to Plaintiff, who better than lead actress and director can reveal the true nature of the proposed film. In my view, however, not much importance can be given to the statements made by the lead actress and the director in December 2024 and January 2025. At that time, the proposed film of Defendant Nos.1 and 2 was nowhere in the offing. As per reply filed by Defendant No.2, Ms. Ranaut was given a narration in relation to the proposed film in July 2025. Defendant No.2 approached Defendant No.1 to

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collaborate as a co-producer for making of the proposed film in November 2025 and the contract was executed on 7 March 2026. Ms. Ranaut's contractual engagement with Defendant No.2 is in February 2026. True it is that Defendant No.2 and Mr. Bahl had started working on story of proposed film since April 2024. However, there is nothing on record to assume at this juncture that Ms. Ranaut had access to the film's story in January 2025. Plaintiff has not impleaded Ms. Ranaut or Mr. Bahl to the suit and why they made those statements can be explained only by them. This is not to suggest, at this stage, that the suit is barred for non-joinder of necessary parties, but if heavy reliance is placed on personal statements made by the duo, they ought to have been impleaded as parties to the suit. Plaintiff appears to have made correspondence with Mr. Bahl before filing of the suit, but has still avoided to implead him. Plaintiff has apparently filed a separate application against Mr. Bahl under Section 9 of the Arbitration and Conciliation Act, 1996 (CARBP (L) No. 31216 of 2026). While questioning '*who better to speak to these matters*', Plaintiff has kept the persons who can speak about the accuracy and contents of their statements out of the proceedings. In my view therefore, it is too dangerous to *prima facie* infer at this stage that the proposed film is a sequel or derivative work of the original film merely on the basis of the statements allegedly made by the lead actress and director.

144) Though there is no concrete material on record to assume so, I momentarily proceed on an assumption that Ms. Ranaut had an idea about film's broad concept and she did believe that the proposed film was likely to be a sequel of the original film *Queen*. However, the fact of the matter is that the producers of the film (Defendant Nos. 1 and 2) have never

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made any public statement that there is any connection between the two films. The issue for consideration is whether statements made by the director or the lead actor in relation to the film would bind the producers and whether such statements alone can form the basis for the Court to infer that the film is a sequel or a derivative work. This issue needs to be answered in the context of comparison of synopsis of the two films. This Court has already arrived at the finding that the synopsis of the two films do not indicate any similarity in the story, theme, plot, characters or any other elements. Once this finding is arrived at by the Court, not much importance needs to be given to the statements made by the lead actress and director for recording a factual finding about impugned film being a derivative work or sequel. Their statements would not bind the producers, and in any case, cannot be the basis for this Court to infer even *prima facie* that the impugned film is a sequel to the original 2014 film *Queen*.

145) Plaintiff has also relied on several major entertainment publications/portals in support of its contention that the proposed film of Defendant Nos.1 and 2 is a sequel to / remake of / continuation of / derivative work connected to the 2014 film *Queen*. The material relied upon by the Plaintiff is as under:

> a. India Forums has inter alia reported on 29 August 2025 that "After years of Speculation, Kangana Ranaut reunites with Vikas Bahl and Anand L Rai for sequels Queen 2 and Tanu weds Manu 3"
>
> b. Mens Forum has inter alia reported on 30 August 2025 that "Kangana Ranaut is reuniting with Vikas Bahl for the sequel of Queen"
>
> c. Bollywood Mascot inter alia reported on 31 August 2025 that "The official announcement of Quuen 2 has created a storm among fans, with social media buzzing about the sequel to the cult classic film Queen. For those who remember,

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the first installment wasn't just a movie It was an emotion that redefined individuality, courage and self discovery"

d. Bollywood Hungama has inter alia reported on 4 April 2026 that "A few days ago, reports came in that the sequel to Kangana Ranaut's iconic film Queen (2014), is in the works. According to the article in Mid-day, the film will be directed by Vikas Bahl, who also helmed the first part and is set to go on floors in April...A source told Bollywood Hungama, "The makers had several options for the film's title and the one that has really caught their eye is Queen Forever. If all goes well, this will be what the film will be called."...Bollywood Hungama has also learned that Amit Chandra of Trigger Happy Entertainment will be producing Queen Forever...As per the Mid-day story, in Queen's sequel, Kangana Ranaut's character Rani will not go to foreign shores. Instead she'll travel to different cities across India while also embarking on a journey of self discovery."

e. The Times of India on 4 April 2026 inter alia reported that ""Queen Forever works. The makers have roped in Kangana Ranaut starrer's iconic Rani returns with a new title for the sequel...A original director, Vikas Bahl, to helm the project. And as per the latest development, the producers have a tentative title of the movie in their mind..."

f. The website www.msc.com inter alia reported on 5 April 2026 that "Kangana Ranaut's Queen sequel gets new title and its not Queen 2? Here's what we know" and inter alia goes on to state as part of its Key Takeaways that "The sequel will likely be called Queen Forever, moving away from the expected Queen 2, reflecting the film's theme of self-discovery and individuality"

g. Bollywood Hungama reported on the sequel again on 20 April 2026 and inter alia stated that "theatrically this is not just another sequel setup. It is a live stress test of Kangana's current market value. Why? Because the original Queen is not just a hit in her filmography, it is one of the cleanest success stories attached to her name... The Queen brand is strong enough to create curiosity, but it is also emptionally loaded enough to expose whether audiences still want to show up for Kangana in theatres..".

h. On 27 June 2026 the Mid-day reported that "On the set of Queen 2, the countdown has begun. Kangana Ranaut's coming-of-age movie, a thematic expansion of the actor's career defining offering Queen (2013), is only six days away from being wrapped up. Mid-day has learnt that the unit is currently shooting the last leg in Naigaon".

146) Plaintiff has also relied on comments posted by members of public on social media platforms in support of its plea that public in general

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perceives the impugned film as sequel / derivative work of the 2014 film *Queen.*

147) Both the material in the form of entertainment publications and social media posts are nothing but speculative perceptions by third parties in relation to the proposed film of Defendant Nos.1 and 2. To deal with the objection of third party statements, Mr Khambata has relied on judgment of Apex Court in ***Sandeep Kumar vs state of Uttarakhand***[32] in which Privy Council's decision in ***Subramaniam vs. Public Prosecutor***[33] is referred to and it is held that an out of court statement is hearsay when tendered for the truth of its contents, but not when the relevant fact is that the statement was made. It is held in para 75 and 76 of the judgment as under:

> **75.** No such contention is raised before the trial court or before the High Court. Therefore, we need not really deal with it. However, we may only notice the view taken by the Privy Council in *Subramaniam* v. *Public Prosecutor* [*Subramaniam* v. *Public Prosecutor*, (1956) 1 WLR 965 (PC)] . In the said decision the appellant was tried for being in possession of ammunition illegally. His defence was that he had been captured by terrorists and he was put in duress. Evidence of the conversation by the terrorists was shut out by the court on the basis that it constituted hearsay. The Privy Council did not approve of the said view. It laid down as follows : (*Subramaniam case* [*Subramaniam* v. *Public Prosecutor*, (1956) 1 WLR 965 (PC)] , WLR p. 970)
>
>> "In ruling out peremptorily the evidence of conversation between the terrorists and the appellant the trial Judge was in error. Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statement was made, quite apart from its

[32] (2022) 14 SCC 544

[33] (1956) 1 WLR 965

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truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made. In the case before their Lordships statements could have been made to the appellant by the terrorists, which, whether true or not, if they had been believed by the appellant, might reasonably have induced in him an apprehension of instant death if he failed to conform to their wishes."

76. Even if we were to follow the said principles the statement attributed to the deceased that she had told the doctors (DW 2 and DW 4) about her having suffered from TB is admissible for the fact of her having stated so even if it is not admissible for the truth of the statement. That apart, the action of the medical practitioner in acting upon it, by way of prescribing medicines and ordering blood test and x-ray would appear to be relevant and admissible. The appellants in their questioning under Section 313CrPC, set up the case of TB. We need not probe the matter further including the aspect as to whether the matter may be relevant under Section 32 of the Evidence Act.

148) On the other hand, Mr. Kadam has relied on judgment of this Court in ***Star (India) Ltd. vs Zee Entertainment Enterprises Ltd. and Ors.***[34], in which the issue before Division Bench of this Court was whether defendant No.3 therein could be injuncted from broadcasting and telecasting the game show *Antakshari – The Great Challenge* in the light of Plaintiff's copyright in literary works and cinematograph films in television game show *Titan Antakshari*. Before the learned Single Judge, certain documents in the form of statements / interviews of the first defendant were relied on and the learned Single Judge had held that the first defendant could not be permitted to deny the contents made in those interviews. The Division Bench referred to the judgment of Apex Court in ***Laxmi Raj Shetty and Anr. vs. State of Tamil Nadu***[35] and held in para 15, 16, 17 of the judgment as under:

[34] MANU/MH/2327/2011
[35] (1988) 3 SCC 319

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> 15. Therefore, the only question now to be considered by us is whether the learned Single Judge really was justified in relying on the newspaper articles to record a finding that the third defendant has made a representation indicating a connection between the two game shows. The learned Single Judge has himself observed in paragraph 181 of his order that though there are dissimilarities in the content of the two game shows in view of the representation made by the third defendant indicating a connection between the two game shows a finding has to be recorded that the third defendant tried to pass off its show as that of the Plaintiff.
>
> 16. In its judgment in the case of LAXMAN RAJ SHETTY supra is concerned in relation to admissibility of newspaper articles in evidence the Supreme Court in para 26 of that judgment has recorded a clear finding that the statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in court and deposing to have perceived the fact reported.
>
> 17. The observations of the Supreme Court found in paragraphs 25 and 26 of that judgment in our opinion are relevant they read as under :
>
> > 25. "We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence unless proved by evidence alone. A report in a newspaper is only hearsay evidence."
> >
> > 26. " A newspaper item without any further proof of what had actually happened through witnesses is of no value. <u>It is at best a second hand secondary evidence</u>. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible."

Thus, in ***Star (India) Ltd.*** the Division Bench of this Court has held that once dissimilarities in the two gameshows were observed, reliance could not have been placed on third party statements for accepting the claim for passing off.

149) According to Mr. Khambata, the media reports and social media posts are being relied on to show two aspects of the evidence that film titled *Queen* has acquired secondary meaning and that the media reports are evidence of actual confusion having already being caused. He

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therefore contends that the Court is entitled to refer to media reports and public statements for the fact that there is actual confusion and that the confusion is not merely hypothetical. According to Mr. Khambata, the best possible person in the form of the lead actor and director themselves have represented to the public and have caused sufficient confusion in the minds of the viewers that the proposed film is a sequel or derivative work of the original film.

150) So far as the interviews given by lead actor and director are concerned, I have already held that the same are, by themselves, insufficient to draw a positive inference of impugned film being a sequel or a derivative work. So far as media reports are concerned, the same are nothing but rumors and speculations drawn by the third parties. There is no material to hold at this juncture that the producers of the film are responsible for such rumors or speculations. If Ms. Kangana Ranaut and Mr. Vikas Bahl unite together in making of a film and if the media conceives such union as a possibility of making sequel to the film *Queen* (*in absence of knowledge of story or the theme of the film*), Defendant Nos.1 and 2 cannot be made to suffer by such erroneous speculations. This is particularly because Plaintiff itself now admits that the proposed film is not a sequel in strict sense. As observed above, the proposed film is not a continuation of story of the original 2014 film *Queen*. Therefore, the rumors and speculations in media reports about the proposed film being sequel are proved to be false. Plaintiff's case of the proposed film being a spiritual sequel has also not been accepted by this Court. Therefore, if any media reports have speculated that there is any connection between the two films

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merely because it features same actor-director duo and the film is female-centric, such perception apart from being false, cannot be a ground for granting injunction in favour of the Plaintiff. The producers by themselves have not made any public statement about any connection between the two films. When the suit was filed, the film was in the process of being shot. As of now, there is nothing concrete about the release of the film. Therefore, any erroneous speculation made by the media and the resultant rumors cannot be a ground for granting injunction in Plaintiff's favour when this Court is satisfied that there is absolutely no connection between the two films.

151) Coming to the aspect of social media posts, in my view, it is too dangerous to accept Plaintiff's case of passing off on the basis of posts put up by members of public in relation to the proposed film. It must be observed at this stage that most of the material sought to be produced by the Plaintiff in relation to social media posts by way of rejoinder is after filing of the suit and bar under Order XI of the Code may get attracted. Plaintiff will have to take out an application for relying on the material which existed before filing of the suit, but on which Plaintiff now seeks to place reliance. Detailed submissions are made by both the sides on issue of permissibility for the Plaintiff to rely upon additional documents in the light of bar under Order XI of the Code. In my view, it is not necessary to delve deeper in that aspect while considering Plaintiff's application for temporary injunction. That issue can be separately dealt with when Plaintiff seeks to rely upon those documents by filing an appropriate application. Since this Court is of the view that social media posts by themselves are not very relevant for the purpose of deciding temporary

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injunction, which issue is discussed in the paragraphs to follow, it is not necessary to delve deeper into the issue of permissibility for the Plaintiff to rely upon pre-existing material which is not produced along with the plaint in light of provisions of Order XI of the Code. The issue is accordingly kept open to be decided at the appropriate stage.

152) Coming back to the relevance of social media posts, it must be observed at the very outset that the same is a material which is extremely unreliable and lacks credence. Quite often, social media posts are contrary to the factual position and posted by persons whose identity cannot be verified. Many times, the posts are intended to sensationalize the issue. There is no responsibility on persons posting on social media and therefore, what is posted cannot be taken as creation of public perception about any theme or matter. In relation to intellectual property matters, it is too dangerous to place reliance on social media posts to infer confusion in the minds of the consumers/users/audience.

153) After going through the social media posts relied upon by the Plaintiff along with the rejoinder, it is seen that some of the material is posted by anonymous handles such as:

> Mother_Sweet2027, wickedServer, Cocokoko16, Upper_Reply_516, MyCuriousSelf04, Plane-Ad3097, Majestic_District_51, and Shaitaan Haiwan

154) The unreliability of the material is apparent from the fact that in one of the posts under the handle "*filmystan.official*", a poster of a (*non-existing*) film *Queen 2* is published, in which "Balaji Telefilms" is shown as the producer of the film. In the poster, while describing the film, it is stated

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that "the ***journey*** continues". In the poster, temples (*possibly at Varanasi*), Ganga Aarti, Dal Lake and Himalayan mountains are depicted which creates an impression as if Ms. Ranaut is traveling within India from temples in Varanasi to picturesque mountains in Kashmir. The handle *filmystan.official* then reports "*Queen 2 is finally happening*". Thus, the entire material in the post is false to the core and a figment of imagination of the concerned poster. The comments made on that post are relied on by the Plaintiff. This is the reason why I have held that it is extremely dangerous to rely upon social media posts, which lack authenticity and credence. A complete imaginary and false post is posted on the handle, on which members of public have freely commented.

155) Dr. Saraf has relied on three judgments of United States District Courts in support of his contention that it is dangerous to rely upon social media posts. Dr. Saraf has fairly brought to the attention of the Court the judgment in ***Arbaaz Khan Production Pvt. Ltd. vs. Northstar Entertainment Pvt. Ltd.***[36], in which this Court appears to have adversely commented about citing of judgments of US District Courts before the High Court. Mr. Khambata has fairly not objected to Dr. Saraf's reliance on judgments of US District Courts and he himself has relied on US District Court Judgment in ***Tri-Star Pictures*** (supra). In my view, if the judgments of the District Courts abroad have taken note of a new trend or a facet of development of law in relation to intellectual property rights, observations made in the judgment cannot be discarded altogether by the High Court only because the same are made by a District Court. Though the view may

[36] 2016 SCC OnLine Bom 1812

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not bind the High Court, there is nothing wrong to note sound legal reasoning in a District Court judgment. On many occasions, Indian Supreme Court and this Court have found it useful to refer to the views expressed by the District Courts of US. [SEE: ***Vijay Karia vs. Prysmian Cavi E. Sistem SRL***[37], ***Centrotrade Minerals & Metals Inc. vs. Hindustan Copper Ltd.***[38], ***Renusagar Power Co. Ltd. vs. General Electric Co.***[39], ***Vaishnav Sherilal Puri vs. Kishore Kundan Sippy***[40] and ***Rediff Communication Ltd. vs. Cyberbooth and Anr.***[41]]

156) Since the judgments of the US District Courts are on the issue of reliance on social media reports in the context of confusion in a trademark suit, in my view, it would be apt to take into consideration the views of the learned judge in ***Texas Precious Metals LLC*** (supra). The plaintiff therein had registered multiple trademarks including Texas theme imagery, including three marks of the silhouette of the State of Texas. The defendant contracted with a third-party to produce gold notes containing Texas-themed images, which plaintiff alleged were similar to its theme marks. One of the issues before the US District Court was whether there was any evidence of any actual confusion. Plaintiff relied on transcripts of 5 customer calls and screenshots of 3 social media posts from possible customers. It was held by the learned judge that plaintiff's reliance on social media posts invited as many questions as it answered. It was held

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37 (2020) 11 SCC 1
38 (2020) 19 SCC 197
39 1994 Supp. (1) SCC 644
40 (2006) SCC OnLine Bom 361
41 (1999) 4 Bom CR 278

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that the courts often view with skepticism the evidence of actual confusion from social media because social media posts typically lack information verifying user intent, existence and because of potential user bias. It is further held that the webpostings relied upon by the plaintiff themselves indicated that the buying public could distinguish the trademarked product from the allegedly infringing product. It was held that the social media posts do not necessarily reflect accurate sampling of the potential customers and there is always a tendency by social media users to be biased by the exposure to other social media comments. It is held thus:

> **Further, courts often view with skepticism evidence of actual confusion from social part because social media posts typically lack information verifying user intent and media in part existence and because of the potential for user bias.** See, e.g., Nordstrom, Inc. v. NoMoreRack Retail Grp., Inc., 2013 WL 1196948, at *6 (W.D. Wash. Mar. 25, 2013) ("[I]solated instances of confusion, particularly those cloaked by anonymity on the Internet, do not rise to the level of actual confusion on a purchasing decision"); Echo Drain v. Newsted, 307 F. Supp. 2d 1116, 1126 (C.D. Cal. 2003) (finding that "[a] few unauthenticated e-mails and webpostings standing alone are not sufficient evidence of actual confusion," especially when those webpostings indicate that the buying public can distinguish the trademarked product from the allegedly infringing product); Drake Univ. v. Des Moines Area Cmty. Coll. Found., 2024 WL 5440859, at 16 (S.D. Iowa Nov. 22, 2024) (rejecting social media posts as evidence of actual confusion because the posts "[did] not necessarily reflect an accurate sampling of the public or potential customers" and because of the tendency for social media users to be biased by exposure to other social media comments).
>
> *(emphasis added)*

157) In ***Nordstrom Inc.*** (supra), which judgment is referred to in the judgment of ***Texas Precious Metals LLC***, the plaintiff therein had filed a motion for preliminary injunction in connection with 3 trademarks relating to the retail concept of Nordstrom Rack. The defendants therein began operating a members-only shopping website under the URL *nomorerack.com* and also adopted a mark "*friendrack*". Nordstrom alleged

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that shoppers had confused Nordstrom Rack as being the source of Nomorerack's services. Reliance was placed on anonymous posts on the website where users were confused. Rejecting the theory of confusion based on social media posts, it was held thus:

> NoMoreRack contends that the examples are "ambiguous, unreliable, minimal and not truly demonstrative of actual confusion." Dkt. # 30 at 22. They are rather examples of "misdirected communications" resulting from carelessness and inadvertence, which are not probative of actual consumer confusion. Id. at 23. **The Court agrees that the isolated instances of confusion, particularly those cloaked by anonymity on the Internet, do not rise to the level of actual confusion on a purchasing decision.**
>
> In the first two instances, the shoppers contacted Nordstrom's customer service to inquire about items on NoMoreRack's site. "Katie" simply inquired about dress sizing, which is not indicative of a purchasing decision. "Stacey" spoke to a representative concerning a wrong order purchased through NoMoreRack. It is not clear whether "Stacey" initially bought the item believing it was Nordstrom Rack's, or whether she simply contacted the wrong customer service line. **As to the remaining examples, statements made in a public Internet forum may be relevant in proliferating confusion among potential customers and to some extent, influencing actual customers. However, it is unlikely that any serious consumer would be influenced to purchase on NoMoreRack, believing it is Nordstrom Rack, based on an anonymous post.**
>
> *(emphasis and underlining added)*

158) In ***Echo Drain*** (supra), the plaintiff therein had attempted to establish actual confusion *inter alia* on the basis of postings on the website. Holding that webpostings alone are not sufficient evidence of actual confusion, the US District Court has held as under:

> **4. . *Evidence Of Actual Confusion***
> Echo Drain offers no expert reports or surveys to prove that there is a likelihood of confusion between Echo Drain and Echobrain. (UF ¶ 97.) Rather, Echo Drain's evidence of actual confusion consists of four letters from friends and a few unauthenticated e-mails and postings to its website. (Exhs. 19-4 & 20-23 to Andrew Libert Decl.; Exh. 2 to Visentine Decl.) The four letters from friends of Echo Drain band members are not probative of actual confusion. *See, e.g., Japan*

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> *Telecom,* 287 F.3d at 874; *Pump v. Collins Management, Inc.,* 746 F. Supp. 1159, 1170 (holding that "[w]hile the fact that ... these incidents involved [friends of Ganci's] does not make [them] less relevant, it does make their testimony less probative of actual confusion"). **Moreover, the few unauthenticated e-mails and webpostings standing alone are not sufficient evidence of actual confusion.** *See Cohn v. Petsmart,* 281 F.3d 837, 843 n. 7 (9th Cir.2002) (holding that "Cohn received several dozen inquiries over the years about whether the parties were related. Without some other evidence of actual confusion, however, these inquiries are too ambiguous to demonstrate actual confusion"); *see also* J. McCarthy, 3 *McCarthy On Trademarks And Unfair Competition* § 23:16 (noting that "while enquiry evidence is admissible and relevant, standing alone with no other evidence it is insufficient proof of actual confusion"). **In fact, several of the website postings relied on by Echo Drain express the opinion that the Echo Drain and Echobrain marks are so different that Echo Drain will not prevail on its trademark claims.** For example, one posting states: "Looking to cash in on Jason Newsted/Echo Brain! Do you really think people are gonna confuse you???" In addition, none of the evidence offered by Echo Drain suggests that members of the buying public would *mistakenly purchase* an Echo Drain product believing it was an Echobrain product or vice versa. *See Sunenblick v. Harrell,* 895 F. Supp. 616, 631 (S.D.N.Y.1995) (noting that "the relevant confusion to be avoided is that which affects purchasing decisions, not confusion *1127 generally"). Accordingly, the actual confusion factor decisively weighs in favor of Defendants.
>
> *(emphasis added)*

159) In ***Indian Express and Commercial Ventures*** (supra), a coordinate bench of this Court refused to rely upon WhatsApp chats for recording a finding of actual confusion by holding in para 31 and 32 of the judgment as under:

> 31. Going one step further, though not required as one of the Ingredients of existence of goodwill has been answered against the Plaintiff, passing off requires proof of likelihood of confusion or deception. Firstly for confusion to exist, the Plaintiff must be shown to be popularly known by the abbreviation, which is not so and secondly even **to show confusion and deception, the reliance on few whatsapp chats is unacceptable**. The chats are undated and unsupported by pleadings as regards the dates and details. Neither are the chats substantiated by affidavits of the concerned individuals. I do not find any material to persuade this Court to come to a prima facie finding that if the relevant consumer base were to come across the acronym HOM, they would be confused as to whether the same refers to the Plaintiff or the Defendants.

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> 32. There is nothing produced before this Court to suggest that the Defendants made any attempted misrepresentation to portray its restaurant as that of the Plaintiff intentionally or unintentionally or put out a false representation. It is necessary to show false representation, even if unintentional, to the public that leads it to believe that the goods and services of the Defendant are that of the Plaintiff. **The sporadic instances by way of whatsapp chat which even prima facie are not substantiated are not enough to restrain the use of the mark by the Defendants.** It is necessary to have sufficient material on record than is placed by the Plaintiff in order to sustain a prima facie case of passing off.
>
> *(emphasis added)*

160) In my view therefore, social media posts, by themselves, are not sufficient for recording a positive finding of creation of actual confusion in minds of public that the two films have any connection with each other. In fact, it would be wrong on the part of the Court to assume that today's moviegoers are not less discerning and uninitiated that they are not smart enough in distinguishing between the two films. They are capable of understanding the distinction between the two products. They cannot be fooled only by stale media reports or misleading social media posts. They possess necessary intellect to draw distinction between the two films. It would be too dangerous for the courts to assume that today's moviegoers are not intellectual enough or so gullible that they would buy tickets by spending money on film of Defendant Nos.1 and 2 under a hope that they would see a derivative movie based on the 2014 film *Queen*. It is otherwise difficult to hold that the Plaintiff's 2014 film is so deeply engrossed in the minds of moviegoers that the moment they notice the word 'queen' in any other film, they would find themselves curious to watch that film under a hope that the new film is a sequel or derivative work of original film.

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161) As a matter of fact, some social media posts by themselves indicate that today's moviegoers do understand and possess necessary intellect to distinguish between the two films. In one of the social media posts, it is posted that the proposed film is not a sequel or derivative work. The person putting the post writes that the only two things common are Vikas Bahl and Kangana Ranaut and neither the title, character or story has anything to do with the 2014 film queen. The relevant comment is as under:

> So to break it down - its not a sequel. The only two things are Vikas Bahl and Kangana. Nor the title character or story has anything to do with queen. They have just used the queen 2 for marketing and create a buzz. But it isnt queen 2. Just the two ppl who were part of queen reuniting for another in dependant film. How Ranveer Sanjay Leela Bhansali worked on more than one film? Thats all the similarity here is two ppl. It never was a sequel. That was a PR gimmick to excite audiences. Film current title is flower (they may change) and character name is not even Rani. It is no sequel.

162) Another person has posted that proposed film is not a sequel, whose post read thus:

> They can just change name of kangana's character. Name the movie "Queen Too". Say it's not a sequel. Case over.

163) One more social media poster questioned as to whether Plaintiff has invented the word "*Queen*". The post reads thus:

> As if they invented the word "Queen" 😂 😂

164) Thus, today's moviegoers are smart enough to understand the distinction between the two films. Thus, apart from the social media posts being highly unreliable material, the posts relied upon by Plaintiffs themselves indicate that the proposed film cannot be a sequel of 2014 film

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Queen. In my view therefore, social media posts relied upon by the Plaintiff do not make out any case of creation of confusion so as to grant the relief of injunction in Plaintiff's favour.

165) Mr. Khambata has contended that since both the films *Queen* and *Queen Full Power* fall within the category of Hindi Commercial Feature Films and since their target audience is same, there is a likelihood of confusion on account of use of word *Queen* in title of the Defendants' film. According to him, while considering the likelihood of confusion, the stress is to be laid on common features rather than on distinctive features. It is contended that various social media platforms have already caused confusion in minds of cinemagoers. I am, however, not inclined to accept the contention. Except use of the word 'queen' in the title and engagement of Ms. Ranaut and Mr. Bahl, there are absolutely no common features between the two films. I have already rejected contention of social media posts and press media reports creating confusion in minds of moviegoers. In my view therefore, the test of likelihood of confusion of source/affiliation/sponsorship as led down by Delhi High Court in ***Kanungo Media*** is not satisfied in the present case.

WHETHER PLAINTIFF IS DEPRIVED FROM MAKING A SEQUEL

166) It is sought to be contended by Plaintiff that if Defendant Nos.1 and 2 are permitted to make and release the impugned film, Plaintiff would be permanently deprived of making a sequel of 2014 film *Queen*. The contention is preposterous to say the least since proposed film by Defendant Nos.1 and 2 is neither sequel/prequel nor a derivative work of

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the 2014 film *Queen*. It is difficult to comprehend as to how making of the impugned film can ever come in the way of plaintiff in making sequel of the film *Queen*. Plaintiff is free to make a sequel of its film *Queen* by taking the story further or backwards by making a prequel. It can create a derivative work based on the film by making another film involving a similar theme of woman coming from a conservative family and enriching herself through travel experiences and discovering her power and strength. It can make a spiritual sequel of the film *Queen*. It can feature Ms. Kangana Ranaut and use titles such as *Queen 2* to represent to the viewers that what is made is a derivative work/sequel/prequel. If any curiosity is left in the minds of cinemagoers to watch a sequel/derivative work of Plaintiff's film *Queen*, the same will not be lost on account of the film of Defendant Nos.1 and 2. Making of a film involving a kidnapping thriller by Defendant Nos.1 and 2 by engaging Ms. Kangana Ranaut as lead actor and/or Mr. Vikas Bahl as director does not prevent plaintiff's right to make sequel/prequel/derivative work based on its film *Queen*.

PLAINTIFF'S CASE OF BREACH OF CONTRACTUAL STIPULATIONS OF NOVATED CO-PRODUCTION AGREEMENT

167) Before considering the second point of breach of contractual covenants of novated CPA, it must be observed that though this was the main thrust of Plaintiff's challenge in the plaint, the same has taken a back seat after realization that Defendant No.1-Jiostar is not a successor to Viacom 18. As observed above, after noticing that Jiostar is not a successor to Viacom 18, Plaintiff has altered its stand by seeking to establish a link

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between Defendant No.1-Jiostar and the CPA by alleging that Jiostar is a veritable party to the CPA.

168) As observed above, the CPA was executed on 9 August 2012 between Viacom 18 and Phantom Films for co-production of the film *Queen*. It was novated on 20 January 2022, under which Plaintiff acquired rights, obligations and benefits in respect of the film *Queen* from Phantom Films. This was the change on Plaintiff's side. There was a change on Defendant No. 3 side as well. Viacom 18, who was the counterparty to the CPA and the novated CPA, transferred its business of production and distribution of motion pictures including all rights in the film *Queen* in favour of Digital 18. This is how all the intellectual property rights in the film *Queen* are now owned in 50:50 allocation by Plaintiff and Defendant No.3.

169) However, Defendant No.3 is not associated with making of the film *Queen Full Power* in any manner and Plaintiff does not dispute this position. In that sense, there is no direct allegation of association of Defendant No.3 in making of the impugned film. The film *Queen Full Power* is being co-produced by Defendant No.1-Jiostar and Defendant No. 2-Trigger Happy. Plaintiff, however, complains that Jiostar and Digital-18 are part of same economic entity. It is contended that Reliance Industries Limited (**RIL**) owns 83.61% shares in Studio-18 and about 16.34% shares in Jiostar. It is further contended that Studio-18 owns 46.82% shares in Jiostar. This is how it is contended by the Plaintiff that both Jiostar and Digital-18 are a part of same economic unit of RIL. It is, therefore, sought

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to be contended that Jiostar is a veritable party to the novated CPA executed between Plaintiff and Defendant No.3.

170) In support of plea of Jiostar being a veritable party to the novated CPA, reliance is placed by Mr. Khambata on judgment of Constitution Bench in ***Cox and Kings*** (supra). Relying on ratio of the judgment in ***Cox and Kings,*** it is contended by the Plaintiff that there are four factors which make Jiostar a veritable party to the novated CPA viz., (i) Jiostar's corporate and commercial relationship with Digital 18, (ii) Jiostar negotiating matters arising out of the contract, (iii) Jiostar performing functions contemplated by the contract, and (iv) Jiostar's conduct, when cumulatively viewed, disclosing mutual intention that Jiostar has participated in performance and be bound by the contract. Plaintiff has cited several instances to establish Jiostar negotiating and proposing to conclude the exploitation transactions under clauses 5.1 and 5.3 of the novated CPA. Plaintiff has accordingly contended that Jiostar has performed exploitation functions of Digital-18 under clauses 5.1 and 5.3 of the novated CPA, performed statement obligations under clause 13.3, administered Plaintiff's entitlement and payment under clause 7 and asserted control over payment for its own commercial purpose.

171) In my view, it is not necessary to delve deeper into the aspect of Jiostar being a veritable party to the contract in the facts of the case. Even if it is assumed *arguendo* that Jiostar is indeed a veritable party to the novated CPA, Plaintiff would still not be entitled to secure injunction as sought for in the light of the fact that it has thoroughly failed to prove that

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the proposed film of Defendant Nos.1 and 2 *Queen Full Power* is a derivative work or sequel or prequel to Plaintiff's 2014 film *Queen*. Once it is *prima facie* established that the proposed film is not a derivative work or sequel or prequel, the contention of breach of contractual covenants under the CPA fails. In that sense, even if the proposed film was to be made by Defendant No.3, who is made counterparty to the novated CPA, Plaintiff's case of breach of contractual obligations would still fail as the proposed film is not a derivative work/sequel/prequel. Therefore, it is not necessary to burden this judgment any further on the aspect of Plaintiff's allegation of Jiostar being a veritable party to the novated CPA. The issue can be decided at the time of trial of the suit.

FAILURE TO SATISFY THE CLASSIC TRINITY TEST FOR PASSING OFF

172) It is well established that a claim for passing off requires the Plaintiff to meet the three-tiered framework of (i) actionable goodwill in source identifier/mark, (ii) actionable similarity i.e., misrepresentation by the defendant, and (iii) injury flowing from the previous two factors. Each independent test must be established and failure to establish even one test entails rejection of claim for passing off. If actionable goodwill itself is not shown, the inquiry must end there.

173) In the present case, the Plaintiff is unable to establish the first test of actionable goodwill as Plaintiff is unable to demonstrate that it alone has goodwill in the word 'queen' used in title of its film '*Queen*'. Plaintiff's claim for actionable goodwill is premised on acquisition of secondary meaning to word 'queen' used in title of its film. Plaintiff has

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failed to demonstrate that the word 'queen' has acquired secondary meaning even in relation to films. In fact, Plaintiff itself disclaims any monopoly in word 'queen' *per se*. In the note submitted by Mr. Khambata on passing off, there is express admission that the passing off case is not a claim to monopolise the dictionary word 'queen'. However, Plaintiff attempts to gather actions of the Defendants for the purpose of establishing his proprietorship in respect of the title of the film. Plaintiff has relied on factors such as engagement of lead actress and director duo for the film '*Queen Full Power*', seeks to compare the two works to draw thematic similarity, relies on public statements made to assume possibility of sequel, etc. Reliance on these factors, either individually or in combination, is impermissible to show any evidence of proprietorship or goodwill.

174) As held above, Plaintiff cannot claim any proprietary right in engagement of individuals such as Ms. Kangana Ranaut or Mr. Vikas Bahl and in rejoinder it expressly admits so. Plaintiff does not claim any monopoly even to their engagement together. Plaintiff also disclaims monopoly in the theme. Thus, despite disclaiming any proprietorship in the word 'queen', in engagement of actors/individuals and in the theme, Plaintiff seeks to combine these very integers for setting up a case of proprietorship. Once monopoly is not claimed in dictionary word 'queen', Plaintiff cannot add such integers for the purpose of establishing a claim for actionable goodwill. Thus, Plaintiff fails in the first test of actionable goodwill and inquiry into the second test is not even necessary.

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175) However, even if the second test of misrepresentation is applied, the Plaintiff fails therein as it has failed to establish any actionable similarity in the two films. There is absolutely no possibility of the viewers getting confused by associating the proposed film '*Queen Full Power*' with the film '*Queen*'. Even the third test of injury is not met. Plaintiff itself has not made any derivative work/sequel/prequel based on the film '*Queen*'. As observed above, Plaintiff is not prevented in any manner from making its own derivative work, sequel, prequel, spiritual sequel of the film. It has not actually suffered any damage by Defendants' actions. Its film was released 12 years ago and the same is now available on OTT platforms. Plaintiff has not demonstrated as to how the viewership of its film on OTT platforms would be adversely affected by release of the impugned film.

176) Thus, Plaintiff has failed to establish classical trinity test for establishing the claim of passing off. There is no prima facie case in favour of the Plaintiff either for the claim for passing off or for the claim for contractual breach.

NO IRREPARABLE INJURY

177) As observed above, Plaintiff's case, as originally filed as well as after amendment, is essentially speculative. The Plaintiff embarked upon a roving inquiry by raising conjectures about the film of Defendant Nos. 1 and 2. As of now, there appears to be nothing common between the two films except engagement of same lead actor and director and use of word 'queen' in the title. If after Defendants' film is released, Plaintiff finds any similarity in the two films or can establish that the film of Defendant

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Nos. 1 and 2 is sequel to or derivative work based on Plaintiff's 2014 film *Queen* or if the synopsis tendered by the Defendant No.1 turns out to be false or if Defendant Nos. 1 or 2 or anyone on their behalf are found to be promoting the new film as a sequel or a derivative work of the film *Queen*, Plaintiff can always claim damages from Defendant Nos. 1 and 2. There is an express prayer in the plaint for recovery of damages of Rs.253.55 crores. It therefore cannot be contended that Plaintiff would suffer irreparable loss if temporary injunction sought for is not granted.

BALANCE OF CONVENIENCE IN FAVOUR OF DEFENDANTS AND AGAINST PLAINTIFF

178) The case does not involve a situation where Plaintiff is in the process of making a sequel or derivative work based on the film *Queen*. Plaintiff's film was released on 7 March 2014. By now, more than 12 years have passed. During these 12 years, no attempt is made by Plaintiff to make any sequel or derivative work in respect of the film *Queen*. This *prima facie* implies possible absence of any opportunity to encash on alleged goodwill of the film *Queen*. It otherwise becomes difficult to believe at this juncture that Plaintiff's film *Queen* is still fresh in the mind of cinemagoers and if Defendant Nos.1 and 2 make the impugned film, the Plaintiff would lose opportunity to make a sequel / derivative work based on the film *Queen*. On the other hand, if Defendant Nos. 1 and 2 are restrained from releasing or exploiting the proposed film *Queen Full Power*, they would suffer immense losses. The principal photography of the film is already complete. Therefore, the harm that is likely to be caused to Defendant Nos. 1 and 2 upon grant of temporary injunction would be way higher than the one that

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may be caused to Plaintiff by refusal of injunction. Thus, the balance of convenience is tilted against the plaintiff and in favour of Defendant Nos.1 and 2.

ORDER

179) In view of the above discussion, I am of the view that Plaintiff has failed to make out a case for grant of temporary injunction as sought for in the Interim Application.

180) Interim Application is accordingly **dismissed**.

181) It is clarified that the observations made in the Order are *prima facie* and shall not affect the trial of the Suit. Costs of Interim Application shall be the costs in the Suit.

[SANDEEP V. MARNE, J.]

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