$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 22.01.2026
Judgment pronounced on: 20.03.2026

\+ FAO(OS) (COMM) 268/2022, CM APPL. 18933/2023

TV TODAY NETWORK LIMITED .....Appellant

Through: Mr. Hrishikesh Baruah, Mr. Kumar Kshitij, Ms. Pragya Agarwal, Mr. Yashaswy Ghosh and Ms. Nishtha Sachan, Advs.

versus

NEWS LAUNDRY MEDIA PRIVATE LIMITED AND ORS .....Respondent

Through: Mr. Rajshekhar Rao, Sr. Adv. with Ms. Bani Dikshit and Mr. Uddhav Khanna, Advs. for R-1 to R-9

Ms. Mamta Rani Jha, Ms. Shruttima Ehersa, Mr. Rohan Ahuja and Ms. Amishi Sodani. Advs. for R-10

Mr. Deepak Gogia, Mr. Aadhar Nautiyal and Ms. Shivangi Kohli, Advs. for R-12

\+ FAO(OS) (COMM) 303/2022

NEWS LAUNDRY MEDIA PVT LTD .....Appellant

Through: Mr. Rajshekhar Rao, Sr. Adv. with Ms. Bani Dikshit and Mr. Uddhav Khanna, Advs.

versus

TV TODAY NETWORK LTD AND ORS & ORS ....Respondents

Through: Ms. Mamta Rani Jha, Ms. Shruttima Ehersa, Mr. Rohan Ahuja and Ms. Amishi Sodani. Advs. for R-10

Mr. Deepak Gogia, Mr. Aadhar Nautiyal and

Ms. Shivangi Kohli, Advs. for R-12

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 20.03.2026

OM PRAKASH SHUKLA, J.

1. The present cross appeals have been preferred under Order XLIII Rule 1 of the Code of Civil Procedure, 1908[1], assailing the judgment and order dated 29.07.2022 passed by the learned Single Judge of this Court, in CS (COMM) No. 551 of 2021, whereby the application filed by the Plaintiff/Appellant under Order XXXIX Rules 1 and 2 of the CPC was dismissed.

2. For the sake of convenience, the parties to the present appeal are referred to by their respective designations in the proceedings before the learned Single Judge. Thus, the "Appellant" is referred to as "Plaintiff" and the "Respondents" are referred to as "Defendants".

Brief factual matrix

3. Shorn of unnecessary details, the brief factual matrix necessary for the adjudication of the present dispute is as follows.

[1] "CPC", hereinafter

4. The Plaintiff is a company incorporated under the Companies Act, 1956 and operates prominent television channels, namely, "AajTak", "AajTak HD", "India Today Television", and "Good News TV", as well as several social media platforms. The Plaintiff is part of the "India Today Group" and is engaged in broadcasting, publishing, e-commerce, and other related activities through its constituent companies. The Plaintiff claims that its channels and allied services have become household names, enjoying wide recognition among the public at large.

5. The Defendant No. 1 is a private limited company, incorporated on 04.05.2011 under the Companies Act, 1956. The Defendant avers that it is an independent, reader-supported news media company and claims to be an innovative news and media house, founded on the mission of reporting, critiquing, and reviewing news media.

6. In simple terms, the present dispute concerns alleged disparagement and defamation of the Plaintiff company by the Defendants. According to the Plaintiff, the Defendants, through various programmes aired on their social media and digital platforms under the name "Newslaundry" have tarnished the reputation of the Plaintiff and defamed it.

7. In addition to the allegations of defamation and disparagement, the Plaintiff claims that the Defendants have infringed the Plaintiff's copyright by reproducing and publishing portion of original works and telecasts from the Plaintiff's news channels.

8. Thus, the Plaintiff filed an application under Order XXXIX Rules 1 and 2 of the CPC seeking to restrain the Defendants from infringing the Plaintiff's copyright and sought the removal of defamatory or disparaging content, along with other appropriate relief(s) before the learned Single Judge.

9. The learned Single Judge observed that a *prima facie* case of defamation and disparagement was made out against the Defendants. However, the Court held that the balance of convenience lay in favour of the Defendants and that no irreparable injury would be caused to the Plaintiff in the absence of an interim injunction.

10. Consequently, the application under Order XXXIX Rules 1 and 2 of the CPC was dismissed.

11. Hence, the present cross-appeal has been filed by the Plaintiff challenging the dismissal of the injunction application.

12. The Defendants have challenged the impugned judgment, particularly with respect to the finding that a *prima facie* case of defamation and disparagement was made out against them.

Rival Submissions Before Us

13. Mr. Hrishikesh Baruah, learned counsel for the Appellant/Plaintiff,

submitted that the commercial product of the Plaintiff consists of original 'cinematograph films' and 'sound recordings', which are owned by the Plaintiff as its copyrighted works. To substantiate the claim of copyright ownership, Mr. Baruah referred to the significant expenditure incurred in creating these works, as purportedly evidenced by a Chartered Accountant's[2] certificate, indicating the total production cost amounting to several crores for FY 2019-2020 and Rs. 92.49 crores for FY 2020-2021. It was also asserted that there has been no denial of this assertion by the Defendants.

14. Therefore, asserting copyright ownership, it was argued that the Defendants have failed to comply with section 52A of the Copyright Act, 1957[3]. Specifically, it was contended that Section 52A mandates a declaration by the person who made the video film, confirming that the necessary license or consent has been obtained from the copyright holder. However, according to Mr. Baruah, the Defendants have failed to comply with this requirement, thus committing copyright infringement.

15. In response, the Defendants asserted that the work of the Plaintiff was "transformed" by them, thus negating any claim of copyright infringement.

16. In reply, Mr. Baruah emphasized that the defence of "transformation" is not available to Defendants under Indian law. It was

[2] "C.A", hereinafter
[3] "Copyright Act", hereinafter

argued that the defence of transformation is only applicable when, (i) The original copyrighted material loses its identity, (ii) The material used remains identifiable as the Plaintiff's copyrighted work, and its identity is intact, (iii) Indian law does not recognize a transformative use test, And (iv) The mere addition of copyrighted material to other content does not absolve the Defendants from liability for copyright infringement.

17. Thus, Mr. Baruah asserted that, in this case, the original version of the copyrighter work remains clear and evident, and the Defendants cannot escape liability by claiming "transformation".

18. On the Defendants' defence of fair dealing, the following points were submitted by the Plaintiff:

i. A party is permitted to copy or use a copyrighted material only when such copying is absolutely necessary. In support of this argument, reliance was placed on ***Super Cassettes Industries Limited v. Mr. Chintamani Rao & Ors***.[4].

ii. The Defendants' use of the Plaintiff's copyrighted news broadcasts does not qualify as "fair dealing" because the Defendants are rival traders using the Plaintiff's material for their own commercial benefit, which is not permissible under the law as fair use.

[4] **2012 (49) PTC 1 (Del.), Para 27-28**

iii. The doctrine of fair dealing must be judged by the extent and purpose of the use and whether the use was necessary for reporting current events. Applying this test, the Plaintiff argued that the Defendants' videos fail because they neither genuinely report current events nor amount to a critique or review of the Plaintiff's broadcasts.

iv. Moreover, Section 52(1)(a) read with Section 52(1)(m) of the Copyright Act limits the protection for news-related use to criticism or review on current economic, political, social, or religious topics, which is absent in the present case. Hence, the Defendants' actions constitute copyright infringement and attract liability under Sections 63 and 63A of the Copyright Act.

v. It was also argued that if the copyrighted material were removed, the Defendants' videos would fail to attract subscribers and viewers. This, the Plaintiff contended, demonstrates that the Defendants are dishonestly using copyrighted material for their own benefit, thereby necessitating an injunction.

vi. In case where copyright infringement is '*prima facie'* established, mere delay in seeking relief does not defeat the Plaintiff's claim for injunction.

19. Regarding commercial disparagement, Mr. Baruah broadly submitted the following:

i. The Respondent No.1 has engaged in commercially disparaging the products of the Plaintiff by making disparaging remarks such as "**Damn this is so bad, Gold Standard. Shit Standard**" and calling the Plaintiff's reporters "**Shit Reporters**"; "**Your punctuation is as bad as your journalism**". Additionally, the Plaintiff's anchors are described as "**high on weed or opium**" and "**please hold our hand and take us through the painful journey of watching a channel**". The news delivered by the Plaintiff's anchor is described as "**method anchoring**" and the News Director of the Plaintiff's channel is referred to as "**pretending to be a journalist**" and a "**nautanki director**".

ii. Mr. Baruah contended that while a competitor may make positive statements about its own products, it cannot falsely disparage the products or services of others by making claims of inferiority, undesirability, or bad quality. The Defendants' statement, according to Mr. Baruah, are patently false and vicious, which have resulted in the commercial disparagement of the Plaintiff's products.

20. Lastly, the Plaintiff alleged defamation, with the following submissions:

i. The Plaintiff contended that the Defendants accepted in their written statement that the videos posted by them contained defamatory content.

ii. Mr. Baruah submitted that specific defamatory statements include, '*Ekta Kapoor, I think you found your next K serial actress*', And referring to one of the news anchors of the Plaintiff as a '*gunda*' ['Goon'].

iii. It was further submitted that following the death of one of its news anchors due to the COVID-19 pandemic, the Defendants posted a video where they stated, '**on such occasions, keep your emotions under control. If your job is to give news, then give the news with its dignity**'. The Defendants also described the Plaintiff's inability to maintain the dignity of the deceased anchor, asserting, '**Aaj Tak was not able to take professional attitude, nor could it maintain the dignity of death of its anchor'**.

21. *Per contra*, Mr. Rajshekhar Rao, learned Senior Counsel appearing for the Defendants, submitted that the finding of the learned Single Judge regarding the "balance of convenience" and "irreparable loss" does not warrant any interference. In support of this submission, he highlighted the following points:

i. Mr. Rao asserted that Defendant No. 1 has raised the "defence of truth", which is an absolute defence to defamation. He contended that, in light of this defence, no interim injunction can be issued against the Defendants.

ii. Mr. Rao argued that, without trial, there can be no determination of the Plaintiff's case. Specifically, issues such as fair dealing (in the context of copyright infringement), the absence of malice and truth (regarding defamation), and the intent/manner of the storyline (on the issue of disparagement) can only be conclusively proved through a fact finding trial.

iii. Mr. Rao further submitted that Defendant No. 1 has a strong case for trial, as the aforementioned issues cannot be conclusively established at the interim stage. He argued that, given the complexity of these issues, a higher threshold must be met by the Plaintiff to obtain a prohibitory injunction.

iv. It was pointed out that some of the impugned videos date back to 2018, indicating that there is no urgent need to disturb the *status quo*. Therefore, the Defendants contended that no immediate injunction is warranted.

v. Mr. Rao emphasized that any injury to the Plaintiff, if at all, can be compensated through damages, which have already been sought in the suit. He argued that such injury, therefore, does not

constitute irreparable harm.

vi. The learned senior counsel contended that the balance of convenience lies in favour of Defendant No. 1, and not with the Plaintiff, and that this favours the Defendants' position in the present matter.

vii. Lastly, Mr. Rao argued that extraordinary circumstances are required for any prohibitory injunction that would muzzle the right to freedom of speech and expression of Defendant No. 1, who operated within the realm of satire, parody, fair dealing (in the form of review and criticism), and without any ill-intention towards the Plaintiff. He further asserted that such extraordinary circumstances do not exist in the present case.

22. Replying to the assertions made by the Plaintiff regarding copyright infringement, Mr. Rao submitted that the learned Single Judge correctly observed that the issue of 'fair dealing' should be assessed not only under Section 52 of the Copyright Act but also under Section 39. Further, the following points were raised concerning copyright infringement:

i. Mr. Rao argued that the Defendant No. 1's shows fall squarely within the scope of "fair dealing" as the dominant purpose of the shows is to provide a review, comment, criticism, and critique of televised content. These activities are protected under Section 52 of the Copyright Act.

ii. It was further submitted that there is no malice attributable to Defendant No. 1. Malice or bad faith is a matter of evidence and can only be conclusively determined at trial.

iii. Mr. Rao emphasized that Defendant No. 1's programmes are aired substantially after the Plaintiff's broadcasts, meaning that there is no plausible case of "stealing" contemporaneous viewership. He also argued that there is no credible basis to infer revenue loss or diversion of audience from the Plaintiff due to the Defendants content.

iv. Mr. Rao contended that a prohibitory injunction could not have been granted without a complete examination of each impugned video in its entirety (rather than merely select excerpts). He suggested that such an assessment would need to consider: (i) The quantum and qualitative value of the extract taken vis-à-vis the accompanying criticism or commentary; (ii) The purpose and character of the use (whether it is review, critique, or in the public interest); (iii) The likelihood of market substitution or competition between the two works; (iv) The intent, manner of use, storyline, and overall structure of the Defendant No. 1's work.

v. Mr. Rao asserted that there was no "substantial copying" by Defendant No. 1. He argued that the content is transformative

and value-additive, involving independent script-writing, selection, sequencing, editing, and substantial curation across multiple sources, resulting in a distinct work.

vi. It was further contended that there was no "usurpation" of the Plaintiff's copyright, as Defendant No. 1 never presented the Plaintiff's work as its own. The Defendant gave due credit while using only limited extracts necessary for critique and review.

vii. Mr. Rao argued that the allegation of "piggy-backing" is misconceived, as Defendant No. 1 created an original programme with its own theme, structure, and voice. The programme is rooted in satirical journalism and media accountability, and is therefore a new expressive work, not a substitute for the Plaintiff's show.

viii. It was emphasized that review and criticism must be bona fide and not malicious. Therefore, where the intent is the dissemination of information and commentary in the public interest (and not merely private gain), such use is protected under Section 52. Reliance was placed on decisions in ***Super Cassettes v. Hamar TV*** [5] and ***Super Cassettes v. Chintamani Rao*** [6].

23. Mr. Rao submitted that the Learned Single Judge's prima facie

[5] **(2010) SCC OnLine Del 2086**
[6] **(2011) SCC OnLine Del 4712**

finding on defamation is unsustainable. He argued that since Defendant No.1 characterises its content as satire, it is not necessary at the interim stage to "segment" each programme into satire, commentary, or justified criticism. He further asserted that the defence of truth is raised, and truth is a complete defence to defamation. Since truth cannot be adjudicated without evidence, no interim prohibitory injunction could be granted without a full trial.

24. It was urged that fair criticism, even if expressed in harsh language, is not defamation. Where the dominant character of the work is satire or commentary on matters of public interest, defamation and disparagement cannot be made out at an interlocutory stage.

25. Mr. Rao submitted that Defendant No.1's works satisfy the constitutional test for protected speech, as laid down by the Supreme Court in ***Indibly Creative (P) Ltd. v. Govt. of W.B***.[7]. He emphasized that courts must exercise close scrutiny before restraining speech, particularly where the matter involves public interest. He further pointed out that no prima facie financial impact has been shown by the Plaintiff. The Plaintiff's revenue is primarily advertisement-driven, and there is no concrete pleading or proof of revenue loss or advertiser impact.

26. On the issue of commercial disparagement, Mr. Rao submitted that no case has been made out. He contended that the parties operate in different spheres and are not market competitors. The Plaintiff is a TV

[7] **(2020) 12 SCC 436 (para 16)**

news/electronic media broadcaster, whereas Defendant No. 1 operates on social-media platforms.

27. Mr. Rao emphasized the fundamental difference in business models. The Plaintiff is advertisement-dependent, with revenues driven by advertising and TRP/viewership, whereas Defendant no. 1 is subscription-based, with revenues primarily from paying subscribers seeking curated journalism and content.

28. Mr. Rao contended that intent is the key test for disparagement. In reliance on ***Pepsi Co. Inc. v. Hindustan Coca Cola Ltd***[8], he submitted that the absence of intent to secure a commercial advantage by denigrating a rival means that the allegation of disparagement cannot be sustained. He asserted that Defendant No. 1's purpose is social commentary, critique, and public-interest journalism, not the pursuit of advertising-led viewership or revenue.

29. Lastly, it was submitted that the plaint is not maintainable as a "composite suit" before the Commercial Court. It was argued that only the copyright prayer arguably fall within Section 2(1)(c) of the Commercial Courts Act, 2015, and the remaining prayers for defamation and disparagement do not constitute a "commercial dispute". ***Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP***[9] was cited to emphasize that the Commercial Courts Act is designed to fast-track pure commercial disputes and cannot be used to bring non-commercial disputes before the

[8] (2003 (27) PTC 305 (Del), para 12),
[9] (2020) 15 SCC 585

commercial forum.

Analysis

30. We have heard the learned counsels for both parties, reviewed the relevant judgments and perused the record placed before us.

Scope of Interference

31. At the outset, we must note that this court is conscious of the limited scope of interference in matters concerning interim orders. The role of an appellate court is not to act as a court of first instance. Instead, interference is warranted only where the discretion exercised by the learned Single Judge is shown to be arbitrary, capricious, perverse, or based on a misapplication of settled legal principles, or where material evidence has been ignored. Also, mere possibility of a different view is not sufficient ground for interference[10].

32. Thus, the present appeal will therefore be examined in light of the settled principles governing the grant of interim injunctions in intellectual property[11] disputes.

JURISDICTION

33. The Defendants have raised an objection with regard to the

[10] **Wander Ltd v Antox India (P) Ltd; 1990 Supp SCC 727**
[11] "IP" hereinafter

jurisdiction of the Commercial Court. We deem it appropriate to address this objection before adjudicating on the merits of the appeal.

34. The learned Single Judge observed that copyright infringement claims fall within the definition of a "commercial dispute" under Section 2(1)(c)(xvii) of the Commercial Courts Act, 2015. The Court held that the proper forum for such relief is the Commercial Court. Further, once an intellectual property claim forms part of a suit, any other reliefs "arising out of" the same intellectual property rights can also be tried by the Commercial Court.

35. The learned Single Judge explained that the term "arising out of" should be interpreted broadly. According to the learned single judge, it includes situations where non-IP claims are closely connected with the IP dispute. Therefore, it was concluded that the Commercial Court had the jurisdiction to try the entire suit.

36. While the Defendants did not orally challenge the learned Single Judge's finding on jurisdiction, they raised objections in their written submissions. They argued that the Plaintiff cannot combine a copyright infringement claim with non-commercial claims like defamation and disparagement and still file the suit in the Commercial Court. According to the Defendants, only the copyright prayer fits the definition of a "commercial dispute" under Section 2(1)(c) of the Commercial Courts Act and the other reliefs do not. They contended that the entire suit should, therefore, be transferred to an ordinary civil court. The Defendants added

that permitting such mixing of claims would defeat the very purpose of the Commercial Courts Act.

37. The Defendants further argued that only commercial suits pertaining to immovable property, as under Explanation A to Section 2(1)(c), can be filed in Commercial Courts. Reliance was placed on the case ***Ambalal Sarabhai (supra)*** to assert that the object of the Act is to fast-track pure commercial disputes. Allowing non-commercial claims to be bundled together in composite suits, they argued, would clog the commercial docket and defeat the Act's intended purpose.

38. After hearing the learned Counsels on behalf of the defendants, and applying our mind, we respectfully disagree with their submissions.

39. Upon reading Section 2(1)(c) of the Commercial Courts Act, it is evident that the definition of a "commercial dispute" includes a wide range of matters, including disputes related to intellectual property rights (IPRs).

40. Section 2(1)(c) of the Commercial Courts Act, reads as follows:

> *"(c) "commercial dispute" means a dispute arising out of—*
> *(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;*
> *(ii) export or import of merchandise or services;*
> *(iii) issues relating to admiralty and maritime law;*
> *(iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;*
> *(v) carriage of goods;*

(vi) construction and infrastructure contracts, including tenders;
(vii) agreements relating to immovable property used exclusively in trade or commerce;
(viii) franchising agreements;
(ix) distribution and licensing agreements;
(x) management and consultancy agreements;
(xi) joint venture agreements;
(xii) shareholders agreements;
(xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;
(xiv) mercantile agency and mercantile usage;
(xv) partnership agreements;
(xvi) technology development agreements;
(xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;
(xviii) agreements for sale of goods or provision of services;
(xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;
(xx) insurance and re-insurance;
(xxi) contracts of agency relating to any of the above; and
(xxii) such other commercial disputes as may be notified by the Central Government.
Explanation.–A commercial dispute shall not cease to be a commercial dispute merely because—
(a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;
(b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions."

(emphasis supplied)

41. Upon a plain reading of the above, it can be understood that Section 2(1)(c) defines a "commercial dispute" as a dispute arising out of several categories, including intellectual property rights such as trademarks,

copyrights, patents, etc. Notably, the explanation in Section 2(1)(c) clarifies that a commercial dispute does not cease to be a commercial dispute merely because it involves a claim related to immovable property or because one of the parties is the State. The explanation serves to prevent challenges to the jurisdiction of the commercial court by adding peripheral claims related to immovable property.

42. The explanation make it clear that once a dispute qualifies as a commercial dispute, it does not lose its status as such merely because it involves ancillary issues, such as immovable property, or because the State is involved as a party. It does not, however, restricts the jurisdiction of the Commercial Courts regarding composite suits that involve both commercial and non-commercial claims. The explanation provided does not restrict the jurisdiction of the Commercial Courts by proscribing composite suits that involve both commercial and non-commercial claims.

43. Thus, the reliance placed on ***Ambalal Sarabhai (supra)*** by the Defendants is misplaced. In that case, the Supreme Court clarified that only disputes directly related to commercial matters fall within the jurisdiction of the Commercial Courts. However, the Court did not hold that composite suits, where commercial and non-commercial claims are joined, are prohibited. This judgment merely underscores the importance of ensuring that only disputes of a commercial nature are heard by Commercial Courts.

44. Based on the above analysis, we find no merit in the Defendants'

objections to the jurisdiction of the Commercial Court. The jurisdictional aspect has been correctly addressed by the learned Single Judge. Thus, we reject the Defendants' submission that the entire suit should be transferred to an ordinary civil court.

45. With the jurisdictional issue now settled, we proceed to consider the subject matter of the dispute and the other issues raised by the parties in the appeal.

Copyright Infringement

46. The copyright of the Plaintiff in the present appeal is not under challenge. On the other hand, the Defendants have raised the defence of "fair dealing" under copyright law.

47. Before delving into the facts of the present case, it is imperative to first discuss the doctrine of fair dealing under copyright law.

48. The concept of "fair dealing" is not specifically defined in the Copyright Act. In ordinary course, Indian courts assess fair dealing cases on a case-to-case basis. Section 52 of the Act provides specific exemptions that are not to be construed as infringement, the same reads as follows:

> *"Section 52(1)- The following acts shall not constitute an infringement of copyright:*
>
> *[(a) a fair dealing with any work, not being a computer programme, for the purpose of:*
>
> *(i) private or personal use, including research;*

> *(ii) criticism or review, whether of that work or of any other work;*
> *(iii) the reporting of current events and current affairs, including the reporting of a lecture delivered in public."*
> *(emphasis supplied)*

49. Thus, it is clear that the fair dealing of a work for criticism or review is protected under the Act but any reproduction for purposes not enumerated within the statute would not protected.

50. The fair dealing provisions are also found in the context of broadcasting rights. Section 39 of the Copyright Act reads as follows:

> *"Section 39. Acts not infringing broadcast reproduction right or performer's right: No broadcast reproduction right or performer's right shall be deemed to be infringed by:*
> *(a) the making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of bona fide teaching or research; or*
> *b) the use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide review, teaching or research; or*
> *(c) such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under section 52."*

51. In ***Wiley Eastern Ltd. & Ors. vs. Indian Institute of Management*** [12], this Court observed that the primary purpose of Section 52 is to protect the freedom of expression guaranteed under Article 19(1)(a) of the Constitution of India. The relevant observation reads as follows:

[12] **61 (1996) DLT 281 (DB)**

> *"19. The basic purpose of Section 52 is to protect the freedom of expression under Article 19(1) of the Constitution of India- so that research, private study, criticism or review or reporting of current events could be protected. Section 52 is not intended by Parliament to negatively prescribe what infringement is.."*

52. In ***ESPN Star Sports* v *Global Broadcast New Ltd***[13]**,** this Court, speaking through Justice S. Ravindra Bhatt (as he then was), held that while determining whether a 'use' constitutes fair dealing, the Court must consider the surrounding context, the extent and length of the material used, and the purpose for which it is used. The Court emphasized that no universal standard can be applied across all cases, and the enquiry must be fact-specific, requiring a determination based on the specific circumstances of each case.

53. In ***Super Cassettes Industries Limited vs. Mr. Chintamani Rao & Ors.***[14], the learned Single Judge of this Court gave the following observation on the fair dealing doctrine**:**

> *"27. Before I proceed to deal with the case law cited by the parties and examine the position on facts, I think it appropriate to make a few preliminary observations according to my understanding of the statutory position on a plain reading of Section 52 of the Act.* ***What Section 52(1)(a) permits is that the literary, dramatic, musical or artistic work may be reproduced without fear of infringement of copyright in such works, if such reproduction is a fair dealing of the copyright work in question, for the purpose of criticism or review whether of that work or any other work.*** *Therefore, firstly it has to be —fair dealing of the work in question. This means that the* ***dealing with the copyrighted work is not an unfair dealing. Only that part of the literary, dramatic, musical or artistic work may be utilized for the***

[13] **(2008) 38 PTC 477 (Del)**
[14] **2012 (49) PTC 1 (Del.)**

> ***purpose of criticism or review, which is absolutely necessary, and no more****. The purpose - ostensibly or obliquely, should not be to ride piggy back on the work of another. The focus of attention, and interest of the producer/author of the work and the viewer/listener should not be the work of another, but the work created by the person who may, bona fide be using the work of another for the specific purpose of criticism or review of that work, or of any other work. The work of another cannot be used for any other purpose. The copyright protected work of another cannot be used out of context.* ***There has to be an intellectual input and an original mental exercise undertaken by the person bona fide lifting or copying the literary, dramatic, musical or artistic work, which should involve either the criticism or review of the lifted/copied work, or of any other work****. **Copying of the work of another for any other purpose, such as, to make one's own programme more interesting, attractive or enjoyable is not permitted**. The underlying theme and focus of; and, in substance, the* ***new work should necessarily be an exercise to either criticize or review either the bona fide copied work, or any other work****. A person cannot, in the name of ―fair dealing, lift or copy literary, dramatic, musical or artistic work of another to such an extent that it ceases to be a ―fair dealing and becomes a blatant act of copying the work of another".*
>
> *(emphasis supplied)*

54. From the foregoing legal principles and statutory framework, it can be summarised as follows: (i) Section 52 allows the reproduction of parts of a copyrighted work without infringement, provided the use is a genuine "fair dealing" for criticism or review, (ii) The use must not be excessive or exploitative and should only include the portion of the original work necessary for the critique or review, (iii) The user cannot "piggyback" on another's work to attract attention or make their own work more attractive, (iv) There must be real intellectual input, and the purpose of the use must genuinely be criticism or review, not simply a disguised act of copying, (v) If the amount or manner of use exceeds what is necessary for criticism or review, it ceases to be fair dealing and constitutes infringement.

55. Having understood the doctrine of fair dealing, we now turn to its applicability in the present case as assessed by the learned Single Judge in the impugned judgment.

56. The learned Single Judge considered Section 39 and 52 of the Act and correctly outlined the contours of fair dealing. The relevant observation of the learned Single Judge is as follows:

> "*69. It is evident from these decisions that when work that is subject to copyright or broadcast rights, is used, and a plea of infringement of those rights is raised in a suit, the defence of ―fair dealing by use of excerpts is a plausible defence to such a plea. The court would then look into the validity of the defence raised on parameters, such as, whether the comments were devoid of malice; they were honestly made; and in public interest; the reproduction was of short excerpts; there was some creative input of the copier/reproducer; they constituted criticism and review, and there was no blatant act of copying. But as observed in Hubbard (supra), these are all questions of fact and have to be decided by the Trial Court. One of the pleas urged by the defendants No.1 to 9 is that though they were using excerpts from the programmes of the plaintiff, they were doing so with an intent to comment and remove bias from reporting, which was in public interest, and there was 'transformative use" inasmuch as the excerpts were superimposed with the comments by the defendant No.5/Manisha Pandey (Newsance) and the defendant No.8/Atul Chaurasia (Tippani). This defence raised will also have to be established on the support of facts that would need to be proved."*

57. The learned Single Judge rightly observed that the test for fair dealing is fact-intensive, involving considerations such as the honesty and nature of the comments, the extent of excerpts used, the presence of any creative or transformative input, and whether the use truly amounted to criticism or review or whether there was any blatant copying. These are questions of fact that must be determined by the Commercial Court on the

basis of the evidence adduced.

58. Following the ***Wander (supra)*** principle, we are only required to enquire whether the learned Single Judge erred on principle. Thus, in our view, the learned Single Judge's findings are consistent with established legal principles and do not constitute any error in law. The conclusion reached by the learned Single Judge, that the test for fair dealing involves fact-intensive inquiries which must be determined at the trial stage, is a permissible view within the discretion of the learned Single Judge, and we cannot interfere merely because an alternative view is possible.

59. Therefore, the submissions of Mr. Baruah that there was no transformation of the content cannot be accepted at this stage, as it would require a detailed examination of the infringing material. As an appellate court, we are not in a position to reassess facts and evidence at this stage.

60. Mr. Baruah's contention that the Defendants failed to meet the threshold for fair dealing may appear convincing, but we find that this issue requires an independent examination of the material. In these circumstances, we reiterate that we are bound by the ***Wander (supra)*** principle and cannot engage in the appreciation of facts and evidence at the present stage.

Commercial Disparagement and Defamation

61. The parties made detailed oral arguments on the issues of

commercial disparagement and defamation. We must say that the discussion, at times became quite intense, given the nature of the allegations involved.

62. In a nutshell, the Plaintiff's case is that both the parties are active players in the digital news industry, and the Defendants have made commercially disparaging comments towards the Plaintiff. In response, the Defendants argue that they do not target the same consumer base as the Plaintiff's asserting that they operate in different spheres of journalism. They also challenged the finding of the learned Single Judge pertaining to existence of a *prima facie* case of disparagement and defamation.

63. The learned Single Judge, while examining the content in question, found that certain statements made by the Defendants were *ex-facie* defamatory and disparaging. For example, the use of terms like "*shit standards*", "*shit playing*" "*shit reporters*", and "*shit show*" were deemed to indicate that the programme run by the Plaintiff are of inferior quality. However, other comments or extracts were interpreted as legitimate criticism. Consequently, the learned Single Judge concluded that a *prima facie* case was made out against the Defendants but also held that the balance of convenience tilted in the favour of Defendants and no irreparable injury would be caused to the Plaintiff in the absence of an interim injunction.

64. Thus, the issue falling for consideration before us is whether the learned Single Judge was correct in finding a *prima facie* case of

defamation and disparagement against the Defendants and, if so, whether the principles of balance of convenience and irreparable injury were correctly applied to refuse the grant of an injunction.

65. Before delving into the contentions of both parties, it is essential to first understand the concepts of commercial disparagement and defamation.

66. Recently, in ***Dabur India Limited v. Patanjali Ayurved Limited and Anr.***[15]**,** the learned Single Judge of this Court discussed commercial disparagement. The judgment made an interesting observation, which warrants consideration. The Court noted as follows:

> *22. In cases such as the present,* ***it is the duty of the Court to examine whether the impugned advertisement falls under the realm of puffery, or whether it has transgressed the fine line separating it from disparagement. Disparagement is nothing but the denigration and downgrading of a rival product or service in an advertisement by way of misrepresentation or otherwise, in order to influence the consumer to prefer the advertiser's product over the competitor's product****. In general parlance, „to disparage" Whereas, the legal definition of disparagement as given in Black"s Law Dictionary, 8th Ed. (2004), is as follows:*
>
> *"xxx xxx xxx*
>
> *disparagement (di-spair-ij-mənt), n. 1. A derogatory comparison of one thing with another.<the disparagement consisted in comparing the acknowledged liar to a murderer>. 2. The act or an instance of castigating or detracting from the reputation of, esp. unfairly or untruthfully <when she told the press the details of her husband's philandering, her statements amounted to disparagement>. 3. A false and injurious statement that discredits or detracts from the reputation of another's property, product, or business. • To recover in tort for disparagement, the plaintiff must prove that the statement caused a third*

[15] **2025: DHC:5232**

party to take some action resulting in specific pecuniary loss to the plaintiff. — Also termed injurious falsehood. — More narrowly termed slander of title; trade libel; slander of goods. See TRADE DISPARAGEMENT. Cf. commercial defamation under DEFAMATION. [Cases: Libel and Slander - 130, 133. C.J.S. Libel and Slander; Injurious Falsehood §§ 204-206, 209.] 4. Reproach, disgrace, or indignity <self-importance is a disparagement of greatness>. 5. Hist. The act or an instance of pairing an heir in marriage with someone of an interior social rank <the guardian's arranging for the heir's marriage to a chimney sweep amounted to disparagement>. — disparage, vb.
xxx xxx xxx"

(Emphasis Supplied)

23. ***Thus, any attempt of an advertiser to portray a rival's goods or service in a negative light, by either making false statements or using ambiguous or deceptive visual and audio aids, will constitute disparagement****. Negative insinuation campaigns in the name of advertising are impermissible as they go against the best interest of the public at large. In case of disparagement, a number of factors, including,* ***the intent, manner, storyline, mode, use of celebrities as endorsers, etc****., have to be looked into, in order to determine the capacity and degree of deception. Advertisements cannot urge people not to buy a certain product as the same constitutes disparagement. Therefore, any representation by an advertiser which contravenes the requirements of professional diligence and is likely to materially distort economic behaviour of the average consumer with regard to the product is disparagement.*
24. Furthermore, the nature of goods and services also affects the degree of hyperbole which can be employed by advertisers. For example, in case of a toilet cleaner or a liquid handwash, the degree of falsity in puffery would be higher in comparison to what shall be tolerable when marketing a medicine or a drug. The threshold at which Courts analyze misrepresentation in commercial practice has to be much higher and stricter when the product being advertised is capable of having a detrimental impact on the health of the consumer.

67. Additionally, the learned Single Judge of this Court in ***Zydus Wellness products Ltd vs Mr. Prashant Desai***[16] further elaborated on the concept of disparagement, the same is reproduced below:

[16] **2024:DHC:7432**

> *"55. Though the term 'disparagement' has not been defined in any Statute but it has since evolved by judicial interpretation from time to time since the evolution of changing times. As per the Black's Law Dictionary the term 'disparagement' is defined as "A false and injurious statement that discredits or detracts from the reputation of another's property, products or business." Similarly, as per Chambers 21st Century Dictionary the same term "disparagement' is defined as "to speak of someone or something with contempt."*
> *56. In essence, the term 'disparagement' means speaking, which includes reading, hearing and seeing, something in a negative vein. This, sometimes can include even what is not spoken in a bad/ unkind/ sublime/ impolite/ sarcastic/ cryptic manner which are/ can be false, incorrect, untrue, wrong, unmeaningful, unfounded, inexact, slander or so like as also damaging, harmful, injurious, disfiguring, malicious or so like. Though the basic contours for act(s) of disparagement are cut out but that there is disparagement or not and the scope of comparison thereof all depend upon the facts and circumstances involved in each individual case(s)."*

68. The Division Bench of this Court in the decision of ***Reckitt Benckiser (India) Pvt Ltd. vs. Gillete India Ltd***[17], laid out three core principles to assess disparagement. The relevant observation reads as follow:

> *"45. From a conspectus of the decisions rendered by English Courts, three underlying principles can safely be deduced :*
> *(i) The impugned statement/representation must specifically denigrate the product of the claimant in order to be actionable;*
> *(ii) The representation shall not be actionable unless it is likely to be taken seriously;*
> *(iii) General praise of one's product/goods would not be actionable."*

69. The three principles outlined in ***Reckitt Benckiser (supra)*** can be summarized thus: Firstly, the statement must specifically denigrate the claimant's product; Secondly, the representation must be likely to mislead

[17] **2016 SCC OnLine Del 4737**

or confuse a reasonable consumer; and Thirdly, merely praising one's own product is not actionable unless it constitutes a false comparison to a rival product. These guidelines are crucial in determining whether a statement constitutes disparagement or is merely a comparison allowed under the law.

70. In the context of comparative advertising, it has been further clarified in ***Reckitt Benckiser (supra)*** that while puffery is permissible, the direct disparagement of a rival product is not. The Court laid down several guidelines including:

> *"55. A cumulative assessment of the case laws of the subject leads to the only inescapable conclusion that puffery is permissible but disparaging a rival product is not. One of the guidelines to be followed has been provided in Pepsi Co. (Supra) wherein it was held as hereunder:*
>
> > *"(1) The intent of the advertisement—this can be understood from its story line and the message sought to be conveyed.*
> > *(2) The overall effect of the advertisement—does it promote the advertiser's product or does it disparage or denigrate a rival product? In this context it must be kept in mind that while promoting its product, the advertiser may, while comparing it with a rival or a competing product, make an unfavourable comparison but that might not necessarily affect the story line and message of the advertised product or have that as its overall effect.*
> > *(3) The manner of advertising—is the comparison by and large truthful or does it falsely denigrate or disparage a rival product? While truthful disparagement is permissible, untruthful disparagement is not permissible."*

71. On defamation, the Supreme Court, in the decision of ***Bloomberg Television Production Services India (P) Ltd. v. Zee Entertainment***

Enterprises Ltd[18]**,** outlined the tests for granting interim injunctions in defamation cases, the same reads as:

> *"5. In addition to this oft-repeated test, there are also additional factors, which must weigh with courts while granting an ex parte ad interim injunction. Some of these factors were elucidated by a three-Judge Bench of this Court in Morgan Stanley Mutual Fund v. Kartick Das [Morgan Stanley Mutual Fund v. Kartick Das, (1994) 4 SCC 225: (1994) 81 Comp Cas 318], in the following terms: (SCC pp. 241-42, para 36)*
>
> > *"36. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are—*
> >
> > *(a) whether irreparable or serious mischief will ensue to the plaintiff;*
> >
> > *(b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;*
> >
> > *(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;*
> >
> > *(d) the court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant ex parte injunction;*
> >
> > *(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.*
> >
> > *(f) even if granted, the ex parte injunction would be for a limited period of time.*
> >
> > *(g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court."*
>
> *6. Significantly, in suits concerning defamation by media platforms and/or journalists, an additional consideration of balancing the fundamental right to free speech with the right to reputation and privacy must be borne in mind [R. Rajagopal v. State of T.N., (1994) 6 SCC 632]. The constitutional mandate of protecting journalistic expression cannot be understated, and courts must tread cautiously while granting pre-trial interim injunctions. The standard to be followed may be*

[18] **2024 SCC OnLine SC 426**

borrowed from the decision in Bonnard v. Perryman [Bonnard v. Perryman, (1891) 2 Ch 269 (CA)]. This standard, christened the "Bonnard standard", laid down by the Court of Appeal (England and Wales), has acquired the status of a common law principle for the grant of interim injunctions in defamation suits [Holley v. Smyth, 1998 QB 726 (CA)]. The Court of Appeal in Bonnard [Bonnard v. Perryman, (1891) 2 Ch 269 (CA)] held as follows: (Ch p. 284)

> *"... But it is obvious that the subject-matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions."*

7. In Fraser v. Evans [Fraser v. Evans, (1969) 1 QB 349: (1968) 3 WLR 1172 (CA)], the Court of Appeal followed the Bonnard principle and held as follows: (QB p. 360)

> *"... insofar as the article will be defamatory of Mr. Fraser, it is clear he cannot get an injunction. The Court will not restrain the publication of an article, even though it is defamatory, when the defendant says he intends to justify it or to make fair comment on a matter of public interest. That has been established for many years ever since (Bonnard v. Perryman [Bonnard v. Perryman, (1891) 2 Ch 269 (CA)]). The reason sometimes given is that the defences of justification and fair comment are for the jury, which is the constitutional tribunal, and not for a Judge. But a better reason is the importance in the public interest that the truth should out. ..."*

72. Having understood the principles governing commercial disparagement and defamation, we now turn to the facts of the present case.

73. The learned Single Judge's approach to defamation and commercial disparagement appears to be sound. The judgment recognizes the need to assess whether the statements made by the Defendants were harmful or untruthful and whether the Plaintiff suffered irreparable harm. The Court's application of the ***Bonnard*** standard and other relevant principles demonstrates a cautious approach whilst determining interim relief in a defamation case, given the importance of safeguarding freedom of speech and expression.

74. Further, the learned Single Judge found that the statements such as "shit standards", "shit playing" "shit reporters", and "shit show" were *ex-facie* defamatory and disparaging. We agree with the learned Single Judge's findings in this regard.

75. According to us, in the present case, both the Plaintiff and Defendants are media companies, and both operate in the electronic media. Consequently, we do not agree with the Defendants' contention that the two are not direct competitors.

76. We note that despite their differing business models, the content produced by both parties is available on overlapping platforms and both are engaged in producing similar content, i.e., news and target a coinciding consumer base. Further, in today's digital media landscape, access to content is no longer limited by geographic boundaries or platform restrictions. Today's consumers can discover and consume a wide array of media instantly, often with just a swipe. Platforms frequently serve

multiple types of content, and algorithms push users across various genres and formats. In this context, the argument that the Defendants' customer base is vastly different from the Plaintiff's due to the differing revenue models, lacks credibility.

77. Additionally, while it is true that the Defendants' revenue model is subscription-based and the Plaintiff's revenue model is advertisement driven, we find that this distinction cannot absolve the Defendants from targeting the Plaintiff's consumers. The revenue model does not alter the fact that both parties produce similar content and can influence the same audience, regardless of their business model. Therefore, it is safe to conclude that the Plaintiff and Defendants are indeed competitors in the media space.

78. The malicious intent of the Defendants is evident from their repeated targeting of the Plaintiff and their journalists and making disparaging comments about them. The Defendants not only criticized the Plaintiff's work, but also commented negatively on the death of one of the Plaintiff's anchors. Such conduct demonstrates a clear intent to harm the Plaintiff's reputation and falls far beyond the realm of legitimate criticism. The statements made were not backed by any independent standards or justifications. Terms such as "shit standards" and "shit reporters" clearly go beyond the realm of criticism or review and are defamatory and disparaging and therefore, intended to demean the Plaintiff's reputation.

79. We are conscious that the Defendants have raised the defence of justification and fair dealing. However, we are of the view that an interim

injunction cannot be refused merely because these defences have been pleaded. If such a defence were allowed to defeat injunctive relief at the interim stage, any defendant could evade injunctions simply by raising the defence of justification or fair dealing. Therefore, we are convinced that the ingredients of commercial disparagement and defamation have been met in this case.

80. We shall now turn to the Defendants' contentions advanced before this Court.

81. The Defendants have argued that their main objective was to provide informative and socially beneficial content, and that there was no malicious intent behind their statements. However, we cannot accept this defence. Statements such as "shit playing", "shit reporters", "shit show", "high on weed or opium", and "your punctuation is as bad as your journalism" clearly do not qualify as socially beneficial content. These remarks, rather than contributing to public discourse, serve to disparage and insult the Plaintiff and its journalists.

82. The Defendants have self-awarded the title of the "highest standard of journalism" and claim to be protectors of public interest. This self-entitlement cannot serve as a blanket justification for disparaging remarks. The tone of the statements made by the Defendants appears to be one of intolerance rather than constructive criticism. In the name of being "correct" and "independent", the Defendants have, at times, replaced substantive debate with shaming, which does not benefit public discourse

or social dialogue.

83. Thus, we find no convincing justification for the statements made by the Defendants. There is no legitimate defence for calling the Plaintiff's work "shit" or making derogatory remarks about its journalists. Such statements, in our view, cannot be protected under the guise of fair dealing or legitimate criticism. Thus, Defendants' conduct appears to be an unprovoked attack on the Plaintiff's reputation rather than a critique aimed at improving public discourse.

84. In light of the above observations, we find that the principles of disparagement and defamation, as discussed, have clearly met. We do not find any ground of interfere with the finding of the learned Single Judge. The Plaintiff has established a *prima facie* case of defamation and disparagement, and the conduct of the Defendants, based on the facts available, clearly warrants further examination at the trial stage.

85. We now turn to examine whether the learned Single Judge, despite finding that a *prima facie* case was made out, was correct in applying the principles of balance of convenience and irreparable harm to refuse an injunction.

86. The learned Single Judge observed that the issues raised by the Plaintiff involved complex questions relating to copyright infringement, fair dealing for criticism or comment and defamation. The Court noted that determining whether the Defendants' use of excerpts from the Plaintiff's

videos constituted infringement or fell within the scope of fair dealing required a detailed examination of material. Thus, the learned Single Judge held that it could only be determined at trial whether the statements made were malicious and defamatory or amounted to honest criticism, satire, or fair comment and hence considered it inappropriate to restrict the Defendants' publication at the interim stage.

87. In our view, the learned Single Judge did not correctly apply the principle of balance of convenience. It is well settled that when applying the principle of balance of convenience, the Court must weigh one party's need against the other and then determine which side's convenience prevails. However, in the present case, instead of weighing the convenience, the learned Single Judge seemed to base its decision on the merits of the case.

88. The learned Judge reasoned that the defence raised by the Defendants, which relied on facts and the examination of material, would require trial. In our view, this reasoning is not appropriate when applying the balance of convenience test. The mere fact that the Defendants have pleaded fair dealing or justification should not be a reason to deny interim relief, as any defendant could evade injunctive relief simply by raising such a defence. After making a *prima facie* finding as to the nature of the statements, the learned Single Judge should not have later concluded that the balance of convenience would favour the Defendants simply because the material required substantive examination.

89. The learned Single Judge's reasoning becomes even more complex when it comes to commercial disparagement. The primary purpose of commercial disparagement is to protect goodwill and commercial reputation from ongoing market-facing denigration. In our opinion, while weighing the Plaintiff's need against the Defendants', the balance of convenience would certainly tilt in favour of the Plaintiff. The Plaintiff's reputation and commercial standing would be at risk, while the Defendants would not face any disproportionate harm by taking down the offending content or remarks, especially at the interim stage.

90. With regards to irreparable harm and injury, the learned Single Judge held that since the Plaintiff has quantified damages, no irreparable injury would be caused. However, this approach is not in line with established legal principles concerning irreparable harm.

91. To address this, we refer to the decision of the apex Court in ***Dalpat Kumar and Anr. v. Prahlad Singh and Ors.***[19]**,** where the Court observed:

> *"5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one*

[19] **1992 1 SCC 719**

to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. ***Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages****. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. The Court further noted that when determining whether to grant an interim injunction, the court must assess whether non-interference would result in irreparable harm, and whether there is no other remedy available to the Plaintiff except for an injunction."*

(emphasis supplied)

92. The learned Single Judge appears to have mistakenly treated the presence of quantified damages as equivalent to the absence of irreparable injury. This is a misapplication of the principles governing interim injunctions. Irreparable harm is not defined by the ability to plead damages in an abstract sense, but by whether the injury caused cannot be sufficiently compensated be damages. The learned Single Judge's failure to recognize this distinction leads to an incorrect application of the "triple test" while granting interim injunctions.

93. Thus, in our view, a *prima facie* is made out in the Plaintiff's favour, only with respect to the defamatory and disparaging statements or remarks made by the Defendants, such as "shit playing", "shit reporters", "shit show", "high on weed or opium", and "Your punctuation is as bad as your

journalism". Given the serious nature of these statements and their potential to cause lasting harm to the Plaintiff's reputation, we find that the balance of convenience tilts in favour of the Plaintiff. Irreparable harm is likely to result if these statements are not taken down.

94. Therefore, the learned Single Judge's findings on the balance of convenience and irreparable injury are not in line with the established legal principles and are hereby set aside. The Plaintiff has made out a *prima facie* case, and the balance of convenience and potential for irreparable harm clearly favour granting interim relief in this matter.

CONCLUSIONS

95. We are in agreement with the learned Single Judge's finding that a *prima facie* case of commercial disparagement has been made out. The statements identified in the impugned order and judgment are clearly without any independent standard and/or basis, and therefore, constitute disparagement under the applicable legal principles.

96. Furthermore, it is evident that if these statements are not removed and continue to remain accessible, they will cause serious and irreparable harm and prejudice to the Plaintiff. Such harm cannot be adequately compensated by monetary relief or any other remedy available, and hence, interim protection is warranted.

97. The balance of convenience also lies in favour of the Plaintiff and

against the Defendants. Both parties operate in the same media industry, with the Defendants having substantial user base. Any refusal of protection at this stage would cause greater prejudice to the Plaintiff, while granting the relief sought would not cause comparable hardship to the Defendants.

98. For the reasons recorded hereinabove, we partly allow the appeal to the limited extent that the statements or remarks identified by the learned Single Judge as constituting commercial disparagement should be removed. The statements are *ex-facie* disparaging, and their continued availability online would harm the Plaintiff's reputation.

99. The Respondents are directed to immediately remove the remarks or statements "shit reporters", "shit show", "high on weed or opium", and "Your punctuation is as bad as your journalism" from the impugned video and remove them from their respective social media platforms, handles, and websites until the final disposal of the underlying suit.

100. It is clarified that the present order is passed at an interlocutory stage. Therefore, the observations made herein, particularly those regarding the factual aspects and any tentative findings, shall not prejudice or bind the Trial Court in its adjudication of the issues on merits, after the full appreciation of evidence.

101. The Trial Court is free to come to its own conclusions, even if those conclusions differ from the observations contained in this order. This order is made without prejudice to the Trial Court's independent analysis of the

case.

102. The present appeals, along with pending applications, if any, stand disposed of in the aforesaid terms. There shall be no order as to costs.

OM PRAKASH SHUKLA, J.

C.HARI SHANKAR, J.

MARCH 20, 2026/*gunn/at*