

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

% **Date of Decision: 10.7.2012**

+ **I.A Nos.4776, 4777/2005 in C.S (OS) No.868/2005**

Twentieth Century Fox Film Corporation ... Plaintiff

versus

Zee Telefilms Ltd. & Ors. ...Defendents

Advocates who appeared in this case:

For the Plaintiff : Mr. C.M.Lall & Mr. Pradyuman Dubey

For Defendants : Mr. Arun Jaitley, Sr. Advocate with
Ms.Pratibha M.Singh, Mr.Sudeep Chatterjee
and Mr. Ashwin Kumar Advocates

**CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR**

ANIL KUMAR, J.

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1. These are the applications by the plaintiff/applicant under Order 39 Rules 1 & 2 and under Order 26 Rule 9 seeking interim injunction against Zee Telefilms Ltd from making, telecasting or broadcasting or in any other manner communicating to the public the television serial/cinematograph film titled `Time Bomb' and not to do anything without obtaining a license from the plaintiff and for directions to the defendants, their partners, servants, agents, representatives to hand over possession of the infringing copies and all other incriminating material including the original script and all plates for production of cinematograph film titled `Time Bomb' in a suit for permanent,

mandatory injunction and rendition of accounts for the alleged infringement of copyright of the plaintiff.

2. The suit was initially filed against M/s.Zee Telefilms Ltd. During the pendency of the suit the plaintiff filed an application being IA No.4822/2005 to implead Ms.Deepa Sahi, Mr.Ketan Mehta and M/s. Maya Movies Pvt.Ltd also as defendants on account of their involvement, as they claimed to be producer of the serial 'Time Bomb'. The said application was allowed by order dated 18th July, 2005 and the said persons were impleaded as defendant Nos.2, 3 & 4 to the suit of the plaintiff. The plaintiff/applicant has contended that he is a pioneer in the world of entertainment and the plaintiff Corporation was founded in 1913 when William Fox founded Fox Studios to produce the famous Movietone Newsreels. In 1935 Fox Studios merged with 20th Century Pictures and (which had been founded in 1933). According to the plaintiff he is engaged principally in the business of film entertainment, television entertainment including direct broadcast, satellite and cable transmission of television channels and programming. The plaintiff also gave the details of various notable movies made by him. The plaintiff asserted that he was one of the first to introduce various channels for different audiences. In 1987 plaintiff launched network by the name of FOX.

3. According to the plaintiff he has the copyright in his well known television serial titled '24' which is a thriller with the main theme of narration of story in real time. The plaintiff contended the term '24' relates to 24 hours in a day and the story is told in 'real time' about how a terrorist attempt is thwarted within 24 hours. The plaintiff disclosed that each episode of '24' features an hour in the life of counter terrorism agent Jack Bauer. According to him the theme of setting a television serial in this format is unique to the plaintiff.

4. The plaintiff contended that the principal star of the serial is Mr. Keifer Sutherland who has been nominated three times for Emmy Awards for his work in '24' who plays the role of a protagonist Jack Bauer, a secret service agent working for the U.S. Government on VIP Security and his main task is to save the political leaders from international terrorist attacks.

5. The plaintiff has given the description of Season One of the said serial in which the protagonist Jack Bauer's main task was to protect a U.S. Senator (David Palmer) running for the position of the U.S. President from an assassination attempt by a gang of international terrorists. In Season two the serial deals with the trauma of his wife's murder and the effect it had on his relationship with his daughter. He was called by President David Palmer to stop a terrorist plot to detonate a nuclear bomb in Los Angeles. Season three was set three years later where Jack

spent several months deep under cover and returned to Counter Terrorist Unit (CTU) as Director of Field Operations. According to the plaintiff the complete episode guide with the entire story line is available on the plaintiff's website.

6. The plaintiff disclosed that his television serial '24' had been extensively discussed in articles in Indian publications and it is described as unique, as it takes place in 'real time'. A number of books have been written on the plaintiff's serial according to plaintiff.

7. The plaintiff/applicant further contended that the representatives of the plaintiff had met with Mr. Subhash Chandra in 2005, who is the Principal Officer of defendant No.1 and the possibility of licensing the rights of serial '24' in order to create a local version in India was discussed. However, the plaintiff categorically communicated to Mr. Subhash Chandra that plaintiff would not license the rights of '24' to the defendants.

8. The grievance of the plaintiff is that he was shocked to learn that the defendant has processed and launched a television serial titled "Time Bomb". On perusal of power point presentation prepared by the defendants containing a summary of the proposed television serial, it became apparent to the plaintiff that the serial 'Time Bomb' characterization, story line and the script would have numerous

similarities to the plaintiff's television serial '24'. The averment of the plaintiff is that the similarities between the defendants serial "Time Bomb" and plaintiff's serial '24' amount to copyright infringement. According to the plaintiff 'Time Bomb' is an international political thriller of global terror with its epi-centre in South Asia in which Varun is a special agent of an exclusive, secret, multi-disciplinary intelligence agency created under the PMO to deal with terrorism and related matters known to the very few. The plaintiff further disclosed that from the script, it has transpired that in serial 'Time Bomb' a young and dynamic Prime Minister of India Sh.Anirudh Prakash was woken up on account of imminent crisis, as there was reason to believe that there was an assassination attempt on the Prime Minister. The plaintiff has given the other details of the serial 'Time Bomb'.

9. In the circumstances, the allegation of the plaintiff is that the defendants have copied the story line of the plaintiff. The USP of the defendants' serial is described as "This story of 1 day told in real time over 24 hours, 1 hour episodes in a crisp breathtaking manner ending on 11th September 2005" which is exactly how the plaintiff's serial is set up.

10. The plaintiff contended that in order to resolve the matter with defendant a communication dated 6th May, 2005 was sent to defendant no.1 through the attorney of the plaintiff not to produce any television

serial which in any way violates the copyright of the plaintiff. The defendant no.1 was also asked to disclose the complete story line and script of their proposed television serial and to make appropriate amendments to the satisfaction of the plaintiff in a manner that the serial does not violate the copyright of the plaintiff.

11. The plaintiff alleged that no response was received from the defendants therefore, a reminder dated 27th May, 2005 was also sent. Thereafter, the attorney of the plaintiff received a letter dated 3rd June, 2005 stating that the defendants are in the process of preparing reply to plaintiff's letter dated 6th May, 2005 which shall be sent soon. Thereafter on 10th June, 2005 the attorney of the plaintiff received another reply dated 6th June, 2005 denying the allegation of the plaintiff of violation of his copyright and contended that the characterization, story line and script of the serial of the defendants was entirely different from the script of the serial of the plaintiff and consequently the allegations of the plaintiff were rejected.

12. The plaintiff's allegation is that the defendant used time in answering their allegations with the aim to expedite the launch of their television serial "Time Bomb". The plaintiff crystallized the similarities in its serial '24' and the defendant's serial "Time Bomb" as under:-

- a) The unique and unusual feature of the plaintiff's serial is that it is about a story told in real time narrating events over a period of 24 hours. The serial

is divided into 24 episodes of one hour each. This is the Unique Selling Point (USP) of the Plaintiff's television serial. There is no other serial which has such a format or story line. The Defendant's proposed serial is exactly the same format and interestingly the format is described in the Defendant's power point as the USP of the Defendant's serial as well.

- b) The Plot of the Plaintiff's serial relates to international terrorism, as does the Defendant's television serial.
- c) The protagonist in the Plaintiff's serial is a special secret service agent Jack Baur, as is the protagonist in the Defendant's serial, Varun.
- d) The protagonist in the Plaintiff's serial is deployed by the Counter-Terrorist Unit (CTU), the protagonist in the Defendant's serial is deployed by the Agency to Counter Terrorism (ACT).
- e) The backdrop of the Plaintiff's serial is the protection of the U.S. President from international terrorist attack, whereas the Defendant's serial is about saving the Indian Prime Minister from international terrorist attack.
- f) Both serials have a plot of nuclear attack combined with a threat on the head of government, with the protagonist attempting to stall both.
- g) The proposed terrorist attack in each of the Plaintiff's serials has international repercussions, which is exactly the case in the Defendant's serial.
- h) In both the serials the terrorists groups are Islamic terrorists."

13. According to the plaintiff, the similarities as enumerated hereinabove, unequivocally reflected violation of copyright by the defendants of the plaintiff's serial '24'. According to the plaintiff the defendants have not only kept the hour format but has also taken the main plot, theme, characters etc. The defendants according to the

plaintiff, refused to subject their script for scrutiny to the plaintiff giving rise to the suspicion that the script of 'Time Bomb' violated the copyright of the plaintiff.

14. In the circumstances, the plaintiff contended that plaintiff is likely to suffer irreparable injury and harm as the plaintiff has the exclusive right to telecast or license the making of a television serial in accordance with the script and story line and the copyright which vests with the plaintiff.

15. The plaintiff further alleged that this is not the first time when the defendants have attempted to infringe the rights of the plaintiff. The plaintiff disclosed that it had filed legal proceedings against defendant No.1 on account of defendant no.1 adopting the plaintiff's well known channel name FX. The plaintiff alleged that in the said suit defendant No.1 had given an assurance that it will change its channel's name from FX to ZEE MX and the said suit being suit No.208/04 is pending before the Court.

16. The plaintiff alleged that the attempt of the defendants is malafide and they want to derive as much coverage and benefit from the plaintiff's already existing and popular television serial '24'. In the circumstances the plaintiff sought an interim restraint against the defendants from telecasting or broadcasting their serial 'Time Bomb'

and a direction that the defendant should hand over all the infringing copies and all other incriminating material to the plaintiff.

17. The plaintiff has alleged violation of its copyright inter-alia on the grounds that its serial has been broadcast since 2001 and the defendants had ample opportunity to view the plaintiff's serial and had full access to it. The story line of the plaintiff's serial is available in the text form on the plaintiff's website and the defendants had shown its interest in obtaining license. However, when it was declined the defendants have copied it. The plaintiff also alleged that the defendants have acted dishonestly as they have not disclosed as to who is the producer of the said serial. In order to buttress his allegation that the defendants have copied his serial and they violated his copyright, plaintiff contended that the defendants have copied the format and structure, screenplay, story-line, character sketches, interplay of characters and sequence of events.

18. The plaintiff alleged the similarities in character and events as under:-

B. SIMILARITIES IN MAIN CHARACTERS

Name	Plaintiff	Name	Defendant
Jack Bauer	Protagonist battling between marital and family problems and professional problems – threat	Varun Awasthi	Protagonist battling between marital and family problems and professional problems – threat

	to life of presidential candidate. Works for Anti Terrorist Unit called CTU		to life of Prime Minister. Works for Anti Terrorist Unit called ACT
David Palmer	Presidential Candidate facing political crises as well as threat to life	Anirudh Prakash	Prime Minister facing political crises and threat to life.
Victor Drazen & Sons (Andre & Alexis)	Father and son combination heads terrorist group & plans attack on the premier of state and the protagonist Jack Baur	Osama & Son Usman	Father and son combination heads terrorist group & plans attack on the premier of state and protagonist Varun Awasthi
Kimberley	Daughter and only child of the Protagonist Jack Baur	Payal	Daughter and only child of the Protagonist Varun
Victor Rovner transmits the message & David Palmer is the Target President	A telephone call received informing about threat to the life of the President	Abhay is the caller & Anirudha Prakash, Target Prime minister	A telephone call received informing about threat to the life of the Prime Minister
Martin Belkin	A Photographer Journalist	Roma Awasthi	A news reporter
Nina Myers	A female chief of staff at CTU – concerned about the marital problems that the protagonist is facing.	Menaka	Lady Jt. Director at ACT – concerned about the marital problems that the protagonist is facing.

Mandy	Stranger meets journalist cover impression coincidence	who the under and of a	Sejwani	Stranger meets journalist cover impression coincidence	who the under and of a
Patty Brooks	Presidents Campaign manager		Lady PA to Prime minister	A close Prime Minister	Aide to

19. According to the plaintiff the defendants have attempted to dissect the components of the plaintiff's serial and has contended that the common features in the comparison chart are common stock, however, such dissection is impermissible.

20. The plaintiff/applicant contended that though ideas are not protected but expression of ideas are protected and relied on R.G.Anand v. Deluxe Films PTC Suppl. (1) 802 (SC); Sid & Marty Krofft Television Productions Inc. v. McDonald's Corp. 196 USPQ 97 at 102; Universal Pictures v. Harold Lloyd Corporation, 162 F2d 354 at 363. The plaintiff has further alleged that even if the similar material is quantitatively small, however, if it is qualitatively important, it may constitute infringement of copyright and has relied on Fink v. Goodson Todman Enterprises Ltd, 169 USPQ 106 at 114, 115; Universal Pictures v. Harold Lloyd Corporation, 162 F2d 354 at 361. According to plaintiff new treatment of common subjects are also entitled to copyright protection. For this proposition plaintiff has relied on Universal Pictures v. Harold Lloyd Corporation, 162 F2d 354 at 360, 363. The plaintiff has

relied on Sid & Marty Krofft Television Productions Inc. v. McDonald's Corp. 196 USPQ 97 at 102, 103 to assert that for determination whether there is a similarity in the expression of the idea, hypercritical or meticulous scrutiny is not to be done but it is to be ascertained by observation and expressions of the average reasonable reader and spectator. According to the plaintiff analytical dissection in order to ascertain the similarities and dissimilarities are not permissible and relied on Sid & Marty Krofft Television Productions Inc. v. McDonald's Corp. 196 USPQ 97 at 103.

21. The counsel for the plaintiff emphasized that in order to ascertain whether the copyright has been violated or not what is relevant is whether the concept and feel has been copied and mere absence of duplication or near identity is not necessary to negate the plea of infringement. The plaintiff relied on Sid & Marty Krofft Television Productions Inc. v. McDonald's Corp. 196 USPQ 97 at 105; Fink v. Goodson Todman Enterprises Ltd, 169 USPQ 106 at 114; Anil Gupta v. Kunal Dasgupta, 2002 (25) PTC 1 (Del) at 22; Zee Telefilms Ltd v. Sundial Communications P.Ltd, 2003 (27) PTC 457 (Bom DB) at 468.

22. The plaintiff further contended that portrayal techniques, adornments and methods of presentation can form an integral part of copyrighted subject matter and relied on Fink v. Goodson Todman

Enterprises Ltd, 169 USPQ 106 at 113, 114, 115; Universal Pictures v. Harold Lloyd Corporation, 162 F2d 354 at 363.

23. In order to substantiate its allegation of violation of copyright the plaintiff contended that digital time clock with the distinctive sound is an integral part of the serial which is used at the beginning and the end of each episode and after each commercial break; portrayal of a story of 24 hours in real time divided into 24 episodes of one hour each; the seasons of the plaintiff and defendants serial begins at 12 midnight and ends 24 hours later and at places multiple screens are used to portray simultaneous events and in real time and the time spent in the commercial break is included in the real time events. Plaintiff also alleged similarities in plots and sequence of events.

24. The defendants have contested the claim of the plaintiff. Defendant No.1 filed a written statement dated 11th August, 2005 along with a short reply dated 18th June, 2005 to the applications of the plaintiff. Defendant No.1 averred that the plaintiff by its notice dated 6th May, 2005 had sought for disclosure/sharing of the complete storyline and script of the television serial 'Time Bomb'. The telecast of the serial Time Bomb commenced on 20th June, 2005 and had to continue for 24 episodes. The defendant No.1 asserted that he had clearly informed the plaintiff by his reply dated 6th June, 2005 to the notice of the plaintiff dated 6th May, 2005 that the storyline of the script of the serial of the

defendants could not be disclosed to the plaintiff who is a business rival and the defendant No.1 could not prejudice the telecast of his own programme. The defendant No.1 asserted that it had informed the plaintiff that the characterization, storyline and script of the defendants' serial is completely different from that of the plaintiff's serial '24'. It was emphasized that the serial 'Time Bomb' is a continuation of earlier serial of defendants titled 'Pradhan Mantri'. It was also aired earlier on Zee. Mr.Ketan Mehta had produced the said television serial for the defendants titled as "Pradhan Mantri" in which there was an assassination attempt on the Prime Minister. According to the defendant No.1 the serial 'Time Bomb' is in continuation of earlier serial 'Pradhan Mantri' which is apparent from the fact that the lead actors who had featured in 'Pradhan Mantri' are the same.

25. According to the defendant No.1 the serial 'Pradhan Mantri' was a story of a young leader, MP who went to become the Prime Minister of India and turned out to be an ideal Prime Minister. That serial had ended with an attempt to assassinate him. The present serial 'Time Bomb' picks up the thread from the end of that serial and the same Prime Minister, Mr.Anirudh Prakash three years later is still the Prime Minister and there is an attempt on his life. The defendant No.1 detailed the various roles played by various actors in the two serials 'Pradhan Mantri' and 'Time Bomb'. The defendant No.1 in the circumstances emphasized that the story and screen play of the serials have been

developed entirely by the defendants' producers and directors through extensive research and it has been written by Mr.Uttam Gada who is a well known screen play writer and play writer. In the written statement dated 11th August, 2005 the defendant No.1 also contended that they are filing in a sealed cover having a concept note of serial 'Time Bomb' along with a CD of the episode.

26. According to the defendant No.1 the serial 'Time Bomb' which follows the earlier serial 'Pradhan Mantri' is an international thriller based on the theme of global terrorism. The epicentre of said global terror is in South Asia and it relates to terrorists who move from Pakistan to India. There is an intelligence report that there exists an apprehension of assassination attempt on the Prime Minister of India. The question is whether the secret service agent would be able to save the Prime Minister? Investigation also revealed that there would be simultaneous attacks in various important cities of the world and it revolves around the 11th September attacks.

27. The defendant No.1 categorically contended that the various element existing in the serial 'Time Bomb' namely an assassination attempt, terrorism threat from weapons of mass destruction, political turmoil etc are all elements which are existing in the earlier serial. The primary secret service in the serial is known as RAW which is the real

name of such an agency and other agencies which are referred to are IB, CBI and CID which are actual names of existing agencies.

28. Refuting the allegation of the plaintiff that '24' is the unique serial confined to a single day, the defendant No.1 contended that a large number of films and serials have depicted the incident of a single day which include "Iss Raat Ki Subah Nahi"; "Ek Din Achanak"; "Jagte Raho", "Holi" and "Mirch Masala". According to the averment of defendant No.1 storyline has a real time story which is not new to this serial. The defendant No.1 further disclosed that earlier films namely "Nick of Time" and another serial "In the nick of Time" have this kind of narration structure which is claimed to be exclusive by the plaintiff.

29. The defendant No.1 further asserted that a show is presented by Zee T.V titled "Tamanna House" which is also the story of one day told over 48 half hour episodes in real time. It also has multiple windows being used in serial which have simultaneous events. According to the defendant No.1 this has been made possible through use of advanced technology in editing and a large number of feature films used this kind of technology and technique. The defendant No.1 in the circumstances emphasized that there is no copyright in the format of any T.V programme or serial.

30. The defendant No.1 thus contended that its serial 'Time Bomb' is an independently created work and it is not based on plaintiff's programme in any manner whatsoever and there is no commonality either in the story or in the content or character.

31. Any story which consists of an assassination links with terrorism will have a large number of elements which would be common in various other similar stories and the plaintiff cannot claim a copyright on the same. The defendant No.1 further alleged that the format of serial by itself is not entitled to any copyright protection whatsoever. The defendant No.1 also stated that the preparation for this serial commenced way back in November, 2004 when the programme department of Zee engaged Mr.Ketan Mehta who is one of the most reputed directors in India who had prepared the concept note in 2004 itself and an agreement dated 23rd November, 2004 was entered between the defendant No.1 and Maya Movies Pvt Ltd. which is a company of Mr.Ketan Mehta. Thus the concept of serial 'Time Bomb' was decided way back in November, 2004 itself. The defendant No.1 also disclosed that the entire cost of production and the programme including the payment to the Director, marketing, advertising etc of the serial 'Time Bomb' till the date of filing of the written statement was approximately 10.5 crores.

32. The defendant No.1 further disclosed that the serial 'Time Bomb' had to be telecast every Monday over 20 episodes with duration of approximately 45 minutes. The serial had been successfully promoted by the defendants on its various channels and on the Zee network platform and the shooting of the serial had taken place in Washington, London, Tel-Aviv (Israel), Mumbai and Delhi and is based on the date 11th September, 2005 and is revealed over 24 hours depicting in 24 episodes. In the circumstances, the defendant No.1 contended that there is no infringement of copyright, if any of the plaintiff and he is not entitled for any interim order. The defendant No.1 contended that there is no copyright in an idea, concept or the form of any T.V programme.

33. Regarding the alleged similarities it is contended that every story based on assassination and terrorism are bound to contain various elements which can be compared and the similarities can be found. However, that itself will not be sufficient to infer that there are similarities. The serials based on assassination and terrorism are bound to contain elements like international terrorism, secrets service agents, assassination of Head of States and counter terrorists units. According to the defendant No.1 there are numerous films with such plots including Roza, 13th September, The Hero, Maachis, Mission Kashmir, Kachche Dhadge, Qayamat etc. which had been produced which have the similar elements as has been alleged by the plaintiff on

the basis of which the plaintiff is allegedly claiming copyright in the serial '24'.

34. The defendant No.1 further asserted that mere idea of '24' one hour episodes cannot be copyrightable and cannot be protected under the law of copyright, as the mere idea is not copyrightable. The defendant No.1 contended that general ideas are in public domain and cannot become a monopoly of any particular entity. The mere idea of an assassination attempt on the head of state by a terrorist group combined with modern technological inputs as also the presentation of the same in a 24 episodes format, is per se is not entitled to copyright. The defendant No.1 contended that such claim would be prejudicial to "creativity, expression" and this would be contrary to public policy and is neither permissible nor sustainable in law. In the circumstances it is also asserted that there is no similarity between the plaintiff's serial '24' and the defendant's serial 'Pradhan Mantri' and 'Time Bomb' nor in the portrayal or in the combination of incidents, pattern of activity etc.

35. The defendant No.1 refuted the allegation that the Chairman of defendant No.1 Mr. Subhash Chandra had tried to obtain the license from the plaintiff which was declined. The defendant No.1 rather contended that there had not been any occasion for the defendant No.1 to request for such a license. It was disclosed that in fact three representatives of the plaintiff's distribution company had visited the

office of the Chairman of defendant no.1 in Mumbai. The representative of the plaintiff who visited defendant No.1's office in Mumbai were Mr.Brendan Zauner, Director of Television Sales, Mr.Richard Samuels, Sr.V.P & M.D, Asia Pacific and Mr.Mark Kaner, President. The meeting was fixed as the plaintiffs representatives wanted to sell their content and software for defendant's English Channel Zee Café and Zee Studio. According to the defendant No.1 the meeting took place on 1st March, 2005, however, the preparation of the agreement for serial 'Time Bomb' had taken place in November, 2004 and a large amount of money had already spent by Zee from 1st March, 2005. The defendant No.1 categorically asserted that by that time entire concept note was conceived, the storyline was ready, the script was ready and the serial was under production and substantial shooting had taken place and thus there was no question of the Chairman of the defendant No.1 Company requesting for a license from the plaintiff. In the circumstances reliance by the plaintiff on the alleged meeting is completely misleading and is an attempt to twist the facts. The defendant No.1 also filed the scanned copies of the visiting cards of the three representatives who had come to meet the Chairman of the defendant on 1st March, 2005. In order to allege malafides on the part of the plaintiff, the defendant No.1 contended that with a view to mislead, the plaintiff is deliberately not giving the exact date and has rather mentioned that such a meeting had taken place in "early 2005".

36. Regarding the earlier litigation with Channel FX, the defendant No.1 contended that it has no connection with the present case. Even in the said case no injunction was granted in favour of the plaintiff. The defendant No.1 had rather filed the reply and had unilaterally changed the channels name to Zee MX. Though an objection was taken by the plaintiff that FX and MX are similar, however, without granting any further relief to the plaintiff the suit was disposed of.

37. The defendant No.1 further asserted that the marketing of the serial had commenced, a number of months in advance and no objection was raised from any quarter. According to the defendant No.1 the plaintiff noted the story of the serial which is evident from the website zee-tv.com which is the basic story of the serial. The plaintiff did not take action earlier and the present suit has been filed with a view to prejudice the successful telecast of the serial. In order to demonstrate the malafides on the part of the plaintiff the defendant No.1 relied on the documents which are as under:-

- 1) Page 239 extract of indiantelevision.com dated 2.6.05- This is one of the websites dealing with Indian Television industry and this extract clearly states that the telecast is from 20th June.
- 2) Page 241 extract from Bizasia- 8th June, 05- This extract states that the serial come in July, but is of later dated than No.1 above.
- 3) Another extract from Biz Asia dated 3rd June 05 states that the serial is slated for early July.”

38. In the circumstances it is contended that the telecast was scheduled for Monday at 10 PM on 20th June, 2005 and filing of the suit on 16th June, 2005 was a malafide attempt. The defendant No.1 applicant also contended that the suit is bad for non joinder of parties and the suit has not been filed by a duly authorized person. In the circumstances, it is contended that for the foregoing reasons there is no prima facie case in favour of the plaintiff and against the defendant No.1.

39. The defendant No.1 emphasized that there are fundamental differences between the serial of the plaintiff '24' and the defendant No.1's serial. According to the said defendant the defendants serial 'Time Bomb' is based on its own earlier serial and is shot/produced in or around various locations of the world which is not the case in the serial of the plaintiff '24'. The other major difference relied on by the defendant No.1 is that the defendant's serial 'Time Bomb' is based on 11th September, 2005 attack which is not the case in the serial of the plaintiff '24'. These differences change the entire script, characterization and the screen play of the plaintiff's serial.

40. According to the defendant No.1 mere reading of the story line would show that there is no similarity between the plaintiff's serial '24' and the defendants' serial and it is because of this that after reproducing the story line of the defendants' serial, no comments has

been made by the plaintiff. The defendant No.1 thus contended that the plaintiff cannot claim exclusive copyright in portraying terrorism on television.

41. To emphasize that the plaintiff is claiming the copyright in an idea, the defendant No.1 contended that the alleged similarities alleged by the plaintiff cannot be the basis for a copyright. The defendant No.1 answered the alleged similarities alleged by the plaintiff as under:-

a) The plaintiff in para (a) is trying to claim a monopoly on a specific format which is impermissible. There has been a number of movies which relate to a story of one day being narrated. In fact such a format has been used by the defendants in an earlier serial also.

b) International terrorism is a concept and subject matter which is very common in a large number of movies and television serials in India and abroad. There cannot be any monopoly on this.

c) Secret service agents are there in every country. They are involved in every film which revolves around terrorism. There is nothing new and they are in public domain. There are episodes to counter terrorism and it is nothing but an imagination of the director/producer.

d) Assassination attempts on Heads of States is a very old concept and a very old subject matter.

e) Every terrorist attack always have international repercussion. The plaintiff's serial is based on one location whereas the defendants serial is not so. They are all co-related with 11th Sept. They are also co-related with the real-time terrorist group which is alleged to be involved in 11th Sept. attacks. Islamic terrorism is extremely common and has been portrayed in various films and serials. There are large number of differences between the plaintiff's and defendants' serial which is evident from them.

h) Every terrorist attack always have international repercussion. The plaintiff's serial is based on one location whereas the plaintiff's serial is not so. They are all co-related with 11th Sept. They are also co-related with the real-time terrorist group which is alleged to be involved in 11th Sept. attacks. Islamic terrorism is extremely common and has been portrayed in various films and serials. There are large number of differences between the plaintiff's and defendants' serial which is evident from reading of the concept. The allegations of similarities is unfounded. In any case, such elements are in public domain. A large number of serials are based on crime, mother-in-law vs. daughter-in-law, music based programmes etc., Granting of a monopoly on ideas of this nature is alien to the law of copyright."

42. In the circumstances, the defendant No.1 contended that prima facie plaintiff has no right and even the inconvenience caused to the defendant No.1 will be more in case the telecast of the serial is stayed and the defendant No.1 shall also suffer irreparable loss.

43. The defendant Nos.2 to 4 who were impleaded later filed a separate written statement dated 11th August, 2005 reiterating the pleas and contentions which were raised by the plaintiff. The said defendants, however, disclosed that Mr.Ketan Mehta is the co producer and Director of television serial 'Time Bomb' and M/s. Maya Movies Pvt Ltd (Defendant No.3) is a co-producer of the said serial. The defendant No.4 was also disclosed to be the Director of defendant No.3.

44. The defendant Nos.2 to 4 also disclosed that the serial 'Pradhan Mantri' was telecast on Zee T.V between 6th April, 2001 till October, 2001. The said serial 'Pradhan Mantri' had a re-run on Zee T.V in November-December, 2004 as 'Pradhan Mantri Time Bomb'. According to the said defendants, the serial 'Pradhan Mantri Time Bomb' had all features including the digital clock, windows technique, nuclear attack and the assassination of the Prime Minister on which the plaintiff is allegedly trying to seek a monopolistic claim.

45. The defendant Nos.2 to 4 reaffirmed that in October, 2004 the concept note of serial 'Time Bomb 9/11' was prepared and an agreement was entered into between M/s. Maya Movies Pvt Ltd and Zee Telefilms Ltd on 23rd November, 2004 for production of serial 'Time Bomb' continuing with the actors and characters of the earlier serial 'Pradhan Mantri'. In the circumstances, it was re-asserted that the serial 'Time Bomb' is the continuation of earlier serial 'Pradhan Mantri'. According to the defendant Nos.2 to 4 the suit of the plaintiff is a speculative and baseless and there is no commonality between the two serials '24' and 'Time Bomb 9/11". They are based on different facts and circumstances and they are completely dissimilar. The plots in the two serials have no connection with each other. The script is different and the story line is different. According to defendant Nos.2 to 4 the number of dissimilarities between the two serials would be unending.

The defendants also crystallized some of the dissimilarities between the two serials as under:-

<u>Sl.No.</u>	<u>Plaintiff's serial 24</u>	<u>Defendant's Serial Time Bomb</u>
1.	Basic plot revolves around on location in the USA (Los Angeles) which is the target of terrorism.	Plot simultaneously unfolds in four capital cities of the world viz., Washington D.C., London, Tel-Aviv & New Delhi.
2.	Basic storyline is primarily related to threat within USA & a Presidential candidate.	The plot revolves around the geo-politics of South Asia viz., India & Pakistan and its global repercussions.
3.	Inspiration is general terrorist threats & attacks.	Inspiration drawn is from the 9/11 attacks and the terrorist groups alleged to be involved therein.
4.	Three seasons have been run: <u>1st Season:</u> Threat is to the life of the Black Presidential Candidate <u>2nd Season:</u> Nuclear threat in Los Angeles <u>3rd Season:</u> Biochemical threat in Los Angeles	Time Bomb is a sequel to the earlier Television series produced for Zee by Mr.Ketan Mehta viz., Pradhan Mantri which was telecast starting April, 2001. It had ended with an assassination attempt on the Prime Minister of India. Time Bomb picks up the same characters and stories 3 years later when the same person is the Prime Minister and there is an attack to his life which unravels into a global terrorist threat. The attack on the Prime Minister of India is in fact a "red herring" which is meant to deflect the attention of the Security Agencies from the global simultaneous terrorist attacks.
5.	The main protagonist of 24 Jack Bauer is a middle aged man in his late forties.	The main secret service agent Varun Awasthi is a young man in his late 20s.
6.	The female protagonist is a house wife who is the wife of Jack Bauer.	The female protagonist the wife of Varun Awasthi is a TV journalist and an independent working woman.
7.	The villains in the series are	Terrorist are Afghanistan-

- from the Balkans
- Pakistan-India based.
- Osama the character in this serial, flees from Pak-occupied Kashmir to Kashmir in India when his hiding camp is attacked by America.
8. No local Americans villains associated with terrorists. An Indian industrialist tycoon is involved with the Terrorists.
 9. The main villain is actually in prison and the attempt is to get him to be released. Son of Osama the terrorist in Time Bomb actually takes over the head of the organization by-passing his father who gets a heart-attack.
 10. Daughter of Jack Bauer is a teen-aged girl who escapes from her house. Daughter of Varun Awasthi is a 5 year old girl.
 11. Daughter of the Presidential Candidate is a rape-victim. Daughter of Prime Minister of India is studying in London and has come back for a holiday.
 12. Wife of the Presidential candidate is an ambitious woman not averse to breaking rules and goding him on ala Lady Macbeth. Wife of the P.M. of India is dead in a terrorist attack 5 years ago in a car bomb explosion.
 13. Starts in Malaysia and continues to Los Angeles. Series opens with a few clippings from Pradhan Mantri and how the present plot is happening 3 years later. The important beginning of the present serial is in Pak-occupied- Kashmir and shows Osama escaping into India.
 14. USA is a victim of terrorism. President of USA orders elimination of Osama and destruction of his camp. This information is leaked to Osama and he manages to escape. So USA is shown as an aggressor & a victim of terrorism.
 15. Daughter of Presidential Candidate is a traumatized rape victim. PM's daughter gets involved with a group of teenagers and son of an industrialist tycoon who is in league with the terrorists.
 16. Son of the President is a murder accused. In the present Time Bomb version, the son of PM is not

- | | | |
|-----|--|--|
| 17. | Presidential Candidate in the first season is still fighting for the presidential preliminaries. | portrayed.
The Prime Minister is already an elected PM for four years and is facing a crisis to his Government due to defection from one of the coalition partners in the Government. |
| 18. | The assassination of the Presidential Candidate is being planned as a revenge for ordering an attack on the Balkans. | The assassination of the PM is being planned because of the industrial tycoon's vested interests. |
| 19. | Wife of Jack Bauer dies at the end of the First Season. | The wife of Varun does not die and actually plays an active role in thwarting the attempt of the terrorists. |
| 20. | Terrorist threat is thwarted in all their Seasons. | The terrorists succeed in one of the Capital Cities of the world. |

46. The defendant Nos.2 to 4 also contended that even scene to scene narration does not show any similarities between the plaintiff's story and the defendant No.1 serial which are as under:-

Scene

Timebomb 9/11

24

- | | | |
|----|---|---|
| 1 | CIA Agent in Washington informs US president that the Operation has begun. US president wants Osama eliminated. CIA agent's driver informs Osama's men that their camp is going to be attacked by the Americans. | Victor Rovner transmits from Kuala Lumpur, Malayasia that a shooter is coming into town to target Senator Palmer. Agent Richard Walsh, a high-ranking Counter Terrorist Unit (CTU) officer, is alerted. |
| 2. | Roma is driving home ... at the same time a recorded news cast is on where Roma is talking about Sept 11... and that terrorist have announced a threat on the anniversary of Sept. 11 AND the current PM's govt. is in doldrums
Roma reaches her house and | Senator David Palmer, an African-American running for President, writes his speech for the next day's California primary election. |

- puts her daughter to bed and goes to get ready for the party. The recorded news continues- it is about the last Sept. 11, 2011 attack.
3. In POK Usmaan gets a call about an attack that can happen anytime ... Usmaan alerts everyone .. the camp is bombarded but Osama and gang (Usmaan, Zafar and Noora) escape in a truck. Jack Bauer plays chess with his daughter Kimberly in their home. Before going to bed, she tells him that she's glad he moved back in. Jack and his wife Teri go to her room to find she has snuck out the window. Nina Myers, Jack's chief-of-staff at CTU, calls him into the office because Richard Walsh is in town. Jack phones Kimberly's ex-boyfriend Vincent, but he doesn't know where she is.
 4. Roma is getting ready to leave for the party. She gets a call from Varun (her husband0 who is driving in a jeep. Tension prevails in brief conversation, which breaks off on a note of usual martial friction. Kimberly and her friend Janet York are on their way to meet up with some guys named Dan and Rick.
 5. Varun and his colleague Asif stop a hotel. They go in and arrest Javed Durani – a suspected terrorist. Varun and Asif are special agents of (ACT-RAW). Jack arrives at CU headquarters and calls his wife to alleviate her fears. Turning back to work, Jack gathers his team and suggests that perhaps Senator Palmer is the reason they have been called in. he asks them to start pulling together information on the candidate. Along with Nina are CTU employees Jamey Farrell and Tony Almeida. Meanwhile, Kimberly and Janet arrive at a furniture store where they meet the guys.
 6. PM Anirudh Prakash is watching the recorded news from earlier today, where Roma is interviewing him and Jack asks a friend at the LAPD to keep a lookout for his daughter. Walsh arrives and briefs Jack's team about an

- other cabinet ministers about the fate of the Prakash Govt. expected attempt on Palmer's life. Walsh privately tells Jack that there may be a leak within CTU involved in the hit.
7. PM discusses the vote of no confidence with the ministers. It seems like the Govt. is doomed. The ministers are blaming the PM for his action of firing a minister who has taken 15 MP's with him. Cabinet is of the opinion that the Govt. should be saved by hook or crook and that is the PM's responsibility. PM is shocked to see the amorality of his ministers. Martin Belkin, a foreign photographer, calls Palmer campaign manager Patty Brooks from an airplane bound for Los Angeles. He is scheduled to meet Palmer for breakfast the next morning Mandy, the woman in the seat next to him, overhears his conversation and asks about Palmer.
 8. At a grand party, somewhere in Delhi, Nath is being congratulated for getting the 'Industrialist of the Year Award'. He goes around meeting the dignitaries. Roma has just rushed in. she congratulates Nath.. Nath introduces her to Gulshan Bano- a celebrity from Middle East
Sejpal, a handsome looking NRI approaches her and tries to talk to her. How come she is alone? Nina confronts Jack about not being included in a meeting with District Director George Mason. Jack does not tell her what the secrecy is about. Teri calls to tell Jack that she found joints in Kimberly's desk. Jack apologizes for not being there to help. In a heart-to-heart talk with Rick, Kimberly lies and says that her father is dead.
 9. Osama and gang cross the Line of Control ... Usmaan tells Osama that they will be in India very soon. Mason does not reveal to Jack what his source is for the information on the Palmer case. Jack is suspicious, and shoots Mason with a tranquilizer gun to knock him out. Jack orders Nina to look up the assets of convicted heroin dealer Phillippe Darcet because he has always suspected that Mason skimmed money from the bust. Jack hopes to use that information to blackmail the District Director.

10. The meeting with PM is about to get over; Yadav makes an offer to work out something of Pm agrees to go along with whatever he decides. PM does not want to agree without knowing the details. Savita stays back a little longer after the ministers leave and displays proximity with him. She suggests that he should take rest as he looks tired. Teri receives a call from Alan York, the father of Kimberly's friend Janet. He too is looking for his daughter.
11. Osama is angry about the way they were attacked. He is told that their location was given to the Americans by ACT-RAW. He decides to take revenge with India. Jack requests that Nina get Tony to access the Darcet files. Tony is suspect that Nina is doing this because she is still sleeping with Jack. She doesn't give a straight answer, but convinces the reluctant Tony to get her the information. Jack asks Jamey to trace the passwords for the email accounts on his home phone line. He informs Teri that Kimberly's password is LIFESUCKS.
12. Varun comes to Nath's party and is looking for Roma. He sees Roma talking top Sejpal. Varun interrupts and takes Roma aside. On the plane, Mandy continues to grill Martin flirtatiously. There is growing attraction between them.
13. Osama and gang are on mules moving towards Indian territory. Senator Palmer gets a phone call from Maureen Kingsley at the network. He gets angry at her allegation, and avoids telling his wife Sherry what was discussed.
14. Varun talks to his wife Roma trying to reconcile matters .. just then he gets a call from Abhay Sinha about some problem related to PM .. Varun apologizes to Roma and leaves the party. Nina grows worried about Jack's erratic behaviour, and she voices her concern that he is breaking the law by tapping into private files. He says that he will not compromise himself. Meanwhile, Teri and Alan York decided to try to find the girls at an address found in Kimberly's email account.

- Seeking her mother's repeated calls on her cell phone, Kimberly asks the guys to drive her home.
15. Osama has crossed border and entered India...he announces that the last battle will start from here. Martin and Mandy make love in the airplane bathroom. She asks if they can get together in Los Angeles, but he replies that he will be "pretty busy."
- Varun sends the audio file of his conversation with Abhay to Tina at RAW and asks her to clean-up the distorted audio file.
- The PM talks to his sister in law about where the kids are ...she says they are at the party and having fun.
16. At the party Sejpal tries to console Roma .. tries to get close to her and introduces himself as being from Canada... At CTU, Tony sends to Jack the accessed wire transfers on the Darcet account, and Jack wakes Mason. He once again asks the District Director who his source is, but this time shows the incriminating Darcet transfers. Mason goes to the back of the plane and knocks a flight attendant unconscious. She takes out Martin's stolen identification and she puts on a protective jumpsuit. She removes a bomb from the plane's fire extinguisher and detonates it. Mandy ejects herself from the cabin within seconds of the plane's explosion, parachuting to safety.
17. Osama and gang have stopped in the hills .. Osama is worried about Zafar's injured condition... Usmaan takes Osama to give his dose of injection (insulin) ... Zafar informs Indian friends that they are approaching Srinagar ... Usmaan asks Osama to leave Zafar behind as he will Teri speaks to Jack while driving with Alan York to the Valley. When he loses contact with his wife, Jack sets out to find her. Tony stops him with news that a plane has blown up over the Mojave Desert. Preliminary reports indicate that it was bombed. Within Dan drives the van with the

be a trouble because of his injured condition.

girls insides, he ignores Kimbgerly's directions to her house. For the first time she is afraid, and she realize that she may not be in control of the situation.

18. Varun reaches RAW office and checks the cleaned up audio file ... Javed Durani is being interrogated ... Menka who is Varun's boos is upset with Varun for not maintaining protocol... Varun listens to the cleaned up audio and finds out that there is going to be an attack on India PM today ... he decided to go and meet the PM personally at that hour.
19. Varun reaches PM's house and tries to get special permission to get in.
20. Sejpal tells Roma that he is India to meet Roma and that he has a proposal for her.
21. Osama and gang kill the loaders and mule men and leave.. they cross a check post that says Srinagar 100 Kms.
22. Varun tells the PM that some is going to make and attempt to kill him today ... PM is shocked.

47. The said defendants also contended that the plaintiff is seeking a claim mainly on real time format, use of digital clock and windows, however, such techniques are known to the film industry. The real time format has been used for a large number of years now which dates back to 1949 with the film, "The Set Up". The real time format feature had been used in the serial M*A*S*H. The real time format was also used in

1995 feature film, Nick of Time. According to defendant Nos.2 to 4 a large number of movies and programs were made in real time format including Alfred Hitchcock's 1948 film ROPE. The defendant Nos.2 to 4 disclosed that film "High Noon" was a film specifically shot in "real time" 84 minutes and also the film "My Dinner with Andri". According to them even daily program called "Before sunrise" was based on the lives of 365 people from different cities produced in one hour capsules for one whole year in real time. Under the circumstances according to said defendants there is nothing noble or unique in plaintiff's serial '24'. Regarding depiction of a clock with a countdown the said defendants contend that this is a common technique which is used in most video games, movies based on war, blackmail, spy stories etc. The digital countdown is very common and has been used in hundreds of movies e.g "Nick of Time", "High Noon" and "Dr.Strange Love".

48. Regarding the split screens also the defendant Nos.2 to 4 asserted that it is extremely common and is used in large number of movies internationally as well as in India. Some of the movies according to the said defendants which used split scenes are Time Code, Dhoom, Kal Ho Na Ho, Phone Booth, Asambhav. Even the television serials 'Pradhan Mantri' and CID Special Bureau had used split screens. The said defendants also reiterated the plea of the defendant No.1 that large number of movies confers to a single day incident and in the

circumstances plaintiff cannot claim any monopoly or copyright in the same.

49. Regarding the window technique, it is asserted that it is made possible by advanced technology and there is nothing novel which can be copyrighted by the plaintiff. It is stated that this technique is used by news channels in general, sports channels, a large number of commercials and television serials such as CID which is an investigative serial telecast on Sony T.V which is based on window technique.

50. The defendant Nos.2 to 4 also emphasized that they have used presentation techniques, different tools of presentation like "Television News Reporting" which according to the said defendants could be used in the serial 'Time Bomb' which are not comparable or similar to the features of the plaintiff's serial '24'.

51. In the circumstances, the said defendants allege that the suit of the plaintiff is only speculative and is an attempt to derail the telecast of the serial 'Time Bomb'. The defendants also produced the print out from various movies showing that the format used by the plaintiff is not unique to the serial of the plaintiff.

52. The plaintiff filed the rejoinder dated 23rd June, 2005 denying the pleas and contentions raised by the defendants. Along with the

rejoinder the plaintiff filed the similarities between the format of the plaintiff and the defendants. The similarity in the format between the plaintiff and the defendants as alleged by the plaintiff were the comparison of some of the slides of two serials.

53. The plaintiff also filed the affidavit of Mr. Brendon Zauner dated 24th June, 2005 refuting the allegations made by the defendants regarding the meeting.

54. The defendants had also filed the colour print outs of some of the shots of the pictures Dhoom, Kal Ho Na Ho, Phone Booth, Asambhav to show that split screens are very common and are used in large number of moves internationally and in India.

55. The plaintiff also relied on the complete episode guide of first Season, Season II, Season III of serial '24' and power point presentation of defendant and various other documents as well as the correspondence exchanged between the plaintiff and defendants. The correspondences exchanged between the plaintiff and defendants were the copy of notice dated 6th May, 2005 by the counsel for the plaintiff to the defendant No.1; reply dated 3rd June, 2005 from defendant No.1 to the plaintiff; the reply dated 6th June, 2005 on behalf of defendant No.1 to the plaintiff. The plaintiff also filed a copy of the order dated 25th November, 2004 passed in IA No.1382/2004 in CS(OS) No.208/2004.

56. This Court has heard the learned counsel for the parties on various dates and perused the record in detail. Even certain episodes of the serial 'Time Bomb' which had already been telecast and the serial '24' were screened in the Court. On the basis of the screening of the serial 'Time Bomb' and the serial '24', it was noticed that besides having some elements similar, the general impression of this Court is that the serial 'Time Bomb' is not the copy of the serial '24'.

57. Before analyzing the various allegations made by the plaintiff and the defendant, it will be appropriate to consider a number of judgments cited by the counsel for the plaintiff as well as counsel for the defendants in support of their respective contentions.

58. The plaintiff has relied on Fleet Street Reports (1993) 497, Johan Richardson Computers Limited Vs. Flanders and Another to contend that that Court should first decide whether the plaintiff's program as a whole was entitled to copyright, and then decide whether any similarity attributable to copying which was to be found in the defendant's program amounted to a copy of a substantial part of the plaintiff's program. Consideration of the substantiality of any copying is not to be restricted to the text only. Nor should consideration be limited to the "structure and organisation" of the program since this imports an

unacceptable degree of uncertainty because it is unclear at what level of observation of the “structure and organisation” is to be discerned.

59. In considering the question of substantiality, the similarities between the program should be considered individually and then it should be considered whether the entirety of what had been copied represented a substantial part of the plaintiff’s program. Whether a part was substantial is to be decided by its quality rather than by its quantity. It was necessary to take in account such considerations as originality and the distinction between the idea and expression in assessing the quality, and hence the substantiality, of any part which is said to have been copied. It is also relevant in assessing substantiality to filter out elements dictated by efficiency, elements dictated by external factors and elements taken from the public domain. The Court held that Mr. Flanders had intimate knowledge of BBC programme at all levels of abstraction and it is possible that he has unconsciously, unintentionally or in some other way which he did not consider to be objectionable, made use of that knowledge in a way that amounts to copying in the context of breach of copyright. It was those possibilities that were evaluated in appraising the particular similarities between the BBC program and that of Mr. Flanders.

60. 1997 PTC (17) DB, Metropol India Limited Vs. Praveen Industries India was relied on by the plaintiff to contend that the deception is the

gist of the tort of passing off and it is not necessary for a plaintiff to establish that the defendant consciously intended to deceive the public, if that is the probable result of his conduct. Nevertheless, the question why the defendant chose to adopt a particular name or getup is always highly relevant. It is a question which calls for an answer. In the said case, reliance was placed on *Munday Vs. Carey*, 22 RPC 273 where it was held that “where you see dishonesty, then even though the similarity were less than it is here, you all, I think, to pay great attention to the items of similarity and less to the items of dissimilarity.”

61. Reliance on Copinger and Skone James on copyright, 14th Edition, by Kavin Garnett, the plaintiff contended that whether copying has occurred or not is a matter of fact. Direct evidence of copying is rarely available and reliance frequently has to be placed on inference drawn from circumstantial evidence. The basis of secondary proof of copying normally lies in the establishment of similarities between the plaintiff’s work and the defendant’s work, combined with the proof of possibility of access by the author of defendant’s work to the plaintiff’s work. The relevant observation is extracted as under:-

“Whether copying has occurred or not is a matter of fact. Direct evidence of copying is rarely available and reliance frequently has to be placed on inference drawn from circumstantial evidence. The basis of secondary proof of copying normally lies in the establishment of similarities between

the plaintiff's work and the defendant's work combined with proof of the possibility of access by the author of the defendant's work to the plaintiff's work. Inferences may properly be drawn from the surrounding circumstances and from the nature of the similarities themselves. It is good practice for the plaintiff to particularise at an early stage in an action the alleged points of similarity between his work and the defendant's work. The existence of a striking general similarity coupled with evidence of the opportunity to copy will establish a prima facie case of copying which the defendant then has to answer. The evidential burden shifts to the defendant who then may seek to adduce evidence of some alternative explanation of the similarities between the two work, for example, evidence of independent creation or common source. The Court has declined to order interrogatories seeking evidence of the detailed history of the defendant's development of their copyright work on the grounds that they were "fishing" for information which would be the subject of evidence at the trial. The task of the judge is then to consider the evidence as a whole and decide whether there has been copying or not. An appellate court will not normally interfere with the judge's findings of fact."

62. The plaintiff has also relied on 169 USPQ 106, Fink Vs. Goodson Todman Enterprises, a case of California District Court of Appeal, Second District, Division Five to contend that to assess infringement of copyright, story similarities are key to recovery in action for infringement of common law copyright in literary material. Change in setting of stories can be ignored. It is not fatal to recover that some

parts of plaintiff's elaborate idea are not found in defendant's production provided that parts taken are quantitatively and qualitatively significant to the work.

63. In 2003 (27) PTC 4157 (Bom) DB, Zee Telefilms Ltd. & Anr. Vs. Sundial Communications Pvt. Ltd. & Ors., a Division Bench had held that in order to find out similarity in two concepts what is to be seen is the substances, the foundation, the kernel and the test as to whether reproduction is substantial is to see if the rest can stand without it. If it cannot, then even if many dissimilarities exist in the rest, it would nonetheless be a substantial reproduction liable to be restrained.

64. For comparison, two words involved are to be considered in hypocritical and meticulous scrutiny but by the observations and impressions of the average viewer.

65. A TV Reality Show "Swayamvar" providing a platform for match-making giving a choice to the bride with mediation of an Anchor to chose a husband of a choice from a line-up of suiters in the presence of her parents in the studio was conceived. The concept of swayamvar as conceived by the plaintiff was found to be noval concept in original though capable of being protected. In this matter, the defendant also had a TV Reality Show "Subh Vivah" based on concept of spouse selection in any form so to depict match-making in the form of reality

TV show as a real drama. It was held that the defendants were aware of the concept of Swayamver and the concept developed and evolved by the plaintiff was the result of the work done by the plaintiff and if the defendant is allowed to show their own reality show based on the concept of originally conceived by the plaintiff, it will be allowing the defendant to use that concept and to reap the fruits of the labour of the plaintiff and consequently it was held that the plaintiff has *prima facie* case pertaining to his TV reality show “Swayamver” in his favour and the defendants were restrained from its own TV reality show “Subh Vivaha” and balance of convenience was also found to be in favour of the plaintiff leading to restraint against the defendants from transmitting or enabling the transmission by television of the programme entitle “Subh Vivaha”.

66. The single Judge had crystallised the propositions as follows:-

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 copy-righted 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 copy of the original.

4. Whether 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 negate 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.

67. Reliance has also been placed on 162 Federal Reporter, 2nd Series 354, Universal Picture Company Incorporation Vs. Harold Lloyd Corporation to contend that entire motion picture, photo play, need not be copied to constitute infringement of copyright but mere copy of a major sequence is sufficient and slight difference and variations will not serve as a defence in action for copyright infringement. But a test of infringement is whether the work is recognisable by an ordinary observer as having been taken from the copyrighted source. The means of expressing an idea is subject to copyright protection and where one uses his common method or way of expression, his idea with such a mode of expression would constitute a protectable work.

68. Relying on 196 USPQ 97, Sid & Marty Krofft Television Productions Inc. Vs. McDonald's Corporation, the plaintiff contended that in addition to substantial similarity, a plaintiff must show access in order to prove infringement. In this case, the defendants had access to plaintiff's work as defendants were engaged in negotiations with plaintiff for licensing of the work even while preparing the Macdonald land commercials. It was held that the test for whether there is a similarity of ideas is factual one to be decided by the trier of fact and analytical dissection and expert testimony are appropriate for this determination; type of the work involved, material used, subject matter and settings are some criteria to be analysed in applying this extrinsic test. Once substantial similarity of ideas has been established, trier of

fact must determine whether there is substantial similarity in expression of ideas so as to constitute infringement and analytic dissection and expert testimony are not intrinsic determination which depends upon response of ordinary reasonable person.

69. The contention of the plaintiff is that the defendants had ample opportunity to view the plaintiff's serial and had full access to it as it is being broadcast since 2001 and the entire storyline of the plaintiff's serial is also available in text form on the plaintiff's website giving opportunity to the defendants to copy the same. To further advance the plea of availability of plaintiff's material, it was contended that first defendant had met the representatives of the plaintiff's and had showed interest in obtaining a license from the plaintiff for the same serial but when no licence was granted, the serial has been copied. Plaintiff relied on the affidavit of Mr. Brendan Zauner dated 8th August, 2005. the allegation of the plaintiff is that with a view to divert the issue regarding this meeting, first defendant who claimed to be producer of the serial has taken a dramatically opposite stand calling second defendant the producer which reflects the dishonesty with which the defendants have acted.

70. The plaintiff has given great emphasis on the copy of its serials by contending that format and structure, screen play, storyline, character sketches, entire play of character or sequence of events have been

copied by the defendants inasmuch as that different actors in both the serials have similar roles to play. The plaintiff contended that though ideas are not protected but the expression of ideas are protected.

71. To counter the plea of the defendants that features in their serials are commonly used and are common stock, the plaintiff has contended that new treatment of common subject are also entitled to copyright protection. According to the plaintiff for determination whether there is a similarity in the expression of an idea, hypocritical or meticulous scrutiny is not to be done, but by the observations and impressions of the average reasonable reader and spectator. The plaintiff asserted that portrayal, adornments and methods of presentation can form an integral part of copyrighted subject matter.

72. Relying on Sid & Marty Krofft Television Productions Inc. Vs. McDonald's Corporation, 196 USPQ 97 at 105; Fink V. Goodson Todman Enterprises Ltd. 169 USPQ 106 at 114; Anil gupta V. Kunal Dasgupta 2002 (25) PTC 1 (Del) at 22; Zee Telefilms Ltd. & Anr. Vs. Sundial Communications Pvt. Ltd. & Ors. 2003 (27) PTC 457 (Bom DB) at 468), it was contended that what is important is whether the concept and feel has been copied and in order to ascertain the copying, duplication or near identity is not necessary to establish infringement nor it is permissible to divide up the work and make comparison of individual parts as analytical dissection is improper.

73. Another precedent relied on by the plaintiff, *Green v. Broadcasting Corporation of New Zealand* 1989 RPC 700 Privy Council, the issue was whether copyright subsisted in the ‘dramatic format’ of the plaintiff’s show ‘Opportunity Knocks’? It was observed:-

“The alternative formulation of the appellant’s claim relies upon the ‘dramatic format’ of ‘Opportunity Knocks’, by which their Lordships understand is meant those characteristic features of the show which were repeated in each performance. These features were, in addition to the title, the use of catch phrases “for [name of competitor] opportunity knocks” “this show is your show folks, and I do mean you”, and “make your maind time”, the use of a device called “clapometer” to measure audience reaction to competitors’ performances and the use of sponsors to introduce competitors.....

It is stretching the original use of the word “format” a long way to use it metaphorically to describe the features of a television series such as a talent, quiz or game show which is presented in a particular way with repeated but unconnected use of set phrases and with the aid of particular accessories. Alternative terms suggested in the course of argument were ‘structure’ or ‘package’. This difficulty in finding an appropriate term to describe the nature of the “work” in which copyright subsists reflects the difficulty of the concept that a number of allegedly distinctive features of a television series can be isolated from the changing material presented in each separate performance (the acts of the performers in the talent show, the question and answers in the quiz show etc.) and identified as an “original dramatic work”.....

The protection which copyright gives creates a monopoly and “there must be certainty in the subject matter of such monopoly in order to avoid justice to the rest of the world.”[*Tate v. Fulbrook* (1908) 1 K.B. 821. The subject matter of the copyright claimed for the ‘dramatic format’ of ‘Opportunity Knocks’ is conspicuously lacking in certainty. Moreover, it seems to their Lordships that a dramatic work must have sufficient unity to be capable of performance and that the features claimed as constituting the “format” of a television show, being unrelated to each

other except as accessories to be used in the presentation of some other dramatic or musical performance, lack that essential characteristic.”

74. In *Borden v. Andrews* 139 USPQ 557 (California Superior Court, Los Angeles County) referred to by the Plaintiff, the alleged infringing game, “By the Numbers” was a variation on the old parlour game called ‘Ghost’. The purpose was to make a word of three or more letters in which two-man teams participate. A game board was involved, which has thirty permanently numbered squares. Before each game, the twenty-six letters of the alphabet were assigned, each to one of the thirty squares, leaving four dummy squares. The contestants were permitted to view the arrangement with a view to memorizing the same. Then, the letters were withdrawn from sight. The beginning member of the team then called out one of the numbers; the letter was then momentarily exposed and recorded; his teammate thereafter, called out another number, the letter corresponding to which thus became the second letter towards a prospective word. This selection continued till an impossible combination has been reached or one of the members of the team ‘declares’ a word rather than seeking to add thereto. Thereupon, the opposing team proceeded in a similar fashion. Values, in terms of points, were given according to the length of a word successfully completed. In this case the Court observed: –

“ On the other hand the plaintiff’s concept, as expressed in the exhibits bear no relationship to this televised program. Quite apart from the basic reliance on

the dollar bill as a source of numbers to be translated into letters and words, and from the fact that the letter-number equivalence is both invariable and open to the contestants at all times, both the manner of play and goal to be attained are entirely different.

75. The plaintiff in this case had contended that he had conceived his game as one in which there is number-letter equivalence, which is manifested in terms of an electrical board in which this is shown and exhibited to the audience and that this had been copied by the defendants in their game show. The Court observed:-

“ In a case such as this, it is the clothing of the idea rather than the idea itself which is protectable; that is the manner and form in which the basic concept of cryptography is fashioned into a game show for television. Except for the basic cryptographic principle itself, the only minor similarity between the two concepts is the use of the game board. Even there, the similarity is not one which exists as a practical and tangible, as distinguished from verbal, matter. Under such circumstance the issue is one of law on which reasonable minds cannot differ.”

76. Another precedent relied on by the plaintiff is *Zee News v. Navjot Sandhu & Ors.* SLP (CrI.)No. 5464/2002. In this case the respondents were prosecuted for their alleged involvement in the 13th December, 2001 Parliament Attack. Their trial was over and the trial court had notified that the judgment would be delivered on 11th December, 2002. On 5th December, 2002 the petitioner advertised that it would be broadcasting a reconstruction of the parliament attack from 13th December, 2002 to 16th December, 2002. The court subsequently changed the date of delivery of judgment from 11th December to 16th

December, 2002. Thereafter, the respondents filed a criminal writ petition before the Delhi High Court contending that the broadcast of the telefilm may cause prejudice to their case and therefore the broadcast may be stayed till the delivery of the judgment. The High Court without issuing notice to Zee News passed the following order:

– “In the meantime in case the film ‘December 13 Parliament Attack’ is to be telecast the same shall be done only with the prior permission of the trial court. Any order which the trial court passes in the meanwhile with regard to the telecast of the film shall be passed only after hearing the accused.”

On appeal the Supreme Court held :-

“We find that there was neither any prima facie case nor balance of convenience in favour of the respondents for passing the interim order nor an irreparable injury was likely to be caused to the respondents if the interim order had not been passed. It may be noted that the Sessions Court on 25th November, 2002 notified that the judgment would be delivered on 11th December, 2002. The petitioner on 5th December, 2002 advertised that it would broadcast the telefilm from 13th December, 2002. The afore-said dates show that the telecast of the film was not for the purpose, in any way, to influence the mind of the judge. Further, we find that the judges by their judicial training and the kind of office they hold are not expected to be influenced by any broadcast of such film. For the above said reasons we stay the operation of the order under challenge.”

77. In *Hollinrake v. Trustwell* 1894 Ch. 420 relied on by the plaintiff it was held:-

“Copyright, however, does not extend to ideas, or schemes, or systems, or methods; it is confined to their expression; and if their expression is not copied the copyright is not

infringed. The case of Baker V. Selden, already referred to, illustrates this very well. It was there held that the author of a system of book-keeping was not entitled to any monopoly in the system, but was only entitled to prevent the other persons from copying his description of it...."

Applying this principle it was observed,

"If this dictum is applied to our case it can be said, and we say so, the plaintiff No. 1 has no monopoly in the idea of a poor woman making good in life, being burdened early in life with an illegitimate child, having a life long friend who is an ordinary worker, marrying an army officer, and then making a devise of her fortunes, required through a chain of stores, to her successors. It might, be the theme of "A Woman of Substance", but if only this is copied, then nothing is copied. It is common to both the works, but it is too common. There can be no monopoly in something which is too common, because it would prevent free exercise of artistic skill."

78. Per contra the defendants have also relied on a vast number of Indian and foreign judgments in support of their contentions. In R.G. Anand v. Delux Films & Anr. 1978 (4) SCC 118 relied on by the defendants, the plaintiff was the writer and the producer of the play 'Hum Hindustani'. The play was written by him in Hindi in 1953 and was enacted by him for the first time on February 6, 7, 8 and 9, 1953 in New Delhi. The play proved to be very popular and received great approbation from the press and the public as a result of which the play was re-staged in February and September, 1954 and also in 1955 and 1956 at Calcutta. In November, 1954 the plaintiff received a letter from the second defendant in that case wherein the defendants informed the plaintiff that he was supplied with a synopsis of the play by one Mr. Balwant Gargi, a common friend of the plaintiff and the defendant. The

defendant had requested the plaintiff to supply a copy of the play so that the defendant may consider the desirability of making a film on it. Some time about January, 1955 the second and the third defendants came to Delhi, met the plaintiff in his office where the plaintiff read out and explained the entire play to the defendants and also discussed the possibility of filming it. The second defendant did not make any clear commitment but promised the plaintiff that he would inform him about his reaction after reaching Bombay. Thereafter, the plaintiff heard nothing from the defendant. Sometime in May, 1955 the second defendant announced the production of a motion picture entitled "New Delhi". One Mr. Thapa who was one of the artists in the play produced by the plaintiff happened to be in Bombay at the time when the picture 'New Delhi' was being produced by the defendant and informed the plaintiff that the picture being produced by the defendant was really based on the plaintiff's play 'Hum Hindustani'. The picture was released in Delhi in September, 1956 and the plaintiff read some comments in the papers which gave the impression that the picture was very much like the play 'Hum Hindustani' written by the plaintiff. The plaintiff himself saw the picture on the 9th September, 1956 and he found that the film was entirely based upon the said play and was, therefore, convinced that the defendant after having heard the play narrated to him by the plaintiff, dishonestly imitated the same in his film and thus committed an act of piracy so as to result in violation of the copy-right of the plaintiff. The plaintiff accordingly filed the suit for damages, for

decree for accounts of the profits made by the defendants and a decree for permanent injunction against the defendants restraining them from exhibiting the film 'New Delhi' The Court had observed that the position appears to be that an idea, principle, theme, or subject matter or historical or legendary facts being common property cannot be the subject matter of copyright of a particular person. It is always open to any person to choose an idea as a subject matter and develop it in his own manner and give expression to the idea by treating it differently from others. Where two writers write on the same subject similarities are bound to occur because the central idea of both are the same but the similarities or coincidences by themselves cannot lead to an irresistible inference of plagiarism or piracy. Thus, the fundamental fact which has to be determined where a charge of violation of the copyright is made by the plaintiff against the defendant is to determine whether or not the defendant not only adopted the idea of the copyrighted work but has also adopted the manner, arrangement, situation to situation, scene to scene with minor changes or super additions or embellishment here and there. Indeed, if on a perusal of the copyrighted work, the defendant's work appears to be a transparent rephrasing or a copy of a substantial and material part of the original, the charge of plagiarism must stand proved. Care however must be taken to see whether the defendant has merely disguised piracy or has actually reproduced the original in a different form, different tone, different tenor so as to infuse a new life into the idea of the copyrighted work adapted by him. In the

latter case there is no violation of the copyright. 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 copyright 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 negate 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, a 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.”

79. The Court had further held,

“On a close and careful comparison of the play and the picture, but for the central idea (provincialism which is not protected by copyright), from scene to scene, situation to situation, in climax to anti-climax, pathos, bathos in texture and treatment and purport and presentation, the picture is materially different from the play. As already indicated above, applying the various tests outlined above we are unable to hold that the defendants have committed an act of piracy in violating the copyright of the play.”

80. Another Judge, JASWANT SINGH, J. In this case had rather held,

"On a careful comparison of the script of the plaintiff's copyrighted play with the aforesaid film, although one does not fail to discern a few resemblances and similarities between the play and the film, the said resemblances are not material or substantial and the degree of similarities is not such as to lead one to think that the film taken as a whole constitutes an unfair appropriation of the plaintiff's copyrighted work. In fact, a large majority of material incidents, episodes and situations portrayed by defendants 1 and 2 in their aforesaid film are substantially different from the plaintiff's protected work and the two social evils viz. caste system and dowry system sought to be exposed and eradicated by defendants 1 and 2 by means of their aforesaid film do not figure at all in the plaintiff's play. As such I am in complete agreement with the conclusions

arrived at by my learned brother Murtaza Fazal Ali that there has been no breach on the part of the defendants of the plaintiff's copyright and concur with the judgment proposed to be delivered by him."

81. However, judge PATHAK, J. had held,

"An infringement of copyright can arise even though the essential features of a play correspond to a part only of the plot of a film. Such a situation can arise where changes are effected while planning the film so that certain immaterial features in the film differ from what is seen in the stage play."

82. It appeared from a comparison of the script of the stage play "Hum Hindustani" and the script of the film "New Delhi" that the authors of the film script had been influenced to a degree by the salient features of the plot set forth in the play script. There can be little doubt from the evidence that the authors of the film script were aware of the scheme of the play. But on the other hand, the story portrayed by the film travels beyond the plot delineated in the play. Nonetheless, the question can arise whether there is an infringement of copyright even though the essential features of the play can be said to correspond to a part only of the plot of the film. This can arise even where changes are effected while planning the film so that certain immaterial features in the film differ from what is seen in the stage play. The relative position in which the principal actors stand may be exchanged or extended and embellishments may be introduced in the attempt to show that the plot in the film is entirely original and bears no resemblance whatever to the stage play. If the treatment of the theme in the stage play has been

made the basic of one of the themes in the film story and the essential structure of that treatment is clearly and distinctly identifiable in the film story, it is not necessary, for the Court to examine all the several themes embraced within the plot of the film in order to decide whether infringement has been established. In the attempt to show that he is not guilty of infringement of copyright, it is always possible for a person intending to take advantage of the intellectual effort and labour of another to so develop his own product that it covers a wider field than the area included within the scope of the earlier product, and in the common area covered by the two productions to introduce changes in order to disguise the attempt at plagiarism. The trial Court as well as the High Court had concurred with the finding that such similarities as exist between the stage play "Hum Hindustani" and the film "New Delhi" do not make out a case of infringement. The dissimilarities, in their opinion, are so material that it is not possible to say that the appellant's copyright has been infringed. This Supreme Court had held that it was extremely reluctant to interfere with concurrent findings of fact reached by the Courts below and for that reason, the judgment under appeal was allowed to stand. It was further held that in another, and perhaps a more clearer case, it may be necessary for this Court to interfere and remove the impression which may have gained ground that the copyright belonging to an author can be readily infringed by making immaterial changes, introducing insubstantial differences and enlarging

the scope of the original theme so that a veil of apparent dissimilarity is thrown around the work now produced.

83. In R.M. Subbiah & Anr. v. N. Sankaran Nair, AIR 1979 Madras 56, the plaintiff claimed copyright in the story titled 'Mandanotsavam' and sought an injunction refraining the defendant from producing or continuing to produce the Telegu movie titled 'Amar Prem" which was allegedly based on the story 'Mandanotsavam'. Instead of granting an injunction, the learned Single Judge passed an order the operative portion of which is quoted below-

“ I direct the defendants to furnish a bank guarantee to the tune of Rupees 50,000/- to the satisfaction of II Asst. Registrar, High Court, Madras, on or before 23-5-1978, will stand made absolute. If, however, the bank guarantee as directed above is furnished the interim injunction granted as stated above, will stand dissolved to the extent of the exploitation of the story 'Madanotsavam' for picturing the Telugu version by the second defendant and in other respects, the interim injunction granted will continue".

84. In pursuant to the order of the Court, the defendant had completed the Telegu version of the picture 'Amar Prem' and distributed the prints thereof to various distributors in the State for the release of the said movie. Wide publicity was made about the release of the movie. Thereafter the plaintiff once again approached the Court for an injunction restraining the defendants from releasing the movie 'Amar Prem'. The learned Single Judge passed an order restraining the defendant from releasing the movie as he was of the opinion that the

previous order passed by him only enabled the defendant to picturize the film but did not authorize him to release it. The defendant preferred an appeal against the said order. The issue before the DB was 'whether the grant of an injunction alone will subserve the interests of justice or whether substituted safeguards could be thought of in order to preserve the rights, if any, of the respondents.' The Court had held and observed:

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“ Injunction being an equitable remedy, which is granted by a court in exercise of its judicial discretion has to be considered from various facets which arise from a particular set of circumstances in each case. There may be cases in which the grant of an injunction temporary or permanent will only meet the ends of justice and an alternative safeguard for the preservation of the rights of the challenging party cannot at all be thought of. There may be also cases where the remedy of injunction has to be made flexible and adjustable to the situations arising in each case. A rigid invocation without contemplating elasticity in the application of the rule as to the grant of injunction might sometimes result in hardship which cannot later be cured.”

85. In the instant case, the learned Judge had allowed the Telugu version of the picture Amar Prem to be taken, the story said to be based on the story of 'Madanotsavam' in which the plaintiffs claimed a copyright. When once we reach the stage, which is not in dispute, that the picture has been picturised on celluloid and it would not be conducive in equity or in the name of justice to keep such a completed picture in the shelves of a laboratory without the same being exploited for the benefit of both the parties in litigation in which only question is

whether there is a copyright vested in the plaintiff in the story of the picture. If the picture as picturised and completed in the Telugu version is to be kept without being released, then it would neither benefit the plaintiffs not the defendant. But in our view certain nearer approximations in order to render justice has to be thought of, instead of creating a stalemate which is not beneficial to the parties. It is not conducive to keep the status quo until the disposal of the suit. The plaintiff is interested only in establishing his rights and getting sufficient compensation in terms of money, if his copyright is established in accordance with law. It was held that:

“.....In a case like this, when it is not disputed that after the Telugu version was completed, prints were taken and distributed to the distributors in this State and in other States, it would be highly iniquitous to stem the progress of such a commercial activity unless the Court is satisfied that there is no other way of granting justice to the parties excepting by a preventive injunction. The rights of third parties are also involved. The third parties are distributors and exhibitors who have come into the picture. The first plaintiff's claim is that his literary work has been pirated. This relief could be compensated for sufficiently in money. In cases where an equitable relief would be sufficiently compensated for monetarily, then the Courts refrain from being wooden and granting injunctions alone instead of contemplating the nearest approximation which it can make. The mere fact that a prima facie case exists for the grant of an injunction or even the additional intelligence that a party seeking for it would suffer irreparable harm or inconvenience by this, may not be sufficient criteria for the granting of an injunction. Before the Court exercises its jurisdiction, to grant such a interim relief, which is essentially an equitable and a discretionary remedy the Court will have to be further satisfied that the comparative

mischief or inconvenience which is likely to arise from withholding an injunction will be greater than that which is likely to arise from granting it".

86. In *NRI Film Production Associates (P) Ltd. v. Twentieth Century Fox Film Corpn. & Anr.*, ILR 2004 Kar 4530 relied on by the defendants, the plaintiff filed a suit for declaration that the movie 'Independence Day' produced by the defendants is the infringement of the copyright of the film script 'Extra Terrestrial Mission. In this film the plaintiff was the author of the film script E.T.M and acquired registered copyright in the year 1986. It was alleged that the defendants' movie I.D. was a plagiarized version of E.T.M. The plaintiffs pointed out various similarities between the script of E.T.M and the movie I.D. The storey line was that Phil Talon a U.S. Army Captain saves Diana, a Vietnam citizen from a sexual assault during the Vietnam War. Love blossoms and they get married. They are now working together for the rehabilitation of Vietnamese war affected children at U.S. Aliens descend on earth on a rescue good will mission and informs Phil Talon about an impending nuclear blast conspired by a Christian priest at the site of a mosque at Jerusalem and requests him to negotiate with the President of U.S. for preventive action. The President takes an egoistic stand, refuses alien interference in the affairs of earth and directs war against the aliens. First round of war the nuclear arsenal is substantially exhausted and the aliens appear invincible. The aliens successfully prevent the nuclear holocaust and resists the U.S. attacks.

The President of U.S. confers with U.S.S.R., France etc. and launches a second round of attacks with too is thwarted by the aliens. Desperate, the President calls for a truce. The aliens having established their triumph, voluntarily returns. Whereas the storyline of I.D was that Aliens attack the earth bombarding buildings including the White house and nuclear installations killing several people. Space ships of 15 miles diameter descend on several important cities. A huge mother space ship stationed in the space at quite a distance control the smaller space ships. The U.S. Air Force attacks in vain exhausting substantial nuclear arsenal. A scientist accidentally hits on the idea of implanting a virus in the mother ship thereby making all the space ships vulnerable. The scientist and an expert war pilot takes the journey to the mother ship in an old captured spaceship and successfully implants the virus. The president gets directly involved in the war, as a pilot to attack the spaceships. The virus is activated and the spaceships become vulnerable to attacks and starts crumbling. In this case it was held:

“.....the idea and portrayal of sequences like traffic jams, disruption of communication, dazzling effects of the nuclear missiles are hackneyed subjects of every scientific fiction and matters of common grasp. There is no novelty or uniqueness either in the idea or in expression. In variably every author of a scientific fiction would conjure them as consequential concomitant effects as a matter of common grasp and "Scenes a Faire" which carry no copyright.”

87. The true effect of amendment of clause 2(a) (v) in the case of literary and dramatic works would apply only when there is marginal peripheral alterations and rearrangements. The amendment does not bring out any drastic change in the existing law, therefore the test of dissimilarities propounded by Supreme Court in R.G.Anand's case still holds the field. In that view it was held that the story and the film script in I.D. is totally distinct and different from E.T.M. The so called unique features of E.T.M. like President's involvement in war, the picturization of effects of war, the presentation of concept of spaceship, energy shield could at the best be called an idea, but not a precise defined expression to confer copyright. It was held:

“ There is no comparative basis between E.T.M. and I.D. Except the fact in both the plots the President is involved in the war, but the manner of involvement and the nature of the President's role conceived in E.T.M. is totally different from I.D. The spaceship, energy shield, people welcoming aliens are again ideas. The treatment and presentation of the concept in the film I.D. is totally different from the script E.T.M. The picturisation of blasting of nuclear missiles, disruption of communications, traffic jams are nothing but "scene a faire" commonly found in scientific fictions. Indeed in the several English earlier movies which have been marked and presented visually for the Court's benefit disclose that the confrontation of aliens with the men on the earth, the spaceship energy shields are the ideas evolved several decades ago and there is nothing special of the idea.

In fact E.T.M. is only at the stage of film script, a reading material. Whereas I.D. is a visual material. The presentation and picturisation of ideas into events in a visual form involves technical skills and expertise of photography. The depiction of the events of nuclear missile

attacks, the traffic jams, disruption of communications, devastating effects of the nuclear bombardment could get altogether a different photographic treatment varying from person to person. The photographic expression of the work in the film would itself constitute a copyright. Therefore, it cannot be said that the script of E.T.M. if made a film will bear the similar presentation and effects.”

88. In another judgment relied on by the defendant, *Barbara Taylor Bradford v. Sahara Media Entertainment Ltd.* 2004 (28) PTC 474 (Cal)(DB), the plaintiff was the authoress of the book ‘A Woman of Substance’. She sought an interim injunction against the defendant from infringing her copyright in the book by broadcasting the serial ‘Karishma- The Miracle of Destiny’. At the time of filing the suit the defendants had already completed and made ready for telecasting 80 episodes of the serial. About 100 crores had already been invested and 11 crores taken as advance from advertising agents. One episode had been telecast before the Single Judge had issued the injunctive order. The only material on which the plaintiffs had based their claim for infringement was the interview taken by a freelance journalist named Ms. Pammi Somal of Respondent No. 2, Akashdeep Sabir who was the creative Director and producer of the serial, wherein he had mentioned that the serial was based on the book ‘A Woman of Substance’. The Court had observed that the law protects originality of expression but not originality of the central idea, not merely because of the balancing of two conflicting policies. Those policies are that the law must protect originality of artistic work, thereby allowing artists to reap the fruits of

their labour and stopping unscrupulous pirates from enjoying those fruits. The second policy is that the protection must not become an over protection, thus, curbing down future artistic activity. If mere plots and character were to be protected by copyright, an original artist could not write anything "original" at all, on a similar plot or on similar characters. The rationale behind the basic copyright law is that you can borrow the idea of another author, but not the expression. The theme can be borrowed. The originality in the theme is not protected. There is no protection given by the law to the first writer who is not really the first writer at all. The plot being common, perhaps too common, and being the possible field for operation of future and different literary works and plays, should not be blocked of by the law of copyright. If plots and ordinary prototype characters were to be protected by the copyright law, then soon would come a time in the literary world, when no author would be able to write anything at all without infringing copyright.

89. In these circumstances, the issue which arises is that since no literary work is ever exactly copied, except for naked piracies by unauthorized printing, should not a particular author be free to devise his own story, characters and plots, just as he pleases provided he does not actually copy an earlier work, exactly or almost exactly? It was held that the law cannot become this lax. It would pave the way to plagiarism and the labors of the authors would be freely picked up by

unscrupulous persons. They would utilize the fruits or originality, not the authors themselves. Therefore, even if the plot is copied, the person who copies it, be it consciously or unconsciously, must also weave into the plot sufficient creations of his own imagination and literary skill, to make the work his own and not a copy of the work which might have inspired him in the first place.

90. The defendants have also relied on *Norowzian v. Arks Ltd.*, Fleet Street Reports [2000] 363 (In the Court of Appeal). In the said decision in 1992 the claimant directed a short film called 'Joy', consisting of a man dancing to music. The striking feature of the visual impact of the film was the apparent sudden changes of position of the man which could never have been performed as successive in reality. This effect was produced by the use of an editing technique known as 'jump cutting'. He claimed that the Guinness advertisement entitled 'Anticipation' infringed his copyright in 'Joy'. In 'Anticipation' the defendants had used a similar jump cutting technique to that used by the plaintiff in 'Joy' with the similar result that the dancing man appears to indulge in a series of jerky movements that could not be achieved by a dancer in reality. It was held by the Court that it is impossible to say that 'Anticipation' is or includes a copy of a substantial part of Joy. It was observed, "the highest it can be put in favor of the claimant is that there is a striking similarity between the filming and editing styles and techniques used by the respective

directors of the two films. But no copyright subsists in mere style or technique. Mr. Prescott QC, for Arks Ltd, instanced the technique of Pointillism, which was originated by the neo-impressionists Seurat and Signac. That was a telling example. If, on seeing *La Baignade, Asnieres* at the Salon des Artistes Independents in 1884, another artist had used precisely the same technique in painting a scene in Provence, Seurat would have been unable, by the canons of English copyright law, to maintain an action against him. Other examples of original artistic styles or techniques whose imitation in the production of an entirely different subject matter would not found such an action might be the 'sprung rhythm' of Gerard Manley Hopkins' verse or the thematic build-up of Sibelius's second symphony. So here, the subject matter of the two films being, as the judge said, very different one from the other, the similarities of style and technique are insufficient to give the claimant a cause of action against the defendants.”

91. In *McGhan v. Ebersol*, 605 F.Supp. 277(S.D.N.Y. 1985) it was observed that it is true that the fact that a plaintiff's idea 'embodies elements long in use does not of itself negate originality or novelty. In *Baut v. Pethick Const. Co.*, 262 F. Supp. 350, 361 (M.D. Pa. 1966)], it was observed that in order to be protectable, adaptations of ideas must show genuine novelty and invention, and not a merely clever or useful adaptation of existing knowledge. The judicious use of existing means or the mixture of known ingredients in somewhat different proportions,

all the variations on a basic theme, partake more of the nature of elaboration and renovation than of innovation. Similarly in Educational Sales Programs, Inc. v. Dreyfus Corp., supra, 317 N.Y.S.2d at 844, applying the principle enunciated in the above said case the Court observed-

“ In his proposal for "Father's Day," plaintiff took already existing ingredients from the basic theme of the family situation comedy. If plaintiff's submission in 1980, which was expressly rejected by NBC in November of 1980, were to be considered novel, it would mean that defendants would be barred from televising a family situation comedy starring Bill Cosby, if the family is an intact family unit.”

92. In Green v. Broadcasting Corporation of New Zealand 1989 RPC 469 (Court of Appeal NZ) the appellant was the author, producer and compere of a television talent quest produced and broadcast in the United Kingdom under the name 'Opportunity Knocks' from the early 1960's until 1978. Over the years he had developed a distinctive style built round the name of the production and his personality and each broadcast followed a standard form in which contestants were introduced by sponsors who spoke briefly about them, and there were also features such as a "clapometer" for visual measurement of audience reaction and distinctive phrases said to be exclusively associated with the show, such as "For 'So and So' Opportunity Knocks" and "Make your mind up time", to give the audience the opportunity to make their decision. The appellants broadcasted a talent show with the same title 'Opportunity Knocks' in New Zealand from 1975 to 1979. The

said talent show was alleged to have the same format as that of the appellant's talent quest. In 1979 the appellant brought an action against the respondent, the Broadcasting Corporation of New Zealand, claiming that by its production and transmission in New Zealand of a similar television talent quest under the same name in 1978 it passed off its program as his, or as an adaptation authorized and approved by him. The appellant also claimed that the Corporation by its transmission had infringed his copyright in the title "Opportunity Knocks" and to scripts and the dramatic format of his program. In these circumstances, the Court had observed:

“In order to succeed in his action the plaintiff had to make out that his television program was distinctive, that its reputation in New Zealand among television viewers had generated a goodwill here and that the Corporation in transmitting its program falsely represented that it was Mr. Green's program or at least that he had approved of it.”

The judges were of the opinion that the plaintiff has not been able to establish the existence of goodwill in New Zealand for his show sufficient to support an action of passing off. The two issues before the Court were whether the plaintiff had copyright in (1) script (2) format of 'Opportunity Knocks'. The court was of the opinion that the plaintiff's script included the title, the various catchphrases (which as time went by became a standard and expected part of the entertainment), recorded the names of the competitors or entrants together with the nature of their act, the names of the sponsors and the general order of appearances and happenings, and specifically referred to the

"clapometer". The script must also have indicated the sequence of events, musical interludes and the like. They did not include the details of interviews for they were ad lib, nor, obviously, details of the particular performance of each competitor. The Court had held that the scripts could not constitute a dramatic work as they were nothing more than a general scheme for a proposed entertainment and they could not themselves be acted or performed, which according to the court was the essence of such a work. As to the issue whether the scripts were entitled to copyright as a literary work it was observed –

“The question remains whether the script or scripts is, or are, literary works. Mr. Green's written work was, to an extent which in the absence of the actual scripts is not entirely clear, the expression of an idea for the production of a talent quest. Copyright does not protect a general idea or concept. The abstraction implicit in a general idea or concept may however be delineated by or attended with detail or pattern or incidents sufficiently substantial to attract copyright in the whole. If the work is sufficiently removed from mere idea so as to obtain copyright the question of whether it is infringed will depend upon the nature and quality of what has been taken. If the general idea which underlies or forms the basis of the work has alone been taken there will be no infringement. If more than that it will be a question of fact and degree whether there is an infringement.”

In these facts and observation, the Court had held:

“I am of the opinion that Mr Green's script or scripts cannot support a claim of copyright in a dramatic work. Nor do I think there can be a claim for "format" which is not either a dramatic or literary work itself or perhaps a combination of both. The monopoly conferred by the Copyright Act can only be maintained where the condition of its grant are complied with.”

93. The suit of the plaintiff twentieth Century Fox Film Corporation is at preliminary stage, though pending for some time, when the existence of the rights of the plaintiff and their violations are contested and uncertain. The rights of the plaintiff are still to be established after the trial for evidence in support of the pleas of the parties. Considering the facts that the serials of both the parties have already been telecast, this Court will have to go by the principles of 'balance of convenience' which will be as to who will be more inconvenienced in case as prayed for by the plaintiff is granted or not granted and also as to who will suffer irreparable loss. The principles enunciated by the Apex Court in the case of Wander Ltd. & Anr. v. Antox India (P) Ltd. can be a guideline principle to resolve this controversy and to throw light about these aspects of the matter. In the case of Wander Ltd. & Anr. (supra), it was held by the Supreme Court as under:-

“.....Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Court at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both the temporary and discretionary. The objection of the interlocutory injunction, it stated;

“.....is to protect the plaintiff against the injury by violation of his rights by which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against the injury resulting from his having

being prevented from exercising his own legal rights for which he could not be adequately compensated.”

94. In the circumstances, this Court must weigh the plaintiff's requirement to telecast his serial against the defendants' need to telecast his serial and determine where balance of convenience lies and preserve the status quo in respect of the rights of the parties which will appear on a prima facie case. The task is slightly more difficult at this stage as parties have not yet started with their evidence and the telecast of both the serials of plaintiff and defendant is over without any further new development.

95. The plea of the plaintiff to establish prima facie case is that the defendants have substantially copied the serial of the plaintiff `24'. In considering the question of substantiality, the similarity between the programs can also to be considered individually in certain situations and then to consider whether the entirety of what had been copied represented a substantial part of the plaintiff's program. Even regarding the substantial copy by the defendants, what is to be decided is by its quality of copy rather by its quantity. This has not been disputed by both the parties that under the Copyright Act protection for an original work does not extend to any “idea, procedure, process, system, method of operation, concept, principle, or discovery” regardless of the form in which it is described, explained, illustrated or embodied in such work. A statutory protection does not extend to the intellectual conceptions

apart from the thing produced. The protections of Copyright Act are not intended to either enlarge or to contract the scope for Copyright production and the basic dichotomy between the idea and its expression remain unchanged. The rules of the Copyright provide that ideas, plans, method, systems, or device, as distinguished from the particular manner in which they are expressed or described in a right, are not copyrightable.

96. Although, there is no copyright protection for an idea, concept, principles or discovery, there may be a valid copyright in an original form of expression of an idea, concept or discovery. It is equally true that a mere outline or theme is not copyrightable since it is only an idea, nor is there any protected property right in the “theme” of a work, or in locale or setting of a story. But a distinctive treatment of a plot or theme is copyrightable as a literary work or as a dramatic work.

97. Similarity in the presentation techniques will not constitute violation of copyright in the facts and circumstances and on the basis of the various decisions cited by the parties and considered in short this Court is unable to infer that there can be copyright in the manner and format of presentation. The precedents relied on by the Zee Films Ltd. v. Sun Dial Communication Pvt. Ltd & Ors. (supra) by the plaintiff are apparel distinguishable. The precedents express News Paper VLC v. Liver Pool Delhi Post and Eco PLC & Ors. is also distinguishable.

98. Some of the facts which are prima facie apparent are that there have been an agreement in relation to serial Pradhan Mantri between G. Telefilms and Maya Entertainment on 20th February, 2001 and the telecast had commenced on 6th April, 2001. This is also the plea of the plaintiff that the first season of serial “24” commenced later on 6th November, 2001. The Story of Pradhan Mantri had all the elements of a Head of State, Nuclear attack by a terrorist group etc. The said serials also have the presentation technique of windows, time, clock etc. The agreement between the Zee Telefilms and Maya Movie for the serial ‘Time Bomb’ was executed prima facie on 23rd November, 2004 as per the pleadings and documents of the defendant, unless refuted and proved by the plaintiff otherwise. The serial ‘Pradhan Mantri’ also had a rerun as “Pradhan Mantri Time Bomb” in November, 2004 and the shooting of the allegedly offending serial “Time Bomb” commenced in December, 2004, unless established otherwise after the evidence by the plaintiff or if the defendants are not able to prove their pleas and contentions.

99. In the circumstances, the plea of the plaintiff that on the basis of the alleged meeting between the Chairman and some representative of the plaintiff on 1st March, 2005 in which according to the plaintiff, the defendants had demanded the license for the said serial which was however, rejected by the plaintiff will not be of much consequences, as

the serial Pradhan Mantri had started much earlier than the telecast of the serial “24” first season. Even the shooting of the allegedly offending serial “Time Bomb” had commenced before the alleged meeting on 1st March, 2005. The plea of the defendants that tenor of the meeting was entirely different than what has been alleged by the plaintiff, appears prima facie to be correct. In the facts and circumstances, as alleged by both the parties, it cannot be inferred even prima facie that whatsoever has been alleged by the plaintiff in respect of alleged meeting between the representative of the plaintiff and the chairman of defendant No.1 on 1st March, 2005 can be accepted. It may be that the plaintiff is able to establish his plea after evidence, however, on the basis of the allegation and counter allegation made by the plaintiff and the defendant, the same cannot be accepted.

100. The plea of the defendants is also that the serial “Time Bomb” accepts thread from the earlier serial Pradhan Mantri and narrate the story “three years later”. If there is substantial similarity between the serial ‘Pradhan Mantri’ and the serial ‘Time Bomb’ then the plea of the defendant that in fact the serial ‘Time Bomb’ accepts the thread from the serial Pradhan Mantri and narrate the story in continuation cannot be repelled. The plaintiff has emphasized in comparing the format of plaintiff’s serial “24” and defendant’s serial “Time Bomb”, however, from the perusal of the pleadings, it is apparent that the alleged similarity between the serial Pradhan Mantri and Time Bomb has not even been

alleged appropriately by the plaintiff. If it is to be held that the serial 'Time Bomb' is in continuation after few years of the serial 'Pradhan Mantri' then prima facie the plea of the plaintiff that 'Time Bomb' is the copy of the serial "24" cannot be accepted.

101. The another significant factor which repels against the plea of the convenience about the meeting of the representative of plaintiff and the chairman of defendant No.1 on 1st March, 2005 is that before the alleged meeting, the agreement for production between defendant No.1 and other defendants had already been executed, unless proved otherwise by the plaintiff by evidence. Therefore, it has to be inferred that by the time alleged meeting on 1st March, 2005 had taken place between the plaintiff and the defendants, the serial 'Time Bomb' was under the advance stage of preparation in terms of concept, note script, and story line and substantial shooting had already taken place. If that be so it cannot be accepted that chairman of defendant No.1 had asked for the license for production of serial on the line of the serial "24" from the plaintiff.

102. The plaintiff has also claimed copyright in presentation technique and the story line and characters. There appears to be a little dichotomy between the pleadings of the plaintiff and the submission made on behalf of the plaintiff during the protracted arguments. In the plaint, the plaintiff has claimed the copyright in the "Cinematograph Film" and

“Underlying Literary work” whereas later on the emphasis had been made on the format being a protectable feature. If the plaintiff has been claiming the copyright in the literary work of the serial, then naturally format was not a part of the script and therefore there could not be a violation of literary work on account of alleged violation of format of the plaintiff.

103. The plaintiff has claimed copyright in the presentation techniques/format especially in use of digital clock, use of split screens and adoption of concept of “Real Time”. These allegations of presentation technique as alleged by the plaintiff, in view of a number of instances and documents produced by the defendants cannot be termed to be unique to the serial of the plaintiff. All these presentation techniques/format do appear in many films and programs.

104. Countdown normally with a clock appears to be have been used in “Nick of Time”; “High Noon”; and “Dr. Strange Love” and a number of war films etc. The split screen technique also cannot be contended to be unique of the serial of the plaintiff. The defendants have given various instances of films and serials where these techniques have been used. Similarly, ‘Real Time’ format is alleged to have been used in various films and serials and the technique is alleged to date back to 1949 and was used in the film “the Set Up” and others. In the circumstances, it will be difficult to infer that the plaintiff can claim originality in these

presentation techniques. These presentation techniques are apparently enabled by the use of Modern Technology e.g., split screen copy achieved by the advance camera by stretching; digital clock can be inserted by use of advance camera and “Real Time” is also a format and on the basis of these the plaintiff, prima facie, cannot claim any uniqueness in its serial ‘24’ on the basis of it. Reliance for this can be placed on NRI Film Production Associates (P) Ltd. v. Twentieth Century Fox Film Corporation & Anr. (supra), Green v. Broadcasting Corporation of New Zealand (supra) and Norowzian v. Arks Ltd. & Ors. (supra) discussed hereinabove.

105. By protracted argument and a number of decisions cited by the plaintiff, the attempt has been made regarding copyright on the basis of manner of presentation in which the time clock is an integral part of the story; character move in the break; sound of clock and 24 hours split into one hour with no flash back. Apparently on the basis of the law discussed hereinabove there cannot be a copyright in the original format of presentation as all these presentation techniques which have been used in various films in the past, plaintiff cannot claim anything unique, noble and new in the same.

106. Though both the parties have referred to a very large number of precedents at the interim stage when the parties have not led evidence and alleged similarities and dissimilarities and other factors have not

been established. Whether on the basis of these large number of decision the pleas can be decided in this case at this stage? It must be remembered that decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The plaintiff has also tried to distinguish *Norowzian (supra)*, *NRI Film Production Associates (P) Ltd. (supra)*, *Barbra Tailor Brad Ford (supra)*, *Green v. Broadcasting Corporation of New Zealand (supra)*, *Marey v. N.B.C. (supra)*, *R.G.Anand v. Deluxe Films (supra)* and *Borden v. Andrew*. On the basis of the descriptions and the prepositions crystallized by the plaintiff, this Court is even unable to accept the pleas of the plaintiff that the cases

relied on by the defendants do not support the pleas and contentions of the defendants.

107. Viewing of some of the plaintiff's and defendants' episodes of serial also reveal that concept utilized by the of defendants' allegedly offending serial, are not the same as that of plaintiff. Terrorism is very common thing and plaintiff cannot contend that it is unique to his serial. Similarity the presentation techniques cannot be the basis to contend that there has been a copyright violation, as there cannot be any copyright in the manner and the format of presentation. In the circumstances, even the theme of the plaintiff's serial also cannot be termed to be noble. The plaintiffs have alleged similarity between the story line of the plaintiff's serial "24" and defendants serial "Time Bomb" whereas the defendants have highlighted the differences between the story line of the plaintiff's serial and their serial. Considering the qualitative differences between the serial of the plaintiff and serial of the defendants, prima facie the inferences which can be drawn is that the story line of the plaintiff's serial is substantially different from the story line of the defendant's serial "Time Bomb".

108. As already held the plaintiff cannot claim a copyright on the basis of the presentation techniques which are enabled by the use of modern technology e.g. splitting the screen which is possible by advance camera and editing technique, inserting clock to show time which is very easy

in modern cameras and the use of “Real Time” format a story told are 24 hours. How does one distinguish between a copy of an idea or a plot, which is permitted, and the copy of an expression of the author, which is protected and which is his or her own? Where does idea end and expression begin? These are the questions which are the most difficult to answer or even to explain at the interim stage. These are situations for legal assessment after parties lead exhaustive evidence. Just as there is no mathematical formula for finding out when it is just and convenient to appoint a receiver, similarly, although at a more refined level of intellectual operation, there is no final and exact way of determining what is a copy, or what is a copy of the expression, or what is a copy of the idea, or what is a copy of the idea only. It was observed that in copyright cases especially, the judgments should be read as a whole. It is possible to find apparently contradictory statements within the very same copyright judgment. The subject is such that exact dealing is not easily possible.

109. The plaintiff also prima facie cannot claim the copyright on the basis of the general story line even taking the entirety of the defendants’ serial ‘Pradhan Mantri’, ‘Pradhan Mantri Time Bomb’ & ‘Time Bomb’. It is apparent to an ordinary person that the serials of the defendants are different from the serial of the plaintiff “24”. Similarities which have been pointed out by the plaintiff appear to be superficial and such type

of similarity can be inferred in many different serials. Terrorism, attacks on country heads has already been subject matter in various movies and serials and the plaintiff cannot claim exclusivity in respect of the same. From the defendants' serial "Time Bomb", it is apparent that it revolves around the India and Pakistan. There is definite co-relation between the serial "Pradhan Mantri" which was recast as "Pradhan Mantri Time Bomb" and thereafter "Time Bomb". Characters between these three serials are quite common and the story continues after three years later.

110. The allegation by the plaintiff that "Pradhan Mantri" and "Pradhan Mantri Time Bomb" are two different serials altogether prima facie is not acceptable. If the serials "Pradhan Mantri" & "Pradhan Mantri Time Bomb" and 'Time Bomg' are different serials altogether then a fortiori the serial "24" of the plaintiff cannot be contended to be similar to that of "Time Bomb". The plaintiff has emphasized that the Digital Time Clock was introduced for the first time in November-December in the rerun of the serial "Pradhan Mantri" in the name of "Pradhan Mantri Time Bomb" and not in 'Pradhan Mantri'. However, even it is accepted it still negates the contentions of the plaintiff that the use of the digital time clock is unique to the serial of the plaintiff '24' as it was used in 'Pradhan Mantri Time Bomb'.

111. The plaintiff has also emphasized the alleged difference between “Pradhan Mantri Time Bomb” in order to contend that same has not been continued afterwards in “Time Bomb” 9/11. According to the plaintiff the concept and story developers are different. However, that will not make the serials completely different. If in the sequel “Time Bomb” 9/11 the assassination of the Pradhan Mantri is not explained, this itself will not lead to the inferences that “Time Bomb” 9/11 is not the sequel of the “Pradhan Mantri Time Bomb”.

112. The plaintiff in its note on additional arguments on the VCDs filed by the defendant on 20th September, 2008, has tried to emphasize that “Time Bomb” 9/11 is not an independent creation on the ground that defendant No.1 in his written statement has claimed that Mr.Ketan Mehta is a script writer as the name of Mr.Uttam Gada does not appear in the acknowledgement of “Time Bomb” 9/11 and no credits have been given to script writer of “Time Bomb” and credit have been given only to coordinator Mr.Saleem Puna Wala and the credits have been given to hair stylist, dress man, spot boys and even to office boys and suppliers and not to script writer. The suit is still at the preliminary state and the parties have not lead evidence. Merely on the basis of the affidavit filed by the parties, the inferences which have been drawn conclusively by the plaintiff cannot be drawn and consequently, the inferences drawn by the plaintiff that “Time Bomb” 9/11 is not an independent creation cannot be accepted in the facts and circumstances, nor in the

circumstances it can be held that the defendants' serial "Time Bomb" is, prima facie, a copy of the plaintiff's serial "24".

113. The alleged similarity given by the plaintiff in the format of his serial "24" and defendants' "Time Bomb", conspicuously ignores various dissimilarity which are apparent on watching the two serials and consequently, on the basis of the just 14 frames of the two serials, it is difficult for this Court to draw inferences that serial "Time Bomb" is a copy of the serial "24".

114. The plaintiff has tried to emphasize about the litigation regarding the change of name sought by the plaintiff where some of the defendants had agreed to the change of name to Zee Max. However, this fact in itself does not reflect in any manner that serial "Time Bomb" is a copy of the plaintiff's serial "24". If one takes similarity and dissimilarity and considers them after juxtaposing them, the inferences which have been drawn by the plaintiff cannot be drawn even prima facie and this Court is unable to conclude prima facie that defendants' serial "Time Bomb" is a copy of plaintiff's serial "24" or is similar to that. The list of differences rather clearly shows that story line is different and the treatment and expression are also different.

115. In the circumstances, the plaintiff has failed to make out prima facie case at the stage. Since the serial has already been telecast,

restraining the defendants from telecasting the serial further will cause more inconvenience to the defendants, it is more so because the serial of the defendant "Time Bomb" has already been telecast as also the serial of the plaintiff. Despite the serial already having been telecast, the plaintiff has not modified his prayers in any manner despite the passage of considerable time. In these circumstances, it is apparent that defendant shall suffer irreparable loss if the plaintiff is granted injunction as has been sought by him. It may also lead to multiplicity of proceedings and in the circumstances, it will not be appropriate even to direct the defendant to submit the script of his serial to the plaintiff at this stage.

116. Consequently in the facts and circumstances and for the forgoing reasons, the applications of the plaintiff are dismissed. It is, however, clarified that anything stated hereinbefore is not the final expression of the opinion by the Court on the pleas and contentions raised on behalf of the parties. Parties are also left to bear their own costs.

July 10, 2012
vk/k

ANIL KUMAR, J.