



2025:DHC:2973



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

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*Judgment Reserved on: 13.02.2025*  
*Judgment pronounced on: 28.04.2025*

I.A. 29793/2024 & I.A. 36110/2024  
IN  
+ CS(COMM) 420/2024

**SAN NUTRITION PRIVATE LIMITED** .....Plaintiff

Through: Mr. J. Sai Deepak, Senior Advocate  
with Ms. Kangan Roda, Mr. Tanishq  
Sharma, Mr. R. Abhishek, Mr. Sarthak  
Sharma and Mr. Chirantan  
Priyadarshan, Advocates.

versus

**ARPIT MANGAL AND OTHERS** .....Defendants

Through: Mr. Ramchandra Madan and  
Mr. Tushar Nigam, Advocates for  
D-1  
Ms. Aishwarya Kane, Mr. Sauhard  
Alung and Mr. Shuvam Bhattacharya,  
Advocates for D-5  
Mr. Yash Karunakaran, Mr.  
Vishwajeet Deshmukh and Ms. A.  
Mehra, Advocates for D-6.  
Mr. Aditya Gupta and Mr. Varun  
Pathak, Amici Curiae.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT BANSAL**

**JUDGMENT**

**AMIT BANSAL, J.**

**I.A. 29793/2024 (under Order XXXIX Rules 1 and 2 of the CPC) and I.A. 36110/2024 (under Order VII Rule 10 and Order VII Rule 11 of the CPC)**



## **I. PREFACE**

1. Influencer marketing has emerged as a pivotal force in India's digital landscape reshaping how consumers connect with brands across sectors, from fashion and beauty to food, technology and finance.
2. This surge in the influencer marketing industry is largely attributable to increased internet penetration, proliferation of affordable smartphones and rise of regional content creators who cater to diverse audiences across the country. Platforms like Instagram and YouTube, which serve as primary channels for influencers to share content and collaborate with brands, have become central to this phenomenon.
3. The impact of social media influencers however extends beyond mere advertising. Apart from being the trendsetters introducing new products and brands to their target audiences, social media influencers have also taken up the role of watchdogs amplifying the concerns raised by the consumers.
4. Inasmuch as it comes off as an opportunity for consumers to ensure their right to know, democratization of internet has also increased the potential for harm caused to individuals and businesses by spread of misinformation. Since influencers shape consumer behaviour, their critique significantly impacts a brand's reputation, which is why there is also an undeniable tension between business entities and the influencer community.
5. This necessitates the need to balance the right of such influencers to their freedom of speech and expression and the right of individuals and business entities to their reputation.



6. The present case is illustrative of the tension that prevails between social media influencers and business entities. The present suit has been instituted by the plaintiff seeking relief of permanent injunction restraining the defendants, who are social media influencers and have posted videos on YouTube and/ or Instagram regarding the plaintiff and one of its products, alleging infringement of trade marks, defamation, disparagement and unfair trade practices.

7. This case shall explore the limits of freedom of speech and expression under Article 19(1)(a)<sup>1</sup> in light of Article 19(2)<sup>2</sup> of the Constitution of India (hereinafter ‘Constitution’) concerning allegedly defamatory and disparaging remarks made by social media influencers in respect of third-party goods/ services.

8. In view of the importance of the issue involved, the Court, *vide* order dated 2<sup>nd</sup> December 2024, appointed Mr. Aditya Gupta and Mr. Varun Pathak as *amici curiae* to assist the Court in the present suit.

9. With the aforesaid background, I proceed to adjudicate *I.A. 29793/2024*, the application filed on behalf of the plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter ‘CPC’) seeking an interim injunction against the defendants no.1 to 4 and *I.A. 36110/2024*, the application filed on behalf of the defendant no.1 under Order

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<sup>1</sup> 19. Protection of certain rights regarding freedom of speech, etc.—

(1) All citizens shall have the right—

(a) to freedom of speech and expression

<sup>2</sup> (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.



VII Rule 10 of the CPC and Order VII Rule 11 of the CPC seeking return/rejection of plaint.

## **II. PROCEEDINGS IN THE SUIT**

10. Summons in the present suit and notice in the application for interim injunction were issued to the defendants on 21<sup>st</sup> May 2024.

11. Pleadings *qua* the plaintiff and the defendant no.1 in the suit are complete.

12. As recorded in the order of Joint Registrar dated 21<sup>st</sup> August 2024, all the defendants stand served. However, none has entered appearance on behalf of the defendants no.2 to 4 till date nor has any written statement been filed on their behalf.

13. The parties as well as the *amici curiae* have filed their respective written submissions, along with judgments in support.

14. Submissions on behalf of counsel for the parties as well as the *amici curiae* were heard on 28<sup>th</sup> October 2024, 2<sup>nd</sup> December 2024, 16<sup>th</sup> December 2024, 15<sup>th</sup> January 2025, 3<sup>rd</sup> February 2025 and 13<sup>th</sup> February 2025, when the judgment was reserved.

## **III. CASE SET UP BY THE PARTIES**

### **CASE SET UP BY THE PLAINTIFF**

15. The case set up by the plaintiff in the plaint may be summarized as under:

15.1. The plaintiff is a company engaged in the business of sale and marketing of various nutraceutical and healthcare supplement products



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including isolate whey protein, vitamins, protein powder, mass gainers, branched chain amino acids (BCAAs), essential amino acids (EAAs), fat burners, supplements, merchandise, etc.

15.2. The plaintiff, through its predecessors SA Nutrition and B.B. Emporio, started the marketing and sale of dietary and nutritional supplement products

in 2018 under the trade marks DC DOCTOR'S CHOICE,  and other DC DOCTOR'S CHOICE formative marks including the mark DC

 DOCTOR'S CHOICE ISO PRO/ (hereinafter collectively referred to as the 'plaintiff's marks'). The plaintiff and its predecessor SA Nutrition continue to carry out their business activities simultaneously.

15.3. The plaintiff is a market leader in the '*dietary and nutritional supplements*' industry. The plaintiff's products are designed and formulated by a team of international researchers and the plaintiff ensures the high standards and quality of its supplements and vitamins.

15.4. The plaintiff's products under the plaintiff's marks are manufactured through third-parties and the nutritional information given on the labels of the plaintiff's products is based on the information provided to it by the manufacturers of the said products. The plaintiff's products are approved by Food Safety and Standards Authority of India (hereinafter 'FSSAI') and are in compliance with the relevant provisions relating to their manufacturing and labelling.

15.5. The plaintiff is the registered proprietor of the mark  with effect from 16<sup>th</sup> November 2018 in relation to goods in class 5. The plaintiff has



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applied for registration of several DC DOCTOR'S CHOICE formative marks, which are listed in paragraphs 13 and 16 of the plaint, and the same are currently pending before the Trade Marks Registry.

15.6. The plaintiff operates its website, accessible at <https://thedrchoice.com/>, to advertise and sell its products and ensure awareness of the plaintiff's marks. The plaintiff owns and operates accounts on various social media platforms such as Facebook, Instagram, Twitter (now X), LinkedIn and YouTube to promote, advertise and disseminate information regarding the plaintiff's products and enjoys a huge following on its social media profiles/ pages. The plaintiff also owns and operates a mobile-based application, namely, '**Doctor's Choice**' to offer its products to the consumers.

15.7. The plaintiff's products under the plaintiff's marks are available at various offline retailers, supermarket chains and are also sold through various e-commerce websites such as [www.amazon.in](http://www.amazon.in) and [www.flipkart.com](http://www.flipkart.com).

15.8. The plaintiff has been continuously and uninterruptedly marketing and selling its products under the plaintiff's marks. The sales figures of the plaintiff and its predecessors since the year 2018-19 to 2023-24 are given in paragraph 21 of the plaint. The plaintiff's total sales in the year 2023-24 alone was Rs. 18,85,00,000/-.

15.9. The plaintiff undertakes various advertisement and business promotional activities for the plaintiff's marks and incurs huge expenses in relation to the same. The plaintiff also engages various celebrities and influencers on social media platforms to promote its products. The advertisement and business promotional expenses of the plaintiff and its predecessors since the year 2018-19 to 2023-24 are given in paragraph 22 of



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the plaintiff. The plaintiff's total advertisement and business promotional expenses in the year 2023-24 alone was Rs. 1,71,00,000/-.

15.10. The defendants no.1 to 4 are youtubers/ influencers/ content creators who own and operate their accounts/ channels on social media platforms including but not limited to YouTube, Instagram and Facebook wherein they create and upload content, primarily in the form of videos/ reels, and disseminate information for views on several topics including health supplements and related products.

15.11. The particulars of the defendants no.1 to 4 are given as under:

- a. Defendant no.1 – Arpit Mangal operating a YouTube channel under the handle @AllAboutNutrition and Instagram account with the username @arpit\_mangal\_official;
- b. Defendant no.2 – Kabir Grover operating a YouTube channel under the handle @HealthByKilo and Instagram account with the username @healthbykilo;
- c. Defendant no.3 – Manish Keshwani operating a YouTube channel under the handle @ManishhKeshwani and Instagram account with the username @manishkeshwanifitness;
- d. Defendant no.4 – Avijit Roy operating a YouTube channel under the handle @COREFITLAB and Instagram account with the username @corefitlab\_official.

The defendants no.1 to 4 are hereinafter collectively referred to as the 'defendants'.

15.12. The defendant no.5 is Google LLC that owns and operates the global video sharing platform YouTube (hereinafter 'Google'/ 'YouTube') wherein the defendants have uploaded videos which are the subject matter of the



present suit (hereinafter collectively referred to as the ‘impugned videos’). The defendant no.6 is Meta Platforms Inc. that owns and operates the social media platform Instagram (hereinafter ‘Meta’/ ‘Instagram’) wherein the defendants are uploading and circulating the impugned videos. The defendant no.7 is Ashok Kumar, *i.e.*, unknown defendants.

15.13. The plaintiff conducts various market surveys and research in relation to the marketing and sale of the plaintiff’s products. While reviewing the sales figures for September 2022 and the months thereafter, the plaintiff was surprised to find them far below the projection.

15.14. The plaintiff’s sale of its product under the mark DC DOCTOR’S CHOICE ISO PRO (hereinafter ‘plaintiff’s product’/ ‘ISO PRO’) has spiralled downwards ever since the impugned videos surfaced on the internet. The same is highlighted by the graph below:

Year 2022									
Products	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22
ISO PRO	1238813	2593256	2567042	3075976	5488379	2203089	2655619	1528686	1639461



15.15. The plaintiff contacted its sales and marketing department to locate the cause for such sharp decline in its sales. Subsequently, the impugned videos were brought to the notice of the plaintiff which were disparaging the



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plaintiff's product and adversely affecting its business, goodwill and reputation.

15.16. Between December 2023 and February 2024, the impugned videos were analysed and the plaintiff was shocked to learn that the impugned videos have gained negative popularity for the plaintiff's marks and the plaintiff's product based on baseless and incorrect information.

15.17. The defendants are taking advantage of the plaintiff's brand and reputation to merely garner views and popularity and they are also funded and sponsored by the plaintiff's competitors. The details of the impugned videos are given as under:

- a. Video titled '*Doctors Choice Iso Pro detailed review by All About Nutrition || Lab Report ||*' uploaded by the defendant no.1 on YouTube on 1<sup>st</sup> June 2022 (hereinafter 'impugned video 1');
- b. Video titled '*Doctor's Choice – Iso Pro | Lab Report*' uploaded by the defendant no.2 on YouTube and Instagram on 19<sup>th</sup> July 2022 (hereinafter 'impugned video 2');
- c. Video titled '*Doctor's Choice – Iso Pro | SCAM | Lab Report |thank you @All About Nutrition full video -description*' uploaded by the defendant no.3 on YouTube on 9<sup>th</sup> August 2022 (hereinafter 'impugned video 3');
- d. Video titled '*Doctors Choice Iso Pro Detailed Review & Lab Test With MB Procheck Kit @Muscleblaze*' uploaded by the defendant no.4 on YouTube on 23<sup>rd</sup> August 2022 (hereinafter 'impugned video 4');
- e. Video titled '*Never Buy This 6 Brand Whey Protein*' uploaded by the defendant no.4 on YouTube on 15<sup>th</sup> November 2022 (hereinafter 'impugned video 5'); and



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f. Video titled ‘7 Worst Protein Powder Brand || Warning #shorts #youtubershorts’ uploaded by the defendant no.1 on YouTube and Instagram on 5<sup>th</sup> December 2022 (hereinafter ‘impugned video 6’).

15.18. On 28<sup>th</sup> March 2024, the plaintiff lodged complaints with Google for the removal of the impugned videos hosted on its platform YouTube. However, in its reply dated 29<sup>th</sup> March, 2024, Google refused to remove the impugned videos from its platform stating that it is not in a position to adjudicate the veracity of the posts and it does not remove videos based on allegations of defamation.

#### **CASE SET UP BY THE DEFENDANT NO.1**

16. The case set up by the defendant no.1 in the written statement is as follows:

16.1. The defendant no.1 is a certified personal trainer and a sports science nutritionist.

16.2. With the primary goal to spread awareness and integrity in the fitness industry and to protect consumers from fraudulent manufacturers and adulterated products, the defendant no.1 started a YouTube channel in April 2019 under the name ‘All About Nutrition’ for posting educational videos relating to the fitness industry for informational purposes only.

16.3. The defendant no.1 is dedicated to the mission of verifying, auditing and reporting on the quality and safety of health products and supplements through stringent laboratory evaluations and aims to be a trustworthy source of news for fitness enthusiasts and professionals. The defendant no.1 thus provides valuable information relating to science, nutrition, exercise and also



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exposes myths, superstitions and falsehoods propagating in the fitness industry.

16.4. The defendant no.1 subsequently incorporated M/s Arpit Trustified Certification Private Limited (hereinafter 'Trustified') for conducting audits, providing certifications and to review and report its findings on various consumer products with the aim of educating the general public and spreading awareness on various fitness products, processes and techniques.

16.5. Around April 2022, when the defendant no.1 received a substantial number of complaints and negative reviews regarding the plaintiff's ISO PRO, he selected the plaintiff's product for testing.

16.6. The defendant no.1, on 9<sup>th</sup> May 2022, ordered one unit of the plaintiff's ISO PRO from an authorized dealer of the plaintiff on Amazon.

16.7. A sample of ISO PRO was sent by the defendant no.1 for testing to 'Varni Analytical Laboratory' (hereinafter 'VAL'), which is an NABL accredited and ISO certified laboratory. The results of the report dated 24<sup>th</sup> May 2022 from VAL indicated that the sample of the plaintiff's ISO PRO contained far less protein content and much higher carbohydrate content than claimed.

16.8. On 22<sup>nd</sup> May 2022, the defendant no.1 again ordered a unit of ISO PRO from the plaintiff's own seller page on Amazon and submitted the sample to 'Micro Tech Laboratory' (MTL), which is also NABL accredited and FSSAI approved. The result of the report dated 28<sup>th</sup> May 2022 from MTL confirmed the results of the first laboratory report.

16.9. Based on the aforesaid findings, the defendant no.1 published the impugned video 1 on 1<sup>st</sup> June 2022, wherein he reviewed the plaintiff's ISO



PRO based on the aforesaid laboratory reports. He also provided disclaimers therein.

16.10. Subsequently, on 5<sup>th</sup> December 2022, the defendant no.1 published the impugned video 6 where, in a satirical form, based on his experience and scientific laboratory reports, the defendant no.1 criticized the practice of influencers promoting brands offering sub-standard products.

16.11. 'Trustified' was incorporated by the defendant no.1 in 2023 and its first video on YouTube was posted on 28<sup>th</sup> January 2023.

16.12. Even after the aforesaid tests, the defendant no.1 pseudonymously ordered two units of the plaintiff's ISO PRO from the plaintiff's website. One of the two units was sent to 'Eurofins Laboratory'. The report issued by Eurofins Analytical Services India (hereinafter 'Eurofins'), which is NABL accredited and recognized by FSSAI, also confirmed the discrepancies revealed in the previous two laboratory reports. As per his policy, the defendant no.1 continues to possess the second unit of the plaintiff's product which can be sent for testing, if required.

#### **IV. I.A. 36110/2024**

17. To begin with, I shall decide the captioned application filed by the defendant no.1 under Order VII Rule 10 and Order VII Rule 11 of the CPC seeking return/ rejection of the plaint.

#### **RIVAL SUBMISSIONS**

18. The principal ground taken by the defendant no.1 in this application is that the present suit is barred by limitation as it has admittedly been instituted



beyond the period of one year from the date of publication of the impugned videos 1 and 6 by the defendant no.1.

19. Yet another ground taken by the defendant no.1 is that this Court does not have the jurisdiction to try the present suit as no part of the cause of action/ dispute between the parties falls within the definition of ‘commercial dispute’ defined under Section 2(1)(c) of the Commercial Courts Act, 2015 (hereinafter ‘CCA’). Therefore, the present proceedings are beyond the subject-matter jurisdiction of this Court.

20. Mr. Ramchandra Madan, counsel appearing on behalf of the defendant no.1, has made the following submissions in this behalf:

20.1. The cause of action for instituting the present suit arose when the defendant no.1 published the impugned video 1 on 1<sup>st</sup> June 2022 on YouTube. The cause of action further arose when the defendant no.1 published the impugned video 6 on 5<sup>th</sup> December 2022 on YouTube. The suit is barred by limitation as it has admittedly been instituted beyond the time period prescribed for instituting a suit claiming defamation (compensation for libel) under Article 75 of the Schedule to the Limitation Act, 1963, which is one year from the date on which the libel is published.

20.2. The legislative policy would be defeated if mere continued residing of the allegedly defamatory material on a website were to give a continuous cause of action to the plaintiff to sue for defamation/ libel. In this regard, he relies on the judgment of a Coordinate Bench of this Court in **Khawar Butt v. Asif Nazir Mir**<sup>3</sup>, wherein it has been held that a ‘single publication rule’ would apply in cases of libellous post on social media, *i.e.*, the period of

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<sup>3</sup> 2013 SCC OnLine Del 4474



limitation would commence from the date when the first libellous post is made.

20.3. The predominant cause of action and the primary reliefs sought by the plaintiff in the present suit do not pertain to intellectual property rights, but defamation as the plaintiff has failed to make out a case for infringement of trade marks or disparagement of the plaintiff's product against the defendant no.1.

20.4. The plaintiff has failed to establish the intertwined nature of the causes of action claimed in the present suit.

21. Mr. J. Sai Deepak, senior counsel appearing on behalf of the plaintiff, has made the following submissions:

21.1. The present suit is not barred by limitation due to the following reasons:

21.1.1. The Limitation Act, 1963 does not prescribe a specific limitation period for suits relating to trade mark/ copyright infringement.

21.1.2. Article 75 of the Schedule to the Limitation Act, 1963 pertains to a 'suit for compensation for libel' and is inapplicable to the present suit as the present suit is a composite suit filed against trade mark infringement, defamation, disparagement and unfair trade practices.

21.1.3. Reliance on behalf of the plaintiff has also been placed on Section 22 of the Limitation Act, 1963 to contend that the defendant no.1's infringement of the plaintiff's marks as well as the continued presence of the impugned videos on YouTube constitute a continuous cause of action. Every single time the impugned videos are clicked/ liked/ shared/ viewed, a fresh publication occurs, which renews the cause of action. He relies on the judgment of a Coordinate Bench of this Court in *Ajay Agarwal v. Ibni8 Media*



& *Software*<sup>4</sup>, wherein the judgment in *Khawar Butt* (supra) has been distinguished.

21.2. The present suit is of commercial nature as per Section 2(1)(c) of the CCA and is well-within the subject matter jurisdiction of this Court on the basis of the following:

21.2.1. The reliefs sought by the plaintiff are linked to the primary issue of violation of its intellectual property rights and the product disparagement claims involve and are intertwined with the unauthorized use of the plaintiff's marks and copyrighted content. Therefore, it is impractical to separate these issues without undermining the resolution of the primary dispute.

21.2.2. The claims of product disparagement directly impact the plaintiff's commercial interests as they relate to the reputation and marketability of the plaintiff's product.

### ANALYSIS

22. A perusal of the plaint would show that the present suit is a composite suit based on multiple causes of action, which include defamation as well as disparagement and trade mark infringement. It is settled position of law that for the purposes of Order VII Rules 10 and 11 of the CPC, the court only has to look into the averments made in the plaint.

23. The judgment in *Khawar Butt* (supra), where it has been held that a '*single publication rule*' would apply in cases of libellous post on social media where the period of limitation would count from the date when the first libellous post is made, has been distinguished in the subsequent judgment in *Ajay Agarwal* (supra) on the ground that *Khawar Butt* (supra) was a suit

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<sup>4</sup> 2020 SCC OnLine Del 606



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simpliciter for compensation for libel and, therefore, the limitation period of one year prescribed in Article 75 of the Schedule to the Limitation Act, 1963 would be applicable therein.

24. In *Ajay Agarwal* (supra), the suit action was not based on a mere publication of libel, but on other acts which caused mental agony and harassment to the plaintiff. Therefore, it was held that the limitation would be covered by the residuary clause, *i.e.*, Article 113 of the Schedule to the Limitation Act, 1963 and therefore the applicable period of limitation would be three years.

25. The aforesaid reasoning is equally applicable to the facts and circumstances of present case. The present case is based not only on the alleged defamation/ libel, but also on the alleged acts of disparagement and trade mark infringement committed by the defendants. This would also constitute a continuing cause of action in terms of Section 22 of the Limitation Act, 1963.

26. As rightly pointed out by Mr. Aditya Gupta, the learned *amicus curiae*, Article 75 of the Schedule to the Limitation Act, 1963 is attracted only when there is a claim for '*compensation for libel*'.

27. Based on the aforesaid, on the aspect of limitation, I am in agreement with the submissions made on behalf of the plaintiff and cannot agree with the submission made on behalf of the defendant no.1 that the present suit is barred by limitation.

28. The other submission raised on behalf of the defendant no.1 is that the present suit is not a commercial suit as the reliefs claimed herein pertain to defamation and do not pertain to violation of intellectual property rights. Therefore, the present suit is not maintainable before this Court.



29. Once again, I cannot accept this submission. As observed earlier, the present suit is a composite suit also involving the aspects of trade mark infringement and disparagement. The suit would therefore be covered under Section 2(1)(c)(xvii) of the CCA and would qualify as a commercial suit.

30. In view of the above, I do not find merit in the aforesaid application, and the same is dismissed.

#### **V. I.A. 29793/2024**

31. This application has been filed seeking an interim injunction against the defendants restraining infringement of trade marks, defamation, disparagement and unfair trade practices.

#### **SUBMISSIONS ON BEHALF OF THE PLAINTIFF**

32. Mr. J. Sai Deepak, senior counsel appearing on behalf of the plaintiff, has made the following submissions:

32.1. The content of the impugned videos includes false, malicious and baseless claims and assertions regarding the plaintiff and the plaintiff's product and is an attempt to target, defame and disparage the plaintiff and the plaintiff's product. The submissions on behalf of the plaintiff with regard to the impugned videos are given in detail as under:

#### **Impugned Videos 1 and 6**

32.1.1. The impugned video 1, including its title and thumbnail, bears name/ pictures/ videos of the plaintiff's product, which amounts to unauthorized and wrongful use of the plaintiff's marks and infringes the plaintiff's marks as well as copyright over the artistic works in its product packaging/ photographs.



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32.1.2. The impugned video 1 contains misleading and untruthful statements with regard to the content of protein and carbohydrates in the plaintiff's product and effect of its consumption by persons with diabetes.

32.1.3. The first laboratory referred to in the impugned video 1, *i.e.* VAL, is not an FSSAI recognized food testing laboratory. Therefore, the report dated 24<sup>th</sup> May 2022 issued by VAL is misleading. The scope of testing of the second laboratory referred to in the impugned video 1, *i.e.* MTL, under the Food Safety and Standards Act, 2006 (hereinafter 'FSS Act') does not include nutraceutical supplements. Therefore, the report dated 28<sup>th</sup> May 2022 issued by MTL is also misleading.

32.1.4. The impugned video 6 contains slanderous statements with respect to the plaintiff and its products which are unsubstantiated and amount to brand disparagement. Further, the defendant no.1, to avoid any scrutiny and prosecution by the brands named in the impugned video 6, has used names similar to the actual brand names/ marks. In particular, the plaintiff's mark DOCTOR'S CHOICE has been referred to as 'DOCTOR HAS NO CHOICE'.

32.1.5. The defendant no.1, in the impugned video 6, has also alleged that the plaintiff pays youtubers/ influencers to make statements that consumers may undertake laboratory tests of the plaintiff's products and the test reports shall indicate that such products 'pass' the tests.

32.1.6. The defendant no.1 in the impugned video 6 has stated that the plaintiff's products are amino spiked which causes the laboratory reports to indicate the same amount of protein in its products as claimed by the plaintiff. Therefore, in the impugned video 6, the defendant no.1 has taken a stand contrary to his stand taken in the impugned video 1.



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### **Impugned Videos 2 and 3**

32.1.7. The defendants no.2 and 3 have created the impugned videos 2 and 3 respectively placing reliance on the misleading laboratory reports produced by the defendant no.1 in the impugned video 1 without undertaking any laboratory testing of the plaintiff's product by themselves.

32.1.8. The defendants no.2 and 3, in their respective videos, have made unauthorized use of the plaintiff's marks, both orally and visually, and have made false claims regarding the plaintiff's ISO PRO.

32.1.9. The defendant no.2 has also made use of the plaintiff's marks as hashtags such as #DoctorsChoice and #IsoPro in the description of the impugned video 2 to attract the attention of consumers.

32.1.10. The defendant no.3 has used the term SCAM in the title of the impugned video 3 and mentioned the link to the impugned video 1 in the description. Further, the defendant no.3, in his video, has falsely stated that the plaintiff's ISO PRO product label claims to have 90% protein per serving.

### **Impugned Videos 4 and 5**

32.1.11. The thumbnail of the impugned video 4 bears the plaintiff's marks and also includes the words 'Fake Protein'. Such words/ statements influence the opinion of any person who come across the aforesaid video regardless of whether or not they watch the same. The aforesaid claim, along with other claims, made by the defendant no.4 in the aforesaid videos are completely unsubstantiated and have been made to showcase the products of the plaintiff's competitors in a good light.

32.1.12. The defendant no.4's claims in impugned video 4 regarding the protein content in the plaintiff's ISO PRO are based only on the test undertaken by him in the aforesaid video itself. Further, the aforesaid test has



been undertaken by using a do-it-yourself (DIY) Kit, namely, 'MB Procheck Kit' of the plaintiff's competitor 'MuscleBlaze', and the same is not FSSAI approved. Thus, the results of such a test are misleading and cannot be relied upon.

32.1.13. In the impugned video 5, the defendant no.4 has made slanderous statements with respect to the plaintiff and its products which are unsubstantiated and amount to brand disparagement. Recently, the defendant no.4 also posted and pinned a comment on the impugned video 5 bearing coupon/ discount codes for products of the plaintiff's competitors.

32.1.14. The aforesaid videos are paid advertising and promotional videos undertaken by the defendant no.4 for a third-party competitor brand called 'MuscleBlaze', which is evident from the title, description and content of the aforesaid videos. However, the defendant no.4 has failed to acknowledge or inform the viewers about these paid advertisements.

32.2. The aforesaid acts on behalf of the defendants amount to defamation, disparagement, infringement and dilution of the plaintiff's marks and damage and tarnish the goodwill and reputation of the plaintiff.

32.3. There can be no justification for the defendants to use the images/ videos of the plaintiff's product to make wrongful, biased and targeted remarks against the plaintiff. The aforesaid dishonest and unauthorized use constitutes infringement of trade mark and copyright.

32.4. The defendant no.1's reliance on the defence of truth cannot absolve him of his liability for infringement through product disparagement. Further, the disclaimer put by the defendants in the impugned videos cannot absolve them of any liability relating to disparagement of the plaintiff's product.



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32.5. The third laboratory report produced by the defendant no.1 issued by Eurofins is not relevant to the present suit as the same does not form part of the impugned videos of the defendant no.1.

32.6. The defendant no.1 does not possess the necessary qualifications in the field of health and nutrition. Further, his actions have been irresponsible, reckless and rooted in malice which is evident from his use of words such as ‘ghatiya’ to refer to the plaintiff’s products. The defendant no.1 cannot justify calling the plaintiff’s brand ‘ghatiya’ and, at the same time, claim to be exercising his journalistic freedom.

32.7. The defendant no.1, in the impugned video 1, stated that due to the shocking results of the first laboratory report, he had placed another order for the same product. However, he had placed the second order for the plaintiff’s ISO PRO on 22<sup>nd</sup> May 2022, *i.e.*, prior to receiving the first laboratory report on 24<sup>th</sup> May 2022. This confirms that the defendant no.1 undertook the aforesaid laboratory tests with the predefined purpose of showcasing the plaintiff’s product in a bad light.

32.8. The defendant no.1 has vested interest in diminishing the brand value of the plaintiff and cannot take the defence of constructive criticism for the public good or journalistic freedom. He is running a business and promotes nutraceutical products of the plaintiff’s competitors which is evident from his videos, social media accounts and operations under ‘Trustified’. Through his Trustified website, the defendant no.1 allows the general public to purchase third-party products from the aforesaid website itself, where he also avails customized promotional codes to customers. However, the defendant no.1 did not disclose any of these facts in his videos. Therefore, the defendant no.1 fails to comply with the ‘Guidelines for Influencer Advertising in Digital



*Media*’ issued by the Advertising Standards Council of India (hereinafter ‘ASCI Guidelines’).

32.9. The defendants, by making misleading statements, has been able to negatively influence members of the public that the plaintiff’s product does not pass the required testing parameters and should not be consumed.

32.10. The negative influence on the consumers and public and damage caused to the plaintiff’s brand are evident from the comments made by the viewers on the impugned videos. The effect of the impugned videos on the plaintiff’s consumer base is also evident from the customer reviews posted on its listings on e-commerce websites stating that the plaintiff’s product contains only half the protein than what is being claimed by it.

32.11. The defendants have relied upon each other’s videos. By creating the impugned videos at regular interval, the defendants have worked together to bring down the plaintiff’s goodwill and reputation and drive down its sales by promoting its competitors’ products in the impugned videos.

### **SUBMISSIONS ON BEHALF OF THE DEFENDANT NO.1**

33. Mr. Ramchandra Madan, counsel appearing on behalf of the defendant no.1, has made the following submissions:

33.1. The defendant no.1 had undertaken extensive due diligence before making any statement and had only asserted a precautionary opinion in public interest based on scientific evidence. Therefore, the defendant no.1’s conduct falls squarely within his right to exercise freedom of speech and expression under Article 19(1)(a) of the Constitution.



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33.2. The defendant no.1's use of the plaintiff's marks was only for the purpose of review and in accordance with fair use. Therefore, the same, in no manner, violates the plaintiff's rights in its intellectual property.

33.3. In a civil action for defamation, truth of the defamatory matter is a complete defence. The defendant no.1 in his videos has merely stated the truth regarding the plaintiff's ISO PRO and that has been substantiated by verifiable laboratory reports. The plaintiff has not only failed to show the incorrectness of these reports but has also failed to substantiate its allegations by producing any other report/ scientific evidence of its own to counter the laboratory reports relied upon by the defendant no.1. Therefore, there exists a presumption of truth in favour of the defendant no.1.

33.4. Both the laboratories used by the defendant no.1 to conduct the tests are duly accredited by the relevant authorities. FSSAI is not an accreditation agency and has no power to recognize a laboratory for any purpose other than those provided under the FSS Act.

33.5. The plaintiff is not a manufacturer of the plaintiff's product and premises the nutritional information mentioned on its product label only on the basis of information provided to it by its manufacturer. Therefore, the plaintiff conducts no test/ due diligence of its own with respect to the plaintiff's product.

33.6. The defendant no.1, in his videos, engaged in constructive criticism and his comments are covered within the ambit of fair comment made on a subject matter involving public interest. His videos solely pertain to critiquing the plaintiff's business practices based on his vast experience and scientific evidence. In particular, use of the word '*ghatiya*' with regard to the plaintiff's products is not unparliamentary and it only means 'sub-standard'.



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33.7. ASCI is a private body and the guidelines issued by it are not binding. Even if the defendant no.1 is not an expert, his comments in the impugned videos 1 and 6 are based on laboratory reports.

33.8. In a suit for defamation, the entire content must be read as a whole and there can be no selective reading of the content to establish defamation. Further, a case for disparagement cannot lie against the defendant no.1 as he is not engaged in a competing business with the plaintiff.

33.9. The content of the impugned video 6 was satirical in part wherein the defendant no.1, without exclusively naming the plaintiff and certain other protein brands, addressed to them by pseudo-names, which were broadly satirical in nature, to point out the sub-standard quality of their products. Therefore, the same cannot constitute as defamation/ disparagement nor as infringement of any trade mark.

33.10. Neither of the impugned videos 1 and 6 contains any sponsorship or affiliate links for products of any other company. Thus, the defendant no.1 has not advertised any third-party product in the impugned videos 1 and 6.

33.11. The defendant no.1 does not have any control over the opinions of, and decisions made by, third-parties/ viewers.

33.12. The defendant no.1 has no relation with other defendants. No basis has been provided by the plaintiff to suggest that the defendants have ever worked together for any specific goal, let alone that of harming the plaintiff.

33.13. The plaintiff has not been able to make out a *prima-facie* case against the defendant no.1. Balance of convenience lies in favour of the defendant no.1 as his reporting is closely intertwined with public health and welfare and he has substantiated his claims with laboratory reports. The plaintiff has also



failed to show that irreparable harm would be caused to it if an interim relief is denied to it.

**THE LEGAL REGIME IN INDIA WITH REGARD TO DEFAMATION AND DISPARAGEMENT**

34. Both the *amici curiae* appointed by this Court have placed before this Court well-researched notes along with judgments with regard to the position in law in relation to cases of defamation and disparagement.

**A. SUBMISSIONS ON BEHALF OF MR. ADITYA GUPTA**

35. As correctly highlighted by Mr. Aditya Gupta, one of the learned *amici curiae* in his submissions, the present case involves the interplay and balancing between the following three rights recognized under the Constitution:

- (i) The plaintiff's right to reputation and its economic rights (Article 21)
- (ii) The defendants' right to freedom of speech and expression (Article 19(1)(a))
- (iii) Public's right to know (Article 19(1)(a))

36. Insofar as the right to freedom of speech and expression under Article 19(1)(a) of the Constitution is concerned, the same is circumscribed by limitations provided under Article 19(2) of the Constitution. One of the restrictions imposed under Article 19(2) of the Constitution is in respect of defamatory statements.

37. The present suit filed by the plaintiff is primarily based on three different causes of action, namely, (i) defamation (ii) disparagement and (iii) trade mark infringement. Mr. Aditya Gupta, in his written note of submissions,



has alluded to the scope and extent of defamation and disparagement in the context of the present case and the defences available to the defendants in respect of each of these causes of action, which I proceed to discuss below.

### **A.1 Defamation**

38. Defamation is recognized as an actionable tort under the common law geared to protect the reputation of a person. Any oral or written statement, which includes a video, that lowers or tends to lower the reputation of a claimant, is considered to be defamatory. However, all defamatory statements are not actionable as the law provides certain defences that are available to the defendant in a defamation suit. These defences are as follows:

- (a) Truth/ Justification
- (b) Fair comment
- (c) Privilege

39. In the context of the present case, only the defences of ‘truth’ and ‘fair comment’ would be relevant. In defamation, the burden of proving the aforesaid defences would lie on the defendant.

#### **(a) Defence of Truth/ Justification**

40. It is a settled position of law that truth or justification is a complete defence to an action for defamation. The onus is on the defendant to show that the statement made by him was true or substantially true (*refer Pankaj Oswal v. Vikas Pahwa*<sup>5</sup> and *Ram Jethmalani v. Subramanian Swamy*<sup>6</sup>).

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<sup>5</sup> 2024 SCC OnLine Del 1193, ¶ 30

<sup>6</sup> 2006 SCC OnLine Del 14, ¶ 95



41. In **Ram Jethmalani** (supra), a Coordinate Bench of this Court has taken a view that the defence of truth cannot be defeated on account of malice. In other words, even if the defendant acted with malice, so long as the statement made by him is a true statement, the element of malice is to be ignored.

42. Clearly, the defence of truth is put at a higher pedestal and would prevail over any claim over reputation. The underlying principle is that when a person speaks the truth, he should be able to do so without any fear or liability of defamation.

(b) Defence of Fair Comment

43. The defence of fair comment provides protection for statements made on the basis of honest opinion, as opposed to statements of facts.

44. In **Branson v. Bower**<sup>7</sup>, the Queen's Bench Division of the High Court of Justice in England and Wales has explained that the defence of fair comment allows citizens to express hard-hitting opinions on matters of public interest in an honest manner without the fear of being brought before courts.

45. In **Ram Jethmalani** (supra), the Court has observed that in order to succeed in a plea of fair comment, the defendant has to establish the following:

- (i) The statement was a comment based on facts, which are sufficiently true;
- (ii) The subject matter of the comment was in public interest;
- (iii) The comment was one which an honest person could form.<sup>8</sup>

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<sup>7</sup> [2002] QB 737, ¶ 24

<sup>8</sup> 2006 SCC OnLine Del 14, ¶ 90



46. Unlike the defence of justification or truth, malice would be a relevant factor to be considered while dealing with the defence of fair comment. Therefore, in a given case, if the court is of the view that the statements made by the defendant are such that he believed them to be correct on the basis of facts available to him, the defendant would be entitled to invoke the defence of fair comment.

47. The defendant should clearly differentiate between a factual statement and a comment in a manner that the listener/ viewer/ reader is able to know that the statement is the personal opinion of the defendant. If the defendant knows that his comments are based on untrue facts or are made without any attempt to determine the truth, it would be assumed that the comments were made with malice. In *Tata Sons v. Greenpeace*<sup>9</sup>, a Coordinate Bench of this Court observed that the onus of proving malice in the comments made by the defendant lies on the plaintiff.

## **A.2 Disparagement**

48. An action for disparagement falls within the tort of malicious falsehood and it seeks to protect the economic interest of the plaintiff, as opposed to its reputation in the case of defamation. Disparagement would involve making statements about the plaintiff's goods or services which are untrue or misleading and are made to influence the public in a manner not to buy the said goods or avail the said services.

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<sup>9</sup> 2011 SCC OnLine Del 466



49. In *Dabur India v. Colortek Meghalaya*<sup>10</sup>, a Coordinate Bench of this Court observed that commercial speech will amount to disparagement if the following ingredients of malicious falsehood is established by the plaintiff:

- (i) The impugned statement is untrue or misleading;
- (ii) The impugned statement has been made maliciously; and
- (iii) As a result of the impugned statement, the plaintiff has suffered special damage.

50. The judgment in *Dabur* (supra) has been upheld by the Division Bench<sup>11</sup> and the aforesaid test laid down therein was followed by a Coordinate Bench of this Court in *Hindustan Unilever v. Cavincare*<sup>12</sup>.

51. Unlike an action for defamation, the burden of proving falsehood of the impugned statement made by the defendant lies on the plaintiff in an action for disparagement. This difference is on account of the inherent nature of the two actions – defamation is directed towards protecting the reputation of a person while disparagement is directed towards protecting the economic interests of a person.

52. Since the entire cause of action in a disparagement suit is based on making false statements to cause damage to the plaintiff's goods, the element of malice is inherently a part of it. However, a statement made believing it to be genuinely true would negate the claim of malice. This has been explained by a Division Bench of this Court in *Reckitt Benckiser v. Gillette India*<sup>13</sup>, the relevant extracts from which are set out below:

*“50. To understand the concept better it would be necessary to see what malice actually means. Unless the malice is akin to dishonesty or at least*

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<sup>10</sup> 2009 SCC OnLine Del 3940

<sup>11</sup> *Dabur India v. Colortek Meghalaya*, 2010 SCC OnLine Del 391

<sup>12</sup> 2010 SCC OnLine Del 2652

<sup>13</sup> 2016 SCC OnLine 4737



*improper motive, the same may not be actionable. For a malice in thought to get reflected in a representation or advertisement, and specially in a comparative advertising, must involve a subjective state of mind of the wrongdoer, having necessary mental element of ill will or an intention to injure. Similarly, if a person is seeking to defend his own lawful interest but, while doing so, he is cognizant of the fact that it would cause damage to the other side, he may not be accused of malice. The trader's desire to promote his business at the expense of rivals is a proper exercise of discretion. A genuine belief in the truth of the statement made negates malice (Horrocks v. Lowe [1975] A.C.135)."*

[emphasis supplied]

### **A.3 Interim Injunction in cases of Defamation and Disparagement**

53. The courts in India have consistently followed the Bonnard principle as laid down in the judgment of the Court of Appeal (England and Wales) in *Bonnard v. Perryman*<sup>14</sup>, wherein it was held that an interim injunction should not be granted unless the defence set up by the defendant was bound to fail in trial. It was held that the courts must exercise exceptional caution while granting injunction before trial in defamation cases as it impinges upon the right to free speech of an individual. In the aforesaid case, the Court agreed that the character of publication was libellous, however, it was observed that the defence of justification raised by the defendant can only be tested in a trial. Hence, the interim injunction was refused. The relevant extracts of the said judgment are set out below:

*"... But it is obvious that the subject-matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. **Until it is clear that an alleged libel is***

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<sup>14</sup> [1891] 95 All ER 965



*untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions.”*

[emphasis supplied]

54. In *Fraser v. Evans*<sup>15</sup>, the Court of Appeal (England and Wales) followed the *Bonnard* principle and held as follows:

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

[emphasis supplied]

55. The aforesaid principle laid down in *Bonnard* (supra) and followed in *Fraser* (supra) was also adopted by the Supreme Court of India in *Bloomberg Television v. Zee Entertainment*<sup>16</sup>. The Supreme Court observed that grant of an interim injunction may have severe ramification on the right to freedom of speech of the author and the public’s right to know, hence unless the content is ‘malicious’ or ‘palpably false’, interim injunction should not be granted. The relevant observations of the Supreme Court in paragraph 10 of the judgment in *Bloomberg* (supra) are set out below:

*“10. Increasingly, across various jurisdictions, the concept of ‘SLAPP Suits’ has been recognized either by statute or by courts. The term ‘SLAPP’ stands for ‘Strategic Litigation against Public Participation’ and is an umbrella term used to refer to litigation predominantly initiated by entities that wield immense economic power against members of the media or civil society, to prevent the public from knowing about or participating in important affairs in the public interest. [Donson, F.J.L. 2000. Legal*

<sup>15</sup> (1969) 1 QB 349

<sup>16</sup> (2025) 1 Supreme Court Cases 741



*Intimidation : A SLAPP in the Face of Democracy. London, New York : Free Association Books.] We must be cognizant of the realities of prolonged trials. The grant of an interim injunction, before the trial commences, often acts as a ‘death sentence’ to the material sought to be published, well before the allegations have been proven. While granting ad-interim injunctions in defamation suits, the potential of using prolonged litigation to prevent free speech and public participation must also be kept in mind by courts.*

[emphasis supplied]

56. The Bonnard principle was also followed by a Division Bench of this Court in *Khushwant Singh v. Maneka Gandhi*<sup>17</sup>, wherein it was held that people have a right to hold a particular view and express the same freely in matters of public interest. The Court has to balance the two competing interests, *i.e.*, of an author to write and publish and of an individual against invasion of privacy and threat of defamation. However, the aforesaid balancing has to be considered at the stage of claim of damages for defamation and not at the stage of interim injunction.

**B. SUBMISSIONS ON BEHALF OF MR. VARUN PATHAK**

57. Mr. Varun Pathak, the other learned *amicus curiae* appointed by this Court, has placed before the Court the following judgments on the aspect of defamation and disparagement by social media influencers.

**57.1. *Marico v. Abhijeet Bhansali***<sup>18</sup>

57.1.1. This is a case relating to Marico (plaintiff) suing the defendant, who was a social media influencer and had his own YouTube channel. It was argued on behalf of the plaintiff that the defendant, through the impugned videos posted on his YouTube channel, disparaged the plaintiff’s product by

<sup>17</sup> 2001 SCC OnLine Del 1030, ¶ 69 and 71

<sup>18</sup> 2020 SCC OnLine Bom 60



stating that it was of inferior quality. The defendant took a defence that the statements made by him in his videos are true and constitute his *bona fide* opinion.

57.1.2. A Single Bench of the High Court of Bombay held that the impugned videos posted by the defendant amount to a ‘commercial speech’ since the purpose behind posting the said videos was to earn revenue. Applying the triple test for disparagement, the Court granted an interim injunction in favour of the plaintiff and against the defendant. The summary of the conclusions of the Court, as set out in paragraph 120 of the judgment, are reproduced below:

*“120. The Defendant cannot under the garb of educating/bring the true facts to public, provide misleading information to disparage the Plaintiffs product. Any campaign to educate the members of the public by placing before them the true and correct facts may be welcomed. **However, under the garb of educating and/or bringing the correct facts before the members of the public, no one should put misleading information which disparages/discredits or belittles someone else’s [sic] product or influences the consumer not to buy the said product. Additionally, the unauthorized use of the Plaintiffs registered trademarks by the Defendant in a manner which is detrimental to its distinctive character or reputation cannot ever be in accordance with the honest practices in industrial or commercial matters.**”*

[emphasis supplied]

57.1.3. To be noted, a Division Bench of the Bombay High Court, *vide* its order dated 14<sup>th</sup> February 2020, stayed the operation of the aforesaid judgment, subject to the appellant (defendant) agreeing to make certain modifications in the impugned video.<sup>19</sup>

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<sup>19</sup> Abhijeet Bhansali v. Marico, 2020 SCC OnLine Bom 265



### 57.2. *Unilever v. Naresh Gehani*<sup>20</sup>

57.2.1. In the present case, Unilever (plaintiff) filed a suit against certain social media influencers having huge public following impugning their posts on social media platforms disparaging the frozen desserts sold by the plaintiff. The Court held that the impugned videos named and targeted specific products of the plaintiff and showed them in a poor light as being harmful and dangerous to health. Hence, an *ex-parte ad interim* injunction was passed in favour of the plaintiff.

### 57.3. *Zydus v. Prashant Desai*<sup>21</sup>

57.3.1. Since this judgement has also been extensively relied upon by the plaintiff, it has been analysed in a later part of this judgment.

## **C. JUDGMENT OF A COORDINATE BENCH OF THIS COURT IN *GREENPEACE (SUPRA)***

58. In this case, Greenpeace India (defendant no.2) had created an online game called '*Turtle v. TATA*' with the objective to bring to the public's notice the alleged destruction of Olive Ridley Turtles Nesting Habitat by construction of a port by the plaintiff. While showing the plaintiff therein as the antagonist, the defendant no.2 used the name of the plaintiff as well as its logos.

59. Applying the Bonnard principle, as followed by the Division Bench in *Khushwant Singh* (supra), the Court did not grant an interim injunction in favour of the plaintiff. The principles that weighed with the Court in not

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<sup>20</sup> 2023 SCC OnLine Cal 6570

<sup>21</sup> 2024 SCC OnLine Del 7018



granting the interim injunction in favour of the plaintiff may be summarized below:

- (i) It would be unreasonable to place restrictions on the freedom of speech and expression before the full trial takes place;
- (ii) Reasonable criticism, comment and parody is largely protected within the right to free speech under the Constitution;
- (iii) Even if the plaintiff has received the requisite approvals, it would not mean that the concerns raised by the defendants are not genuine or backed by materials;
- (iv) At an interim stage, it cannot be stated that the actions of the defendants are *mala fide*;
- (v) Just because internet publication has wider viewership or a degree of permanence, it would not mean that a different standard for grant of injunction, in variance with the Bonnard principle, would have to be followed. Adopting a different approach would result in disturbing the balance between free speech and the interest of the plaintiff.;
- (vi) The use of hyperbole and exaggerated forms of speech or parody would not entitle the plaintiff to grant of interim injunction.

### **ANALYSIS AND FINDINGS**

60. I have examined the material on record including the impugned videos. Now I proceed to apply the aforesaid principles to the facts of the present case.

61. In the present case, it is an admitted position that the defendant no.1 is a social media influencer with a huge following on social media platforms such as YouTube and Instagram. The defendant no.1 claims to be a personal



trainer certified from American Council of Exercise and a sports science nutritionist certified from K-11 School of Fitness Science. The defendant no.1 has filed his certificate issued by American Council on Exercise along with the written statement (*refer page 1 of the documents filed with the written statement*). The defendant no.1 started his YouTube channel @AllAboutNutrition in April 2019 and his two videos, which are the subject matter of the present suit, were posted by him on his YouTube channel on 1<sup>st</sup> June 2022 (impugned video 1) and 5<sup>th</sup> December 2022 (impugned video 6).

62. It is the case of the plaintiff that the aforesaid videos are defamatory in nature and disparage the plaintiff's product. *Per contra*, the defendant no.1 justifies the aforesaid videos on the grounds of 'truth' and 'fair comment'.

63. The case set up by the defendant no.1 is that he received a number of complaints regarding the sub-standard quality of the plaintiff's product from his subscribers and accordingly, he decided to carry out an investigation. The defendant no.1, using a pseudonym, ordered one unit of the plaintiff's product from Amazon on 9<sup>th</sup> May 2022, which was sent for testing to the first laboratory VAL. As per the results of the laboratory report dated 24<sup>th</sup> May 2022, 100 grams of the plaintiff's ISO PRO has a protein content of 45.17 grams and a carbohydrate content of 47.62 grams.

64. In order to double check the results, the defendant no.1 ordered another unit of the plaintiff's ISO PRO from Amazon on 22<sup>nd</sup> May 2022. The defendant no.1 also recorded the entire process of taking the packed product received by him to the second laboratory MTL. The results of the second laboratory report dated 28<sup>th</sup> May 2022 shows that the protein content in the plaintiff's product is 51%.



65. The results of both the laboratory reports were in sharp contrast with the claims made by the plaintiff on the label of the plaintiff's product, *i.e.*, it has protein content of 83.87% and carbohydrate content of 1%. The label of the plaintiff's ISO PRO, as set out in the written statement, is reproduced below:

**NUTRITION INFORMATION**

Serving Size : 1 Scoop (31g)  
Serving Per Container : Approx. 29

Amount per serving	% Daily Value*
<b>Calories</b>	<b>130</b>
Total Fat 1g	3%*
Saturated Fat 0g	0%
Cholesterol 70 mg	23%
Total Carbohydrate 1g	<1%*
Total Sugar 0g	†
Protein 26g	45%*
Calcium 120mg	9%
Iron 0.6mg	3%
Sodium 140mg	6%
Potassium 200mg	4%

\* Percent Daily Values are based on a 2,000 calorie diet. † Daily Value not established.

**Ingredient :** Isolate Protein & Peptide Blend (Whey Peptides, Whey Protein Isolate, Whey Protein Isolate 98%), Cocoa (Processed with Alkali), Soy and/or Sunflower Lecithin, Salt, Natural and Artificial Flavors, Gum Blend (Cellulose Gum, Xanthan Gum, Carrageenan), Silicon Dioxide, Acesulfame-Potassium, Sucralose.

**SIMPLIFIED USAGE**

- 1 LEVEL SCOOP - 26 grams OF PROTEIN PER SERVING
- 4-8 OZ OF OZ - COLD WATER, MILK OR OTHER BEVERAGE
- 30 MINUTES - AFTER WORKOUT, TRAINING OR RUNNING SESSION

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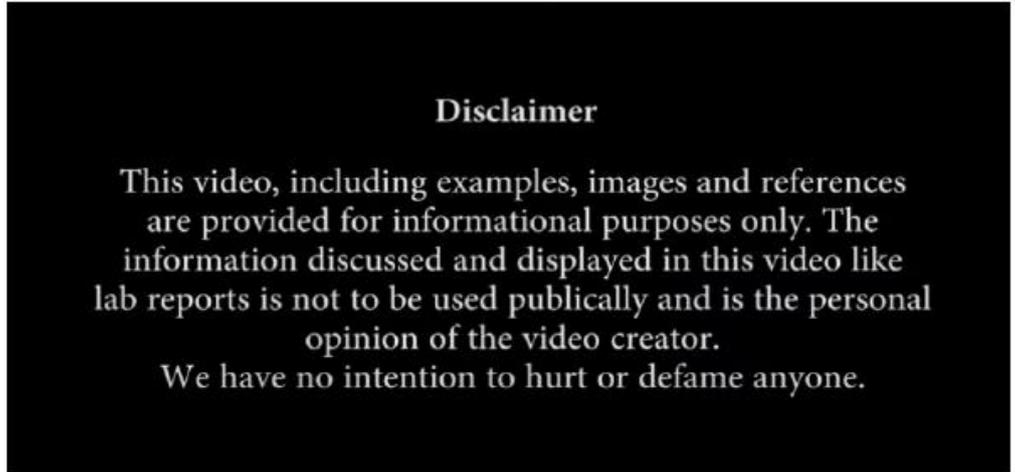
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66. Based on the aforesaid two laboratory reports, the defendant no.1 published the impugned video 1 on 1<sup>st</sup> June 2022. The total length of the impugned video 1 is 14:39 minutes.

67. I have seen the impugned video 1 and the following aspects emerge therefrom:



- (i) The defendant no.1 has categorically provided a disclaimer at the beginning of this video, which is set out below:



- (ii) In this video, the defendant no.1 essentially talks about the aforesaid two tests which he had got conducted and their reports. Based on the aforesaid laboratory reports, the defendant no.1 has stated in this video that the protein content in the plaintiff's product was found to be much less when tested than what was claimed by the plaintiff on its product label and the carbohydrate content was found to be in excess of the amount claimed by the plaintiff.
- (iii) The defendant no.1 concludes this video by stating that the aforesaid test results are shocking as the presence of excess carbohydrate in the plaintiff's product would be detrimental to consumers having diabetes. He further concludes that purchase of a premium product such as the plaintiff's ISO PRO by students with limited resources as well as athletes would cause financial strain, as they would be spending money under the belief that the plaintiff's product has a certain amount of protein, which in reality it does not have.



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- (iv) He advises all persons who consume protein powder to test the products on their own and carefully make a choice before purchasing protein powder of a particular brand.
- (v) He also invokes his right to freedom of speech enshrined under the Constitution in justification of this video and clarifies that through this video, he is only providing his opinion and his intent is not to malign any product.
- (vi) At the end of this video, there is yet another disclaimer in the following terms:

The information provided in this video has no intention to influence anyone, hence viewers are advised to make their own decision independently. Also all the information is provided in good faith, however we don't claim ownership for any of this information.

\*Source of all the information is disclosed in description box.

- (vii) This video does not contain any sponsorship or affiliate links to promote competing products of any third-party.
68. I have also seen the impugned video 6 posted by the defendant no.1 and the following points may be highlighted therefrom:
- (i) This video of the defendant no.1 is of about one minute and is posted as a YouTube Shorts, wherein the defendant no.1 names seven protein powder brands in a satirical manner and terms them as '7 worst protein powder brand'. In particular, he referred to the plaintiff's brand DOCTOR'S CHOICE as 'DOCTOR HAS NO CHOICE'.



- (ii) While collectively referring to three of these brands, including that of the plaintiff, he uses the word ‘ghatiya’.
- (iii) He suggests that the aforesaid three brands are extremely popular on account of the companies owning those brands hiring YouTube influencers to heavily promote their products on various social media platforms.

69. Now I shall examine whether the aforesaid impugned videos amount to defamation and/ or disparagement of the plaintiff’s product ISO PRO and whether the defendant no.1 is entitled to the defences of ‘truth’ and/ or ‘fair comment’.

### **Defamation**

#### **(a) Defence of Truth/ Justification**

70. The defendant no.1 has taken the defence of truth on the basis of two reports obtained by him from two independent laboratories. Both the laboratory reports confirm the fact that the claim made by the plaintiff with regard to protein content in the plaintiff’s product is untrue.

71. After the impugned video 1 was uploaded, in order to ensure that he has reported correctly, the defendant no.1 once again ordered two units of the plaintiff’s product from the plaintiff’s website and one unit in a sealed condition was sent to Eurofins, which is NABL accredited and is also recognized by FSSAI. The test report issued by Eurofins also revealed that the protein content in the plaintiff’s ISO PRO was 52.17 grams per 100 grams and the carbohydrate content was 35.33 grams per 100 grams.

72. To be noted, the plaintiff has nowhere questioned the veracity of the findings in the laboratory reports relied upon by the defendant no.1 nor has it



submitted any laboratory report or other scientific material of its own to rebut the findings of the laboratory reports relied upon by the defendant no.1. The plaintiff has only questioned the credibility of the laboratories issuing the aforesaid reports on the ground that they are not recognized by FSSAI and therefore their reports cannot be relied upon.

73. The aforesaid argument overlooks the fact that the function of FSSAI under Section 43<sup>22</sup> of the FSS Act is not to provide recognition or accreditation to laboratories for conducting tests. Under Section 43 of the FSS Act, FSSAI recognizes laboratories, research institutions, etc. only for the purpose of carrying out acts/ functions covered under the FSS Act. Nonetheless, all the laboratories where the plaintiff's product was sent for testing by the defendant no.1 are NABL accredited. MTL and Eurofins are also recognized by FSSAI under Section 43 of the FSS Act. Therefore, at a *prima facie* stage, the laboratory reports relied upon by the defendant no.1 cannot be disregarded only on account of the fact that the laboratories in question were not recognized by FSSAI to test the plaintiff's product. The veracity of the results of the laboratory reports can only be tested at the stage of trial. At an interim stage, the Court is only required to take a *prima facie* view if the defendant no.1 has been able to establish his defence of truth of the assertions made by him with regard to the results of the aforesaid laboratory reports.

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<sup>22</sup> **43. Recognition and accreditation of laboratories, research institutions and referral food laboratory.—**

(1) The Food Authority may notify food laboratories and research institutions accredited by National Accreditation Board for Testing and Calibration Laboratories or any other accreditation agency **for the purposes of carrying out analysis of samples by the Food Analysts under this Act.**

(2) The Food Authority shall, establish or recognise by notification, one or more referral food laboratory or laboratories to carry out the functions entrusted to the referral food laboratory by this Act or any rules and regulations made thereunder.



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74. Mr. J. Sai Deepak contends that the test report issued by Eurofins is not relevant to the present suit as the same does not form part of the impugned videos 1 and 6. I am unable to agree with the aforesaid contention. The results of the third laboratory test, even though do not form part of the impugned videos 1 and 6, confirms the results of the aforesaid two reports cited in the impugned video 1 and therefore strengthens the defence of truth taken by the defendant no.1.

75. The plaintiff has not placed any material in justification of the claims made by it on the label of the plaintiff's product with regard to nutritional information. The only justification offered by the plaintiff is that the nutritional information given in the label of its products is based on information provided to the plaintiff by the manufacturer of the said products.

76. In my opinion, this justification is completely untenable. The plaintiff cannot disown the nutritional information given on the label of the products being sold by it under its own brand/ mark on the ground that it is not aware of such nutritional information and the same has been put by a third-party manufacturer. Even if the plaintiff's products are manufactured by a third-party, any false claim therein, including the alleged false claim regarding the nutritional information on the product label, would be the plaintiff's responsibility and the plaintiff would be accountable for the same, especially since the said products are offered and sold to the customers under the plaintiff's marks.

77. Mr. J. Sai Deepak further contends that the laboratory tests were undertaken by the defendant no.1 with the *mala fide* intent and predefined purpose of showcasing the plaintiff's product in a bad light inasmuch as the defendant no.1 placed the second order for the plaintiff's product on 22<sup>nd</sup> May



2022, *i.e.*, prior to receiving the first laboratory report, the date of which is 24<sup>th</sup> May 2022.

78. In my considered view, just because the defendant no.1 conducted a second test without waiting for the results of the first test, would not establish any malice.

79. Based on the discussion above, at a *prima facie* stage, the Court finds that the defendant no.1 has established the defence of truth.

(b) Defence of Fair Comment

80. When examined in the light of legal principles in relation to the defence of fair comment as elucidated above, in my considered view, the defendant no.1 would also be entitled to the defence of fair comment, at least at a *prima facie* stage. The essence of his videos is only to educate the consumers, who could also be diabetic patients, students or athletes, that the protein content in the plaintiff's product is much less than what is claimed and the carbohydrate is in excess of the claim made and to advise them to carefully examine and consider all factors before selecting any brand of protein powder for purchase. He encourages the consumers to conduct their own test before making a choice. The comments made by the defendant no.1, in my *prima facie* view, forms an honest opinion of the defendant no.1 based on 'sufficient factual basis', *i.e.*, the aforesaid test reports from accredited laboratories.

81. The plaintiff's product relates to the fitness and nutrition industry, which affects the health and well-being of consumers. Therefore, in terms of the *dicta* of **Ram Jethmalani** (*supra*), the subject on which the comments were made by the defendant no. 1 is a matter of public interest. Further, the comments that were made by the defendant no.1 were what he believed to be



correct on the basis of the investigation carried out by him. On the other hand, the plaintiff has not been able to establish malice on the part of the defendant no.1, at least at a *prima facie* stage.

82. One of the grievances of the plaintiff is that the defendant no.1 has disparaged the plaintiff's products by referring to the plaintiff's brand as 'ghatiya', which as per the plaintiff is an unparliamentary reference. I cannot agree with the aforesaid submission. In my view, the word 'ghatiya' would mean nothing more than 'sub-standard'/ 'inferior' in English. In the opinion of the defendant no.1 based on the aforesaid test results, the products of the plaintiff are sub-standard inasmuch as they are priced higher in comparison to the products of other brands and are not true to the claims made by the plaintiff. In **Branson** (supra), it was held that a fair comment is not defeated by exaggerated, rude or offensive language. In **Greenpeace** (supra), the defendant had used the expression 'demon' in respect of the plaintiff and this Court held that such a reference was insufficient to establish malice on the part of the defendant. In my opinion, at the highest, the use of the term 'ghatiya' would be in the nature of an exaggeration or hyperbole, which would not be defamatory *per se*.

83. In the impugned video 6, the plaintiff's mark DOCTOR'S CHOICE has been referred to as 'DOCTOR HAS NO CHOICE'. The reference to the plaintiff in the impugned video 6 as 'DOCTOR HAS NO CHOICE' is *prima facie* satirical in nature. This Court in **Greenpeace** (supra) has also held that a satirical reference is permissible under the right to freedom of speech and expression enshrined under the Constitution. Further, the defendant no.1 has not only referred to the plaintiff's mark as such but also five other third-party brands using pseudonyms in a satirical sense. This *prima facie* shows that the



defendant no.1 has no *mala fide* intention to defame the plaintiff or disparage its products.

84. The plaintiff has also placed reliance on the ASCI Guidelines insofar as they relate to ‘*Health and Financial Influencers*’. The plaintiff submits that in terms of the said Guidelines, influencers in the field of health and nutritional products and services must have necessary qualifications to render advice and these qualifications must be stated in their posts and publications.

85. In my considered view, the reliance placed by the plaintiff on the aforesaid Guidelines is misplaced. The defendant no.1 has based his opinion in the aforesaid videos on test results obtained from laboratories which are purely factual in nature.

86. Further, as noted above, the impugned videos 1 and 6 do not include any sponsorship or paid promotion of any third-party brand and therefore do not qualify to be ‘advertisements’ to be covered under the ASCI Guidelines.

ASCI<sup>23</sup> itself defines an advertisement as:

*“a paid-for communication, addressed to the public or a section of it, the purpose of which is to promote, directly or indirectly, the sale or use of goods and services to whom it is addressed. Any communication which in the normal course may or may not be recognised as advertisement by the general public, but is paid for, or owned or authorized by the advertiser or their advertising agency would be included in the definition.”*

[emphasis supplied]

87. In light of the above, the ASCI Guidelines would not apply to the defendant no.1. In any case, the qualifications of the defendant no.1 are irrelevant in the present case since he is backing his comments with the test reports issued by accredited laboratories.

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<sup>23</sup> The Code for Self-regulation of Advertising Content in India, at page 6 (Ed: April 2025)



88. The plaintiff has also sought to discredit the defendant no.1 by stating that he runs another channel on YouTube under the name ‘Trustified’, which operates on commercial lines and wherein he promotes competing products of rival brands. It is contended that the defendant no.1 has failed to disclose these facts in the impugned videos 1 and 6. This contention, however, overlooks the fact that the aforesaid channel was launched by the defendant no.1 only in January 2023, *i.e.*, after the aforesaid impugned videos had been published. There is nothing to suggest that at the time when the aforesaid videos were published, the defendant no.1 had any affiliation with or sponsorship of any third-party brand or was commissioned by a rival brand to defame the plaintiff or disparage its products. Therefore, there cannot be any question of disclosure of interest by the defendant no.1 when the aforesaid impugned videos were published.

89. Therefore, on a *prima facie* consideration, the defendant no.1 has established a *bona fide* defence of fair comment.

### **Disparagement**

90. It has been held by the Supreme Court that ‘commercial speech’ is a part of the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution (*refer Tata Press v. Mahanagar Telephone Nigam Limited*<sup>24</sup>). In *Tata Press* (supra), the Supreme Court held that commercial speech benefits the public as it helps in dissemination of information about a product to the public at large. However, it was clarified

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<sup>24</sup> (1995) 5 SCC 139, ¶ 25



that commercial speech that was deceptive, unfair, misleading or untruthful would be restricted under Article 19(2) of the Constitution<sup>25</sup>.

91. On the aspect of disparagement, it cannot be disputed that the defendant no.1 was not engaged in a competing business with the plaintiff, at least at the time when the impugned videos 1 and 6 were published by him. It is a settled position in law that any commercial speech would amount to disparagement only when all the three ingredients of (i) untrue and misleading statement, (ii) malice on the part of the defendant and (iii) special damage to the plaintiff are established. As discussed above, the defendant no.1 has established a *bona fide* defence of ‘truth’ as well as ‘fair comment’ inasmuch as there is a factual basis for the comments made by him in his videos. Further, at this *prima facie* stage, the plaintiff has failed to establish malice or a motive to cause damage or injury to the plaintiff. On the aspect of special damage, at this stage, there is nothing to show that the alleged drop in the sale of the plaintiff’s product is attributable to the impugned videos.

92. Therefore, the plaintiff has also failed to make out a *prima facie* case for disparagement against the defendant no.1.

### **Impugned Video 2 by the Defendant No.2**

93. I have seen the impugned video 2 and would like to underline the following aspects:

- (i) The defendant no.2, in his video, has simply relied upon the results of the laboratory tests conducted by the defendant no.1, which were referred to in the impugned video 1.

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<sup>25</sup> (1995) 5 SCC 139, ¶ 17



- (ii) The defendant no.2 states that his video should be taken as a news report and places a disclaimer on the screen '*Buying or not is your choice. I'm here to give information*'.
- (iii) The defendant no.2 also mentions that he hopes the plaintiff will work on the plaintiff's product so as to improve its quality based on these findings.

**Impugned Video 3 by the Defendant No.3**

94. I have seen the impugned video 3 and the following facts have surfaced therefrom:

- (i) The impugned video 3 starts with a clip of a video posted by a youtuber/ social media influencer promoting the plaintiff's product so as to highlight the falsity of the claim made by the plaintiff with regard to protein content in the plaintiff's product. In the aforesaid clip, which is a part of impugned video 3, the social media influencer promoting the plaintiff's product says that protein content in the plaintiff's ISO PRO is close to 90%.
- (ii) The defendant no.3, in his video, has also relied upon the results of the first laboratory test conducted by the defendant no.1, which were referred to in the impugned video 1, and requests viewers to research about the products they use on their own.

95. Pertinently, the plaintiff has filed the screenshots/ storyboard of the impugned video 3 in the present suit, however the aforesaid clip of a youtuber/ social media influencer promoting the plaintiff's product has not been disclosed. The transcript of the impugned video 3 in the plaint starts only from



00:13 minutes. It is an admitted position that the plaintiff engages various celebrities and influencers on social media platforms to promote its products.

96. The plaintiff's main grievance with respect to the defendants no.2 and 3 is that they did not undertake any laboratory test by themselves and have relied upon the misleading reports of laboratory tests undertaken by the defendant no.1 in their respective videos.

97. In my considered view, there is nothing wrong in the defendants no.2 and 3 relying upon the tests conducted by the defendant no.1. Further, the defendant no.2 has clearly stated in his video that he is only giving information with regard to the plaintiff's product and asks the consumers to make their own choice. It is also stated that he expects the plaintiff to work on the plaintiff's product to improve its quality. Therefore, on a *prima facie* view, the defendants no.2 and 3 are engaging in constructive criticism of the plaintiff's product.

**Impugned Videos 4 and 5 by the Defendant No.4**

98. I have seen the impugned video 4 and would like to highlight the following:

- (i) In the impugned video 4, using the DIY test kit of 'MuscleBlaze', which is a competing brand, the defendant no.4 conducted a test of the plaintiff's ISO PRO.
- (ii) In a satirical manner, he states that the plaintiff's product has been named DOCTOR'S CHOICE as if to indicate that the plaintiff's products have been suggested by a doctor.
- (iii) After tasting two different flavours of the plaintiff's product, he states that he does not like the taste of the same.



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- (iv) As per the test conducted by the defendant no.4 in the impugned video 4, the protein content was found to be between 55% to 65% in the plaintiff's ISO PRO (chocolate flavoured) and between 35% to 45% in the plaintiff's ISO PRO (blueberry flavoured), as against the plaintiff's claim of about 85%.
- (v) Basis the aforesaid test results, the defendant no.4, in the impugned video 4, highlights that the protein content in the plaintiff's product varies depending on the flavour.
- (vi) He also states that it is ultimately the consumer's choice to select a brand to use for their consumption.

99. The plaintiff contends that the results of the test conducted by the defendant no.4 in the aforesaid video are misleading on the ground that the aforesaid DIY kit is not FSSAI approved. The plaintiff, however, has not placed any material to question the efficacy or reliability of the aforesaid DIY test kit. A perusal of the description of the impugned video 4 further shows that the aforesaid DIY kit has been validated by '*NABL-Accredited SGS S.A. labs (Switzerland headquartered largest global lab network)*'. Therefore, the test results of the aforesaid DIY test kit have to be accepted at a *prima facie* stage, especially in light of the fact that the results of the aforesaid test conducted by the defendant no.4 are more or less in line with the results obtained by the defendant no.1 from NABL accredited laboratories.

100. As regard the plaintiff's contention that the aforesaid video was a paid advertising and promotional video published by the defendant no.4 for a competing brand 'MuscleBlaze', there is nothing to back this allegation. The defendant no.4's use of name/ mark of the competing brand 'MuscleBlaze' in



the title/ description/ content of aforesaid video is only to refer to the Kit used by him to conduct the aforesaid test.

101. As regards the use of the words ‘Fake Protein’ by the defendant no.4, in my view, it appears to be nothing more than an exaggeration or hyperbole.

102. The impugned video 5 does not exist on YouTube anymore. It appears that the said video has been taken down already. To be noted, the plaintiff has not even filed the complete storyboard of the impugned video 5 with the plaintiff.

103. Based on the discussion above, even though the defendants no.2 to 4 have not appeared in the present suit and have not filed their written statements, in my considered view, they would also be entitled to the defences of ‘truth’ and ‘fair comment’ at an interim stage. The plaintiff has also failed to *prima facie* establish malice on the part of the defendants no.2 to 4. Therefore, on a *prima facie* view, no case of actionable defamation or disparagement has been made out against the defendants no.2 to 4.

#### **Judgments relied upon on behalf of the Plaintiff**

104. The plaintiff has placed reliance on the judgment of the High Court of Calcutta in *C.V. Ananda Bose v. Mamta Banerjee*<sup>26</sup>, wherein it has been held that in appropriate cases where the Court is of the view that the impugned statements have been made in a reckless manner in order to cause injury to the reputation of the plaintiff, the Court would be justified in granting injunction. Paragraph 40 of the said judgment is set out below:

“40. This Court is of the view that in appropriate cases where the Court is of the view that the statements have been made in reckless manner in

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<sup>26</sup> 2024 SCC OnLine Cal 7721



*order to cause injury to the reputation of the plaintiff, the Court would be justified in granting injunction. If at this stage, an interim order is not granted it would give the free hands to the defendants to continue making defamatory statements against the plaintiff and continue to tarnish the reputation of the plaintiff.”*

105. In my view, the aforesaid judgment has no application in the facts of the present case as the impugned statements in the present case have not been made in a reckless manner. On the contrary, as discussed above, they are backed up by test reports.

106. The plaintiff has also relied upon the judgment in ***Zyodus v. Prashant Desai*** (supra) in respect of its submission that a social media influencer is not entitled to speak on a subject of which he is not the master and cannot express his views/ opinions without any substantive basis. In the said case, Zyodus (plaintiff) filed a suit against the defendant, who was a social media influencer and had posted disparaging and defamatory video in respect of one of the plaintiff's products. It was the case of the plaintiff that the defendant had conveyed half-truths and distorted factual nutritional and scientific statements to claim that the sugar content in the plaintiff's product was 200% in excess of the daily requirement of children, which is harmful for them. After a detailed analysis, holding that a social media influencer cannot express his/ her ideas or opinions freely without any substantive basis and/ or backing, the Court granted an interim injunction in favour of the plaintiff and against the defendant.

107. The aforesaid judgment also does not advance the case of the plaintiff in the present case as in the present case, the statements made by the defendants in the impugned videos are not unsubstantiated and are based on objective material.



108. The plaintiff has also placed reliance on the judgment of a Coordinate Bench of this Court in *Gujarat Cooperative Milk Marketing Federation v. Akshar Foods and Beverages*<sup>27</sup> in support of its submission that disparaging remarks about any brand/ product cannot be made without properly verifying the underlying facts.

109. The aforesaid judgment would also be of no assistance to the plaintiff herein as in the said case, the defendant was a competitor of the plaintiff.

### **Trade Mark Infringement**

110. The plaintiff has also alleged that the impugned videos amount to infringement of the plaintiff's registered mark inasmuch as the defendants make a reference to the plaintiff's registered mark in their respective videos. The plaintiff relies upon sub-sections (4) and (8) of Section 29 of the Trade Marks Act, 1999 (hereinafter 'the Act'). For ease of reference, sub-sections (4) and (8) of Section 29 of the Act are set out below:

#### ***"29. Infringement of registered trade marks.—***

*(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which—*

- (a) is identical with or similar to the registered trade mark; and*
- (b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and*
- (c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.*

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*(8) A registered trade mark is infringed by **any advertising** of that trade mark if such advertising—*

- (a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or*
- (b) is detrimental to its distinctive character; or*

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<sup>27</sup> 2022 SCC OnLine Del 4899



(c) *is against the reputation of the trade mark.*”

[emphasis supplied]

111. Under sub-section (4) of Section 29 of the Act set out above, the expression used is ‘*uses in course of trade*’. Clearly, in the present case, the defendants have not used the plaintiff’s marks, including by way of hashtags in the description of the impugned videos, in the course of trade. The plaintiff’s marks have been used by the defendants not in respect of their goods/ services, but only to review the plaintiff’s own goods. In *Greenpeace* (supra), the Court has observed that breach of sub-section (4) of Section 29 of the Act would happen only when another commercial or entrepreneurial body is exploiting the plaintiff’s trade mark. Further, a reference to sub-section (8) of Section 29 of the Act would show that it is applicable only when the subject matter of the dispute is an advertisement. In the present case, sub-section (8) of Section 29 of the Act has no application as the defendants are not using the plaintiff’s marks as a part of an advertisement.

### **CONCLUSION**

112. In view of the discussion above, the plaintiff has failed to show that the defences of ‘truth’ and ‘fair comment’ put up by the defendants are palpably false and/ or are bound to fail at the stage of trial. On a *prima facie* view, the plaintiff has also failed to make out a case for disparagement against the defendants as it cannot be said that the contents of the impugned videos are false or misleading or have been made in a malicious manner with an objective to cause damage or injury to the plaintiff.

113. Therefore, applying the Bonnard principle as approved by the judgements of the Supreme Court as well as this Court, the plaintiff has failed



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to make out a *prima facie* case for grant of interim injunction against the defendants and the statements made by the defendants would be entitled to protection of free speech.

114. The plaintiff has also not been able to establish a *prima facie* case for infringement of trade marks/ copyright against the defendants.

115. The balance of convenience would also be in favour of the defendants and granting an interim injunction would be to their prejudice as it would result in putting fetters on their right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution and would also deprive the right of the public at large to receive information on matters of health.

116. Accordingly, the plaintiff's application for interim injunction is dismissed.

117. The Court highly appreciates the valuable assistance rendered by Mr. Aditya Gupta and Mr. Varun Pathak, the learned *amici curiae*, in the present suit.

**CS(COMM) 420/2024**

118. List before the Joint Registrar on 7<sup>th</sup> July 2025 for further proceedings.

**AMIT BANSAL  
(JUDGE)**

**APRIL 28, 2025**

*Vivek/-*