

**(2014) 12 MAD CK 0069**

**Madras High Court**

**Case No:** O.A. No. 331 of 2014 and A. No. 6785 of 2014 in C.S. No. 290 of 2014

Global Eventz

APPELLANT

Vs

India Property Online Private  
Ltd.

RESPONDENT

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**Date of Decision:** Dec. 22, 2014

**Acts Referred:**

- Trade Marks Act, 1999 - Section 11, 12

**Hon'ble Judges:** R. Subbiah, J

**Bench:** Single Bench

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### **Judgement**

R. Subbiah, J.

The application in O.A. no. 331 of 2014 has been filed by the applicant/plaintiff to grant an order of ad-interim injunction restraining the respondent, its servants or agents or any one claiming through them from in any manner, using the offending trademark/trademarks, "GRAHAPRAVESAM, Grihapraves, Grahapraves, Gruhapravesam and Gruhapravesa" or any other marks which is identical and/or deceptively similar to the applicant's well known and well established trademark/trademarks "GRAHAPRAVESAM", "GRUHAPRAVESAM" and passing off its services under the applicant's well known and well established Trade Mark "GRUHAPRAVESAM", "GRUHAPRAVESAM" and/or any other Trade Mark which is similar or identical to the applicant's Trade Mark GRAHAPRAVESAM as and for the applicant's celebrated services including "property exhibitions, property events, property trade shows" by selling or offering for sale or providing services or in any manner advertising the same pending disposal of the suit.

2. The applicant herein is the plaintiff and the respondent is the defendant. For the sake of convenience, the parties will be referred to as per their ranking in the civil suit.

3. The case of the plaintiff, in brief, is as follows:-

(a) The plaintiff is a leading service provider in the field of Event Management, organising various trades shows, events, exhibitions, providing seamless professional and personalized solutions to their clients and building strong relationship with their clients ever since they launched their proprietary concern "Global Eventz" in the year 2010. The plaintiff had organized several trade shows, events and exhibitions for various clients in a variety of industries, which includes Interiors and Exterior Expo ever since the inception in the year 2010.

(b) During the course of the said business, the plaintiff has honestly conceived and adopted the Trade Mark "GRAHAPRAVESAM", "GRUHAPRAVESAM" etc., for their exhibitions, trade shows, etc. The plaintiff and their team were the first to conduct such a property exhibition ever since early 2010 exclusively for Builders, Flat Promoters, Layout Promoters, Land Developers, Individual houses, Banks and Home Loan Providers, which, serves as a platform for the different groups of the Real Estate Sector to interact. The first "GRAHAPRAVESAM" exhibition was conducted in the year 2010 at Yalluvar Kottam, Chennai, which was a very successful event and resulted in more than 15000 enquiries and very good service turn over. Due to the success of the said exhibition, the word "GRAHAPRAVESAM" was associated with the plaintiff alone and no one else. Ever since its inception, all the exhibitions, trade shows, etc. organized and managed by the plaintiff and their team all over the State and the Country under the name and style of "GRAHAPRAVESAM" and "GRUHAPRAVESAM" have been very well received and considered a huge success in the industry. The plaintiff's buyers have benefited from the "GRAHAPRAVESAM" exhibitions and events conducted by the plaintiff and they have bought their dream homes at an affordable price.

(c) The plaintiff has also filed applications registering their Trade Mark "GRAHAPRAVESAM" which includes the word mark and the composite mark under the Trade Marks Act, 1999 claiming user from 2010. The said applications have been numbered as 2228033 and 2354043, which are pending registration. Ever since the early 2010, the word "GRAHAPRAVESAM" and "GRUHAPRAVESAM" trade shows have attracted leading builders, flat promoters, land promoters and Premier Banks and Home Loan Providers including Arun Excello, TVH, VGN, MARG Swarnabhoomi, Amarprakash, Shriram Properties, ETA Star, Jain Housing, VGP Housing, PAAMS Apartments, Bank of India, Union Bank, Canara Bank, Bank of Baroda and Punjab national Bank, etc. The plaintiff had spent huge amounts of time, money and effort in promoting the trade shows, exhibitions, etc., organised under the name and style of "GRAHAPRAVESAM" through exclusive advertisement in both print, visual and electronic media. The plaintiff has also spent huge amounts of time, money and efforts in promotional activities in all visual, audio and other media.

(d) While so, during the month of June 2012, the plaintiff came to know that the defendant, which was then a part of M/s. Consim Info Pvt. Ltd. has started using the identical mark "GRAHAPRAVESAM" for its identical services. Hence, the plaintiff has

issued a notice dated 21.5.2012 to the defendant's parent company viz., M/s. Consim Info Pvt. Ltd. informing them about their rights over their well known, well established and reputed trade mark "GRAHAPRAVESAM" and requested the defendant to cease and desist from infringing their well known trade mark "GRAHAPRAVESAM" by using an identical and/or similar trade mark to that of their trade mark "GRAHAPRAVESAM". However, the defendant gave an evasive reply dated 25.7.2012 contrary to the truth, thereby refusing to comply with any of the demands of the plaintiff and continued with their passing off activities by promoting their events and trade shows through print and media. When the plaintiff had organised a major "GRAHAPRAVESAM" event from 13.12.2013 to 15.12.2013 for which the plaintiff had booked dates for conducting the said event at Chennai Trade Centre, Nandambakkam Chennai, for showcasing elite and signature projects in the range of Rs. 1,00,00,000/- to Rs. 10,00,00,000/-, to their utter shock and surprise, the defendant has also booked the same venue to conduct their event and started their promotional activities in print and media under the banner "GRAHAPRAVESAM by IndiaProperty.com". The defendant has also issued a legal notice dated 10.12.2013 to the plaintiff. In para 5 of the said notice, the defendant themselves had stated that they have started using their trade mark only from November, 2011, whereas the plaintiff is the prior user and adopter of the trade mark "GRAHAPRAVESAM". The said trade mark and logo have been designed on 5.12.2009 itself. They have been organising and conducting property exhibitions and fairs under the banner "GRAHAPRAVESAM" since 2010, whereas the defendant has copied the mark "GRAHAPRAVESAM" in toto and has started organising such shows only from the year 2011.

(e) The defendant has copied the said trade mark "GRAHAPRAVESAM" with the sole intention of riding on the reputation of the plaintiff and use of an identical trade mark for an identical service is likely to create confusion in the minds of the consuming trade and public and therefore, passing off the defendant services as and for that of the plaintiff's. The defendant has no manner of right, title or interest whatsoever to adopt, use and/or trade upon the trade mark "GRAHAPRAVESAM" with or without any additions. Hence, the plaintiff has filed the present suit. Pending suit, the plaintiff has filed the present application for interim injunction.

4. When the matter came up on 28.4.2014, this Court ordered notice to the defendant. Though notice was served on the defendant and their name appeared in the cause list, none appeared on their behalf and hence, this Court by order dated 16.10.2014, has granted interim injunction. Thereafter, on appearance, the defendant has filed an application in A. No. 6765 of 2014 to vacate the interim injunction granted by this Court, along with the counter to O.A. no. 331 of 2014. The sum and substance of the said counter is as follows-

(a) The plaintiff has not used the word "GRAHAPRAVESAM" as a trade mark. In fact, the entire materials produced by the plaintiff would show that "Global Eventz" are

the words that are being projected as a trade name and not the words "GRAHAPRAVESAM". The plaintiff does not have any exclusive right over the words "GRAHAPRAVESAM" as they had not progressed with the idea of promoting "GRAHAPRAVESAM" as a trade mark.

(b) The expression "Graha Pravesh" denotes "entry into a new house" and based on this significance, the defendant adopted the said mark "Grahapravesam by IndiaProperty.com" for marketing/promoting and selling properties/house. There was nothing unusual about the adoption of the said trade mark by the defendant. The defendant conducted a thorough trade mark and market search in September-October, 2011 and came to know of several entities using the term "Graha Pravesh" for marketing/advertising/promoting and selling properties and houses. In order to cater to the said market of promoting sale of flats and apartments, the defendant adopted the composite label "Grahapravesam by IndiaProperty.com" in November, 2011, knowing very well that they could not in any manner get any right over the term "Graha Pravesh" per se since the term descriptive of the services and is used by many other entities. The defendant announced their services of promoting the sale of flats and apartments by way of advertisements in newspapers under the composite mark "Grahapravesam by IndiaProperty.com" on November, 2011, which was reported in leading newspapers and also in the electronic media. After coming to know about the defendant's adoption of the term "GRAHAPRAVESAM" and the wide publicity that was being given by the media, the plaintiff with mala fide intention, wanted to take mileage of the reputation acquired by the defendant and thereby intended to claim exclusive rights over the said descriptive term, which by then was also used by many other entities. Hence, the plaintiff is not entitled to claim any right on the said word "GRAHAPRAVESAM" which is a descriptive term. In fact, in a very short time, throughout, the country, it is the defendant, which is being identified by the term "GRAHAPRAVESAM" popularly and widely and not the plaintiff.

(c) The plaintiff has filed an application seeking registration of the trade mark only in November, 2011 and June 2012, much after the publication made by the defendant, which was widely reported throughout India in all the leading newspapers. The defendant has spent enormous efforts and money to promote its composite mark "Grahapravesam by IndiaProperty.com". The defendant was demerged from its parent Matrimony.com Private Limited pursuant to the order of this Court dated 15.12.2013 and incorporated as a separate legal entity in the year 2013. Ever since the inception of the Real Estate Division right from the parent company days, the defendant has provided itself a niche and serves large client base across India in builders, agents and also individuals, who are both looking for buying and for selling properties.

(d) The defendant so far convened 51 of such "Grahapravesam by IndiaProperty.com" events and out of it 14 events were conducted in abroad and

balance 37 in PAN India. The defendant has spent considerable and substantial amount in advertising and marketing "Grahapravesam by IndiaProperty.com". The defendant has not done anything with an ulterior motive. On the other hand, the composite mark "Grahapravesam by IndiaProperty.com" has been conceived, created and adopted honestly by the defendant to promote, develop and propagate their business to the public.

(e) The term "GRAHAPRAVESAM" is a common term and is descriptive/non-distinctive of the services provided by the plaintiff. Since the said term is common and is non-distinctive/descriptive of services, the term has become publici jurisdiction. The word "GRAHAPRAVESAM" has not acquired any secondary meaning. The mark of the defendant is written/depicted in a distinctive manner with totally different design, font, colour scheme and writing style from that of the plaintiff. The plaintiff has not made out any prima facie case to show as to their exclusive proprietary. There are several other entities using the said term "GRAHAPRAVESAM" even much before the alleged usage by one plaintiff. The plaintiff is aware of such usage by the defendant for more than three years, but, they have not taken any action against the defendant. During these three years, the plaintiff has spent crores of rupees for publicizing and advertising their events "Grahapravesam by IndiaProperty.Com. Thus, the defendant sought to vacate the order of interim injunction already granted by this Court and to dismiss the application.

5. The plaintiff has filed a rejoinder to the counter filed by the defendant, reiterating the averments made in the affidavit filed in support of the application for interim injunction.

6. Learned senior counsel appearing for the plaintiff submitted that the plaintiff is the prior user of the Trade mark "GRAHAPRAVESAM". The logo has been designed on 5.12.2009 itself and they have conducted the first event in the month of July, 2010. In support of the contention that the plaintiff is the prior user of the trade mark "GRAHAPRAVESAM", learned senior counsel has invited the attention of this Court to the brochure of Property Events conducted by the plaintiff under the trade mark "GRUHAPRAVESAM" Expo 2010. Further, the learned senior counsel appearing for the plaintiff has also invited the attention of this Court to the wide advertisements given in the leading newspapers since 2010 to this date with regard to the various trade shows conducted by them. It is the further submission of the learned senior counsel that the plaintiff has also filed an application for registration of the trade mark "GRAHAPRAVESAM", which includes the word mark and the composite mark under the Trade Marks Act, 1999 claiming user from the year 2010 and the same is now pending before the Registrar, of Trademarks. While so, during the month of June 2012, the defendant, which was then a part of M/s. Consim Info Pvt. Ltd., started using the identical mark "GRAHAPRAVESAM" for their identical services. Hence, the plaintiff was forced to issue a notice dated 21.6.2012 requesting

the defendant to cease and desist from infringing their trade mark. But, they have not complied with the said notice. On the other hand, they have given an evasive reply. In fact, the defendant came into existence only in March, 2012 i.e., much later to the plaintiff starting the usage of mark "GRAHAPRAVESAM" for their events. In this regard, learned senior counsel appearing for the plaintiff has also invited the attention of this Court to the documents marked on the side of the plaintiff and submitted that on the side of the defendant, no document was filed for their usage of the trade mark "GRAHAPRAVESAM" from the year 2011 to 2013 and no materials were also produced to show that there were publicity, advertisements or brochures circulated for the alleged shows. Since the plaintiff, during the course of their business, honestly conceived and adopted the trade mark "GRAHAPRAVESAM", "GRUHAPRAVESAM", etc., the said trade mark has been associated with the plaintiff alone. Hence, as a prior user, they are entitled for interim injunction as against the defendant.

(A) In support of this contention, the learned senior counsel appearing for the plaintiff has relied upon the Judgment of the Hon'ble Apex Court in the case of Satyam Infoway Ltd. v. Sirrynet Solutions (P) Ltd. reported in (2004) 6 Supreme court cases 140, wherein, it has been held as follows:-

"13. The next question is would the principles of trade mark law and in particular those relating to passing off apply ? An action for passing off. As the phrase "passing off itself suggests, is to restrain the defendant from passing off its goods or services to the public as that of the plaintiff's. It is an action not only to preserve the reputation of the plaintiff but also to safeguard the public. The defendant must have sold its goods or offered its service in a manner which has deceived or would be likely to deceive the public into thinking that the defendant's goods or services are the plaintiff's. The action is normally available to the owner of a distinctive trademark and the person who, if the word or name is an invented one invents and uses it. If two trade rivals claim to have individually invented the same mark, then the trader who is able to establish prior user will succeed. The question is, as has been aptly put, who gets these first? It is not essential for the plaintiff to prove long user to establish, reputation in a passing off action. It would depend upon the volume of sales and extent of advertisement.

31. What is also important is that the respondent, admittedly, adopted the mark after the appellant. The appellant is the prior user and has the right to debar the respondent from eating into the goodwill it may have built up in connection with the name."

(B) For the same proposition, learned senior counsel has also relied upon the Judgment in the case of Dhariwal industries Ltd., and another v. H.S.S. Food products reported in (2000) 3 supreme court cases 63, wherein it has been held that the prima facie established prior user goes a long way in enabling the plaintiff to claim an injunction in a passing-off action.

(C) In yet another decision reported in [Heinz Italia and Another Vs. Dabur India Ltd.](#), the Hon"ble Apex Court has held that in an action for passing off, the plaintiff has to establish prior user to secure an injunction and the registration of the mark or similar mark in point of time, is irrelevant.

7. Thus, by relying upon the above decisions, learned senior counsel appearing for the plaintiff has submitted that the documents on record would show that the plaintiff is the user of the mark "GRAHAPRAVESAM" from 2010 i.e., much, earlier to the usage of the defendant. Therefore, they are entitled for interim injunction on the ground of prior user. It is the further submission of the learned counsel appearing for the plaintiff that the defendant dishonestly adopted the term "GRAHAPRAVESAM" as a part of their label mark having knowledge about the prior usage of the said mark by the plaintiff. The defendant dubiously adopted the trade mark by inserting their domain name IndiaProperty.Com in small sized font in various forms. In fact, the defendant themselves admitted in their legal notice dated 10.12.2013 about the likelihood of confusion in the mind of the public in using the trade mark "GRAHAPRAVESAM", which would undoubtedly go to show that the plaintiff which is the prior user of the trade mark "GRAHAPRAVESAM" is entitled for interim injunction.

(D) In this regard, learned senior counsel appearing for the plaintiff has also relied upon the decision of the Hon"ble Apex court reported in [Laxmikant V. Patel Vs. Chetanbhat Shah and Another](#), wherein it has been held that when a person adopts or intends to adopt a name in connection with his business of services which already belongs to someone else, it results in confusion and has propensity of diverting the customers and clients of someone else to himself and thereby resulting in injury and the same is one of the issue for determination of the grant of interim injunction.

8. Further, the learned senior counsel appearing for the plaintiff by inviting the attention of this court to the certificate of incorporation issued by the Registrar of Companies to the defendant, submitted that the defendant company themselves was incorporated only on 29.3.2012. Therefore, the claim of usage of the mark "GRAHAPRAVESAM" since November, 2011 by the defendant cannot, be accepted. Originally, the plaintiff has issued a cease and desist notice on 21.6.2012 to the defendant's predecessor M/S. Consim. Info Pvt. Ltd. to stop advertisement by using the Trade Mark "GRAHAPRAVESAM" or any other mark similar to that. In fact, the object of M/S. Consim Info Pvt. Ltd., is not organizing events/trade fair/exhibitions. Though it has been alleged that the defendant was a part of M/S. Consim. Info Pvt. Ltd., no particulars are available to show that M/S. Consim Info Pvt. Ltd. is the parental company of M/S. India Property online Private Limited. Thus, the learned senior counsel sought to make absolute the interim injunction already granted by this Court.

9. Per contra, learned senior counsel appearing for the defendant submitted that the defendant viz., M/S. India Property Online Private Limited was incorporated on 29.3.2012 and they are organising property exposition services nationally and internationally. Their parental company viz., Matrimony Services.Com Private Limited was incorporated on 13.7.2001. The name of the company was changed thrice to viz., M/S. Bharatmatrimony.Com Pvt. Ltd., on 15.12.2003, M/S. Consim Info Pvt. Ltd., on 27.9.2007 and M/s. Matrimony.Com Pvt. Ltd., on 17.8.2012. In the year 2001, M/s. Consim Info Pvt. Ltd., diversified their business and ventured into the property marketing and advisory business. The first property exposition show was organised on 4.11.2011 and 5.11.2011 at Chennai. Trade centre under the composite mark "Grahapravesam by IndiaProperty.Com.". Pursuant to the scheme of arrangement and demerger between "Matrimony.Com Pvt. Ltd.," and "India Property Online Pvt. Ltd.," vide order of this Court dated 15.2.2013, the property marketing and advisory business of "Matrimony.Com Pvt. Ltd." was demerged into the defendant company. Therefore, it could be seen that even before incorporating the present company viz., India Property Online Pvt. Ltd., M/S. Consim info Pvt. Ltd., has ventured into property marketing and advisory business in the year 2011 itself. Further, the learned senior counsel appearing for the defendant submitted that the term "GRAHAPRAVESAM" is a non-distinctive and descriptive of the property exposition services. The mark "GRAHAPRAVESAM" for property exposition services is not invented and has been used by several other entities for similar property exposition services. Though the plaintiff claims that they are adopting and using the mark since only, 2010, the said term has been used by several entities much prior to July, 2010 in respect of similar services. Learned, senior counsel appearing for the defendant has also invited the attention of this Court to the particulars about several entities which are using the term "GRAHAPRAVESAM" for similar services. Thus, the learned senior counsel submitted that it is incorrect to state that the plaintiff is the prior user of the word "GRAHAPRAVESAM". In this regard, learned senior counsel has further submitted that the mark is devoid of any distinctive character and is not capable of distinguishing the services from those or others. Hence, the term per se is not entitled for any trade mark protection. He has further submitted that the plaintiff's application for registration of the mark "GRAHAPRAVESAM" has been objected by the Registrar of Trademarks since it is a generic and common term. Further, the usage of the word "GRAHAPRAVESAM" by the plaintiff has neither acquired any distinctiveness nor any secondary meaning. So far, the defendant has organised 52 events. The sales and marketing turnover for the year 2013-2014 has been about 34 and 25 Crores respectively. The word "GRAHAPRAVESAM" denotes "entry into a new house" and based on this significance, the defendant adopted the said mark "Grahapravesam by IndiaProperty.Com" for marketing/promoting and selling properties/house. The defendant has adopted composite label "Grahapravesam by IndiaProperty.Com" knowing very well that they could not in any manner get any right over the term "GRAHAPRAVESAM" since the term is descriptive and is being used by many other



entities.

10. In this regard, learned senior counsel appearing for the defendant has relied upon the following judgments viz.,

- (i) [Asian Paints Limited Vs. Home Solutions Retail \(India\) Limited,](#)
- (ii) [Skyline Education Institute \(Pvt.\) Ltd. Vs. S.L. Vaswani and Another,](#)
- (iii) [Living Media India Ltd. and Another Vs. Alpha Dealcom Pvt. Ltd. and Others,](#)
- (iv) [Skol Breweries Vs. Unisafe Technologies,](#)
- (v) [Standard Electricals Limited Vs. Rocket Electricals and Another,](#)
- (vi) 2011 PTC 013 (Delhi) - Gillette company and others v. A.K. Stationery and others.

11. Further, the learned senior counsel appearing for the defendant submitted that the plaintiff has not produced any documents to prove the essential ingredients of passing off and/or any deceit/confusion, that has been caused in the minds of the public. The defendant has been marketing and promoting its services as Grihaparavesam by IndiaProperty.Com" and the plaintiff is marketing it as "Grahapravesam by Global Eventz". Therefore, there cannot be any confusion at all.

12. It is the further submission of the learned senior counsel appearing for the defendant that the plaintiff is aware of the usage of the trade mark "GRAHAPRAVESAM" by the defendant for three years. The defendant adopted the mark "GRAHAPRAVESAM" in November, 2011 and they have been continuously, extensively and uninterruptedly using the said mark. The defendant had organised so far as events. But, the plaintiff being aware about the adoption and usage of the mark by the defendant, remained silent and has not taken any action against then for almost three years. Therefore, the plaintiff has admitted the fact that the defendant has been continuously and extensively using the said mark and so far, has conducted 52 events, which are all within the knowledge of the plaintiff.

13. By way of reply, learned senior counsel appearing for the plaintiff has submitted that it is incorrect to state that there is a delay on the part of the plaintiff to initiate action against the defendant in spite of the knowledge about the usage of trade mark "GRAHAPRAVESAM" by the defendant. The fact that M/S. Consim. Info Pvt. Ltd., had changed its name as M/s. Matrimony.Com Pvt. Ltd. in July 2012 and had later demerged their affairs shows that the plaintiff could not have instituted the proceedings in the absence of knowledge of the actual person claiming right to the trade mark "GRAHAPRAVESAM". Therefore, there is no acquiescence or delay on the part of the plaintiff. In this regard, learned senior counsel appearing for the plaintiff relied upon the Judgment reported in AIR. 1954 DELHI 265 - Glaxo operations UK Ltd. v. Samrat Pharmaceuticals, wherein, it has been held as follows:-

18. On the question of delay, following proposition of law was laid down in *Zimmer Orthopaedic Ltd. v. Zimmer Mfg. Co.*, (1968) R.P.C. 362: THE essence of the matter, as I understand it, is this. It is for the plaintiff and his legal advisers to get on with the action and to see that it is brought to trial with reasonable dispatch. The defendant is normally under no duty to stimulate him into action and the plaintiff cannot complain that the defendant gave him no warning before applying to have the action dismissed for want of prosecution. But the court will not take the drastic step of dismissing the action unless (a) the delay has been inordinate, (b) there was no excuse for it and (c) the defendant is likely to be seriously prejudiced by it if the action is allowed to go on.

19. In the present case, it cannot be said that the delay was inordinate. The plaintiff has placed on record the notices which were sent by the plaintiffs to the defendant requesting the latter to stop the impugned user. The suit was brought in November 1982 which can be said to be within reasonable dispatch. Further, it is not clear as to how there was a serious prejudice, to the defendant on account of alleged delay caused by the plaintiff. It was contended by the counsel for the defendant that the defendant had in the meantime built up very good sales and that, therefore, issue of injunction will prejudice him. But the case of the plaintiff is that defendant was served with notice warning the latter in respect of the impugned misuser. Therefore, the defendant was fully in the know of the fact that it was likely to be restrained from carrying on the alleged misuser. It could have very well stopped and not have tried to build up further sales".

14. By relying upon the above judgment, learned senior counsel appearing for the plaintiff has submitted that only if the delay is inordinate and there was no excuse for the said delay and if the defendant is likely to be seriously prejudiced by the said delay, interim injunction can be denied. But, in the present case, the delay cannot be said to be inordinate in nature. Thus, the learned senior counsel submitted that the delay in initiating proceedings cannot serve as a ground to deny grant of interim injunction in favour of the plaintiff.

15. Now, the only question that arises for consideration is, whether any prima facie case has been made out by the plaintiff and whether the balance of convenience is in favour of the plaintiff for granting an order of interim injunction ?

16. According to the plaintiff, they are the prior user of the trade mark "GRAHAPRAVESAM" and they have decided the logo in the year 2009 itself and the defendant has come into existence only in March, 2012. They have conducted their first event in July, 2010. Thereafter, they have conducted several events under the trade mark "GRAHAPRAVESAM" throughout country and also outside the country. The word "GRAHAPRAVESAM" has been conceived and adopted by them for their trade and exhibition shows. While so, the defendant has copied the said mark "GRAHAPRAVESAM" with the sole intention of riding on the reputation of the plaintiff and used the identical mark for identical services only with an intention to

create confusion in the mind of the public and to pass off the defendant's services as that of the plaintiff. Whereas, according to the defendant, in the year 2001 itself, they have diversified their business and ventured into the property marketing and advisory business. The name of M/S. Consim Info Pvt. Ltd., was changed into M/s. Matrimony.Com Pvt. Ltd. and thereafter, the present company viz., India property Online Pvt. Ltd. was incorporated in the year 2012. So far, they have conducted as property exposition shows within and outside India. They are using the mark "Grahapravesam by IndiaProperty.com" in respect of similar property exposition services. It is the further case of the defendant that the word "GRAHAPRAVESAM" is a generic and common word. Therefore, unless the said word "GRAHAPRAVESAM" acquired a secondary meaning, the plaintiff cannot seek for interim injunction on the ground that they are the prior user.

17. In support of his contention, learned senior counsel appearing for the defendant has relied upon the following judgments:-

(i) In the decision reported in [Asian Paints Limited Vs. Home Solutions Retail \(India\) Limited,](#) the Bombay High court has held that the term and expression "HOME SOLUTIONS" is descriptive in many connotations and nature and as such inherently incapable of becoming distinctive with single person with respect of any single product or service. It is generic and publici juris. The Bombay High Court has further observed that even prior to the plaintiff applying for registration of their alleged mark "Asian Paints Home Solutions" before May 2001, there were several companies/entities under the name and style "Home Solutions" in various countries including India, on the question of deception and confusion, the Court said that it is required to be shown by the plaintiff that the plaintiff has invented the said mark. Mere prior user by the plaintiff of the expression. "Home Solutions" cannot create exclusive right in favour of the plaintiff much less to claim that it is the inventor of the expression "Home Solutions".

(ii) In the decision reported in [Skyline Education Institute \(Pvt.\) Ltd. Vs. S.L. Vaswani and Another,](#) the Hon"ble Apex Court reiterated similar principles that the word "Skyline" is a generic word because the same is being used by thousands of persons and institutions as part of their trading name or business activities. Further, it has been held that it was not a fit case for restraining the respondents therein from using the word "Skyline" in the name of the institute established by them. It has not been disputed on behalf of the appellant that the word "Skyline" is being used as trade name by various companies/organisations/business concerns and also for describing different types of institute/institutions.

(iii) In the decision reported in [Living Media India Ltd. and Another Vs. Alpha Dealcom Pvt. Ltd. and Others,](#) the High Court of Delhi held that as far as the plaintiffs" that the stand-alone word/mark "TODAY" has acquired secondary meaning and distinctiveness, as is normally understood in the field of trade mark disputes, is concerned, it would be for the plaintiffs to establish the same during the

trial by adducing necessary evidence which claim of the plaintiffs at this stage cannot be accepted because of many other parties also already using the word "TODAY" in relation to TV news channels and the plaintiffs having raised no objection to those users.

(iv) In the decision reported in [Skol Breweries Vs. Unisafe Technologies, .](#), the High Court of Delhi observed that there is no evidence on record, to establish that the plaintiff's KNOCK OUT has acquired distinctiveness and association with its product of such nature or fame that the consumer or user only thinks or the plaintiff's brand of beer on any reference to the expression, Knock Out..... The plaintiff has not led any evidence to show that there was likelihood of consumer confusion, or that the defendant, knowing the plaintiff's mark, deliberately chose to use it. The plaintiff was under an obligation to prove confusion and not rely merely on the averment in the suit, and the documents filed, which it has failed to discharge.

(v) In the decision reported in [Standard Electricals Limited Vs. Rocket Electricals and Another, .](#) the High Court of Delhi has held that the defendant is not using the trade mark standard simplicitor, but it uses MS STANDARD, which is sufficient even otherwise to distinguish the products of the defendant from those of the plaintiff and could not cause confusion or deception or pass off the goods of the defendant as that of the plaintiff. The word STANDARD is a common English language word and is highly laudatory and is incapable of being appropriated by any single person/company. The word STANDARD cannot acquire any secondary meaning. The basic meaning of the word STANDARD cannot be lost ever if a person uses it for centuries. The word STANDARD is being used by several persons/companies in respect of the electrical and electronic goods, some of whom are prior to the plaintiff. Some have even registered the same though with disclaimer like the defendant. Thus, the same is common to trade and public juris. The word STANDARD has not acquired exclusivity in favour of the plaintiff nor it is claimed by the plaintiff. The plaintiff had the knowledge about the use of the mark earlier as MAX STANDARD and later as MS. STANDARD by defendant no. 2.

(vi) In the decision reported in [The Gillette Company and others Vs. A.K. Stationery and others .](#) it has been held that the mark FLEXGRIP is a completely descriptive trade mark inasmuch as a large number of writing instruments which are sold in the market use word like GRIP in relation to pens and other writing instruments, e.g. Montes High Grip, Cello Gripper, etc. Hence, no monopoly can be claimed in a descriptive mark."

From the dictum laid down in the above judgments, it could be seen that if it is a generic and common word, unless the said word acquired a secondary meaning by way of long usage by the plaintiff, the plaintiff is not entitled for interim injunction. Normally, the word "GRAHAPRAVESAM" denotes "entry into a new house", Hence, the question as to whether the word "GRAHAPRAVESAM" has acquired a secondary meaning, has to be decided only at the time of trial and not at this stage. In fact, the

trade mark application filed by the plaintiff for registering the mark "GRAHAPRAVESAM" has been objected by the Registrar of Trademarks. The relevant portion from the objection of the Registrar of Trade Marks is usefully extracted hereunder:-

"1. The trade marks which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person; which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin of the time of production of the goods or rendering of the service or other characteristics of the goods or service;

2. The Trade mark application is open to objection on relative grounds of refusal under Section 11 of the Act because the same/similar trade mark(s) is/are already on record of the register for the same or similar goods/services. The details of same/similar trade marks is enclosed herewith.

Save as provided in sec. 12, a trade mark shall not be registered if, because of its identity with an earlier trade mark and similarity of goods or services covered by; the Trade Mark; or its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark.

From the said objections, it could be seen that the trade mark sought to be registered by the plaintiff is devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person. Hence, the term "GRAHAPRAVESAM" is not entitled for any trade mark protection. Though catena of decisions are relied upon by the learned senior counsel appearing for the plaintiff to prove that since the plaintiff is a prior user, they are entitled for interim injunction, I find that all those decisions will not be helpful to decide the issue at this stage, particularly in the circumstances when humpty number of entities are using the word "GRAHAPRAVESAM". Moreover, the word "GRAHAPRAVESAM" is a common and generic term and therefore, unless it is established that the usage of the said word by the plaintiff acquired a secondary meaning, the plaintiff is not entitled for any interim injunction, which could be decided at the time of trial.

18. In this regard, learned senior counsel appearing for the defendant has produced the particulars of several entities, which are using the term "GRAHAPRAVESAM" for similar purpose and the same is usefully extracted hereunder:-

From the above particulars, I am of the opinion, it is incorrect to state that the plaintiff is the prior user of the word "GRAHAPRAVESAM", since REBI & Times of India has been using the said word since April, 2009.

19. It is an another submission of the learned senior counsel appearing for the defendant that there is a delay on the part of the plaintiff to initiate action, though

they were aware of the usage of the word "GRAHAPRAVESAM" by the defendant from the year 2011. In this regard, learned senior counsel appearing for the plaintiff submitted that considering the facts and circumstances of the present case, the delay cannot be inordinate in nature and hence, the same cannot be fatal to the case of the plaintiff. But, from the records, I find that as early as on 21.6.2012, the plaintiff has issued a cease and desist notice requesting the defendant M/s. Consim Info Pvt. Ltd., from infringing the said trade mark. Therefore, as early as in the year 2012, the plaintiff was aware of the usage of the word "GRAHAPRAVESAM" by the defendant. But, they have not initiated any action immediately. Thereafter, only when the defendant sent a legal notice dated 10.12.2013 requesting the plaintiff to cease and desist, the plaintiff has initiated action. The factual aspect of the case would show that the plaintiff in spite of the knowledge of the defendant using the trade mark, has not taken any action for two years. Since the plaintiff has not chosen to take any action in spite of the knowledge about the usage of the trade mark "GRAHAPRAVESAM" by the defendant, I am of the opinion, the delay is definitely fatal to the case and the plaintiff is not entitled for interim injunction on the ground of delay also. The plaintiff has allowed the defendant to organise number of events and build their reputation and goodwill in the market for three years. Therefore, I am of the opinion, the delay is critical in this matter. In this regard, a reference could be placed in the judgment of the Delhi High Court reported in [The Gillette Company and others Vs. A.K. Stationery and others](#), wherein it has been stated that acquiescence would also lend legal legitimacy to exclusive user of a descriptive work, which is contemporaneously challenged would call for cancellation. Further, it was also held that the plaintiffs have moved this Court much belatedly as even after coming to know of the fact that the defendant No. 2 was marketing the products with the aforesaid trade mark way back in 1997. No steps were taken in Indian Courts presumably because of the reason that it had, at that time, no intention to market its products in India and was not bothered for the use the trade mark "EKCO FLEXGRIP" by the defendant No. 2 in India.

20. By way of reply to the said contention, learned senior counsel appearing for the plaintiff has submitted that since there was frequent name change in the defendant's company, the plaintiff is not in a position to institute the suit in the absence of knowledge of the actual person claiming right to the Trade Mark "GRAHAPRAVESAM". But, in my considered opinion, whether the plaintiff had the knowledge with regard to the change of name of the defendant company or not, is once again a matter of evidence. Therefore, at this juncture, considering the delay, prima facie, I am of the opinion, the plaintiff is not entitled for continuation of order of interim injunction, since the continuation of interim injunction will cause much hardship and irreparable loss to the defendant. Hence, the order of interim injunction already granted by this Court is liable to be vacated.

21. In fine, the order of interim injunction already granted on 16.10.2014 in O.A. No. 331 of 2014 is vacated and the said application is dismissed. Consequently, the

application in A. No. 6875 of 2014 is allowed. No costs.