**SUPREME COURT OF INDIA**

Skyline Education Institute (Pvt) Ltd.

Vs.

S.L.Vaswani

C.A.Nos.1360-1361 of 2005

(Tarun Chatterjee, G.S. Singhvi and Dr. B.S. Chauhan JJ.)

05.01.2010

**JUDGEMENT**

**G.S. Singhvi, J.**

1. These appeals are directed against order dated 6.10.2004 passed by the Division Bench of Delhi High Court whereby it dismissed FAO(OS) No.212 of 2003 preferred by Skyline Education Institute (India) Private Limited (hereinafter referred to as `the appellant') against the order of the learned Single Judge who refused to restrain Satilila Charitable Society and S.L. Vaswani (hereinafter referred to as `the respondents') from using the name `Skyline' as a part of their trading name in relation to their activities in the field of education and/or as a trademark in relation to any printed matter, including the course material, literature, syllabus etc. and partly allowed FAO(OS) No.213 of 2003 preferred by the respondents insofar as the learned Single Judge directed them not to start any new course similar to the course run by the appellant, namely, graduate and post-graduate courses in Management, Travel and Tourism and further directed them to insert a note in the advertisement etc. that their institute is in no way related to the appellant.

2. The appellant is incorporated under the Companies Act.

> "Although, the appellant's main objects, as specified in para `A' of the Memorandum of Association, are to impart and train in all areas, subjects, fields and disciplines of education, including hospitality, tourism and business management; to act as representative of various foreign educational institutions, universities, organizations, bodies or any other type of institutions for recruiting students and rendering other related services; to establish and run in any part of India, colleges or schools to impart education on such terms and conditions as may be laid down by the Company from time to time but a closer look at the incidental or ancillary objects enumerated in para `B' and other objects enumerated in para `C' of the Memorandum of Association shows that the appellant can engage itself in all types of possible business activities."

3. Respondent No.1, Satilila Charitable Society is registered under the Societies Registration Act. It is said to be part of Skyline group of companies/concerns, the details of which are given below:

> "i) M/s. S.K. Contracts (P) Ltd. (a company started in 1986) ii) M/s. Skyline Construction Co. (a partnership firm started in 1990) iii) M/s. Skyline Constructions (a partnership firm started in 1993) iv) M/s. Skyline Construction Engineers & Builders Co. (a partnership firm started in 1999) v) M/s. Skyline Contractors (P) Ltd. (a company started in 1999) vi) M/s. Skyline Software (P) Ltd. (a company for imparting education in software started in 2001)"

4. The main object of respondent No.1 is to establish colleges for higher technical education for various sections of the community. In November, 2001, respondent No.1 acquired 13 acres of land in the Institutional complex, Greater NOIDA, U.P. at a cost of Rs.5.25 crores for establishing a multi disciplinary college. Thereafter, the respondents obtained permission from All India Council for Technical Education (AICTE) and established an institution with the name Skyline Institute of Engineering and Technology. They also recruited teaching faculty, made admissions in 4 disciplines and started five-year engineering course with effect from 9.9.2002.

5. As soon as respondent No.1 issued an advertisement for recruiting teachers, the appellant got served notice dated 31.1.2002 upon the respondents and called upon them to stop using the word `Skyline' in the name of their institute by alleging that the same was affecting its goodwill. Some dialogue appears to have taken place between the functionaries of the appellant and respondent No.1 but without any tangible result. Therefore, the appellant filed Suit No.1553 of 2002 in Delhi High Court for grant of permanent injunction restraining the respondents herein, their officers, servants, agents, representatives, franchisees or any of them from using the name `Skyline' as part of their trading name in relation to the activities in the field of education and/or as a trademark in relation to any printed matter, literature, syllabus, etc. or in any other manner whatsoever. The appellant further prayed for award of damages to the tune of Rs.5,01,600/- and for issue of a direction to the respondents to give details of the profits earned by them by the alleged wrongful use of the name `Skyline' and deliver all printed material including syllabi, course materials, stationery, blocks, dies, etc. bearing the name `Skyline'.

6. In the plaint, the appellant averred that it was established in 1996 on the lines of the previously existing and highly successful Skyline College, Sharjaha, which was brain child of Mr. Kamal Puri, an eminent educationist, who set up first Skyline Institute in 1990 with the object of providing high quality graduate and post-graduate level professional education and training to the students. The appellant further averred that Skyline Business School was established in 1997 as its division with the object of imparting high quality education in the field of management at under-graduate and post-graduate levels and in a period of one decade it has acquired a substantial reputation and good will on account of highly qualified and dedicated faculty, the internationally competitive courses and scientific methodology of

imparting education. The appellant claimed that it has affiliation with the University of Oxford, University of Lincolnshire and Humberside, U.K., National American University, USA and other bodies like International Air Transport Association, Travel Agents Association of India, Confederation of Indian Industry, Universal Federation of Travel Agents Association, etc. and that these bodies have collaborated with the Skyline Business School for their requirement of trained personnel in the travel business. The appellant then averred that its four months diploma course and the Skyline Business School's three years' bachelor degree course in business administration have been advertised ever since their inception and the applications submitted by it in 1997 and 1998 for registration of trademarks, Skyline Institute, Skyline Medalist, Skyline Business School and Skyline Lead Faculty in class 16 inter alia for printed matter, literature, stationery, etc. are pending before the competent authority. The appellant referred to an advertisement issued by Skyline Institute of Engineering and Technology and pleaded that adoption of the name `Skyline' by the respondents has caused deception and confusion in the mind of the public necessitating filing of the suit for permanent injunction. The appellant also filed an application under Order 39 Rules 1 and 2 read with Section 151 of Code of Civil Procedure (C.P.C.) for grant of temporary injunction restraining the respondents, their officers, etc. from using `Skyline' as a part of their trademark in relation to their activities in the field of education, etc.

7. In the written statement filed by them, the respondents pleaded that the appellant is running its institute illegally without obtaining permission from statutory bodies like AICTE, UGC, etc. and that it does not have affiliation with any University. According to the respondents, there is no connection between Skyline College based in UAE and the appellant's Skyline Business School and that the courses conducted by Skyline Business School are not approved by any competent body. The respondents gave the details of their activities and averred that Skyline Institute of Engineering and Technology was established to provide high quality education to the students in the field of technical education. The respondents asserted that the appellant cannot claim monopoly over the word `Skyline' which is a general word and is being used by as many as 32 companies operating in Delhi, 117 companies operating all over the country and worldwide there are thousands of institutes/institutions, companies, firms, etc. which are using that word as part of their name. The respondents further pleaded that they were already running several companies/firms with the name Skyline and there is no possibility of deception and confusion among the students due to establishment of Skyline Institute of Engineering and Technology. Another plea taken by the respondents is that as per existing law no trademark can be granted in respect of educational services and, as such, the appellant does not have the locus standi to seek an order of injunction against them more so because Skyline Institute of Engineering and Technology was established in 2002 by spending more than Rs.20 crores and the students have already taken admission against 240 seats sanctioned by AICTE. The respondents also alleged that the appellant was operating from the premises of Laxman Public School, Hauz Khas pursuant to an agreement entered into by Shri Kamal Puri in the name of Skyline Express. The respondents also filed reply on similar lines to the application for temporary injunction.

“Findings of the Learned Single Judge”

8. After considering the pleadings of the parties and arguments of their counsel, the learned Single Judge opined that the word `Skyline' being neither an invented nor specific word, has to be considered a generic word more particularly when thousands of persons and institutions are using the same as a part of their trading name or business activities. The learned Single Judge held that even a prior user of the name `Skyline' by the plaintiff would not confer upon it an exclusive right to use that name to the exclusion of others and pendency of the applications for registration under the Trade Marks Act, 1999 is inconsequential. The learned Single Judge then took cognizance of the fact that while the appellant is neither approved by AICTE nor affiliated with any university, the respondents have already obtained the recognition/permission and affiliation from the concerned statutory bodies and have spent huge amount for establishing the institute and further that the first batch of the students is already undergoing five-years course and held that the appellant is not entitled to equitable and discretionary relief by way of temporary injunction. While rejecting the argument that use of the word `Skyline' by the respondents for the Institute of Engineering and Technology established by them will create confusion in the mind of the general public and the prospective students who want to pursue their studies in the field of engineering and technology, the learned Single Judge observed:

> “In the opinion of this Court, merely by the use of the word "Skyline" as a prefix in the name of the two institutes, there is no likelihood of such a confusion because the full name of the plaintiff institute is "Skyline Education Institute (India) Pvt.
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> Ltd." while that of the defendant is "Skyline Institute of Engineering and Technology" used in defendant's name are sufficient to indicate to all concerned that the defendant is not the same institute as the plaintiff. In any case, care can be taken to clarify such a confusion, even if there is any likelihood of such a confusion.”

9. Notwithstanding the above conclusion, the learned Single Judge partly allowed the application filed by the appellant. The operative portion of order dated 6.5.2003 passed by the learned Single Judge reads thus:- "In the result, the application is partly allowed and till the disposal of the suit, the defendants are hereby restrained from starting any new courses similar to the courses run by the Plaintiff viz. graduate and post- graduate education in management, travel and tourism.

> “The ex-parte ad-interim order dated 01.10.2002 is modified to the extent that the defendants will be free to make publicity/issue advertisements etc. in their existing name for any courses in technical/Engineering education provided the said advertisements contain a note to the effect that the institute of the defendants is not related to the Plaintiff's institute being run under the name of "Skyline Educational Institute (India) Pvt. Ltd.", in any way.”

10. The appellant and respondents challenged the order of the learned Single Judge by filing separate appeals. The Division Bench expressed its agreement with the learned Single Judge that the word `Skyline' is not a generic word but was an adoptive word and observed:

> "We also find no force in the argument of the counsel for the respondent that the word `skyline' was not a generic word and was an adoptive word as far as education is concerned. A student who would like to go to an educational institution, he is not a lay customer. If a student likes to go to St. Stephens College in Delhi or want to go to Sri Ram College of Commerce or Hindu College, he will go to these colleges and not to other although there may be similarity of names of other colleges. When the learned single Judge came to the conclusion that there is no similarity in the name of two parties, appellant using the name `skyline' as a prefix with the institute of technology and engineering and the respondent using `skyline' business school', a student would not get any deception by both names. A very large number of institutes, firms and companies etc. are using the word `Skyline' as part of their name which fact has not been categorically denied by the respondent."
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> The Division Bench then observed that after having found that the appellant has failed to make out a prima facie case and that balance of convenience was not in its favour, the learned Single Judge was not justified in directing the respondents not to go ahead with the courses of BBA management and MBA management.
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> This is evinced from the following extracts of the order of the Division Bench:
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> "Normally once all the ingredients like prima facie case, balance of convenience, equity if not found in favour of grant of injunction, injunction in any form ought not to have been granted. At the same time, that does not mean that Court in order to do justice cannot mould the relief or can grant an injunction in terms not prayed for to do justice between the parties. The concept of grant of injunction also have to be seen in the light as to what would be the loss suffered on account of an injury by non-grant of such an injunction. The argument, which has been raised before us that it was basically respondents suit for grant of an injunction against the appellant from using the word Skyline. Having come to the conclusion that Skyline was a word which was used by a very large number of people in India and abroad and it was a generic word, we cannot appreciate as to how the learned Single Judge has granted an injunction against the appellant not to start courses in management. To say the least, the present litigation is to have more commerce in education and less education in commerce.
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> Private commercial houses by advertising fancy name of foreign universities lure students in this country. All this exercise is not in realm of imparting education but knowing fully well that in India the name of a foreign university is lucrative enough to get larger chunk of money from the pockets of the parents. What is the value of these degrees, whether they are permitted to do so or not, we will advert later. Here is a classic case of the respondent who got letters from the University of Lincolnshire

and Humberside, UK both dated 17th October, 1996 which too was for a period of five years only with effect from 1st May, 1997. It as a certificate which the respondent was to given in travel and tourism. However, respondent started giving advertisements for education in BBA (Hons.) with specialization in marketing or tourism.

One such advertisement is at page 516 of the paper book.

It was contended before us by Mr. Singh that on 11 th March, 1998 they had also an arrangement of BBA Marketing programme from the said university. At this stage, we would not like to go to the question whether the respondent could have represented that they could offer courses in BBA Marketing or not, what is of relevant is even if we accept the argument of learned counsel for the respondent, they are `study centre' of a deemed university, Manipal Academy of Higher Education, that is also from the year 2003. The authorization to start courses came in the year 2003, although it was contended by the respondent that they have started courses from 2001. Was it justifiable on their part? Whether they could do so? Was there any legal bar? All are these issues which would be taken care of in the trial. Both the parties would be at liberty to lead evidence and argue the matter. At this stage, when the learned trial Judge has not entertained the plea of the respondent from prima facie case, balance of convenience and irreparable injury to respondent, restraining the appellant not to go ahead with their courses of BBA Management and MBA Management after due approval from AICTE in comparison to respondent being a `Study Center' only was without any basis."

11. Shri Sudhir Chandra, learned senior counsel appearing for the appellant argued that even though the word `Skyline' is being used by several companies, institutions and organizations, the same cannot be treated as a generic word and the contra concurrent finding recorded by the learned Single Judge and the Division Bench is legally unsustainable. Learned senior counsel submitted that though the appellant has not got registration under the Trade Marks Act, being prior user of the word `Skyline', it is entitled to an order of injunction against the use of that word by respondent No.1 as part of their educational activities and the learned Single Judge and Division Bench committed serious error by refusing to protect the appellant from illegal, unlawful and unauthorised use of the word `Skyline' by the respondents. Shri Sudhir Chandra pointed that the appellant is an affiliate of the University of Lincolnshire and Humberside, U.K. and an approved study center of Manipal University and argued that the High Court committed an error by declining the appellant's prayer to restrain the respondents from using the word `Skyline' with the Institute of Engineering and Technology established by them. Learned senior counsel emphasized that even an unregistered prior user can file an action for passing off and the High Court committed serious error by refusing relief to the appellant ignoring the fact that the respondents established the Institute of Engineering and Technology by prefixing the word `Skyline' with the sole object of encashing the goodwill generated by the appellant and its sister concern which is operating in UAE. In support of his arguments, the learned senior counsel relied upon the judgments of this Court in *Kaviraj*

*Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories*[1] *,Ruston & Hornsby Ltd. v. The Zaminidara Engineering Co.*[2], *N.R. Dongre and others v. Whirlpool Corporation and another* [3] and *Satyam Infoway Ltd. v. Sifynet Solutions (P) Ltd.*[4]

12. Shri L.N. Rao, learned senior counsel for the respondents supported the impugned order to the extent the Division Bench rejected the appellant's prayer for restraining the respondents from prefixing the word `Skyline' with the Institute of Engineering and Technology established by them and argued that this Court may nullify the effect of the direction given by the learned Single Judge in its entirety. He submitted that the discretion exercised by the High Court in declining the appellant's prayer for injunction does not suffer from any legal error and this Court may not interfere with the impugned orders because the concurrent finding recorded by the learned Single Judge and Division Bench on the issue of prima facie case is based on correct appreciation of the factual matrix of the case and in any case, equity is not in favour of the grant of injunction in terms of the prayer made by the appellant.

13. We have thoughtfully considered the entire matter.

Before pronouncing upon the tenability or otherwise of the appellant's prayer for restraining the respondents from using the word `Skyline' for the Institute of Engineering and Technology established by them, we consider it necessary to observe that as the suit filed by the appellant is pending trial and issues raised by the parties are yet to be decided, the High Court rightly considered and decided the appellant's prayer for temporary injunction only on the basis of the undisputed facts and the material placed before the learned Single Judge and unless this Court comes to the conclusion that the discretion exercised by the High Court in refusing to entertain the appellant's prayer for temporary injunction is vitiated by an error apparent or perversity and manifest injustice has been done to it, there will be no warrant for exercise of power under Article 136 of the Constitution. In *Wander Ltd. v. Antox India (P) Ltd.*[5] this Court was called upon to determine the scope of appellate court's power to interfere with the discretion exercised by the court of first instance in granting or refusing the prayer for temporary injunction. The facts of that case were that in the suit filed by it, respondent-Antox India (P) Ltd. had prayed for restraining the appellant from using registered trade mark `Cal- De-Ce'. The learned Single Judge of the High Court refused to entertain the respondent's prayer but on reconsideration of the matter the Division Bench passed an order of injunction. This Court reversed the order of the Division Bench and observed:

"... In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and

> seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

14. The proposition of law laid down in *Wander Ltd. v. Antox India (P) Ltd (supra) was reiterated in N.R. Dongre v. Whirlpool Corporation (supra)* in which this Court considered the correctness of an order of temporary injunction passed by the learned Single Judge of the Delhi High Court in a suit filed by the respondents to restrain defendants from manufacturing, selling, advertising or in any way using the trade mark `Whirlpool' or any other trade mark deceptively or confusingly similar to the trade mark `Whirlpool' in respect of their goods. The claim of the plaintiffs-respondents was based on prior user of the mark `Whirlpool'. After considering the rival pleadings and material placed before him, the learned Single Judge granted temporary injunction. The Division Bench confirmed that order and dismissed the appeal preferred by the appellant. This Court, declined to interfere with the discretion exercised by the learned Single Judge and Division Bench of the High Court and held:

> "Injunction is a relief in equity and is based on equitable principles. On the above concurrent findings, the weight of equity at this stage is in favour of the plaintiffs and against the defendants. It has also to be borne in mind that a mark in the form of a word which is not a derivative of the product, points to the source of the product. The mark/name `WHIRLPOOL' is associated for long, much prior to the defendants' application in 1986 with the Whirlpool Corporation, Plaintiff 1. In view of the prior user of the mark by Plaintiff 1 and its trans- border reputation extending to India, the trade mark `WHIRLPOOL' gives an indication of the origin of the goods as emanating from or relating to the Whirlpool Corporation, Plaintiff 1. The High Court has recorded its satisfaction that use of the `WHIRLPOOL' mark by the defendants indicates prima facie an intention to pass off the defendants' washing machines as those of the plaintiffs or at least the likelihood of the buyers being confused or misled into that belief."

15. A somewhat similar view was expressed in *Cadila Health Care Ltd. v. Cadila Pharmaceuticals*[6].

16. The ratio of the above noted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different

opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity.

17. In the light of the above, we shall now consider whether the impugned order is vitiated by an error of law apparent on the face of the record or refusal of the High Court to grant injunction in terms of the prayer made by the appellant has resulted in manifest injustice. A little journey in the backdrop of the case shows that the only ground on which the appellant sought temporary injunction against the respondents was that the word `Skyline' is a specific/distinct word and being a prior user, it was entitled to seek a restraint against the respondents from using that word in the name of the Institute of Engineering and Technology established by them. The learned Single Judge, after examining the rival pleadings and material placed before him recorded a well reasoned finding that the appellant has failed to make out a prima facie case. The learned Single Judge opined 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. The learned Single Judge noted that while the plaintiff is neither approved by AICTE nor affiliated with any university, the respondents have obtained the requisite recognition and affiliation from the concerned statutory bodies and 240 students have already been admitted in the five years course and held that grant of injunction in terms of the prayer made by the appellant will be inequitable. The Division Bench independently considered the entire matter and expressed its agreement with the learned Single Judge that the appellant has failed to make out a prima facie case for grant of injunction.

> "The Division Bench also agreed with the learned Single Judge that the word `Skyline' was a generic word because it was being used by a large number of people in India and abroad. The Division Bench then held that after recording adverse findings on the issues of prima facie case, balance of convenience and equity, the learned Single Judge was not justified in directing the respondents not to undertake in courses in management, tour and travels, etc. and append a note in the advertisements that their institute has no concern, whatsoever with the appellant's institution.
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> Accordingly, the Division Bench substantially vacated the modified injunction order passed by the learned Single Judge."

18. In our opinion, the findings recorded by the learned Single Judge and Division Bench on the crucial factors like prima facie case, balance of convenience and equity are based on a correct and balanced consideration of various facets of the case and it is not possible to find any fault with the conclusions recorded by them that it is not a fit case for restraining the respondents 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 / organizations / business concerns and also for describing different types of institute/institutions.

> The voluminous record produced by the respondents before this Court shows that in India as many as 117 companies including computer and software companies and institutions are operating by using word `Skyline' as part of their name/nomenclature. In United States of America, at least 10 educational/training institutions are operating with different names using `Skyline' as the first word. In United Kingdom also two such institutions are operating. In view of this, it is not possible to agree with the learned counsel for the appellant that the Skyline is not a generic word but is a specific word and his client has right to use that word to the exclusion of others.

19. There is another reason for declining the appellant's prayer for grant of temporary injunction. The appellant is shown to have started Skyline Business School in 1997 as one of its division but has conveniently not mentioned that it had started another institution under the aegis of Asian Educational Society housed in the same building where the appellant claims to have its registered office. After three years of starting Skyline Business School, the Director of the appellant vide his letter dated January 4, 2000 permitted the President, Asian Educational Society to use the trade mark Skyline Business School, name and the logo albeit without disclosing as to when Skyline Business School was registered under the Trademarks Act, 1999. Thereafter, Skyline Group's Asian Educational Society through its President, Shri Kamal Puri entered into an agreement dated 9.12.2001 with Manipal Academy of Higher Education (deemed university) for establishing a branch campus at Skyline Business School, Delhi. Sikkim Manipal University also approved Skyline Business School as a University Study Center for taking management programme under distance education despite the fact that the Skyline Business School is not recognized or approved by AICTE/UGC. In 1996, University of Oxford approved the appointment of a center in the premises of the appellant at Laxman Public School, Hauz Khas Enclave, New Delhi for Certification in Leisure Studies and in Travel and Tourism.

> "In 1997, Skyline Business School entered into a Memorandum of Cooperation with University of Lincolnshire and Humberside, U.K. whereby the latter agreed to offer its BBA (Hons.) Tourism course through a center established at the appellant's campus. In large number of advertisements issued in the name of the appellant or Skyline Business School, it has not been made clear that they are neither approved nor recognized by any of the statutory bodies like, AICTE, UGC, etc. Of course, in some of advertisements, it has been mentioned that the degrees/diplomas purported to be awarded by the Skyline Business School are not recognized by Government of India, State Government, UGC/AICTE. All this lends sufficient credibility to the observations made by the Division Bench of the High Court that the present litigation is to have more commerce in education and less education in commerce and gives an impression that functioning of the appellant is shrouded in mystery and those seeking admission in the courses organised by it may find themselves in serious trouble at any given point of time because the degrees and diplomas awarded in the name of foreign universities are not recognised by statutory bodies/authorities in India."

20. Shri Sudhir Chandra may be right in his submission that even an unregistered prior user of a name can institute action for passing off and seek injunction against the subsequent user of the same name by proving that misrepresentation by the defendant to the public that the goods/services offered by him are that of the plaintiff and such misrepresentation has caused harm to the goodwill and reputation of the plaintiff or the plaintiff demonstrates that it has suffered loss due to such representation, but, in view of our conclusion that the appellant has failed to make out a case for interference with the discretion exercised by the High Court not to entertain its prayer for temporary injunction, we do not find any valid ground to entertain and accept the argument of the learned senior counsel. For the same reason, we do not consider it necessary to discuss the judgments on which reliance has been placed by Shri Sudhir Chandra.

21. Although, during the pendency of the suit, the appellant got registration of trade marks `Skyline MEDALLIST' under No. 795085 and `Skyline Institute' under No. 795086 in class 16 and its prayer for amendment of the plaint was granted by the High Court on 24.8.2006, but, that by itself, is not sufficient for entertaining the appellant's prayer for temporary injunction to restrain the respondents from using the word `Skyline' as part of the Institute of Engineering and Technology established by them.

22. We may now advert to C.A. No. 1362/2005. The respondents' grievance is that after having reached the conclusion that the learned Single Judge was not justified in restraining the respondents from starting new courses in business management, etc. and directing them to append a note in the advertisement that they are in no way related to the appellant, the Division Bench should have set aside all the directions impugned before it. We find merit in the contention of the respondents. When the Division Bench found that the learned Single Judge ought not to have given direction restraining the respondents from starting new courses in business management etc. and directed them to append a note in the advertisement that they are not related to the appellant, then it should have set aside the order of the learned Single Judge in its entirety. The omission on the part of the Division Bench of the High Court to do so calls for a corrective action by this Court.

23. In the result, Civil Appeal Nos.1360-1361 of 2005 are dismissed and Civil Appeal No.1362 of 2005 is allowed and the modified injunction granted by the learned Single Judge is vacated in its entirety. The appellant shall pay Rs.50,000/- as cost of unwarranted litigation thrust upon the respondents.

*[1]1965 (1) SCR 737,*
*[2]1969 (2) SCC 727*
*[3]1996 (5) SCC 714*
*[4]2004 (6) SCC 145.*
*[5]1990 (Supp.) SCC 727,*
*[6]2001 (5) SCC 73*