

(2007) 06 MAD CK 0144

In the Madras High Court

Case No : O.A. No's. 836 to 838 of 2006 and A. No. 4341 of 2006 in C.S. No. 797 of 2006

B. Kishore Jain

APPELLANT

Vs

Navaratna Khazana Jewellers

RESPONDENT

Date of Decision : 06-06-2007

Acts Referred:

Citation : (2008) 37 PTC 536

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : A.A. Mohan, for the Appellant; P.S. Raman, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—The applicant in all these applications has come up with the suit C.S. No. 797 of 2006 praying for various types of decree of permanent injunction restraining the Respondent from infringing the registered trade mark and name "Khazana" and also from infringing the copyright of the Plaintiff over the artistic manner in which the trade name "Khazana" has been written in a particular style. In addition to the prayer for the grant of various types of permanent injunction, the applicant has also sought for a preliminary decree for rendition of accounts of the profits made by the Respondent and also for damages.

2. Pending suit, the applicant has come up with the present applications. Application No. 4341 of 2006 is for the grant of leave to applicant to combine different causes of action such as infringement of trade mark, infringement of a copyright and passing off. The applicant has filed the other three applications, viz. O.A. Nos. 836 to 838 of 2006 praying for the reliefs of- (a) temporary injunction restraining the Respondent from infringing the applicant's registered trade mark; (b) temporary injunction restraining the Respondent from infringing the applicant's copyright in the artistic work "Khazana"; and (c) temporary

injunction restraining the Respondent from passing off their goods as those of the Plaintiffs.

3. I have heard Mr. A.A. Mohan, Learned Counsel appearing for the applicant/Plaintiff and Mr. P.S. Raman, learned Additional Advocate General appearing for the Respondent/Defendant.

4. The case of the applicant/Plaintiff in the suit, in brief, is that he has been carrying on the business of manufacturing and selling jewellery made of gold, silver, and other precious stones under the trade name "Khazana Jewellery" right from 14.04.1989; that the trade name "Khazana" has been registered for goods under Class 14, in favour of the applicant/Plaintiff under registered Trade Mark No. 544884 on 07.04.1991; that the Plaintiff is also the proprietor of the copyright in the artistic work "Khazana" written in a stylised script from the year 1991; that the Plaintiff has been using the said trade mark and artistic work openly, extensively and continuously in respect of the aforesaid goods ever since, the date of commencement of business and has showrooms in T. Nagar and Cathedral Road in Chennai and branches at Hyderabad, Vijayawada and Visakhapatnam in Andhra Pradesh; that due to extensive advertisement and sales promotion techniques carried out by the Plaintiff, the turnover of the Plaintiff rose from Rs. 5.10 crores in 1995-1996 to Rs. 80.82 crores in 2004-2005; that the cost of advertisement itself rose from Rs. 53 lakhs in 1995-1996 to Rs. 127 lakhs in 2004-2005; that in the year 2006, the applicant/Plaintiff found that the Respondent/Defendant had started a similar business in jewellery at Kakinada, under the name "Navaratna Khazana Jewellery", with the word "Navaratna" being written in a small and insignificant manner, but the word "Khazana" written in prominent and bold letters in the same style adopted by the applicant/Plaintiff; that the issue of legal notices by the applicant/Plaintiff produced conflicting replies from the Respondent/Defendant and that the adoption of the same name, in the same style, for the same product by the Respondent/Defendant amounted to infringement of the proprietary rights of the applicant/Plaintiff over the trade mark and also infringement of the copyright that the Plaintiff has over the manner in which the trade mark is written and used and also amounted to passing off.

5. The applicant/Plaintiff has filed the certificate of registration of trade mark as Document No. 1. It shows that the trade mark of the applicant/Plaintiff "Khazana" written in a particular style had been registered as Trade Mark No. 544884 dated 07.02.1991 in respect of goods "precious metals or coated therewith; jewellery, precious stones, ornaments made out of precious metals and their alloys" under Class 14.

The applicant/Plaintiff has also filed an invoice as Document No. 2 and the advertisement clippings which appeared in "The Hindu" on 15.04.1991 as Document No. 3 series. The advertisements made by the applicant/Plaintiff in Yellow Pages of the Telephone Directory have been filed as Document No. 4. A set of about 14 invoices issued on various dated from 1992 up to 2003 by the

applicant/Plaintiff have been filed as Document No. 5. The notice issued by the applicant/Plaintiff, reply issued by the Respondent/Defendant's counsel and the subsequent exchange of notices have been filed as Document Nos. 6 to 10. The Photographs showing the scanned images of the name boards in the applicant/Plaintiffs shop and the Respondent/Defendant's shop have been filed as Document Nos. 11 and 12. The invoice issued by the Respondent/Defendant has been filed as Documents No. 13.

6. After taking me through the pleadings and the documents filed alongwith the plaint, Mr. A.A. Mohan, Learned Counsel for the applicant/Plaintiff contended that the applicant/Plaintiff started business of manufacturing and selling jewellery made out of gold, silver and other precious stones right from 1989 and that the trade mark "Khazana" also got registered in favour of the applicant/Plaintiff with effect from the year 1991 and that the applicant/Plaintiff has built great reputation and goodwill over a period of about 17 years, both in Tamil Nadu and in Andhra Pradesh at a huge advertisement cost as seen from the statistics furnished in paragraph 7 of the plaint and that, therefore, the adoption of the same name "Khazana" by the Respondent/Defendant for the same product, amounted to infringement of the proprietary rights of the applicant/Plaintiff over their registered trade mark. Since the Respondent/Defendant had also copied the style and artistic manner in which the word "Khazana" is written by the applicant/Plaintiff it also amounted to infringement of the copyrights of the applicant/Plaintiff.

7. In response to the contentions of the leaned counsel for the applicant/Plaintiff, Mr. P.S. Raman, learned Additional Advocate General, appearing for the Respondent/Defendant contended:

(a) that the Plaintiff was not entitled to file a suit on the basis of the certificate of registration filed as Plaint Document No. 1, since it is not intended to be used in legal proceedings;

(b) that even otherwise the said certified filed by the Plaintiff as Document No. 1 was valid only for a period of 10 years with effect from 1991 and that, therefore, in the absence of any proof to show renewal, the suit for infringement cannot be maintained;

(c) that the applicant/Plaintiff ought to have filed only a user certificate or certificate of entry in the register u/s 137(1) of the Act read with Rule 59 of the Trade Marks Rules, 2002, to maintain a suit for infringement;

(d) that the Respondent/Defendant had been using the trade name "Navaratna Khazana Jewellers" right from the year 2002, in respect of only one shop in one city and that it was not a descriptive mark;

(e) that there are several other persons using the word "Khazana" in respect of the same goods namely jewellery and there are also others using the same word "Khazana" in respect of goods other than jewellery also;

(f) that by virtue of Section 35 of the Act, the Respondent/Defendant's right to use the word "Khazana" is actually saved against any interference by any registered proprietor of the trade mark; and

(g) that after the issue of the "cease and desist" notice by the applicant/Plaintiff, the Respondent/Defendant had increased the size of the word "Navaratna" in their name boards and invoices, to show that the name adopted by the Respondent/Defendant is different from the one adopted by the applicant/Plaintiff.

8. The Respondent/Defendant has also filed a set of documents. While Document Nos. 1 to 9 filed by the Respondent/Defendant are invoices issued by the 4 Respondent/Defendant, four of which are of the year 2002, two of the year 2003, two of the year 2004 and one of the year 2007, Document No. 10 contains information sourced from the websites and other areas relating to the use of the word "Khazana" by Other traders both in respect of the same goods (jewellery) as well as in respect of other goods.

9. Taking up the first objection of Mr. P.S. Raman, learned Additional Advocate General appearing for the Respondent/Defendant, regarding the maintainability of the suit, it is seen that the said objection stems from a note contained at the foot of the certificate of registration filed by the Plaintiff as Document No. 1. The said foot-note reads as follows:

Registration is for 10 years from the date of application and may then be renewed for a period of 10 years and also at the expiration of which period of 10 years. This certificate is not for use in legal proceedings or for obtaining registration abroad.

Therefore, according to the learned Additional Advocate General, appearing for the Respondent/Defendant, the certificate of registration filed as Document No. 1 by the applicant/Plaintiff cannot be looked into and that the applicant/Plaintiff ought to have taken recourse to Section 137(1) of the Act read with Rule 59. Section 137 reads as follows:

137. Evidence of entries in register, etc. and things done by the Registrar-

(1) A copy of any entry in the register or of any document referred to in Sub-section (1) of Section 148 purporting to be certified by the Registrar and sealed with the seal of the Trade Marks Registry shall be admitted in evidence in all Courts and in all proceedings without further proof or production of the original.

(2) A. certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be prima facie evidence of the entry having been made, and of the contents thereof, or of the matter or things having been done or not done.

Rule 59 of the Trade Marks Rules, 2002 reads as follows:

"59. Entry in the register-

(1) Where no notice of opposition to an application advertised or re-advertised in the journal is filed within the period specified in Sub-section (1) of Section 21, or where an opposition is filed and it is dismissed, the Registrar shall, subject to the provisions of Sub-section (1) of Section 23 or Section 19, enter the trade mark on the register.

(2) The entry of a trade mark in the register shall specify the date of filing of application, the actual date of the registration, the goods or services and the class Or classes in respect of which it is registered, and all particulars required by Sub-section (1) of Section 6 including

(a) the address of the principal place of business in India, if any, of the proprietor of the trade mark or in the case of a jointly owned trade mark, of such of the joint proprietors of the trade mark as have a principal place of business in India;

(b) where the proprietor of the trade mark has no place of business in India, his address for service in India as entered in the application for registration together with his address in his home country;

(c) in the case of a jointly owned trade mark, where none of the joint proprietors has a principal place of business in India, the address for Service in India as given in the application together with the address of each of the joint proprietors in his home country;

(d) the particulars of the trade, business, profession, occupation or other description of the proprietor or in the case of a jointly owned trade mark, of the joint proprietors of the trade mark as entered in the application for registration;

(e) the particulars affecting the scope of the registration or the rights conferred by the registration;

(f) the convention application date (if any), to be accorded pursuant to an application from applicants of a convention country made u/s 154;

(g) where the mark is a collective or certification mark, that fact;

(h) where the mark is registered pursuant to Sub-section (4) of Section 11 with the consent of the proprietor of an earlier trade mark or other earlier right, that fact; and

(i) the appropriate office of the Trade Marks Registry in relation to the trade mark.

(3) The Registrar may, from time to time, in consultation with computer experts, formulate guidelines for keeping official records in electronic form.

10. But the said objection of the learned Additional Advocate General appears to be highly hypertechnical. I am unable to appreciate as to how and why a original certificate of registration cannot be admitted in evidence, if a mere certificate of entry in the register could be used in evidence. As seen from Section 137(1) of the Act, even a copy of an entry in the register or a copy of any document referred to in Section 148(1) and certified by the Registrar with the seal of the

Registry, is b admissible in evidence. In simple terms, Section 137(1) speaks of copies of extract from the register or copies of documents available with the Registry, which are issued under the certificate and seal of the Registrar and the Registry. Thus, Section 137(1) enables the production of certified copies without insisting on production of originals. In other words, it is an enabling provision, providing for production of secondary evidence. Therefore, it cannot be interpreted to mean that the production of primary evidence is prohibited by the section. Section 137(1) is only in tune with Section 77 of Evidence Act, 1872. The purport of Section 137(1) has to be read in the backdrop of Sections 64, 65, 76 and 77 of the Evidence Act, 1872.

11. The note contained under the certificate of registration filed as Document No. 1 by the applicant/Plaintiff that it shall not be used in any legal proceedings, appears to have its source in Rule 62(2) of the Trade Marks Rules, 2002. Rule 62(2) reads as follows:

The certificate of registration referred to in Sub-rule (1) shall not be used in legal proceedings or for obtaining registration abroad."

But Rule 62(2) does not flow out of any express provision contained in the Act, relating to such prohibition. Therefore, to hold that Rule 62(2) contains a bar against the production of the original certificate or registration, would militate against the very concept of primary and secondary evidence.

12. In any event, the Respondent/Defendant has not denied the fact that the applicant/Plaintiff has obtained registration of the trade mark "Khazana" in respect of jewellery coming under Class 14. Paragraph 5 of the counter affidavit filed by the Respondent/Defendant merely proceeds on the footing that the registration of the mark obtained by the applicant/Plaintiff was not valid in view of the existence of a prior registered trade mark in favour of another third party. Therefore, the Respondent/Defendant is not entitled to make much ado about the admissibility of Document No. 1, after having admitted that the applicant/Plaintiff has obtained registration of the said trade mark.

13. Though Document No. 1 issued on 28.11.2005 shows that the registration of the trade mark in favour of the applicant/Plaintiff relates back to the date of application, viz. 07.02.1991, the Learned Counsel for the applicant/Plaintiff has also produced a letter issued by the Registrar of Trade Marks on 02.02.2006, confirming the renewal of registration in favour of the applicant/Plaintiff for a period of 10 years with effect from 07.02.2001. Therefore, the applicant/Plaintiff has clearly " established that the registration of the trade mark is still subsisting in favour of the applicant/Plaintiff. Consequently, the applicant/Plaintiff is entitled to the rights conferred u/s 28 of the Act, viz. the exclusive right to use the trade mark in relation to the goods under Class 14. The certificate of registration does not disclose any conditions and limitations by which such exclusive right of usage is circumscribed.

14. Keeping the above in mind, if the next contention of the learned Additional

Advocate General appearing for the Respondent/Defendant is taken up, it is seen from the invoices filed by the Respondent/Defendant that they have been using the name "Navaratna Khazana Jewellers" from the year 2002. Therefore, it is the contention of the Respondent/Defendant that the applicant/Plaintiff who has kept quiet for five years, is not entitled to any relief at this distance of time.

15. However, I am unable to accept the said submission of the learned Additional Advocate General appearing for the Respondent/Defendant for the simple reason that a mere delay in initiating proceedings against a person guilty of infringement, cannot deprive the registered user, of the rights conferred by statute. As a matter of fact, the Trade Marks Act, 1999, contains a provision u/s 33, the equivalent of which was not found in the old Act, viz. the Trade and Merchandise Marks Act, 1958. Section 33 disentitles a person from enforcing his statutory rights, Only if he had acquiesced in the use of the registered trade mark by another person for a continuous period of five years, being aware of such use. In other words, Section 33 imposes two preconditions, viz.-(a) that the registered proprietor must have been aware of the use of the registered trade mark by another person; and (b) that despite such awareness he acquiesced in the usage of the trade mark by the other person for a continuous period of five years.

16. Section 33, which was introduced for the first time under the new Act, is probably intended to send a signal down the line that the delay in initiating action, unless transformed into one of acquiescence of the nature described in Section 33, will not deprive a registered user of his statutory rights. The Supreme Court has also made it clear that mere delay in bringing an action is not sufficient to defeat the grant of injunction. Paragraph 5 of the judgment of the Supreme Court in *Midas Hygiene Industries P. Ltd. and Another Vs. Sudhir Bhatia and Others*, , lays down the law on the point as follows:

5. The law on the subject is well settled. In cases of infringement either of trade mark or of copyright normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark was itself dishonest.

Therefore, I am unable to accept the contention that the delay in initiating action disentitled the Plaintiff from seeking an injunctive relief.

17. Moreover, the applicant/Plaintiff has categorically pleaded that he came to know about the use of the offending mark by the Defendant only in the year 2006. Even in the earliest "cease and desist" notice dated 21.02.2006 issued by the Plaintiff to be Defendant, filed as Document No. 6, the Plaintiff has taken a stand that his knowledge about the use of the offending mark by the Defendant, was of recent origin. Therefore, I am unable to accept the contention that the Plaintiff is not entitled to any relief on account of the delay in initiating any action.

18. It was next contended on behalf of the Respondent/Defendant that the

Respondent/Defendant adopted the mark "Navaratna Khazana Jewellers" and that it had acquired a distinctive nature. On account of the usage of the word "Navaratna", as a prefix, the Defendant's mark is actually distinct and different from that of the Plaintiff.

19. But unfortunately for the Respondent/Defendant, the photographs and invoices filed on both sides disclose that the word "Navaratna" is written in small letters by the Respondent/Defendant and the word "Khazana" is not only used by the Respondent/Defendant in their name boards and bills prominently but also written in the same artistic fashion in which the applicant had written the word in his name boards. Therefore, I am convinced that the prefix added by the Respondent/Defendant is only a camouflage, intended to cover up the imitation and the infringement committed by the Respondent/Defendant.

20. Under identical circumstances, when a manufacturer of sweets, savouries and chats carrying on business under the trade name "Gangotree" came up before this Court, with an action for infringement of his registered trade mark by another person, a similar defence was taken by the Defendant therein that the word "Gangotree" was used with the prefix "Shree" and that, therefore, it was distinct and different. But the said contention was rejected by His Lordship Mr. Justice F.M. Ibrahim Kalifulla, in *Gangotree Sweets and Snaks Pvt. Ltd., Chennai v. Shree Gangotree Sweets, Snaks and Savouries, Trichy*, 2005 (31) PTC 502 (Mad.), in paragraph 29 on the following lines:

The Respondent-Defendant cannot be allowed to contend that by mere use of the word "Gangotree" in its business place alongwith the word "Shree" no infringement has taken place. It is common ground that the business of both the parties is only of sweets, savouries, chats and other food items. In fact, the sample packages placed before the Court at the instance of the Respondent-Defendant disclose that both are in the business of sweets and chats. When the basic principles set out in "Kerly's Law of Trade Marks and Trade Names, Thirteenth Edition", namely, "the resemblance between two marks must be considered with reference to the ear as well as to the eye" is applied, it will have to be held in no uncertain terms that any customer, who intends to buy such special kind of sweets, savouries and chats, is bound to be well carried away by the name "Gangotree" used by the Respondent-Defendant for that of the applicant-Plaintiff.

21. Therefore, the mere addition of a prefix, in my considered view, cannot save the Respondent/Defendant from being prohibited from using the trade mark in question.

22. It was next contended on behalf of the Respondent/Defendant that the word "Khazana" is a generic term meaning "treasure" and that it is incapable of acquiring a distinctive character. But it is too long in the day for the Respondent/Defendant to take such a contention, as the law on the point is now well settled. As a matter of fact, there is a statutory protection in favour of the registered

user of a trade mark, from such a contention being held against him. The said protection is found in Sections 31 and 32 of the Act, which read as follows:

31. Registration to be prima facie evidence of validity

(1) In all legal proceedings relating to a trade mark registered under this Act (including applications u/s 57), the original registration of the trade mark and of all subsequent assignments and transmissions of the trade mark shall be prima facie evidence of the validity thereof;

(2) In all legal proceedings as aforesaid a registered trade mark shall not be held to be invalid on the ground that it was not a registrable trade mark u/s 9 except upon evidence of distinctiveness and that such evidence was not submitted to the Registrar before registration, it is provided that the trade mark had been so used by the registered proprietor or his predecessor in title as to have become distinctive at the date of registration.

32. Protection of registration on ground of distinctiveness in certain cases-- Where a trade mark is registered in breach of Sub-section (1) of Section 9, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration and before commencement of any legal proceedings challenging the validity of such registration, acquired a distinctive character in relation to the goods or services for which it is registered.

23. In *Gangotree Sweets and Snaks Pvt. Ltd., Chennai v. Shree Gangotree Sweets, Snaks and Savouries, Trichy* (supra) also the same contention was raised, but the same was not countenanced. Under such circumstances, the said contention of the Respondent/Defendant is also liable to be rejected.

24. It was next contended on behalf of the Respondent/Defendant that he is carrying on business in a remote place situate at a distance of about 200 kilometres from the place where the applicant/Plaintiff is operating. In other words, the contention of the Respondent/Defendant is that the geographical separation enables him to the use of the mark without causing inroads into the market of the applicant/Plaintiff.

25. But the said contention cannot also be accepted in view of the fact that the Registrar of Trade Marks himself is empowered to restrict the use of the trade mark with reference to the geographical limitations. Admittedly, the certificate of registration obtained by the applicant/Plaintiff does not contain any such restriction relating to geographical location. Therefore, an artificial limitation cannot now be created by this Court, which would virtually amount to curtailing a right conferred upon the applicant/Plaintiff by the statute.

26. Mr. P.S. Raman, learned Additional Advocate General appearing for the Respondent/Defendant contended that the word "Khazana" is Used by several other persons, both in respect of the same products, viz. jewellery as well as in respect of other products. The Respondent/Defendant has filed a set of documents as Document No. 10 series, to substantiate this contention. The first

of these documents show a that the Taj Group of Hotels had established several retail stores under the trade name "Taj Khazana". But it is found from the said document filed by the Respondent/Defendant that the Taj Group of Hotels are not primarily trading in jewellery. Their retail stores are located only in their own hotels (indicated as "Taj Properties" in the document itself). These stores admittedly offer handicrafts, antiques and jewellery apart from designer wear and branded accessories. Thus, two things are very clear, viz.-(a) that the Taj Stores are located only in Taj Hotels catering to their own customers; and (b) that jewellery is one among the several items that they deal with, in those stores.

27. The other documents filed by the Respondent/Defendant show that a person in Thrishur, Kerala is carrying on business under the name and style of "Khazana Jewellers and Exporters", another person is carrying on business under the name "Khazana Palace" at Nellore, a person is carrying on business under the name and style of "Khazana Kids and Accessories" in Bay area Continental United States, another person is carrying on business in New Delhi under the name "Khazana Toys" in respect of wooden toys and educational toys and that there is also a book shop under the name "Khazana Book Shop".

28. An identical contention was raised before a Division Bench of this Court in Bala Arichandra Tex Vs. Bharat Arichandra Tex, . But it was repelled by the Division Bench in paragraphs 4(ii) and 22 as follows at pp. 841 and 846 of MLJ:

4(ii) There are about half a dozen shops in Pondicherry, using the name "Arichandra", for which the Plaintiff has not raised any objection. As the Defendants wanted to do business in truthful manner, they have chosen the name "Arichandra" for their business. Further, there are innumerable differences between the trade names of the Plaintiff and the Defendants..The style in Tamil letters is entirely different from English letters. There is no possibility for any kind of deception. Therefore, the suit is liable to be dismissed.

22. In the light of the above stand taken by the Plaintiff, there is no point in the saying by the Defendants that there are other business concerns, using the name "Arichandra", as their trade mark.

Therefore, it is not enough for the Defendant in an action for infringement, to show that the same trade mark is being used by others. The usage of the trade mark by innumerable persons must be of such an extent that there was no likelihood of the man of average intelligence and imperfect, recollection, mistaking the Defendant's goods as that of the Plaintiff. Therefore, the contention that the Respondent/Defendant cannot be enjoined when many others are using the same trade mark, cannot be accepted.

29. Mr. P.S. Raman, learned Additional Advocate General appearing for the Respondent/Defendant, relief upon Section 35 of the Act, to contend that the applicant/Plaintiff cannot interfere with the bona fide use by the Respondent/Defendant of a name descriptive of the character or quality of his goods or services. Section 35 reads as follows:

35. Saving for use of name, address or description of goods or services--Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with any bona fide use by a person of his own name or that of his place of business, or of the name or place of business of any of his predecessors in business, or the use by any person of any bona fide description of the character or quality of his goods or services.

30. As seen from the language employed in Section 35 of the Act, it saves two types of persons from an action for infringement by a registered proprietor, viz (a) person who bonafidely uses his own name or that of his place of business or of the name or place of business of any of his predecessors-in-business; and (b) a person who uses a bona fide description of the character or quality of his goods and services.

31. Obviously, the Defendant claims protection under the second class of persons, since "Khazana" does not relate to the use of his own name or that of his own place of business or the name or place of business of any of his predecessors. Therefore, the Defendant seeks protection as a person who uses a bona fide description of the character or quality of his goods and services.

32. But in order to claim such a protection under the later part of Section 35, the Respondent/Defendant will have to satisfy two preconditions, viz.-(a) that it was a bona fide description; and (b) that such description is of the character or quality of his goods or services. But even according to the Respondent/Defendant, the name "Khazana" in Hindi/Urdu means "a treasure". Therefore, it is hardly a description of the character or quality of his goods. Hence, the case of the Respondent/Defendant cannot fall under the later part of Section 35 of the Act.

33. As a last bid, it was contended that the Respondent/Defendant actually increased the font size of the word "Navaratna", after the receipt of the "cease and desist" notice, and that the Respondent/Defendant is also willing to go further and make the word "Navaratna" more prominent than the word "Khazana". The learned Additional Advocate General also brought to my notice an interim order passed by the Division Bench in CMP Nos. 19820 and 19821 of 2005 in OSA Nos. 308 and 309 of 2005 permitting the display of the words "Chungath" more prominently than the offending mark "Prince Jewellery" in another case. But in that case, the Division Bench had also imposed one more condition, namely, that the Appellant should not carry on business outside Kerala. Therefore, the background in which the said interim order came to be granted, is to be made known before any such concession could be granted to the Respondent/Defendant. In the absence of the factual details of the case in which the Division Bench passed the aforesaid interim order, the Respondent/Defendant may not be entitled to any such concession. As I have observed earlier, the certificate of registration issued to the applicant/Plaintiff is not circumscribed by any conditions or limitations. Therefore, in the light of the fact " that the applicant/Plaintiff has a branch in Vijayawada, 200 kilometres away from

the place of business of Respondent/Defendant, in the same State of Andhra Pradesh, any concession of the nature prayed for by the Respondent/Defendant would only have the effect of diluting the certificate of registration. Therefore, I am unable to grant any such concession to the Respondent/Defendant.

34. In view of the above, I am satisfied that the applicant/Plaintiff has made out a prima facie case and that the balance of convenience is also in favour of the applicant/Plaintiff. Therefore, O.A. Nos. 836 to 838 of 2006 are allowed.

35. Since the cause of action for the Plaintiff to sue the Defendant arises both out of an infringement of the registered trade mark and also, of the copyright in the manner in which the trade mark is artistically written, the application for leave to combine the causes of action also deserves to be allowed. Accordingly, Application No. 4341 of 2006 is also allowed.