

(1999) 12 DEL CK 0064
In the Delhi High Court
Case No : FAO (OS) NO. 196 of 1998

Metro Plastic Industries (Regd)	Vs	APPELLANT
M/s. Galaxy Footwear New Delhi		RESPONDENT

Date of Decision : 10-12-1999

Acts Referred:

Designs Act, 1911 — Section 51A, 53

Citation : (2000) 1 AD 819 : AIR 2000 Delhi 117 : (2000) 83 DLT 205 : (2000) 52 DRJ 183 : (2000) 3 RCR(Civil) 41

Hon'ble Judges : S.N. Variava, C.J.; S.K. Mahajan, J; Mukul Mudgal, J

Bench : Full Bench

Advocate : Mr. S.K. Bansal and Mr. R.K. Yadav, for the Appellant; Mr. Ajay Sahni, Mr. M.L. Mangala, Mr. H.P. Singh and Mr. Amarjeet Singh, for the Respondent

Judgement

S.N. Variava, C.J.—The question which has been referred to this Full Bench is :

"whether or not an injunction can be granted in favor of a registered owner of a design when an application u/s 51-A of Designs Act is pending?"

2. On this question a number of Judgments of this Court and other Courts have been shown to us. The difficulty arose because it prima facie appeared that two Division Bench of this court had taken different views.

3. It had been held in the cases of Mohammad Abdul Karim Vs. Mahammad Yasin, and Dwarkadas Vs. Chhotalal, reported in AIR 1941 Bombay 188, that merely because the registered holder of a design filed a Suit u/s 53 it would not mean that the Defendant to that Suit could not plead that design was previously published and was neither new nor original.

4. In the case of Sat Pal Singh Vs. S.P. Engineering Works reported in 1982 193 PTC, after considering various provisions of the Patents and Designs Act, 1911, a Single Judge of this Court held that once a design was registered, prima facie, it was only the registered proprietor, who could take benefit of the registered design during the period of the validity of the registration. The Court held that

prima facie, once the design was registered, the registered proprietor could insist that any one committing piracy should be restrained from doing so. The Court then negated the contention that even if a false plea about the validity of registration was taken up by a Defendant, no interim injunction should be granted. The Court went on to hold that the contention that the design had no novelty was a valid defense to the Suit and could be raised to challenge the validity of the registration. It further held that this did not have any bearing at the initial stage and that these were matters to be decided on evidence. It must be mentioned that after so holding the Court, went into the merits and held that in that case it had not been shown that the design was previously published.

5. Thereafter in the case of Tilak Raj Vs. M/s. Clean Deal Industries, reported in (1985) ALR 549 it has been held as follows :

"4. The learned trial Court was in error in implicitly relying on the Lahore decision which did not notice the provisions of Section 51-A which was inserted by Act 7 of 1930. Section 51-A makes it clear that a person interested in challenging the validity of registration of a design has to present the Petition to the High Court which alone has the jurisdiction to cancel such design on various grounds including the ground that such a design had been previously published in India or that it was not new or original. In the absence of Section 51-A, it could be argued that even in a Suit complaining of an infringement of a registered design, the Defendant could raise the plea that the registration was invalid. But after the enactment of Section 51-A, such a plea has to be raised by an application for the cancellation of the said design. Moreover, the jurisdiction for such cancellation was vested in the High Court alone. The present Suit not having been filed in the High Court, the Defendant could not raise the plea about the invalidity of the design in the trial Court. At the most, the Defendant could have applied for a stay of the Suit and made an application to the High Court u/s 51A for the cancellation of the design. The Defendant has done so. The decision of the trial court amounts to invalidating the registered design of the plaintiff. As such it was clearly without jurisdiction. The effect of reading Sections 43, 47, 51-A and 53 together is that so long as the copyright conferred on the plaintiff by the registration of the design is operating, he can complain of any infringement against it by the Defendant. If the Defendant wants to deny the validity of the registration, it has to apply for the cancellation of the registration to the High Court. In the absence of such an application, the design has to be treated as valid by the trial Court."

6. It may be mentioned that even though this case has been reported as late as 1985, this Judgment had in fact been delivered on 7th November, 1973.

7. In the case of Tobu Enterprises Pvt. Ltd. Vs. M/s Joginder Metal Works & Ors., reported in (1983) 1 Delhi 451 it has been held that the contention that the provisions of Section 51-A impliedly bar a defense which could justify the cancellation unless proceedings for cancellation had been initiated, was, prima facie, well founded. Reliance was placed upon the Judgment of Tilak Raj's case

(though the citation given there is wrongly mentioned), It has been held that the question, whether such a defense was open in a Suit for infringement without recourse to the provisions to the provisions of Section 51-A of the Act is not free from defect. A prima facie opinion was expressed that the Defendant would not be entitled to raise such a defense unless he had filed appropriate proceedings for cancellation.

8. Thereafter, in the case of Niki Tasha India Pvt. Ltd. Vs. Faridabad Gas Gadgets Pvt. Ltd., , a Division Bench of this Court, again considered this question. It must be mentioned that the decision in Tilak Raj's case was not brought to the notice of this Division Bench. However, the decisions in Satpal Singh and Tobu Enterprise case were brought to the notice of this Division Bench. In this case, the Court held that it was well settled, in India and England, that interlocutory injunction would not normally be granted where damages would provide adequate remedy should the claim succeed. The Court held that the Court would not grant interlocutory injunction unless it was satisfied that there was real probability of the plaintiff succeeding in the trial of the Suit. The Court also held that where the design was of a recent date no injunction should be granted. The Court held that when there is a serious question as to the validity of the design to be tried in the Suit and an application for cancellation has been made an injunction should not be granted. The Court held that every ground on which a registered design may be cancelled under the Act should be available by way of defense to a Suit for infringement. The Court held that it will be odd to hold that on the strength of a recent registered design, the plaintiff can claim an absolute right to restrain everyone else from carrying on his business unless and until the registered design of the plaintiff is cancelled in appropriate proceedings by a competent Court of law.

9. The question was again considered in Bansal Plastic Industries Vs. Neeraj Toys Industries, reported in (1990) 53 TC 53. In this case, both the decisions i.e. Tilak Raj as well as Niki Tasha were pleaded before the Court. The Court held that in Tilak Raj's case, one of the reasons for holding that the plea was not available by way of defense in a Suit complaining of infringement of a registered design was that the Suit had been filed in the District Court. The Court held that the matter before it was not such a case. The Court held that the question whether the defense was available or not did not make any difference and that granting an injunction under Order 39 Rules 1 and 2 CPC was in the discretion of the Court. The Court held that the discretion was to be exercised for sound reasons and on judicial principles. The Court held that it was not the law that injunction should automatically be granted in an action for infringement of the registered design. The Court held that it was bound to keep in mind the equities and other circumstances.

10. In the case of Ampro Food Products Vs. Ashoka Biscuit Works and Others, , it has been held that it is not open to a Respondent to take up a defense that the design is not new or original in defense to a Suit for injunction based on

registered design if he has not taken any action to have the registration cancelled on that ground. It has been held that there is an express provision for filing of a Petition in the High Court for cancellation of registration on the ground that the design is not new or original. It is held that when there is an express remedy provided under the Act, there was no reason why other civil Court should have concurrent jurisdiction over the same question. It has been held that the provision for cancellation of a registered design by a High Court excludes by necessary implication the jurisdiction of the ordinary Civil Court from going into the question which may be decided by the High Court when the application is presented to it u/s 51-A of the Act. It may be mentioned that the decision in Dwarkadas Dhanji Sha Vs. Chhotalal Ravicarandas and Co., was not accepted by this Court.

11. In the case of The Pilot Pen Co. (India) Private Ltd., Madras Vs. The Gujarat Industries Private Ltd., Bombay, , it has been held that unless there was something new or original in the design a person claiming right in such a design only by reason of his registration cannot claim or obtain any direction. It was held that the registration cannot be effective in relation to a design which was neither new or original.

12. In the case of Rotomac Pens Ltd. Vs. Milap Chand & Co. reported in IPLR (1999) APRIL pg. 149, a Division Bench of Calcutta High Court considered the various provisions of the Designs Act. It also considered amongst others Niky Tasha's case. It held that there was difference between the Indian and the English Law and that difference was the absence of a provision in the English Statute, similar to Section 53 of the Designs Act which gave a statutory right to a registered owner to sue for protection of his exclusive right. It was held that the fact that the design may have been recently registered would be a relevant consideration in U.K. but that in view of Section 53 the right of a proprietor of registered design was not defeated merely by reason of the recentness of the registration. It was held that in India the only question before the Court in a Suit by registered owner, was whether the design was registered in fact and whether there was any infringement of the design. It was held that in such a Suit, the Court was precluded by Statute from considering validity of registration. It was held that the effect of decision of the Court in such a Suit would necessarily be subject to any finding u/s 51-A that the registration was invalid. The Court disagreed with the view taken in Nicky Tasha's case. The Court held that Therefore, a defense relating to invalidity of registration on the ground of lack of originality or publication were outside the purview of Court in proceedings u/s 53.

13. These are the varying views taken by various Courts. At this stage it would be appropriate to set out the relevant provisions of the Designs Act.

14. Section 43 of the Designs Act provides for registration of designs. It reads as follows :

"43. Application for registration of designs - (1) The Controller may, on the

application of any person claiming to be the proprietor of any new or original design not previously published in India, register the design under this Part.

(2) The application must be made in the prescribed form and must be left at the Patent Office in the prescribed manner and must be accompanied by the prescribed fee.

(3) The same design may be registered in more than one class, and, in case of doubt as to the class in which a design ought to be registered, the Controller may decide the question.

(4) The Controller may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal to the Central Government.

(5) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

(6) A design when registered shall be registered as of the date of the application for registration."

15. It is thus to be seen that in cases of designs, there is no provision for advertisement or for calling for any opposition to the registration of a design. Merely on an Application a design could get registered. However, the condition for registration must be that the design must be new and original and one which has not been previously published in India.

16. Section 51A deals with cancellation of registration. It reads as follows :-

"51-A. Cancellation of registration - (1) Any person interested may presented a Petition for the cancellation of the registration of a design -

(i) that the design has been previously registered in India, or

(ii) that it has been published in India prior to the date of registration, or

(iii) that the design is not a new or original design, or

(b) within one year from the date of the registration, to the Controller on either of the grounds specified in sub-clauses (i) and (ii) of Cl (a)

(2) An Appeal shall lie from any order of the Controller under this section to the High Court, and the Controller may at any time refer any such Petition to the High Court, and the High Court shall decide any Petition so referred."

Thus, the ground for cancellation can be that the design was not previously registered in India or published in India prior to the date of registration or that the design is not new or original. The Application for cancellation, if made within one year of the registration would be to the Controller and if the grounds specified were under clause (i) and (ii) of Clause A. Otherwise the Application for

cancellation has to be to the High Court.

17. Section 53 is relevant. It read as follows :

"53. Piracy of registered design - (1) During the existence of copy right in any design it shall not be lawful for any person.

(a) for the purpose of sale to apply or cause to be applied to any article in any class of goods in which the designs in registered the design or any fraudulent or obvious imitation thereof, except with the license or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied, or

(aa) to import for the purpose of sale, without the consent of the registered proprietor, any article belonging to the class in which the design has been registered, and having applied to it the design or any fraudulent or obvious Limitation thereof, or

(b) knowing that the design or any fraudulent or obvious Limitation thereof has been applied to any article in any class of goods in which the design is registered without the consent of the registered proprietor, to public or expose or cause to be published or exposed for sale that article.

(2) if any person acts in contravention of this section he shall be liable for every contravention -

(a) to pay the registered proprietor of the design a sum not exceeding five hundred rupees recoverable as a contract debt, or

(b) if the proprietor elects to bring a Suit for the recovery of damages for any such contravention and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly.

Provided that the total sum recoverable in respect of any one design under Cl. (a) shall not exceed one thousand rupees.

(3) When the Court makes a decree in a Suit under sub-section (2), it shall send a copy of the decree to the Controller, who shall cause an entry thereof to be made in the register of designs."

Another Section which is relevant is Section 54. It reads as follows :

"54. Application for certain provisions of the Act as to patents to designs- The provisions of the Patents Act, 1970 (39 of 1970) with regard to certificates of the validity of a patent, and to remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents with the substitution of references to the copyright in a design for references to a patent and of references to the proprietor of a design for references to the patentee and of references to the designs for references to the invention."

18. u/s 54 the provisions of the Patents Act inter alia with regard to remedy in case of groundless threats of legal proceedings by a patentee have been got incorporated into the Designs Act. The provision the Patents Act, 1970 regarding groundless threat of legal proceedings is Section 106, Section 106 of the Patents Act, 1960 reads as follows :

"106. Power of Court to grant relief in cases of groundless threats of infringement proceedings - (1) Where any person (whether entitled to or interested in a patent or an application for a patent or not) threatens any other person by circulars or advertisements or by communications, oral or in writing addressed to that or any other person with proceedings for infringement of a patent any person aggrieved thereby may bring a Suit against him praying for the following reliefs that is to say -

(a) a declaration to the effect that the threats are unjustifiable;

(b) an injunction against the continuance of the threats, and

(c) such damages, if any, as he has sustained thereby.

(2) Unless in such Suit the Defendant proves that the acts in respect of which the proceedings were threatened constitute, or, if done, would constitute, an infringement of a patent or of rights arising from the publication of a complete specification in respect of a claim of the specification not shown by the plaintiff to be invalid, the court may grant to the plaintiff all or any of the reliefs prayed for".

19. Mr. Bansal submitted that the Designs Act deals with three separate contingencies or eventualities, namely, (i) registration and proceedings regarding registration, (ii) cancellation of registration and (iii) the enforcement of rights by a proprietor. He submitted that the Designs Act having categorised the provisions and having specifically provided for the scope of each of the eventualities the provisions could not be merged into one another. He submitted that the scope of various Sections were different and thus they could not be clubbed together. He submitted that in the Designs Act, the Legislature has thought it fit to provide for only one type of relief. He submitted that once the Act provides for only one type of relief then it must be deemed that was the only relief which was intended to be available. He submitted that in the Designs Act the Legislature has only provided for cancellation of registration u/s 51-A. He submitted that thus during the pendency of registration the only remedy available to any party was to seek cancellation of registration. He submitted that when this was only remedy available, the party was precluded from taking up any defense in a Suit filed by a registered owner of a design u/s 53.

20. In support of his submission, Mr. Bansal relied upon the case of L.T.C. Vs. Phurba Lama reported in AIR (1992) SIK 34 In this case it has been held that the remedy provided u/s 56 for cancellation and rectification of a wrong entry is an adequate remedy which a Civil Court would ordinarily give in such cases. An argument that there should also be a decree for declaration because such a

decree would be more appropriate was negated. It was held that where the Statute permits only a particular type of relief, even if that relief is made subject to certain conditions which it may not be possible for the party to fulfill. Then only that prescribed before the prescribed forum, is to be deemed to have been intended by the Legislature. It was held that the real question was as to the intendment of Legislature. It was held that on a close examination of the legislative scheme the clear intent of the Legislature was that ques- corporation relating to the validity of entry can be decided in rectification proceedings u/s 56. It was held that the remedy of Civil Suit before a Civil Court not inferior to a District Court has been envisaged and the statute had prescribed the said forum and special type of provision which could alone be resorted to.

21. Reliance was also placed, by Mr. Bansal upon the case of The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, . This was a case where the question was about the jurisdiction of Civil Court in relation to industrial disputes. In this context, the Supreme Court, reproduced with approval the following observation from the case of Neville Vs. London Express Newspaper Ltd., reported in 1919 Appeal Case pg. 3368 :

"There are three classes of cases in which a liability may be established by statute. There is that class where there is a liability existing at common law and which is only re-enacted by the statute with a special form of remedy, there, unless the statute contains words necessarily excluding the common law remedy, the plaintiff has his election of proceeding either under the statute or at common law. Then there is a second class, which consists of those cases in which a statute has created a liability, but has given no special remedy for it, there the party may adopt an action of debt or other remedy at common law to enforce it. The third class is where the statute creates a liability not existing at common law, and gives also a particular remedy for enforcing it. With respect to that class it has always been held, that the party must adopt the form of remedy given by the statute."

22. Relying on the abovementioned two cases, it was submitted by Mr. Bansal that the present case falls under the third class of cases. i.e. where the statute had created a liability not existing at common law and given a particular remedy. He submitted that the Statute having done this, that was the only remedy which was available and no other remedy could be made available.

23. Mr. Bansal also submitted that earlier the provisions concerning designs were included in the Patents and Designs Act. He submitted that the provision regarding patents were separated in 1970 when the Patents Act was enacted. He submitted that even in the legislation, which prevailed prior to 1970, though there were provisions providing that in case of a patent defense regarding validity of registration could be taken, there were no such provision in respect of a design. He submitted that under the Patents Act, Section 107 specifically provides for defense which can be taken in suits for infringement. He submitted that very significantly no such provision has been made by the legislature in

respect of designs under the Designs Act. He submitted that this would clearly indicate that the intention of the Legislature was that in a suit by a registered holder of a design u/s 53 of the Designs Act, a defense based on a ground on which a design can be cancelled could not be taken.

24. Mr. Bansal submitted that the main argument on the other side would be that the Designs Act does not have provision for advertisement or opposi- corporation and that a design would be got registered and the same would create great hardship and inconvenience on others if a design which was not new or original was one which had been previously registered or published had still been got registered. He submitted that a ground of hardship or inconvenience cannot be a ground for interpreting the provisions of a statute when the statute was very clear. In support of this submission he relied upon the case of *The Morvi Mercantile Bank Ltd. and Another Vs. Union of India (UOI)*, . In this case, the Supreme Court held that an argument based on inconvenience and hardship is dangerous one and is only admissible in construction where the meaning of the statute is obscure. The Supreme Court has held that were the meaning of the statute is clear and explicit, if any hardship and inconvenience is felt it is for the Parliament to take appropriate steps to amend the law and not for the Court to legislate under the guise of interpretation.

25. Mr. Bansal relied upon the case of *Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others*, . In this case, the Supreme Court has held that where the power is given to do certain thing in a certain way, the thing must be done in that certain way and that other methods of performance are forbidden. The Supreme Court has held that this rule applies where the whole aim and object of the Legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other manner.

26. Mr. Bansal submitted that the intention of the Legislature was very clear. He submitted that the intention became clear from a reading of Section 53 of the Designs Act. He submits that opening part of Section 53 categorically provides that during the existence of a copyright in any design "it shall not be lawful for any person". He submits that use of word "during existence of any design it shall not be lawful" indicates that the intention of the legislature was that the proprietary right in the design were to be fully available to the registered proprietor who could during the existence of the registration, prevent any other person from infringing the design. He submitted that if parties were permitted to take by way of defense the ground of cancellation mentioned in Section 51-A in a suit u/s 53 then the provisions of Section 53 would stand negated.

27. On the other hand it has been submitted by Mr. Sahni that under the Designs Act there is no provision for advertisement and/or opposition. He submitted that the results very often in persons getting registered designs by making false averments a design which does not comply with the mandatory provisions of Section 43 i.e. one which is not new or original and/or has been previously

published in India would be got registered. He submitted that even though the Legislature provides for cancellation of registration, it is well known that applications for cancellation of registration take a number of years to decide. He submitted that it could never have been the intention of the Legislature, that dishonest parties, who by suppressing facts and making false averments, get registered a design which they were not entitled to get registered, become entitled to prevent all other persons from using that design even though the other persons may be the inventor of the design or having prior user. He submitted that once an Application for cancellation of the registration had been made, it would be illogical and would work great hardship if the grounds on which the cancellation had been sought were not available as a defense in a Suit filed u/s 53.

28. Mr. Sahni submitted that the correct proposition would be that in all such cases it was for the Court to consider the facts of each case and decide whether or not an injunction should be granted. He is submitted that in considering whether or not an injunction can be granted, the Court should judicially exercise its discretion by taking into consideration all relevant facts and not merely the fact that some proprietary rights are credited by registration of a design. He submitted that if the Court finds, even prima facie, that the design is neither new nor original and that it has been previously registered or previously published in India/or and the Court, prima facie, comes to the conclusion that the application for cancellation of registration is likely to be granted, then there is no reason why the Court should, even under those circumstances, grant an injunction merely on the basis that the design has been registered.

29. It has been fairly stated by Mr. Sahni that he is not canvassing the extreme view in taken Nicky Tasha's case that merely because that design was a recently registered design no injunction can follow and/or that even if no application for cancellation is filed, still the court should refuse injunction in a suit u/s 53.

29. We have considered the argument of both sides. The question for consideration really is whether or not Section 53 gives an absolute right to a registered owner of a design such that he is automatically, i.e. merely by virtue of such registration, entitled to prevent all other persons from using that design on goods of that class.

30. In our view, the Act itself provides an answer to the question whether the right u/s 53 is absolute or not. It is to be seen that if there is an absolute right then the registered owner of the design could not only prevent all other persons by filing a Suit u/s 53 but could also threaten to file legal proceedings. He would then by such threats prevent use of the design. Normally, before a suit is filed, a notice claiming infringement with a threat to file legal proceedings would be issued. If there was an absolute right, then on such a threat the only remedy available to the other party would be to apply for cancellation. Pending cancellation the other person would have to stop using infringing the design. As seen above, Section 54 of the Designs Act incorporates into the Designs Act

Section 106 of the Patents Act, Section 106 of the Patent Act has been set out hereinabove. Section 106 of Patents Act enables a person to file a suit for a declaration that the threat given by a registered owner of the design is unjustified and to seek an injunction against continuance of a threat. It also gives a right to claim damages if any sustained thereby. One fails to see how, if there was an absolute right created by Section 53, a suit could at all be filed for a declaration that threats were unjustified and/or for an injunction against the continuance of a threat. A suit of this nature could be based on ground that there is no infringement. However, it could also be based on the ground that the registration is not correct as there is nothing new or original in the design and/or that there has been prior publication or previous registra- corporation in India and/or on the ground that person filing the Suit has himself some right in the design. u/s 106 if such a suit is filed, then the registered owner would have to prove that there is an infringement of the design. Thus, the registered owner would have to show that the design was new or original and that it had not been previously published in India. If, as claimed, mere registration gave an absolute right then there would be no question of the registered owner having to prove these facts. Thus a reading of these two Sections makes it clear that Section 53 did not con- template an absolute right in the owner to prevent all other persons from infringing that design under all circumstances. Another illustration, by way of an example would also indicate that Section 53 does not confer such an absolute right that no defense can be taken in such a Suit. Suppose a Suit u/s 53 has been filed in the High Court. In such a Suit, an application u/s 51-A, can be made by way of a counter claim. If by way of counter-claim an Application u/s 51-A is made then the Court will necessarily have to consider the grounds in the Application i.e. whether the design is new or original and/or whether there is previous publication in India. If in such a case the Court necessarily has to consider these grounds then we see no reason why merely because a Suit u/s 53 is filed in the District Court, the same grounds cannot be taken by way of defense in that Suit provided that an Application for cancellation is already pending in the High Court.

31. It is also settled law that the provisions of a statute should be read harmoniously. Section 51-A provides for cancellation of registration on certain grounds. Once an Application for cancellation of registration has been made or filed then the validity of registration itself has been questioned. If the validity of registration has already been questioned, then it would be anomalous and would amount to defeating the provisions of Section 51-A to say that in a Suit u/s 53 the defense of validity cannot be taken. It would then amount to saying that a person whose right is questioned, can in spite of such challenge keep on enforcing his right merely because delays of law do not permit such Applications to be disposed of expeditiously.

32. At this stage it must be clarified that we are not holding that the rights conferred by Section 53 can be defeated merely by some defense being taken. In the absence of an application u/s 51-A having been filed such a defense would

not be available. It is the filing of an Application u/s 51-A which brings into cloud the registration of the design. Thus pending such an Application, Court cannot ignore the grounds taken therein. This is because both Section 51-A and Section 53 have to be read harmoniously and in a manner that neither is rendered nugatory or ineffective.

33. Therefore, in our view, neither the extreme view taken in Nicky Tasha's case or in Rotomac Pen's case are correct.

34. In our view, these are matters where no hard and fast rule can be laid down. Section 53 creates a right in a registered owner. In the absence of an application for cancellation of the design such a right can be enforced and no defense can be taken based on a ground of cancellation. But once an Application for cancellation has been made then it would not be open for the Court, trying the Suit u/s 53, to turn a blind eye to the pendency of such Application. In that case the Court must taken into consideration all relevant facts which would include the grounds raised in the Application for cancellation. The Court must then decide whether or not to grant an injunction in favor of registered owner. Such a decision must be made judicially. In such cases the Court would apply the principles which govern grant of injunction under Order 39 Rules 1 and 2 CPC. The grant or refusal of injunction must then be based upon all relevant factors.

35. It may be mentioned that we are in agreement with Mr. Sahni's statement that merely because a registration is recent is by itself no ground for refusing an injunction. That also would be a factor which can be taken into consideration by the Court.

36. We answer the reference accordingly. List on 14th January, 1999 before the Division Bench for disposal in accordance with law.