(2012) 04 MAD CK 0047

In the Madras High Court

Case No : C.M.A. No. 3434 of 2011 and M.P. No''s. 1 to 4 of 2011

M/s. Blue Bell Hosieries — APPELLANT

Vs

M/s. Padma Hosieries and Rama Textiles — RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:
Trade Marks Act, 1999 — Section 28(1), 29, 29(4)(c), 9(1)(b)

Citation : (2012) 04 MAD CK 0047

Hon'ble Judges : K. Suguna, J

Bench : Single Bench

Advocate : Arun C. Mohan, for the Appellant; P.C.N. Raghupathy, for the Respondent

Final Decision : Allowed

Judgement

The Honourable Ms. Justice K. Suguna

1. Though M.P.s have been listed before this Court today, by consent the Civil Miscellaneous Appeal itself is taken up for final disposal. The Civil

Miscellaneous Appeal is filed as against the order dated 17.09.2011 passed in LA. No. 1225 of 2010 in O.S. No. 604 of 2010 on the file of I

Additional District Court, Coimbatore. The suit in O.S. No. 604 o 2010 was filed for the following reliefs:

24. The plaintiff, therefore, prays that this Hon''ble Court may pleased to grant a judgment and decree on the following terms:

(a) A permanent injunction restraining the defendants by themselves, their proprietor/partners/directors as the case may be, heirs, legal

representatives, successors-in-business, assigns, servants, agents, distributors, retailers, stockiest or any one claiming through them from in any

manner infringing the plaintiffs'' registered trademark ""GOKUL"" as part of trade mark/trade name/ label or ""GOKULAM"" or any other mark/name

identical or deceptively similar thereto or in any other manner whatsoever;

(b) A permanent injunction restraining the defendants, their successors, men, servants, agents, distributors, stockists, successors in business,

retailers, legal representatives, assigns or any other person claiming through or under them, from in any manner using selling, offering for sale,

advertising or otherwise dealing with the trademark GOKUL/GOKULAM or any other word and/ or any mark similar thereto and thereby passing

off their products as and for the products of the plaintiff or in any other manner whatsoever;

(c) An order of permanent injunction restraining the defendant No. 3, partners/ proprietor of defendant Nos. 1, 2 and 4, from in any manner using,

commercially exploiting trade secrets and confidential information of the plaintiff relating to plaintiffs sales network, wholesale dealers, retail dealers,

customer preference, best seasons sales, commission paid to wholesale dealers, retail dealers and other information relating to sale, distribution and

advertisement of hosiery goods;

(d) An order of permanent injunction restraining the defendant No. 3, from advertising or in any manner promoting sales by representing that he

was associated with the plaintiff, making direct or indirect allusion to the defendant''s goods as originating from the plaintiff or in any manner

adversely affecting the plaintiff''s business reputation and goodwill;

(e) The defendants be ordered to pay to the plaintiff a sum of Rs. 1,00,000/- as damages for committing infringement of trademarks and passing

off its products as and for the plaintiffs products or services;

(f) The defendants be ordered to surrender to the plaintiff for destruction, name boards, invoices/bills, brochures, prints, dyes, blocks, moulds and

plates, screen prints, packing, advertising, other stationery material and any other material in the defendant''s possession, which bears the

trademark GOKULAM or any mark identical or similar to the plaintiffs mark GOKUL;

(g) A preliminary decree be passed in favour of the Plaintiff directing the Defendants to render account of profits made by use of the deceptively

similar trademark GOKULAM amounting to infringement of the plaintiffs registered trademarks and/or passing off and a final decree be passed in favour of the Plaintiff for the amount of profits thus found to have been made by the Defendants after the latter have rendered accounts;

(h) For costs of the suit; and

(i) For such further and other reliefs as this Hon''ble Court may deem fit and proper in the circumstances of the case and thus render justice.

2. Pending the suit, I.A. No. 1225 of 2010 was filed seeking the following reliefs:

(a) To grant a temporary interim, ad-interim injunction restraining the respondents by themselves, their proprietor/partners/directors as the case

may be, heirs, legal representatives, successors-in-business, assigns, servants, agents, distributors, retailers, stockists or any one claiming through

them from in any manner infringing the applicants'' registered trademark ""GOKUL"" as part of trade mark/trade name/ label or ""GOKULAM"" or

any other mark/name identical or deceptively similar thereto or in any other manner whatsoever pending disposal of the suit;

(b) To grant a temporary interim, ad-interim injunction restraining the respondents, their successors, men, servants, agents, distributors, stockists,

successors in business, retailers, legal representatives, assigns or any other person claiming through or under them, from in any manner using selling,

offering for sale, advertising or otherwise dealing with the trademark GOKUL/ GOKULAM or any other word and/ or any mark similar thereto

and thereby passing off their products as and for the products of the applicant or in any other manner whatsoever pending disposal of the suit;

(c) To grant a temporary, interim, ad-interim injunction restraining the respondent No. 3, partners/proprietor of respondents Nos. 1, 2 and 4 from

in any manner using, commercially exploiting trade secrets and confidential information of the applicant relating to applicant''s sales network,

wholesale dealers, retail dealers, customer preference, best seasons sales, commission paid to wholesale dealers, retail dealers and other

information relating to sale, distribution and advertisement of hosiery goods pending disposal of the suit.

(d) To grant a temporary, interim, ad-interim injunction restraining the respondent No. 3, from advertising or in any manner promoting sales by

representing that he was associated with the applicant, making direct or indirect allusion to the respondent''s goods as originating from the applicant

or in any manner adversely affecting the applicant''s business reputation and goodwill pending disposal of the suit.

However, by order dated 20.06.2011, the Trial Court disposed of the said I.A. as hereunder:

Order pronounced.

In conclusion, this Court disposes the application as follows:

(a) That the plaintiff shall not be entitled to an order of interim injunction sought in (a), (b) and (d) as the suit itself is ripe for trial and balance of

convenience is not in favour of grant of injunction now, and the application is closed as regards these reliefs.

(b) Should the respondent display an attitude to delay the trial, it is open to the petitioner to revive this application for a final decision on the reliefs

(a), (b) and (d)

(c) The relief (c) sought against the third respondent is dismissed.

(d) The respondents shall maintain a separate accounts as regards the sale their hosiery products sold under the name ''GOKULAM''. The first

respondent shall produce the same before this Court for the period before this date within four weeks from today and thereafter after the expiry of

the month that next succeeds till the disposal of the suit.

As against this, the appellant herein filed C.M.A. No. 2158 of 2011 and the same was disposed of by order dated 26.07.2011 in the following

terms:

9. The only grievance of the learned counsel for the appellant is that the application for interim injunction had not been disposed of on merits and if

the suit is taken up for trial, it would take long time. Therefore, the interim application has to be decided on merits.

10. In view of the submission made by the learned counsel on either side, without going into the merits and demerits of the order, the appropriate

direction could be given to the trial court to dispose of the application in LA. No. 1225 of 2010.

Accordingly, the impugned order passed by the trial court is set aside and the court below is directed to dispose LA. No. 1225 of 2010, after

hearing both sides, within a period of one month from the date of receipt of a copy of this order. Civil Miscellaneous appeal is disposed of

accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

In view of this, again, the Trial Court has taken up I.A. No. 1225 of 2010 and disposed of the same by order dated 17.09.2011. The operative

portion of the said order reads as follows:

26. Even at the earlier instance, this Court has dismissed this application, not because there is no prima facie strong case, but because there is no

balance of convenience in granting injunction. In the earlier occasion, this Court inter alia relied on the authority of Shree Vardhman Rice and Gen

Mills Vs. Amar Singh Chawalwala, (Ref Paragraph 18 above) and held there is no balance of convenience in favour of grant of injunction as the

suit itself is ripe for trial. That situation continues even today. It is for this reason this Court when it passed the first order dated 20.06.2011, it did

not enter a finding as to the existence of prima facie case. Presently, even though that finding is entered, there is no change of circumstances for

modifying the other findings.

27. In the result, this petition is dismissed. However, the first respondent shall maintain a separate accounts as regards the sale of its hosiery

products sold under the name ''GOKULAM''. The first respondent shall produce tis monthly statement regarding the same before the expiry of the

month that next succeeds till the disposal of the suit. No costs.

Aggrieved by the same, the present appeal is filed.

3. According to the learned counsel for the appellant, earlier, though this Court gave a direction to the Trial Court to go into the merits and

demerits of the issue and dispose of I.A. No. 1225 of 2010, yet, the said LA. was disposed of without going into the merits. According to the

learned counsel, the finding of the Trial Court, on both the occasions, was that though a prima facie case was made out, but, the balance of

convenience was not in favour of the appellant. Consequently, interim order was not granted. Besides, according to the learned counsel for the

appellant, as per the order of the Trial Court dated 17.09.2011, though a finding has been given that there is a prima facie case in favour of the

appellant, yet, the other ground for refusing to grant the interim order is that the suit is ripe for trial The said order has been passed in September,

2011. But, till date, the suit has not been taken up for trial. In this regard, it is the stand of the learned counsel for the appellant that having taken the view that the suit is ripe for trial, even after the lapse of 6 months, the suit has not been taken up for trial. Further, according to the learned

counsel, when a finding has been given by the Trial Court that a prima facie case has been made out by the appellant, automatically, balance of

convenience should also be in favour of the appellant. In support of this contention, the learned counsel has relied on the following judgments:

(i) IPLR 2000 APR. 59 (Biochem Pharmaceutical Industries V. Biochem Synergy Limited). The relevant paragraph is extracted hereunder:

29. Now coming to the question of balance of convenience, it is now firmly established that the balance of convenience becomes relevant in an

infringement action in a very rare case. The balance of convenience is to be considered when the scales are even. In the instant case, the

defendants knowingly adopted the impugned mark and having started manufacturing activities after the complaint was made by the plaintiffs, cannot

contend that the balance of convenience is in their favour, (see: Philip Morris Belgium S.A. Vs. Golden Tobacco Co. Ltd., . In an unreported

decision in Pepsico Inc. V. Express Bottlers Services Pvt Ltd. (Notice of Motion No. 1920 of 1988 in Suit No. 2933 of 1986), Kurdukar, J., as

he then was, observed that as long as the plaintiffs'' registered trademark is on the register and if anybody uses the same without permission, such a

user would amount to infringement and in that case the balance of convenience cannot outway the safeguards. The view expressed by Kurdukar,

J., was confirmed by the Division Bench in Appeal No. 486 of 1989, decided on 19th April, 1989, although the Bench clarified that it is only in

unusual circumstances, that the balance of convenience might play a part in a matter where the plaintiff is the owner of the registered trademark.

Same legal position has been reiterated in the case of Kisloskar Diesel Recon Pvt Ltd. V. Kirloskar Proprietary Ltd. (supra). In any event, I have

no doubt that balance of convenience lies with the plaintiffs. A change of names, if that is what will emerge, will be far less damaging to a company

which has only recently started to trade than the damage to the plaintiffs who are trading for more than thirty five years, (see in this connection Chill

Foods (Scotland) Ltd V. Cool Foods Ltd (1997) RPC 522). It is true that the grant of injunction is likely to cause some hardship to the

defendants but this can be taken care of by granting some time to the defendants to comply with the injunction order.

(ii) AIR 1985 Allahabad 242 (Bata India Ltd. V. M/s. Pyare Lai & Co.). The relevant portion reads as follows:

35. The question whether the plaintiff has established that the respondents are passing off goods of their own as that of the plaintiff will be a matter

to be established on the basis of the evidence. I am not concerned at the present about the evidence, for it has still to be led. I am not concerned

whether the plaintiff has suffered any damages or not or whether the plaintiff has been injured by the action of the defendants. At this stage, I have

only to consider whether there is a cause of action and whether there is a prima facie case for issue of a restrictive order. As seen above, I am

satisfied that the plaintiff has a cause of action for instituting a proceeding for passing off. I am further of the view that the plaintiff has been able to

make out a case for issue of an injunction in respect of the user of the name ''Bata'' to any of their products by the defendants. The name ''Bata'' is

neither a fancy name nor paternal name nor in any way connected with the defendants. It is not the name of a flower or fauna. It is a fancy name of

a foreigner who has established his business in making shoes and the like products in this country. The name is well known in the market and the

user of such a name is likely to cause not only deception in the mind of an ordinary customer but may also cause injury to the plaintiff-Company. I

will re-emphasise that these observations of mine are prima facie in purport and are not to be taken as the final expression of opinion on the merits.

(iii) Blue Hill Logistics Private Ltd. Vs. Ashok Leyland Ltd. and Dilip Chhabria Design Private Ltd., The relevant paragraphs are extracted

hereunder:

4. Upon consideration of documents filed by the Plaintiff and 1st Defendant and the rival contentions, learned Single Judge held that Plaintiff having

obtained registration of the trade mark ""Luxura"" in respect of the goods falling under Class 12 by virtue of Section 28(1) of Trade Marks Act,

Plaintiff has exclusive right to use the trade mark in relation to those goods. Pointing out the dubious conduct of Blue Hill Logistics Private Limited

and finding that Plaintiff has established prima facie case and that the balance of convenience is in favour of the Plaintiff the learned Single Judge

granted temporary injunction in favour of Plaintiff on the following findings:

Words ""Luxura"" and ""Luxuria"" are only variants of the descriptive term

""Luxury"" and as a consequence, the protection available to such marks are

not very strong. But the 1st Defendant cannot take advantage of the same for the reason that 1st Defendant themselves have applied for

registration of the trade mark ""Luxuria"" under Classes 35 and 39, despite the fact that there is a prohibition u/s 9 (1)(b) of the Act.

Plaintiffs registered trade mark is ""Luxura "" and the mark adopted by the 1st Defendant is the word ""Luxuria"" along with the device of a reclining

chair and therefore, the mark adopted by the 1"" Defendant is similar to the registered trade mark of the Plaintiff Hence, Clause(a) of sub-section

(4) of Section 29 of Trade Marks Act stands satisfied.

By the use of similar mark viz., ""Luxuria"", 1st Defendant would certainly tend to take undue advantage and the same is also detrimental to the

reputation of the registered trade mark of the Plaintiff and therefore, Section 29(4)(c) of the Trade Marks Act would also stand satisfied.

Once dilution is permitted by allowing the 1st Defendant to use deceptively similar mark on the very same goods purchased by them from the

competitors of the Plaintiff the competitors of the Plaintiff themselves would acquire a right to infringe the rights of the Plaintiff

37. The words ""Luxura"" and ""Luxuria"" are only variants of the descriptive term ""Luxury"" and as a consequence, the protection available is not so

strong. But the P'' Defendant cannot take advantage of the same. As pointed out by the learned Single Judge, 1st Defendant himself had applied

for registration of the trade mark ""Luxuria"" under Classes 35 and 39, despite the fact that there is a prohibition u/s 9(1)(b) of the Act. The person

claiming exclusive right over the expression cannot challenge the same expression as generic.

38. The same points were raised in Health and Glow Retailing Pvt. Ltd. Vs. Dhiren Krishna Paul and Another, . Rejecting the said contention, in

the said decision, Justice V. Ramasubramaniam, J. held as under:

48. The objection that the trade mark of the Plaintiff was not an invented word and hence, not entitled to protection, could have been raised only at

a pre-registration stage. But after registration, a person is entitled to raise such an objection only by taking recourse to the remedies available under

the Act (such as rectification of the Register) and not by committing an infringement. Otherwise, the Proprietor of a registered mark would have no more protection than the Proprietor of an unregistered mark....

Therefore, according to the learned counsel for the appellant, once the Court has given a finding that the appellant has made out a prima facie case

for the grant of an interim order, refusing the same for the above stated reasons, is contrary to the view expressed in the judgments, which have

been referred to above. Apart from this, according to the learned counsel for the appellant, as far as the 3rd respondent herein is concerned, he

was an employee of the appellant and after the termination of his service, he has been adopting the business tactics of the appellant and using the

trademark, which is under challenge and this is having an impact on the business of the appellant herein. Consequently, according to the learned

counsel, the appellant is entitled to the relief sought and the order of the Trial Court has to be set aside.

4. On the other hand, according to the learned counsel for the respondents, as far as the 1st respondent is concerned, they are distributors and as

far as the 3rd respondent is concerned, the learned counsel admits that he was an employee of the appellant and that his services were terminated.

But, according to the learned counsel, the question of the 3rd respondent either selling the trade secrets or using the techniques learnt from the

appellant company does not arise and out of business jealousy, these allegations have been leveled. According to the learned counsel, in cases

involving trademarks, interim orders should not be granted and speedy trial is the solution for the same. The learned counsel relied on the judgment

reported in Shree Vardhman Rice and Gen Mills Vs. Amar Singh Chawalwala, Wherein it was held as follows:

3. Without going into the merits of the controversy, we are of the opinion that the matters relating to trademarks, copyrights and patents should be

finally decided very expeditiously by the Trial Court instead of merely granting or refusing to grant injunction. Experience shows that in the matters

of trademarks, copyrights and patents, litigation is mainly fought between the parties about the temporary injunction and that goes on for years and

years and the result is that the suit is hardly decided finally. This is not proper.

He also relied on the judgment reported in Bajaj Auto Limited Vs. TVS Motor Company Limited, for the same proposition, wherein the relevant

paragraphs read as under:

9. As has been observed by us in the aforesaid case, experience has shown that in our country, suits relating to the matters of patents, trademarks

and copyrights are pending for years and years and litigation is mainly fought between the parties about the temporary injunction. This is a very

unsatisfactory state of affairs, and hence we had passed the above quoted order in the above mentioned case to serve the ends of justice. We

direct that the directions in the aforesaid order be carried out by all courts and tribunals in this country punctually and faithfully.

10. In the present case, although arguments were advanced at some length by the learned counsel for both the parties, we are of the opinion that

instead of deciding the case at the interlocutory stage, the suit itself should be disposed of finally at a very early date.

Based on these judgments, it is the stand of the learned counsel for the respondents that when the Honourable Apex Court has laid down the

dictum that in cases of trademarks, interim orders should not be granted, the order of the Trial Court has to be confirmed. According to the

learned counsel, as far as the other issues, based on which interim order is sought, are concerned, the same can be gone into only at the time of

trial and not at the stage of interlocutory application. Consequently, according to the learned counsel, the order of the Trial Court has to be

confirmed and the Civil Miscellaneous Appeal has to be dismissed.

5. This Court has considered the submissions of both the learned counsel.

6. The suit is with regard to infringement of trademark. As far as the trademark used by the appellant is concerned, it is ""Gokul"" and the trademark

used by the respondents is ""Gokulam"". As per the finding of the Trial Court, in its order dated 20.06.2011, the plaintiff/appellant is not entitled to

the relief sought since the suit is ripe for trial and the balance of convenience is not in favour of the appellant for grant of an order of injunction. As

per the said order, a further direction was given to the respondents to maintain separate accounts as regards the sale of their hosiery products sold

under the name ""Gokulam"" and the first respondent was directed to produce the same before the Trial Court for the period before this date within

four weeks from today and thereafter before the expiry of the month that next succeeds till the disposal of the suit. As per the second order, which

is under challenge in this appeal, a specific finding has been given at paragraph

No. 25, which reads as follows:

25. The first respondent in paragraph 21 of its written statement has given a colour reproduction of both the marks - that of the petitioner and that

of the first respondent, the similarity of which is now in controversy. Both the marks are written in italics, with almost similar style for the first letter

''G''. The font however, is marginally dissimilar but that would not be evidence to a lay customer/consumer while he is shopping. True, in first

respondent''s mark, there are few horizontal lines in black over which the word ''Gokulam'' is seen superimposed. And there is also its insignia ''Ph''

written over the said mark. They look similar visually and bears a stronger similarity phonetically. From the perspective of an ordinary man, it is

difficult to believe that he would make his purchase after putting both the marks under a scanner, and makes the choice of his product noticing all

these distinguishing features of the trade mark Suffice to state that an ordinary consumer of hosiery products, bestowed with ordinary skills and

intelligence in commercial practices, would not or could not make a visual or phonetical distinction between the mark ''Gokul'' and ''Gokulam''. The

learned counsel for the respondent would contend that the word Gokul and Gokulam are generic name, but this is an aspect considering which is

beyond the purview of this Court. To conclude, this Court holds that prima facie, the mark of the fist respondent bears a striking similarity to the

registered mark of the petitioner and that the Court holds that the petitioner has established a strong prima facie case.

In addition to his, when this Court has given a direction to deal with the merits and demerits of the issue in that I.A., though the merits and demerits

have been discussed in the said order, but the concluding portion of the said order is the same as that of the earlier order. In the order under

challenge, at paragraph No. 26, the Trial Court has specifically made an observation that the interim injunction application was dismissed, not on

the ground that there was no prima facie case, but, because, there was no balance of convenience to grant an order of injunction. Having given a

finding at paragraph No. 25, which has been extracted above, i.e., to say, in the words of the Trial Court, that an ordinary consumer of hosiery

products, bestowed with ordinary skills and intelligence in commercial practices, would not or could not make a visual or phonetical distinction between the trademarks used by the appellant and the first respondent, namely, ''Gokul'' and ''Gokulam'', which will automatically have an impact

on the sale of the appellant''s products, the Trial Court ought not to have dismissed the LA. It is relevant to mention here that according to both

sides, the respondents are using the trademark ""Gokulam"" from the year 2009 and according to the learned counsel for the appellant, the appellant

is using the trademark ""Gokul"" for a period of more than 25 years and this is not disputed by the learned counsel for the respondents.

7. The relief sought by the appellant has been rejected by the Trial Court on two grounds namely, (i) there is no balance of convenience to grant an

order of injunction and (ii) the suit is ripe for trial. As far as the first ground is concerned, as per the judgments relied on, which have been referred

above, once the Court comes to the conclusion that a prima facie case has been made out, the balance of convenience will automatically follow.

8. As far as the stand of the learned counsel for the respondents that the trademark used by the appellant is ""Gokul"" whereas the trademark used

by the respondents is ""Gokulam"" and therefore, the said judgments will not have an application is concerned, at paragraph No. 25 of the judgment

of the Trial Court, a specific finding has been given that the two trademarks are visually and phonetically similar and that an ordinary customer will

not be able to differentiate between the two. When such a finding has been given, this argument of the learned counsel for the respondents will not

hold good.

9. Apart from this, the other stand taken by the learned counsel for the respondents is that in view of the judgments reported in 2009 (41) PTC

397(SC) (cite supra) and Bajaj Auto Limited Vs. TVS Motor Company Limited, in matters of trademarks, interim orders should not be granted.

But, the learned counsel for the appellant has brought to the notice of this Court the judgment of the Karnataka High Court dated 02.11.2011

rendered in W.P. Nos. 39843 of 2011, 40102 - 103 Of 2011 (Madhu Product V. Sundaram Files), wherein at paragraph Nos. 19 and 24, it was

observed as hereunder:

19. The contours defined in these judgments would go to show that grant of ex-parte order of temporary injunction order or its refusal thereof has

to be taken by the Court at the time when violation of a right is alleged by the plaintiff and same has been denied by the defendants or based on

such material which is available on record which may go to show that there has been such denial or when both the parties assert their respective

rights and there remains certain amount of uncertainty. Exercise of discretionary power by the Court to grant an ex-parte order of temporary

injunction is unfettered and to prevent the injustice being caused to either of the parties, Court is empowered to exercise its discretionary power.

24. The trial Court has erroneously proceeded and has not even considered the prayer of the plaintiff for grant of ex-parte ad-interim injunction or

the prayer made in I.A.s 1 to 3 by relying upon Bajaj Auto case referred to supra in which judgment the issue regarding exercise of discretionary

power by the Courts was not at all under consideration and as such, I am of the considered view that the trial Court committed a serious error in

not considering the prayer of the plaintiff

The learned counsel also brought to the notice of this Court the judgment of the Honourable Apex Court reported in (2011) 4 SCC Pg. 85 (T.V.

Venugopal V. Ushodaya Enterprises Limited and another) that interim orders can be granted in matters of trademarks if the situation warrants and

he relied on paragraph No. 92 of the said judgment wherein clauses (b) & (c) are relevant and they read as hereunder:

92....

(b) The adoption of the word ""Eenadu"" is ex facie fraudulent and mala fide from the very inception. By adopting the mark ""Eenadu"" in the State of

Andhra Pradesh, the appellant clearly wanted to ride on the reputation and goodwill of the respondent Company;

(c) Permitting the appellant to carry on his business would in fact be putting a seal of approval of the Court on the dishonest, illegal and clandestine

conduct of the appellant;

Consequently, the argument of the learned counsel for the respondents that in matters of trademark, interim orders should not be granted will not

hold good. As far as the other ground on which the Trial Court has rejected the relief sought by the appellant, namely, that the suit is ripe for trial, is

concerned, the said order has been passed in September, 2011. According to the learned counsel for the appellant, till date, not even the trial has

commenced and this is also not disputed by the learned counsel for the respondents. Under such circumstances, the appellant cannot be denied the

benefit of the interim order, on the ground that the suit is ripe for trial, when a prima facie case has been made out. Consequently, the order passed

in LA. No. 1225 of 2010 dated 17.09.2011 is set aside and the Civil Miscellaneous Appeal is allowed. No costs. Connected M.P.s are closed.

