

(2002) 05 KAR CK 0019
In the Karnataka High Court
Case No : M.F.A. No. 4223 of 1999

Prestige Housewares (India) Ltd. and Another	APPELLANT
Vs	
Prestige Estates and Properties Cooper Arch and Another	RESPONDENT

Date of Decision : 18-05-2002

Acts Referred:

Copyright Act, 1957 — Section 14, 45, 50, 72 (2)

Citation : AIR 2002 Kar 313 : (2002) ILR (Kar) 3258

Hon'ble Judges : V.G. Sabhahit, J

Bench : Single Bench

Advocate : K.W. Raghavan and S.K. Shivaprakash, for the Appellant; R.V. Acharya for Harikrishna S. Holia, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal u/s 72(2) of the Copyright Act, 1957 (hereinafter called "Act") arises out of and is directed against the order dated 2-7-1999 passed by the Copyright Board at Bangalore in Case No. 6 of 1996.

2. The essential facts of the case in brief leading up to this appeal are as follows : The parties would be referred to with reference to their rank before the Copyright Board.

The petitioner filed a petition u/s 50 of the Act on 6-7-1995 with prayers to :

- a) Suspend the Copyright registration No. A-51400/91 dated 25th February, 1992 obtained by the respondent.
- b) Revoke/cancel the Copyright registration No. A-51400/91 dated 25th February, 1992 obtained by the respondent.
- c) Award costs of the proceedings and pass such further or other orders as the Court may deem fit and proper in the circumstances of the case and thereby render justice.

It is averred in the petition that the Trade Mark "PRESTIGE" was originally registered under No. 141602 in Class 21 is the name of Palters and Stumpers Limited of England. The- Registration was assigned to the first petitioner by deed of assignment dated 4-10-1985. The first petitioner has entered into a license agreement with the second petitioner to use the Trade Mark "PRESTIGE" in respect of pressure cookers, pressure pans, cooking and kitchen utensils. The second petitioner changed its name to TTK Prestige Limited on 26-7-1994, The Trade mark "PRESTIGE" also forms a prominent feature of the corporate name and trading style of the petitioners. The petitioners' artistic work and Trade mark "PRESTIGE" enjoys great reputation and goodwill amongst the traders and public. It is distinctive of and is exclusively identified with petitioners' goods and business.

3. It is further averred in the petition that the second petitioner enjoys exclusive copyright in the artistic-work "PRESTIGE" in stylized script in white letters placed within red rectangle. The artistic work with distinctive colour scheme and get up was created by Mr. T. T. Jagannathan, Group Managing Director of the petitioners in the course of employment. The artistic work "PRESTIGE" label is the exclusive copyright of the second petitioner. The said artistic work was first published in India in the year 1985 and has since been published continuously all over India till date. It is further averred in the petition that the respondent issued a Copyright and Trade mark warning notice in Times of India and Deccan Herald dated 1st December 1994 claiming to be the proprietor of the Trade mark "PRESTIGE" and also claimed to be the owner of artistic work "PRESTIGE". This notice caused confusion and deception amongst the traders and public. Several traders, retail dealers and customers enquired from the petitioners whether the respondent is associated with petitioners. Find is a member of TTK Group of Companies. The warning notice adversely affected the business interest of the petitioners and (wherefore second petitioner issued a notice to respondent's Trade mark consultant on 2-12-1994 calling upon the respondent to cease and desist from using "PRESTIGE" as a trade mark or a part of trading style. Reply dated 10th December 1994 was received from the respondent's Advocate stating that respondent is the proprietor of the Trade Mark "PRESTIGE" registered under No. 365586 in Class 24 and that respondent is also proprietor of copyright registered under No. A-51400/91 and respondent is involved in real estates and property development field only and refused to withdraw warning notice. Since respondent refused to furnish copy of Trade mark and registered copyright, the petitioner filed C.S. No. 534 of 1995 and obtained ex parte injunction for copyright infringement and the injunction is suspended pending arguments and disposal of applications. It is further averred that the petitioners have exclusive copyright in the word "PRESTIGE" written in stylized script. The respondent has made a substantial reproduction of petitioners' artistic work by adopting the script in respect of the word "PRESTIGE" which is almost identical to the script used by the petitioners and an ordinary purchaser with imperfect memory would assume that the respondent is associated with the petitioners and artistic work is

adopted with a view to pass off and enable to pass off the respondent's goods and business as and for the petitioners goods and business. The respondent has committed act of passing off and infringement of copyright of the petitioners and wherefore the petition.

4. The respondent filed Written Statement to the petition on 9-5-1998 averring that petition filed u/s 50 of the Act is misconceived, arbitrary and illegal and unsustainable. The petitioner has no locus stand to file the petition. The respondent has traversed averment made in the petition regarding patent and copyright owned by petitioners and has further emphatically denied that petitioners have been using work and trademark "PRESTIGE" and that they enjoy great reputation and goodwill among traders and public. Respondent also denied that the trade mark "PRESTIGE" is distinctive and exclusively identified with goods and business of the petitioners.

5. The respondent further averred that it is true that the respondent issued a Trade Mark warning notice and that petitioners had filed C.S. No. 534/1995 which was allowed by order dated 26-3-1997. Being aggrieved the respondent filed an appeal in O.S.A. Nos. 103-107/1997 and the Division Bench of the High Court of Madras allowed the appeal by order dated 2-9-1997 in the light of submission made by Counsel for petitioners and respondents and observed that respondent shall be at liberty to use the word "PRESTIGE" as the name of trading style for the purpose of carrying on real estate business and the plaintiffs (petitioners herein) shall not object to it. In view of the said decision the present application has become infructuous. The respondent emphatically denied that artistic work and trade mark or as a part of trading style adopted by respondent is deceptively similar to petitioners mark and that it has been adopted with deliberate intention to trade upon and benefit from the reputation and goodwill enjoyed by the petitioners corporate name and trading style. As a matter of fact the respondent is a part of group of companies called "Prestige Group". The respondent adopted "PRESTIGE" in respect of textiles in the year 1956, as a measure of diversification and with a view to expand their business activities respondent floated a firm called "Prestige Estates and Properties" in the year 1987. The respondent has been using trading style "PRESTIGE" in a particular design, getup and artistic work since 1987. The respondent obtained registration in respect of copyright "Prestige Estates and properties" after duly complying with the provisions of the Act on 25-2-1992. The respondent adopted artistic work in the field of real estate and property developers in 1985. Petitioners are not carrying on business which is similar to respondent. The field of activity of petitioners and respondent are completely different and there cannot be any confusion in the market. The artistic work, design and get up adopted by the respondent is not similar to the artistic work, design and getup adopted by petitioners. There is no similarity in copyright as alleged and wherefore the petition is liable to be dismissed with heavy costs.

6. The petitioners and the respondent apart from the documents produced with

the petition and written statement respectively did not choose to produce any other documents nor adduce any evidence before the copyright Board and the Board by its order dated 2-7-1999 held that petitioners have miserably failed to prove averment in the petition and have not made out any ground to revoke copyright registered by the respondent on 25-2-1992 and accordingly dismissed the petition directing that petitioners shall pay cost of Rs. 1,000/- to the respondent.

7. That being aggrieved by the order dismissing the: petition, petitioners have preferred this appeal u/s 72(2) of the Copyright Act. 1957.

8. I have heard the learned Counsel appearing for the appellants and the respondent.

9. The learned Counsel appearing for the appellants submitted that the material adduced by the petitioners before the copyright Board clearly proves that they are the authors of Artistic work "PRESTIGE" which was stylized and first used by petitioners in 1981 itself when the said artistic work was registered under the Patents Act in respect of various products manufactured and marketed by petitioners and the respondent has imitated and adopted the said artistic work which has created an impression that respondent is associated with petitioners and the artistic work of respondent could not be registered as it infringes the copyright of the petitioners and no certificate as required under proviso to Section 45 of the Act was produced and wherefore the copyright registered by the respondent is liable to be revoked and entry to that effect in the Register of copyrights is liable to be deleted. He submitted that the finding arrived at by the Copyright Board is perverse: and arbitrary and cannot be sustained and the application filed by the petitioners before the Copyright Board is entitled to succeed and he further submitted that in the alternative the decision rendered by the Madras High Court in O.S.A. Nos. 103-107/1997 dated 2-9-1997 has to be incorporated in the Register of Copyright in order to maintain the purity of the Register.

10. The learned Senior Counsel appearing for the respondent submitted that in view of the decision of the Madras High Court in O.S.A. Nos. 103-107/1997 the petitioners have no locus stand! to file petition for revocation of copyright registered by the respondent and petitioners and respondent are operating in different fields and there is no similarity between the artistic work registered by the respondent and that of the petitioners and respondent's copyright in artistic work "PRESTIGE GROUP" was registered in 1992 itself and first used by respondent in 1986 and registration of artistic work of petitioners is later to the registration of copyright by respondent. He submitted that copyright Board has passed a very considered order, which does not call for interference in this appeal.

11. The points that arise for determination in this appeal having regard to the contentions of the parties are :

1. Whether the Copyright Board was justified in holding that the petitioners have

failed to prove that copyright registration No. A-51400/91 dated 25-2-1992 is liable to be revoked/cancelled as sought for in the petition and in dismissing the petition?

2. Whether the impugned order passed by the Copyright Board dated 2-7-1999 calls for interference in this appeal?

3. What order?

I answer the points for determination as follows :

1. In the affirmative;

2. In the negative;

3. As per the final order for the following :

REASONS

12. Points 1 to 3 : These points are considered together since they are interconnected and to avoid repetition.

I have gone through the petition filed before the Copyright Board (hereinafter called "Board") and statement of objections filed to the petition by the respondent and the documents produced by the parties before the Board. Both the parties have not chosen to adduce any oral evidence before the Board. I have also gone through the order passed by the Board. The finding arrived at by the Board has to be considered in the light of the material on record, contention of the learned Counsel for the parties, the provisions of the Act and decision of the Hon"ble Supreme Court and this Court on the subject.

13. The learned Counsel appearing for the petitioners submitted that application is filed before the Board u/s 50(b) of the Act, which provides for rectification of Register by Board. On application of any person aggrieved for expunging any entry wrongly made or remaining on the Register. He submitted that the registration of copyright obtained on 15-2-1992 under No. 51400/91 is liable to be cancelled as the same has been got registered in violation of the copyright of the petitioners and contrary to law and entry which has been wrongly made is liable to be expunged. It is clear from the averment made in the petition before the Board that petitioners aver that the copyright got registered by respondent is liable to be cancelled and entry has to be rectified on the following facts :

i) Trademark "PRESTIGE" was originally registered under No. 141602 in Class 21 in the name of Palters and Stumpers Ltd. of England.

ii) The above said Registered Trade Mark was assigned to the first petitioner by deed of assignment dated 4-10-1985.

iii) The first petitioner has entered into a license agreement with the second petitioner to use the trade mark "PRESTIGE" in respect of pressure cookers, pressure pans, cooking and kitchen utensils.

iv) The second petitioner changed its name to T.T.K. Prestige Ltd. on 26-7-1994 and the Trade mark "PRESTIGE" also forms a prominent feature of the corporate name and trading style of petitioners.

v) Petitioners enjoy exclusive copyright in the artistic work "PRESTIGE" in stylized script in white letters, placed within red rectangle and said artistic work was created by Mr. T. T. Jagannathan, Group Managing Director of petitioners in the course of employment.

vi) The above said artistic work was first published in India in 1985 and has since been published all over India.

vii) The respondent has made a substantial reproduction of petitioners artistic work by adopting the script in respect of the word Prestige which is almost identical to the script used by the petitioners and ordinary purchaser would assume that the respondent is associated with the petitioners.

viii) The respondent has adopted the artistic work of petitioners with a view to pass off respondent's business and goods as and for the petitioners' goods and business and has committed act of passing off and infringement of copyright.

ix) The Registration of copyright by respondent on 25-2-1992 in No. A.51400/91 is contrary to provisions of Section 45 of the Act and hence liable to be revoked.

14. When the petitioners have filed a petition for revocation or cancellation of respondent's registered copyright on the above facts, naturally, burden would be upon the petitioners to prove the same as they would fail if no evidence is adduced by either side. The petitioners have not led any oral evidence and apart from the documents produced with the petition have not produced any other documents before the Board to substantiate their contentions averred in the petition. The records of the Board show that documents produced by the petitioner are as follows :

i) 11 certificates issued by the Trade Marks Registry certifying registration of Trade Mark "PRESTIGE" by the second petitioner in respect of various products to various dates from 16-6-1981 to 5-1-1987.

ii) Fresh certificate of Incorporation consequent on change of name of second petitioner from T.T. Limited to T.T.K. PRESTIGE LIMITED dated 23-6-1994 on the basis of letter dated 14-6-1994.

iii) Extract of the Register of copyright dated 1-5-1995 showing registration of following artistic work as copyright. In all the certificates date of the publication in India is mentioned as 1993 against Column 9.

a) A-52801/95 in the name of T.T. Ltd., artistic work "PRESTIGE ACCURA".

b) A-52803/95 in the name of T.T. Ltd., artistic work "PRESTIGE NO-STICK FRY PAN WITH DIA 200 MM CARTON".

c) A-52810/95 in the name of T.T. Ltd., artistic work "PRESTIGE-ID LI STAND

CARTON".

d) A-52811/95 in the name of T.T. Ltd., artistic work "PRESTIGE NO-STICK FRY PAN WITH DIA 250 MM CARTON".

e) A-52812/95 in the name of T.T. Ltd., artistic work "PRESTIGE SAUCE PAN CARTON".

f) A-52813/95 in the name of T.T. Ltd., artistic work "PRESTIGE NO STICK TAWA".

15. The documents produced by the respondent are as follows :

i) True copy of the order dated 2-9-1997 in O.S.A. No. 103-107/1997 passed by Madras High Court.

ii) Copy of certificate of Registration bearing No. 51402/91 dated 25-2-1992 showing registration of artistic work of respondent "PRESTIGE GROUP against Column No. 9 first publication is mentioned as 1956.

iii) Certificates issued by Trade Marks Registry dated 2-9-1980 showing registration of trade mark prestige in the name of Retack S. Amin alias Amin Sattar.

iv) Memorandum and articles of association of PRESTIGE ESTATES PROJECTS PRIVATE LIMITED.

16. I have gone through the contents of all the documents produced by the parties before the Board. It is clear from the same that petitioners have not produced any documents to prove facts (i) to (iii) referred to above and wherefore has not proved the same.

17. So far as fact (iv) is concerned, Fresh certificate of incorporation consequent upon change of name of petitioner No. 2 shows that on a letter addressed dated 14-6-1994 the name of petitioner No. 2 has been changed from T.T. Limited to TTK PRESTIGE LIMITED by certificate dated 28-6-1994 and wherefore said fact is proved.

18. However, there is no material what so ever to prove fact Nos. (v) and (vi) and wherefore said facts that artistic work "PRESTIGE" in stylized script in white letters placed within rectangle was created by Mr. T.T. Jagannathan, Group Managing Director of petitioners in the course of employment and that said artistic work was published in 1985 have not been proved. The contents of the documents produced by the petitioners would only show registration of trade marks "Prestige", "PRESTIGE" and "PRESTIGE BARBECUTE in the name of T.T. (Private) Limited on various dates from 16-6-1981 to 5-1-1987 in respect of various products and would not in any way help the petitioners to contend that artistic work was first authored by petitioners employee and first published in 1985. The other documents produced by the petitioners would show that petitioners artistic works were registered under copyright Act on 1-5-1995 in the name of T.T. Limited though it had changed its name and according to the entry

against Column No. 7 in all the certificates of registration of copyright meant for mentioning name, address and nationality of the author it is mentioned as T.T. Jagannathan" and address as in Column No. 2 T.T. Ltd., Bangalore" and it is mentioned against Column No. 9 in all the Certificates of registration of copyright of petitioners that year and country of the first publication as 1993, India and wherefore the above said contents of certificates of registration of copyright would belie the contention that artistic work of petitioners was first published in India in 1985 and the said certificates would clearly show that artistic work of respondents was authored by T.T. Jagannathan and first published in India in 1993 i.e., subsequent to the registration of respondent's artistic work on 25-02-1992 and it is mentioned in Column 9 of certificate of registration of respondent's copyright as first published in India in 1986 and wherefore the finding of the Board that use of the artistic work by respondent was much prior in point of time and came to be registered first in point of time is well founded and unassailable.

19. The next set of facts averred and required to be proved by the petitioners is fact Nos. (vii) and (viii) to show that the respondent has made a substantial reproduction of petitioners artistic work by adopting the script in respect of the word "PRESTIGE" which is almost identical to the script used by the petitioners and an ordinary purchaser would assume that the respondent is associated with the petitioners and that the respondent has adopted the artistic work of petitioners with a view to pass off respondent's business and goods as and for the petitioners goods and business and has committed act of passing off and infringement of copyright.

20. Section 16 of the Act reads as follows :

"16. No copyright except as provided in this Act. No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence."

21. Section 13 of the Act states Works in which copyright subsists and Clause (a) includes original, literary, dramatic, musical and artistic works.

22. "Artistic work" is defined u/s 2(c) of the Act as follows :

"(c) "artistic work" means.-

(i) a painting, a sculpture, a drawing (including a diagram, map chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;

(ii) a work of architecture; and

(iii) any other work of artistic craftsmanship";

23. "Author" is defined u/s 2(d) of the Act wherein in relation to the artistic work other than a photograph, the artist is the author of the Work.

24. Section 2(a) defines "adaptation" and in relation to artistic work "adaptation" would mean conversion of the work into a dramatic work by way of performance in public or otherwise;

25. Section 2(m) of the Act defines "infringing copy" and in relation to artistic work it means reproduction thereof otherwise than in the form of a cinematographic film;

26. Section 14 of the Act states as follows :

"14. Meaning of copyright.-- For the purpose of this Act, "Copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely :--

(a) &(b)xxx

(c) in the case of an artistic work,--

(i) to reproduce the work in any material form including depiction in three dimensions of a two-dimensional work or in two dimensions of a three dimensional work;

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public not being copies already in circulation;

(iv) to include the work in any cinematograph film;

(v) to make any adaptation of the work;

(vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in Sub-clauses (i) to (iv);"

27. Hon"ble Supreme Court had an occasion to consider the provision of the Act in the case of R.G. Anand Vs. Delux Films and Others, . In the said case a suit was filed against the defendants on the ground that they had violated the copyrighted work of the plaintiff which was a Drama called "Hum Hindustani" and that the defendants had adopted the said play into a motion picture "New Delhi". The suit was dismissed by the District Judge. Same was affirmed in the High Court and the Hon"ble Supreme Court also affirmed the order passed by the High Court. However, since there was no decided case of the Supreme Court on the question of infringement of copyright, Hon"ble Supreme Court has considered in detail the question of infringement of copyright, the object of the provisions of the copyright Act and also the factors that are to be borne in mind while considering the fact that whether there is infringement or violation of the copyright. Hon"ble Supreme Court after referring to the opinion of eminent

authors has observed in Paragraph 14 of the judgment by quoting Halsbury's Laws of England by Lord Hailsham Fourth Edition as follows :

"Moreover, it seems to us that the fundamental idea of violation of copyright or imitation is the violation of the Eighth Commandment : "Thou shalt not steal" which forms the moral basis of the protective provisions of the Copyright Act of 1911. It is obvious that when a writer or a dramatist produces a drama it is a result of his great labour, energy, time and ability and if any other person is allowed to appropriate the labours of the copyrighted work, his act amounts to theft by depriving the original owner of the copyright of the product of his labour. It is also clear that it is not necessary that the alleged infringement should be an exact or verbatim copy of the original but its resemblance with the original In a large measure, is sufficient to indicate that it Is a copy."

28. Hon"ble Supreme Court after referring to the learned Authors on copyright and also decisions of the Courts has summarised succinctly the factors to be borne in mind and has laid down the following propositions:

1. There can be no copyright in a idea, subject-matter, themes, plots of historical or legendary work and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyright work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the Courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal limitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and the safest mode to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however apart from the similarities appearing in the two works there are also material and bread dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by

clear and cogent evidence after applying the various tests laid down by the case law discussed above."

29. In the case of Associated Electronic and Electrical Industries (Bangalore) Pvt. Ltd. Vs. M/s. Sharp Tools, Kalapatti, this Court considered an appeal filed u/s 72 of the Act wherein also an application had been filed u/s 50 of the Act and the applicant had sought for cancellation of the copyright registered in favour of the respondent alleging that it had been wrongly obtained or wrongly remained in the Register of Copyright. In the said case it was averred that plaintiff had the trade mark "Sharp" with formidable sale publicity all over India and the same was registered under Trade and Merchandise Marks Act, 1958 and that the respondent had copied the said mark and registered as "Sharp Tools". In the said case this Court has observed in Paragraph 10 regarding the object of the Copyright Act as follow?) :

"10. Before we go into the question raised by the rival contentions of the parties as to the existence of the copyright and its infringement it is necessary to state as to what is copyright and the nature of the copyright. According to Sriyutrus Copinger and Skone James on Copy Right, the copy right laws is in essence concerned with the negative right of preventing the copying of physical, material, existing in the field of literature and art. Its object is to protect the writer and artist from the unlawful reproduction of his material. It is concerned only with the copying of physical material and not with the reproduction of ideas and it does not give a monopoly to any particular form of words. If it could be shown that two precisely similar works were in fact produced wholly, independently from one another, the author of the work that was published first would have no right to restrain the publication of the other author's independent and original work."

30. In the case of Associated Electronic and Electrical Industries (Bangalore) Pvt. Ltd. Vs. M/s. Sharp Tools, Kalapatti, referred to above, this Court has laid down the test to determine whether or not there has been a violation of copyright and has observed as follows (at-p. 412 of AIR) :

"One of the surest tests to determine whether or not there has been a violation of copy right is to see if the reader, spectator, or the viewer after having read or seen both the works would be clearly of the opinion and get an unmistakable impression that the subsequent work appears to be a copy of the first. In other words, dealing with the question of infringement of copy right of the appellant's work by the respondent's work, the Court is to test on the visual appearance of the object and drawing, design, or artistic work in question and by applying the test viz. "lay observer test" whether two persons who are not experts in relation to objects of that description, the object appears to be a reproduction. If to the "lay observer", it would not appear to be reproduction, there is no infringement" of the artistic copy right in the work."

31. When the material on record in the present case is considered in the light of

the principles laid down in the above cited cases, it is clear that so far as the registration of copyright and the artistic work of the petitioners and the respondent is concerned, the publication of artistic work of the respondent as also the registration of the artistic work of the respondent under the Act is first in point of time as the copyright of the artistic work of the respondent was first published in 1986 and was registered on 25-2-1992 whereas the artistic work of the petitioners was first published as per the certificate of registration of copyright produced by the petitioners in 1993 and the artistic work was registered under Act on 1-5-1995.

32. However, what is contended by the learned Counsel appearing for the petitioners, appellants herein is that the word "PRESTIGE" had already been used in a stylized and artistic way by the petitioners and the petitioners had acquired distinctive right over the same and the word that has been adopted and imitated by the respondent is violation of copyright as the word "PRESTIGE" had been registered under the Trade and Merchandise Marks Act in 1981 itself.

33. It is well settled that ideas however original and clever or brilliant cannot be subject matter of copyright. It is only when the said idea is reduced to writing in the form of words or in the form of expression such as picture, play, artistic work, the copyright would arise in respect of the said expression of idea and it is not until it is reduced to writing or manifested into any tangible form, the idea by itself would not be entitled to any copyright and in view of the provisions of the Act it is clear that there can be no copyright in word or words, but the right can only be in the artistic manner in which it is written. A copy is that which comes near to the mind of every person seeing it and imitation will be a copy which comes so near to the object so as to suggest the original in the mind of that person seeing it. Wherefore having regard to these principles and also the factors laid down by the Hon"ble Supreme Court and this Court as tests that determine as to whether there is violation or infringement of copyright and as to whether there is copying, imitation or adaptation of the artistic work of the petitioners by the respondent, the artistic works of the petitioners and respondent has to be compared. It is clear from the perusal of the artistic work registered under the Act as already held above there is no comparison whatever between the artistic work of the petitioners and the artistic work of the respondent as the artistic work of the petitioners registered under the Act is entirely different from the artistic work that is registered by the respondent and in view of the above said finding that first publication of the artistic work and registration of artistic work by the respondent is first in time as the publication and registration of copy right of the petitioners was later, question of the respondent copying the artistic work of the petitioners would not arise.

34. Even otherwise, it is clear that the artistic work of the respondent that is registered under No. A-51402/92 dated 25-2-1992 is "Prestige Group" with photo of a bird in a circle. Whereas the artistic work of the petitioners that is registered under the Act is in respect of PRESTIGE ACCURA, PRESTIGE NO-STICK

FRY PAN WITH DIA 100 MM CARTON, PRESTIGE-IDLI STAND CARTON, PRESTIGE NO-STICK FRY PAN WITH DIA 250 MM CARTON, PRESTIGE SAUCE PAN CARTON" and PRESTIGE NO STICK TAWA. It is clear from the comparison of the artistic work of the petitioners and respondent registered under the Act that they are not similar and one cannot be said to be copy or imitation of the other. Even the word "PRESTIGE" registered under the Trade and Merchandise Marks Act by the second petitioner for various products would show that they are registered as "Prestige", "PRESTIGE", PRESTIGE BARBECUTE" and the artistic work of the respondent is "Prestige Group" with the photo of a bird in a circle and the comparison of the two works in which they are represented by the petitioners and the respondents would show that there is no similarity in the two works. This Court has held in the above filed case of Associated Electronic and Electrical Industries (Bangalore) Pvt. Ltd. Vs. M/s. Sharp Tools, Kalapatti, that there cannot be any copyright in the words, but copyright would exist in the artistic form in which it is written. The facts of the said case were similar to the facts of the present case. In the said case it was contended by the petitioners in a petition filed u/s 50 of the Act that they were manufacturers of electrical goods over a long period under the trade mark "Sharp" and respondent had registered the trade mark "Sharp Tools" and wherefore there was imitation and this Court held that on comparison of the two marks they were not similar and confirmed the finding of the Board. In the present case also on comparison of the artistic way in which the word "PRESTIGE" is being used by the petitioners and respondent, it is clear that respondent cannot be held to be guilty of copying or imitating or adopting the artistic work of the petitioners and the following observations made by the Board in Paragraph 9 are well founded in view of the material on record :

"9. Apart from this, the perusal of the artistic works of the petitioners and the respondent and a comparison of one with the other would show that there is absolutely no similarity in the said artistic work. The letters in petitioners' work are smaller in size and all the letters are vertical whereas the letters of artistic work "PRESTIGE" used by the respondent are slightly transverse tilting towards right and letters are more than three times the size of the letters used by the petitioners". The artistic work used by the respondent is underlined by a thick line. More than anything else, the word "PRESTIGE" adopted by the petitioners are not uniform at all times apart from the usage in different items, as observed earlier. The word adopted in the Trademark Registration of the year 1981 is different from the word used in the different wares or in the latest letter head. The Counsel for the respondent further stated that his registered trademark mentions "PRESTIGE GROUP" and as the mark goes, the entire registered matter has to be seen and not a portion of it. So, applying the test as laid down by the Hon'ble High Court of Karnataka and the observations made above, there is absolutely no similarity between the artistic work used by the petitioners and the artistic work used by the respondent so that it can be said that one is copied by the other. This being so, the petitioners' allegations that the respondent has been deliberately using the same artistic work as used by them for the purpose

of gaining in their trade are not correct."

35. Wherefore, in view of the above facts it is clear that the finding of the Board that the petitioners have failed to prove that respondent has copied or imitated or adopted the artistic work of the petitioners is unassailable.

36. It is also clear from the material on record that the sphere of activity of the petitioners and the respondent is different. The petitioners are manufacturing and selling kitchen utensils and whereas the respondent is using the word "PRESTIGE" as a corporate name as "Prestige Group" and wherefore the possibility of respondent infringing upon the activity of the petitioners and passing off the goods and products of the petitioners would not arise at all. In fact the petitioners had filed O.A. No. 364/1995 and 365/1995 respectively and in appeals against the order passed in the said cases in OSA. Nos. 303-107/1997. Division Bench of the Madras High Court by its order dated 2-9-1997 has disposed of the said OSAS and it is clear from the perusal of the order passed in the said case which has been produced by the respondent before the Board that infact during the course of argument the Counsel appearing for the respondent herein submitted that they are engaged in real estate-business and using the word "Prestige" in the name of the trading style and that as on that day they were not engaged in any business that is carried on by the petitioners herein and in the light of the said submission the learned Counsel who was appearing for the petitioners herein in the said case submitted that if the word "Prestige" is to be used by the defendant (respondent herein) as trading style for carrying real estate business only then the plaintiff shall not have any objections and under those circumstances High Court of Madras held that the respondent herein who was the defendant in the said case was at liberty to use the word "Prestige" as the name for trading style for the purpose of carrying on real estate business and the plaintiffs (petitioners herein) shall not object to it and consequently nothing survived in those appeals and accordingly the appeals were disposed of. Wherefore, it is clear that in view of the above said submissions made by the learned Counsel appearing for the parties in the said proceedings before the High Court of Madras in OSA. Nos. 103-107/1997 and the fact that the sphere of activity of the petitioners and respondent is entirely different, the question of passing off or infringing the trademark would not arise at all.

37. The learned Counsel appearing for the petitioners submitted that it was specifically averred in the petition before the Board that there was no compliance of the proviso to Section 45 of the Act and the Board has not at all considered the question and has dismissed the said contention by holding that it has no relevance. He submitted that the proviso to Section 45 of the Act would be relevant as it is for the Registry of trademark to decide as to whether there is infringement of any artistic work.

38. On the other hand, the learned Counsel appearing for the respondent submitted that the provision to Section 45 of the Act would not be applicable to

the facts of the present case in view of the different sphere of activity of the petitioners and the respondent and in view of the fact that there is no similarity in the artistic work of the petitioners and the respondent and that the registration of the copyright of the respondent has been done in accordance with law and the same has not been shown to be wrong.

39. Section 45 of the Act reads as follows :

"45. Entries in Register of Copyrights.--(1) The author or publisher of, or the owner of or other person interested in the copyright in, any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights :

Provided that in respect of an artistic work which is used or is capable of being used in relation to any goods, the application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks referred to in Section 4 of the Trade and Merchandise Marks Act," 1958 (43 of 1958), to the effect that no trade mark identical with or deceptively similar to such artistic work has been registered under that Act in the name of, or that no application has been made under the Act for such, registration by any person other than the applicant."

40. In view of the above said proviso to the section it is clear that the certificate from the Registrar of trade marks has to be obtained only in respect of artistic work which is used or is capable of being used in relation to any goods. In the present case, it is the case of the respondent that the word "Prestige Group" is being used as a corporate name of the respondent and is not used in relation to any goods and the submissions made by the learned Counsel appearing from the parties herein in OSA. Nos. 103-107/1997 before the High Court of Madras would also go to show that the petitioners have no objection for using the word "Prestige" as a corporate name in real estate business by the respondent and the respondent has no intention of using the word "Prestige" in relation to any of the goods which is being manufactured and sold by the petitioners and wherefore the proviso would not be applicable to the facts of the present case as rightly submitted by the learned Counsel appearing for the respondent.

41. Even otherwise, it is clear that when once the artistic work of the respondent is registered as back as 25-2-1992 there is a presumption that the same has been registered In accordance with law after complying with the provisions of the Act and if there is any non compliance of the provisions of the Act, it is for the petitioners to prove the same. Mere averment made in the petition would not prove the fact that there is no compliance with the proviso of Section 45 of the Act. It is not as if the application filed by the respondent for registration of copyright is within the exclusive knowledge of the respondents alone. The application given by the respondent has been accepted and registered and a certificate has been Issued by the Registrar of Copyrights and wherefore if the

petitioners intended to prove that there was no compliance with the proviso to Section 45 of the Act, the same could have been done by summoning the application filed by the respondent before the Registrar of Copyrights for registration of copyright and further it is clear that in view of the fact that there is no similarity in the artistic works used by the petitioners and the respondent and that the sphere of activity is different and there is no likelihood of one infringing upon the activity of other, the contention of the petitioners that there is no compliance of the provision to Section 45 of the Act would not assume any importance in view of the above said facts of the present case and accordingly I hold that there is no merit in the contention of the learned Counsel appearing for the petitioners.

42. The learned Counsel appearing for the petitioners submitted that if this Court comes to the conclusion that no case is made out for rectification of the copyright of the respondent, in view of the judgment of the Division Bench of the Madras High Court in OSA. Nos. 103-107/1997 dated 2-9-1997 an entry may be ordered to be made in the certificate of registration of copyright of the respondent dated 25-2-1992 and also the certificate of registration of copyright of the petitioners dated 1-5-1995 in respect of various artistic works in order to maintain the purity of register maintained under the Act as per Section 44 of the Act. He has relied upon the opinion expressed by the learned author P. Narayanan in Law of Trade marks and Passing off wherein it is stated as follows :

"21.48 Improper or Illegal registration-purity of Register- When the entry made in the register is improper, the Court may order rectification when its attention was called to the improper entry even though there was no specific pleading to that effect. An illegal entry may be expunged whatever be the merits or demerits of the applicant moving for rectification. But when the trade mark sought to be removed is not itself illegal or, improper, the Court is not bound to act at the instance of an unmeritorious complainant, although registration might have been successfully opposed by some third party.

In the case of identical marks falling within Section 11(1)(a) of the Act the question of parity of Register in the public interest is a primary consideration as against the question of acquiescence or delay unless the same had caused substantial injury to the party concerned so as to outweigh the question of public interest. Purity of register and public interest will arise even if the case comes within the protection offered by Sections 12 and 34."

43. He has also relied upon the decision of the High Court of Bombay in Kanshiram Surinderkumar a firm Vs. Thakurdas Deomal Rohire and Others, wherein it is observed as follows :

"In the case of identical marks falling within Section 11(a) viz. Marks which are likely to deceive or cause confusion the question of purity of Register in public interest is a primary consideration as against the question of acquiescence or delay unless the same has caused substantial injury to a party so as to outweigh

the question of public interest."

44. There is no merit in the contention of the learned Counsel appearing for the petitioners in view of the fact that there is no prayer in the petition filed by the appellants before the Board for entering the remarks that the said certificate of registration is subject to the decision of the Madras High Court in OSA Nos. 103-107/1997 dated 2-9-1997. Further, it is clear that the certificate of registration would only contain the particulars which are required to be mentioned under the Act and the question of this Court directing an entry to be made in the register of copyrights that the said registration of copyright is subject to the decision of the Madras High Court would not arise in this appeal as there is no direction in the decision of the Madras High Court itself that an entry should be made in the register of copyrights regarding the said decision and wherefore the question of issuing any direction to enter the remark regarding decision of the High Court of Madras in OSA. Nos. 103-107/1997 dated 2-9-1997 in the register of copyrights of the petitioners and the respondent would not arise in this appeal and accordingly I hold that there is no merit in this appeal as the impugned order passed by the Board dated 2-7-1999 is justified and does not call for interference in this appeal and accordingly I answer the points for determination and pass the following order :

The appeal is dismissed without any order as to costs.