

(2001) 06 MAD CK 0095

In the Madras High Court

Case No : O.A. No's. 344, 345 and 346 of 2001 in C.S. No. 268 of 2001

S.A. Safiullah and Co, Sole prop. A.R. Safiullah

APPELLANT

Vs

Umaidchamd Singhni and 3 Others

RESPONDENT

Date of Decision : 25-06-2001

Acts Referred:

Copyright Act, 1957 — Section 51, 55

Penal Code, 1860 (IPC) — Section 479

Trade and Merchandise Marks Act, 1958 — Section 105, 106, 2, 27

Citation : (2002) 1 LW 85

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : P. Chidambaram for M/s A.A. Mohan, C.S. Gopalakrishnan, K. Mugunthan and R. Sathishkumar, for the Appellant; Rangarajan and Prabhakar for Respondents 1 and 2, M/s. S. Venkatesan and Mrs. Uma Venkatesan for Respondent 3, for the Respondent

Judgement

A. Kulasekaran, J.—A. No.344/2001 has been filed to pass an order of ad-interim injunction restraining the respondents from in any manner infringing the applicant's registered copyright in the Design Nos.182931, 183131, 183132, 184035, 1840 36, 184037 and 184038 in respect of artificial banana leaves, laminated paper plate, laminated artificial leaf by manufacture and sale of products identical or an obvious imitation of the shape and configuration of Applicant's products for which plaintiff has design registration. A. No.345 of 2001 has been filed seeking for an order of ad-interim injunction restraining the respondents from manufacturing and selling artificial laminated banana leaves, which are identical or deceptively similar to the colour scheme, get up, layout and trade dress of the applicant's artificial laminated banana leaves so as to pass off or enable others to pass off the respondent's goods as and for the Applicant's goods or in any other manner whatsoever.

2. A. No.346 of 2001 has been filed seeking for an order of ad interim injunction restraining the respondents by themselves, their partner, heirs, etc., from in any

manner infringing Appellant's copyright in the artistic work artificial laminated banana leaves by manufacture and sale of artificial laminated banana leave which are identical to or a substantial reproduction of applicant's artistic work artificial laminated banana leaf and thereby amounting to infringement of Applicant's copyright in the artistic work or in any other manner whatsoever.

3. The short facts of the case of the applicant herein as seen from their affidavit filed in the above applications are: The applicant is the manufacture of artificial laminated banana leaf. The product of the applicant is innovative, introduced for the first time in India. The applicant has conceived the idea that the artificial laminated Banana leaf can be used as an alternative to the traditional banana leaf obtained from the plantain trees. The artificial banana leaf conceived and created by the applicant serves the purpose of natural banana leaf sans the inherent defects involved in natural banana leaf viz., the banana leaf getting dry and brown when stored over a period of time, the leaf getting decayed due to humidity, the leaf being infected by bacteria and germs and sufficient quantity of uniform size of natural leaf not being available at any point of time, etc., By strenuous research over a period of time, and repeated experiments, laboratory trials the applicant has invented such item which is of good grade and is proven to be safe for packing, storing and serving food including not Indian food. The entire process for manufacture of artificial laminated banana leaf is invented by the applicant and is the original intellectual property of the applicant. The applicant has obtained design registration for its artificial laminated banana leaves in various shapes and configuration, as mentioned below:

Sl. No.

Regn

No.

Date

Description

Renewed upto

1.

182931

18-07-2000

Laminated artificial Banana leaf

18-07-2015

2.

183131

04-08-2000

Circular shaped laminated artificial banana leaf

04-08-2015

3.

183131

-do-

Oval shaped laminated artificial banana leaf

-do-

4.

184037

27-11-2000

Square laminated artificial banana leaf

27-11-2015

The applicant has also applied for and obtained design registration in respect of other artificial laminated leaves invented by the applicant as follows:

Sl.

No.

Regn.

No

Date

Description

Renewed upto

1.

184035

27-11-2000

Laminated paper plate

27-11-2015

2.

184036

-do-

-do-

-do-

3.

184038

-do-

Circular laminated artificial leaf

-do-

The applicant is the owner of the copyright in the artistic work of artificial laminated banana leaves- oval shaped, circular shaped, square shaped. The artistic works were created by Mr. A.R. Safiullah, sole proprietor of the applicant firm which were first published in Aug-2000 and have since then been published continuously till date in India. All rights, title and interest in the said artistic works artificial laminated banana leaves-oval shaped, circular shaped, square shaped vests exclusively in the applicant. The above items are also exported to Malaysia and Singapore earning valuable foreign exchange for the country. The applicant also made necessary advertisements of all kinds for the promotion of sales and also published design caution notice in all leading newspapers English and vernacular all over India, by spending substantial amount. According to the applicant, by virtue of extensive sales, advertisements and as a high quality product having optimum utility value as well as one having aesthetic value and ethnic look the product artificial laminated banana leaf enjoys great reputation and good will amongst the trade and public. The trade dress in artificial laminated banana leaf with a distinctive shade of green colour, the nerves of the leaf running in regular sequential pattern and having definite uniform shape and size is distinctive of and exclusively identified by the trade and public with the artificial laminated banana leaf manufactured and sold by the applicant. In or about February 2001, the applicant became aware that the 3rd respondent is laminating and distributing artificial banana leaves, which is a slavish imitation of applicant's well-reputed artificial laminated banana leaves. The representatives of the applicant met the 3rd respondent and explained the intellectual property rights vested in the applicant in respect of artificial laminated banana leaf and the acts of infringement and passing off committed by the 3rd respondent. The 3rd respondent gave a written undertaking dated 1-2-2001 stating that he would not manufacture in his premises any banana leaf identical to applicant's registered designs.

4. It is also the case of the applicant that in view of the undertaking provided by the 3rd respondent, the applicant was under the impression that imitative, spurious, counterfeit artificial laminated banana leaf would not be manufactured and sold by the 3rd respondent, But they are shocked and surprised to learn in March 2001 that the 3rd respondent is laminating paper in green colour and manufacturing look alike artificial laminated banana leaf. The 3rd respondent is the proprietor of a laminating unit and the 1st and 2nd respondents purchase the

laminated banana leaf sheets from the 3rd respondent and cut the sheets to the size and shape required. The 1st and 2nd respondents supply to the traders and consumers artificial laminated banana leaves, which are imitative of the applicant's said artificial laminated banana leaves. The 3rd respondent in addition to supplying laminated banana leaves in bulk to the 1st and 2nd respondents, is also engaged in the manufacture, sale and distribution of look alike, imitative artificial laminated banana leaves. The distribution and sale of look alike, imitative, spurious, counterfeit artificial laminated banana leaf in the state of Tamil Nadu including the city of Chennai is carried out by the respondents. The 4th respondent is a wholesale cum retailer dealer of paper products including laminated sheets in the city of Chennai. The 1st and 2nd respondents supply to the 4th respondent look alike, imitative spurious, counterfeit artificial laminated banana leaf and the 4th respondent is selling to traders and customers in the city of Chennai look alike, imitative, spurious counterfeit artificial laminated banana leaf. The respondents have committed piracy of applicant's registered designs. The manufacture and sale of artificial laminated banana leaf which are identical or is a substantial reproduction of the applicant's artificial laminated banana leaf. Further the respondents are manufacturing and selling artificial laminated banana leaf which are of inferior quality and do not have any of the distinctive qualities of the applicant's innovative artificial laminated banana leaf viz., good grade quality, which can be used for packing, storing and serving food including hot Indian food. The said artificial banana leaf of the applicant has acquired a secondary meaning amongst the trade and public, identifying exclusively with the product manufactured and sold by the applicant. The respondents are passing off or enabling others to pass off their artificial laminated banana leaf as and for the applicant's artificial laminated banana leaves by manufacture and sale of imitative products. Further the respondents have copied the colour scheme, get up, and lay out in the applicant's trade dress in their artificial laminated banana leaf. The sale of look alike, imitative, spurious, counterfeit artificial laminated banana leaf sold by the respondents have made inroads into the sales turnover of the applicant, and the members of the trade and public are deceived into believing that the respondents' products also emanate from the applicant.

5. The first respondent filed a counter denying all the allegations which is adopted by the second respondent. It is stated by the first respondent that he has applied for design registration of table mat on 14.3.2001 with the Controller of Patents and Designs, Calcutta. However, the said product is not manufactured by the first respondent, but by his son the 2nd respondent herein. It is also their case that they do not have any transaction with the 3rd respondent and the transactions are only with M/s. Swastik Poly Laminators which has been in existence-for more than 6 years. It is denied by the respondents 1 & 2 that the applicant has invented a novel method in manufacturing artificial banana leaf or that they can have exclusive rights over the same. It is the case of the respondents that the laminated paper referred by the applicant is commonly

used for various purposes such as kite making, chocolate wrapping, packing of pickles, packing of suparis, packing of various edible items etc., for several years. The respondents also denied the export of the said items by the applicant to various countries, and also the expenses relating to advertisement done by the applicant and the fact that their product enjoys great reputation. The respondents 1 & 2 also stated that these leaves are commonly available and have been used in various hotels as table mats for a number of years and that therefore there cannot be any exclusive right on the shape and patterns which are commonly available in natural form. It is also their case that as such there cannot be any exclusive right in colour and colour combination also. The respondents 1 & 2 also deny the averment that they have purchased laminated banana leaf sheets from the third respondent. But according to them, they have purchased oil quoted paper sheets and other materials from Swastik Poly Laminators. It is also their specific case that the second respondent is engaged in the manufacture of table mat and there is no distribution or sale of their products in the city of Chennai and they have no transaction with the 4th respondent in any manner. Further according to the respondents 1 & 2, the 4th respondent is arrayed as a party to somehow invoke jurisdiction on this court since all the other respondents are outside the jurisdiction of this court and that therefore on that ground the suit deserves to be dismissed. A police complaint was lodged with the Sivakasi Police Station by the first respondent on 26.3.2001 against the applicant as they have threatened the third respondent and as they were trying to interfere and disturbing the day to day affairs of the respondents. According to them, the product of the respondents 1 & 2 totally different from that of the applicant and there is no bona fide in the contention that the respondents' products are look alike, imitative, spurious and counterfeit artificial laminated banana leaves. They also denied the averment that their products would fall within the ambit of Sec.51 of the Copyright Act. They also vehemently denied the averment that they are using the copyright and design of the applicant and that they manufacture identical or deceptively similar product which would infringe the registered design or copyright of the applicant. The averment relating to copying of colour scheme, get up and lay-out of the applicant's trade address is also denied by them. According to them the product of these respondents is totally different and they have already applied for registration of their product. It is their case that the test of design by the naked eye and it would be prima facie evident and one can easily understand the difference between the product of the applicant and the respondents and that there cannot be any confusion in the minds of the public and due to business rivalry only this case has been filed by the applicants. The respondents 1 & 2 also pointed out that the suit is filed under Sec. 27, 105, 106 of the Trade and Merchandise Act, under Sec. 51, 55, 62 of the Copyright Act and Section 22 of the Designs Act, 1999 on 10.4.2001 whereas the Designs Act has come into force only on 11.5.2001.

6. The 3rd respondent filed a counter wherein they have admitted the written under taking, but it is stated that the same was obtained under coercion and

duress. However they have totally denied that they are not manufacturing any banana leaves in their premises and also denied the transaction with the respondents 1 & 2.

7. The 4th respondent has received the notice sent by registered post but not chosen to appear before this court.

8. The point for consideration in this case is, whether the applicant is entitled to the interim order sought for in these applications.

9. Before going into the merits of the case, it is necessary to resolve the issue of the territorial jurisdiction of this court raised by the respondents herein. Learned counsel for the respondent contended that this court is not vested with the territorial jurisdiction. In application No.1697/2001 filed by the applicant herein leave to sue was granted. As such it is not open to the respondent to canvass the same, but the remedy open to the respondents is to file an application seeking revocation of the leave. Admittedly no such application is filed. It is well settled that the plaint averments should be taken note to decide the jurisdiction of the court. In the decision relied on by the applicant reported in M/s. Scientific Compounds & Processes Private Limited v. M/s. National Soapnut Works, Bangalore (1998 1 L.W. 640), a Division Bench of this court held that,

"The proper course would have been, after the respondent had filed the written statement, an issue could be taken as to the jurisdiction and that could have been dealt with either as a preliminary issue or alongwith other issues on the basis of the evidence that could be let in by the parties."

At this stage, it is not open to the respondents to question the territorial jurisdiction of this court, particularly in the absence of any petition to revoke the leave.

10. The suit is filed on 10.4.2001 quoting the provisions of the new Act. Learned counsel for the respondent brought to the notice of this court that the new Act came into force only on 11-5-2001. As such the suit shall be treated as filed under the old Act viz., Act 2 of 1991 as replied by the learned counsel for the applicant.

11. Before considering the merits of the case, it is absolutely necessary to look into the relevant provisions of the Designs Act, 1911 relating to the case on hand before considering the merits of the submissions made.

12. Section 2(4):

" "Copyright" means the exclusive right to apply a design to any article in any class in which the design is registered."

13. Section 2(5):

" "Design" means only the features of shape, configuration, pattern or ornament applied to any article by any industrial process or means, whether manual,

mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-sec (1) of S.2 of the Trade and Merchandise Marks Act, 1958 or property mark as defined in Section 479 of the Indian Penal Code."

The words shape, configuration, pattern or ornaments employed in this Sub Section are relating to an article. In order to protect the design a proprietor may apply to the Controller General of Patterns, Design and Trade Marks for the registration. When the design is registered, the date of application for registration is taken as date of registration which is evident under Sec.43 of the Act.

14. Section 2(14):

" "Proprietor of a new or original Design:-

(a) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed; and

(b) where any person acquires the design or the right to apply the design to any article either exclusively of the any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and

(c) in any other case, means the author of the design; and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person."

15. Sec.43 of the Designs Act speaks about submitting application for registration of designs. The application must be made in the prescribed form and must be left at the Patents Office in the prescribed manner and must be accompanied by the prescribed fee. The Controller may on the application of any person claiming to be a proprietor of any new or original design not previously published in India register the design under the Act. The condition necessary for registration is the design must be a new and original not published previously. After satisfaction, the authority register the design and issue the necessary certificates. In this case, documents Nos. 1 to 7 are the certificates issued by the authority relating to the products of the petitioner.

16. Section 51-A:

"Cancellation of Registration: -

(1) Any person interested may present a petition for the cancellation of the registration of a design.

(a) at any time, after the registration of the design, to the High Court on any of the following grounds, namely: -

- (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 (1) and (ii) of clause (a).
- (2) An appeal shall lie from any order of the Controller under this section to 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."

Section-51A provides for proceedings in High Court for cancellation of registration of a design. Now the power for cancellation is given to the Controller u/s 19 of the New Act. The cancellation can be done on three grounds under the Old Act under the sub-section as mentioned supra.

17. Section:53:-

"Piracy of registered design:-

- (1) During the existence of copyright 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 design is registered the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to anything with a view to enable the design to be so applied; or
 - (aa) to import for the purposes 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 imitation thereof; or
 - (b) knowing that the design or any fraudulent or obvious imitation 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 publish or cause to be published or exposed for sale of that article.
- (2) If any person acts in contravention of this section, he shall be liable for every contravention.
- (a) to pay to 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

clause (a) shall not exceed one thousand rupees.

(3) When the court makes a decree 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."

Sec.53 creates three separate acts which are unlawful. The first is to apply a design in the way described, the 2nd is to do anything with the view to enable the design to be applied in the way described and the third is to expose or cause to be exposed for sale of the article under conditions specified under head (b). Section-53 is equivalent to Sec.22 of the new Act.

18. Sec.53 (2) (b) gives presumption of originality and new. When a design is registered, the Controller of Patents and Designs is presumed that it is satisfied itself as new and original and issued certificates. Sec.53 (2) (b) gives an option to the registered owner to bring a suit for recovery of damages against the person who infringes and for an injunction and damages.

19. The documents 1 to 7 filed along with the plaint by the applicant are certificates of registration of design relating to different shapes of laminated artificial banana leaf, the product of the applicant hereinunder the provisions of Designs Act, 1911 and the Designs Rules 1933 issued by the Controller General of Patents, Designs and Trade Marks. The said registration is valid for 15 years as mentioned supra. Document No.8 is the caution notice published by the petitioner in various newspapers in different languages. Document No.9 is the copy of the letter of undertaking given by the 3rd respondent to the petitioner on 1.2.2001. Document No.10 is the original cash bills issued by the 4th respondent relating to the purchase of limited artificial lamination banana leave on various dates. Document No. 11 is the original specimen of plaintiffs artificial laminated banana leaves of two shapes, Document No. 12 is the original specimen of respondent's artificial laminated banana leaves. Document No.13 is the phamplet published by the petitioner mentioning their products' features and utility for different type of uses. The respondent filed three specimen of oval shape laminated artificial banana leaves of their products as document No. 2 and the application dated 14.3.2001 filed before the Controller of Patents and Designs, Calcutta is the other document.

20. The products of the applicant and respondents are similar. The shape, pattern, colour of the both products are identical, the nerves of the leaf running in the regular sequential pattern. A general view of the features of both the designs are same and there is no substantial difference. Apparently, the design, shape, pattern of the artificial laminated banana leaves are similar or obvious imitation of that of the applicant.

21. Learned Senior Counsel Mr. P.Chidambaram relying upon the decision reported in Castrot India Ltd. v. Tide Water Oil Co. (I) Ltd., (1996 PTC 16) to show that the registration creates the presumption of originality, when a design is registered, it shall be presumed the Controller of Patents and Designs must

have satisfied that the design was new and original, and also to establish [he infringement of design, the element of confusion or deception is not at all necessary, mere similarity or imitation to the naked eye is sufficient. In the said decision in para-41 it has been held thus:

"For the reasons aforesaid there will be an order of the injunction restraining the respondents Nos.1&2 and each of them by themselves or by their servants or agents or dealers or any of them or otherwise howsoever from infringing/pirating or attempting or causing enabling or assisting others to infringe/pirate the copyright in the registered Design No. 162663 of the petitioner or in any way using a design on containers which is similar to the such registered design of the petitioner."

22. The next decision relied on by the applicant is the one reported in *Salzer Electronics Ltd., v. Senith Mould and Tools Pvt. Ltd.* (1998 PTC 18), to show that the similarity between the designs, the infringement of registration and the registered owner's entitlement for interim injunction. In paras -19&22 of the said decision, it has been held as follows:

" 19. As regard the similarity of the switches of the plaintiff and that of the defendants, by comparison, to a mere look, both are similar. Having found so by the learned single Judge, order of injunction ought to have been granted. If the defendants were to manufacture and sell the switches not similar or identical to the switches of the plaintiff, there was no question of the plaintiff seeking an order of injunction. In our view, in the applications filed by the plaintiff for grant of injunction, direction could not have been given to the defendants to change the colour scheme on the front square plate in order to avoid similarity between the two products. The learned single Judge was not right in giving such a direction in the applications filed by the plaintiff for grant of injunction, as mere change on the front square plate by the defendants was of no consequence. That could not protect the interest of the plaintiff when the plaintiff has made out a prima facie case for grant of injunction."

"22. In our view, in the light of the material placed on record referred to above, the plaintiff has made out a prima facie case for grant of injunction. The plaintiff having turnover and sale figures reaching to Rs. 631.07 lakhs prima facie it could be inferred that they have earned reputation for their switches. Hence the balance of convenience is also in favour of the plaintiff. In case the order of injunction is refused the plaintiff would be put to irreparable loss as well, as the plaintiff alleged that the switches manufactured and sold by the defendants as that of the plaintiff are of inferior quality."

Learned Senior Counsel has also advanced arguments for the necessity of granting interim injunction to restrain the respondents from manufacturing and selling artificial laminated banana leaves which are identical or deceptively similar to the colour scheme, get-up, lay-out and trade dress of the applicant's artificial banana leaves so as to pass off or enable others to pass off the

respondents" goods as and for the applicant's goods.

23. It is brought to the notice of this court that identical and similar goods are produced by the respondents herein and they have been marketing the same either directly or through other agents. The product of the respondents is shown as Document No.12. It is not disputed by the respondents either in the counter or at the time of advancing the arguments by the learned counsel. But on the contrary, the learned counsel for the respondents has put forward a plea that the products of the respondents are totally different. However, I have already come to the conclusion that both the goods are similar, identical and particularly, the respondents' products are nothing but an imitation. It is evident that Document No.2 filed by the respondents also are identical to the applicant's products. It is the case of the applicant herein that the respondents' products are inferior in quality and do not have any of the distinctive qualities of the applicant's innovative product. It is also the case that the respondents products may lead to food poisoning or other health hazards, if used for hot Indian food. The learned Senior Counsel advanced arguments that, the respondents are passing off or enabling others to pass off the imitative products which would affect the goodwill and reputation of the applicant. Learned counsel also pointed out that the respondents are passing off their imitative products even after filing the suit before this court. Learned counsel for the respondents has not controverted the said argument of the learned Senior Counsel. Learned Senior Counsel also relied upon the decision reported in *Ampro Food Products Vs. Ashoka Biscuit Works and Others*, , which relates to Sec. 51A of the Designs Act. In the said decision, it has been held that it is open to the opposite party to claim that the design is not a new or original design in defence to a suit for an injunction based on a registered design if he has not taken any action to have the registration cancelled on that ground, u/s 51A of Designs Act. In para-5 of the decision, it is has been observed as follows:

"I am, therefore, of the view that the learned Additional Chief Judge, City Civil Court was in error in refusing to grant a temporary injunction. The appeal is allowed and a temporary injunction will issue restraining the respondent from using the registered design of the appellant and from selling biscuits bearing that design."

24. Reliance was also placed on behalf of the applicant on the decision reported in *Alert India v. Naveen Plastics* (1997 PTC 17).

This case deals with Section 53 of the Designs Act, 1911. In the said case, both the plaintiffs and the defendants are registered owners of a particular design. The court held that the registration which is earlier in point of time prevails over the latter. In the said decision, the learned Judge dissented the view taken in "*Tobu Case*" and also "*Indo Ashahi*" case and injunction was made absolute. In the said decision in para-44 it is held as follows:

"Plaintiff has also filed a petition u/s 51-A of the Act in this court for cancellation

of the defendant's registered design. In my view in this case the three requirements for grant of temporary injunction, namely, prima-facie case, balance of convenience and possibility of irreparable loss or injury in favour of the plaintiff are made out for the grant of temporary injunction. I accordingly, allow IA No.8597/96 of the plaintiff and confirm ad-interim temporary injunction granted on 19.9.1996 and in the result IA No.9048/96 filed by the defendant is dismissed."

25. It is argued by the learned counsel for the respondents that the laminated paper referred to by the applicants are commonly used for various purposes such as, kite making, chocolate wrapping, packing of pickles, packing of suparis and packing of various edible items for several years. But the purpose or use is irrelevant. Under Sec.51A of the Designs Act, any person interested may present a petition for the cancellation of the registration of a design when the design has been previously registered or published in India prior to the registration and that the said design is not a new or original design. u/s 51A (b), the lime limit is granted to the interested person to apply for cancellation is within a period of one year from the date of registration. Under sub clause (2) of section 51A, an appeal provision also is provided. It is the admitted case of the respondent that till date though they are aware of the registration of the commodity of the applicant under the Act, they have not chosen to invoke the provisions of Section 51A of the Act. The respondent herein also not produced any evidence or records to show that the products of similar nature of applicant's products were published prior to the registration.

26. Learned counsel appearing for the respondents relied on the decision reported in Bishwanath Prasad Radhey Shyam Vs. Hindustan Metal Industries, This case relates to the Patents Act and the facts mentioned in the said decision are not applicable to the case on hand. More-over, the respondents herein have not produced any evidence to show that the similar products of the applicant herein are already available in the market and as such this decision is not applicable to the respondents" case. Learned counsel for the respondent also relied upon the decision reported in The Pilot Pen Co. (India) Private Ltd., Madras Vs. The Gujarat Industries Private Ltd., Bombay, . In this case, the registration of a particular design expired pending suit with the result the injunction was vacated. This decision is also not supporting the case of the respondents in any way. Learned counsel for the respondents next relied on the decision reported in Baldev Singh v. Shriram Footwear (1997 PTC 268). In the said decision, similar product of the plaintiff was already marketed by a reputed concern with the result, injunction was not granted and hence this decision is not applicable to the facts of the case on hand. Learned counsel for the respondents also placed reliance on the decision reported in "Indo Asahi Glass Co., Ltd., v. Jai Mala Roller Glass Ltd., which was followed by "Tobu Enterprises Pvt., Ltd., case and as such this decision also is not applicable to the case on hand. Learned counsel also relied on the decision reported in Ravinder Kumar Gupta v. Ravi Raj Gupta case. In this case, under Sec. 51A of the Act, the registration was cancelled. It is also

not applicable to the present case. Learned counsel for the respondents also relied on the decision reported in the case of Prayag Chand Agarwal Mayur Plastic Industries. In the said case, the ex parte injunction granted was modified and the respondent was permitted to market and sell his products since the defendant has shown some records to the effect that prior to the registration of the design by the plaintiff advertisement was published by the defendant. This case also is not applicable to the present case.

27. It is brought to the notice of this court that the applicant has come to know only on February, 2001 that the respondents are manufacturing and selling the products which are identical with/obvious imitation of the registered design of the applicant without licence or consent and thereby they committed the act of piracy and thereby passing off or enabling others to pass off their artificial laminated banana leaf as those of the applicant and thereby create confusion in the mind of the customers, causing damages to the reputation, goodwill and monetary loss to the applicant besides it is hazardous to the health of the general public. The applicant herein has made out a prima facie case to restrain the respondents from passing off or to enable others to pass off their products.

28. The applicant also prayed for injunction restraining the respondents and their men etc., from in any manner infringing the applicant's copyright in the artistic work in the artificial laminated banana leaves by manufacture and sale which are identical to, or substantial reproduction of applicant's artistic work. u/s 47(1) of the Designs Act, when a design is registered, the registered proprietor of the design shall subject to the provisions of this Act have Copyright in the design during the period from the date of registration. In this case, admittedly the design of the products of the applicant are registered with the competent authority. As such, the applicant is entitled to copyright. The respondents are using this copyright and the design of the applicant by manufacturing identical or deceptively similar products which definitely infringe the registered design under the copyright of the applicant. The object and policy of the Act, is to give statutory protection to the registered owner, viz., the applicant herein. The applicant herein has made out a prima facie case for injunction. Moreover, the balance of convenience also is in their favour. Until the injunctions sought for, are granted, the applicant will be put to great loss. Hence, all these applications deserve to be allowed. Accordingly all the three applications are allowed. No costs.