
(2014) 04 MAD CK 0245
In the Madras High Court
Case No : O.S.A. No. 107 of 2013

Standard Corporation India Ltd.

APPELLANT

Vs

Tractors and Farm Equipment Ltd.

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 4 Rule 1, Order 7 Rule 1, Order 7 Rule 11
Copyright Act, 1911 — Section 16, 31
Copyright Act, 1957 — Section 13, 14, 14(c), 15, 15(2)
Designs Act, 2000 — Section 11, 2, 2(d), 6
Trade Marks Act, 1999 — Section 16

Citation : (2014) 04 MAD CK 0245

Hon'ble Judges : M. Venugopal, J; M. Jaichandren, J

Bench : Division Bench

Judgement

M. Jaichandren, J.—Heard the learned counsels appearing for the parties concerned.

2. This Original Side Appeal has been filed against the order, dated 1.8.2012, made in A. No. 4618 of 2010, in C.S. No. 602 of 2007. The Civil Suit in C.S. No. 602 of 2007, had been filed by the plaintiff in the said suit, the respondent in the present appeal, under Order IV Rule 1 of the Original Side Rules of the High Court of Judicature at Madras and Order VII Rule 1 of the Civil Procedures Code, 1908, read with Sections 51, 55 and 62 of the Copyrights Act, 1957.

3. The respondent herein had filed the suit, in C.S. No. 602 of 2007, praying for the grant of a judgment and decree of permanent injunction, restraining the defendant in the said suit, the appellant herein, its men, agents and others claiming through it from, in any manner, infringing the plaintiffs Copyright in the artistic work in the drawings for its tractors, by substantially reproducing the same for manufacturing, selling and dealing with the STANDARD 348 tractors, parts and fittings manufactured by the appellant and for a permanent injunction restraining the appellant and others claiming through it from, in any manner,

passing off or enabling others to pass off the STANDARD 348 tractors, parts and fittings, which are identical or deceptively similar to the respondent MF 245 DI tractors.

4. The appellant herein had filed an application in Application No. 4618 of 2010, praying for the dismissal of the civil suit, in C.S. No. 602 of 2007, stating that the said suit, filed by the respondent herein, is not maintainable, in view of the statutory bar for the filing of the suit, u/s 15(2) of the Copyright Act, 1957. It had been further stated that the respondent had stated in the plaint filed in the suit that the drawings, which are qualified as artistic work belongs to the plaintiff, exclusively. It had also been stated that they had been used over 100 times, prior to the filing of the said suit. It had also been stated that, u/s 15(2) of the Copyright Act, 1957, the copyright, in respect of any design, which is capable of being registered under the Designs Act, 1911, and not so registered shall cease as soon as any article to which it applies has been reproduced more than 50 times, by any industrial process. It is an admitted fact that the design, in respect of which the respondent has made a claim, had been used more than 50 times. Therefore, the suit filed by the respondent, in C.S. No. 602 of 2007, is statutorily barred, u/s 15(2) of the Copyright Act, 1957.

5. It had also been stated that, in order to avail the statutory protection, the respondent ought to have registered the design in question, under the Designs Act, 1911. Having failed to do so, it would not be open to the respondent to claim exclusive rights over the said design. As such, as no cause of action had arisen for the filing of the suit, by the respondent herein, the suit, in C.S. No. 602 of 2007, is liable to be dismissed, in limine.

6. The learned counsel for the appellant had further stated that no relief against the alleged infringement of passing off can be claimed, in respect of the rights relating to copyrights, patents and designs. A claim can be made only in respect of infringement of such rights, u/s 16 of the Trade Marks Act, 1999.

7. It had been further stated that it is an admitted fact that the respondent has not registered the design in question, falling under the definition of the term "design", as defined u/s 2(d) of the Designs Act, 2000, as per the provisions of the said Act. The definition of the term "design" was narrower and restricted, under the Designs Act, 1911, as compared to its definition under the Designs Act, 2000. To get the necessary protection of the design in question, the respondent ought to have registered the same, as per the procedures prescribed u/s 11 of the Designs Act, 2000, and the Designs Rules, 2001. The design registered under the Designs Act, 2000, would have lesser protection as compared to the protection available under the Copyright Act, 1957. However, an unregistered design, as that of the respondent, cannot have any protection, as claimed by it in the civil suit, in C.S. No. 602 of 2007.

8. It has been further submitted that the relief prayed for by the respondent in the Civil Suit, in C.S. No. 602 of 2007, relating to the order of injunction, in

respect of passing off, is barred, as per the provisions of the Copyright Act, 1957.

9. The learned counsel appearing for the appellant had relied on the decision in *Microfibres Inc. Vs. Girdhar and Co. and Another*, wherein, a Division Bench of the High Court of Delhi has held as follows:

34. Section 6 of the Designs Act, 2000 reads as follows:

6. Registration to be in respect of particular article.--(1) A design may be registered in respect of any or all of the articles comprised in a prescribed class of articles.

(2) Any question arising as to the class within which any article falls shall be determined by the Controller whose decision in the matter shall be final.

(3) Where a design has been registered in respect of any article comprised in a class of article, the application of the proprietor of the design to register it in respect of some one or more other articles comprised in that class of articles shall not be refused, nor shall the registration thereof invalidated--

(a) on the ground of the design not being a new or original design, by reason only that it was so previously registered; or

(b) on the ground of the design having been previously published in India or in any other country, by reason only that it has been applied to article in respect of which it was previously registered:

Provided that such subsequent registration shall not extend the period of copyright in the design beyond that arising from previous registration.

(4) Where any person makes an application for the registration of a design in respect of any article and either-

(a) that design has been previously registered by another person in respect of some other article; or

(b) the design to which the application relates consists of a design previously registered by another person in respect of the same or some other article with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof, then, if at any time while the application is pending the applicant becomes the registered proprietor of the design previously registered, the foregoing provisions of this section shall apply as if at the time of making the application, the applicant, had been the registered proprietor of that design.

A perusal of the above Section 6 clearly indicates that once the design has been registered for a particular article comprised in a class of articles, the subsequent registration of other articles comprised in that class of articles shall not be refused but the subsequent registration shall not extend the period of copyright in the design beyond that arising from the previous registration. It is significant that the subsequent registration has statutorily been mandated not to extend the

period of copyright registration beyond the period beginning from the original registration. This clearly shows the legislative intent of limiting the copyright protection in the design to the initial period of 10 years, extendable by further period of 5 years.

35. However, there can be no quarrel with the plea of Shri Ramachandran that the operation of Section 15(2) of the Copyright Act does not exclude from the ambit of Copyright protection either the original "artistic work" upon which the design is based or the design which by itself is an artistic work. It cannot be disputed that the original paintings/artistic works which may be used to industrially produce the designed article would continue to fall within the meaning of the artistic work defined u/s 2 of the Copyright Act, 1957 and would be entitled to the full period of copyright protection. This is also evident from the definition of the design u/s 2(d) of the Designs Act. This, in our view, in fact is a factor which would go against the appellants in construing the nature of protection to be given to the original artistic work such as a painting, as contrasted with the applied artistic work that is the design, which in the present case does not mean the intermediary medium such as a mould, engraving devised/produced only to enable industrial application of the painting to produce the furnishing products of the appellant. Thus, while the original painting would indeed be entitled to the copyright protection, the commercial/industrial manifestation of such paintings such as the design derived from and founded upon the original painting for the purpose of industrial production of furnishings would only be covered by the limitations placed in Section 15 of the Copyright Act and would get protection if registered as a design under the Designs Act but would enjoy lesser period of protection in case of a registered design.

44. We cannot accede to the plea of Shri Sanjay Jain that the intention of creating an artistic work would determine as to which enactment applies. The artist's intent at the time of creation of the artistic work is indecipherable at the best of times. Artists are governed more often than not by their emotions and moods and whatever be the intention at the time of the creation of the artistic work cannot, in our view, determine the nature of protection available to the artistic work. Indeed such a plea of Shri Ramachandran has already been rejected by us, as the stupendous and commercial success of a particular artistic work may spur on the artist to permit commercial utilization and exploitation of such a work of art. To this extent, we agree with Mr. Praveen Anand that an intention of creation is difficult to ascertain and cannot form the basis of determining the rights. Thus, even if the original painting was intended to be created only as a work of art, a latter intention may transform it by its industrial application into a commercially viable object. To this extent, we agree with the plea of Shri Sanjay Jain that once the artistic work, by industrial application transforms into a commercially marketable artifact its design falls within the domain of the Designs Act and the protection to the design founded upon the artistic work is limited by section 15 of the Copyright Act and the provisions of the Designs Act.

45. Learned counsel Shri Praveen Anand, appearing on behalf of the appellant in FAO (OS) No. 447/2008 has contended that there is a vital difference between the subject matter of copyright and design protection. In our view, while this plea is sustainable, nevertheless, it cannot be ignored that different kinds of protection for an artistic work, and the design founded upon the artistic work which is industrially and commercially exploited, has been intended by the Legislature. He has further submitted that what stands extinguished u/s 15 of the Copyright Act is the copyright in the design itself as applied to an article and not the copyright in the artistic work itself. There is no quarrel with this proposition. However, that does not advance the case of the appellant. We do hold that in the original work of art, copyright would exist and the author/holder would continue enjoying the longer protection granted under the Copyright Act in respect of the original artistic work. Thus, for instance a famous painting will continue to enjoy the protection available to an artistic work under the Copyright Act. A design created from such a painting for the purpose of industrial application on an article so as to produce an article which has features of shape, or configuration or pattern or ornament or composition of lines or colours and which appeals to the eye would also be entitled design protection in terms of the provisions of the Designs Act. Therefore, if the design is registered under the Designs Act, the Design would lose its copyright protection under the Copyright Act but not the original painting. If it is a design registrable under the Designs Act but has not so been registered, the Design would continue to enjoy copyright protection under the Act so long as the threshold limit of its application on an article by an industrial process for more than 50 times is reached. But once that limit is crossed, it would lose its copyright protection under the Copyright Act. This interpretation, in our view, would harmonize the Copyright and the Designs Act in accordance with the legislative intent.

46. We thus summarize our findings as follows:-

- a. The definition of "artistic work" has a very wide connotation as it is not circumscribed by any limitation of the work possessing any artistic quality. Even an abstract work, such as a few lines or curves arbitrarily drawn would qualify as an artistic work. It may be two dimensional or three dimensional. The artistic work may or may not have visual appeal.
- b. The rights to which a holder of an original artistic work is entitled are enumerated in Section 14(c) of the Copyright act.
- c. It is the exclusive right of the holder of a Copyright in an original artistic work to reproduce the work in any material form. For example, a drawing of an imaginary futuristic automobile, which is an original artistic work, may be reproduced in the three-dimensional material form using an element, such as a metal sheet.
- d. The design protection in case of registered works under the Designs Act cannot be extended to include the copyright protection to the works which were

industrially produced.

e. A perusal of the Copyright Act and the Designs Act and indeed the Preamble and the Statement of Objects and Reasons of the Designs Act makes it clear that the legislative intent was to grant a higher protection to pure original artistic works such as paintings, sculptures etc and lesser protection to design activity which is commercial in nature. The legislative intent is, thus, clear that the protection accorded to a work which is commercial in nature is lesser than and not to be equated with the protection granted to a work of pure art.

f. The original paintings/artistic works which may be used to industrially produce the designed article would continue to fall within the meaning of the artistic work defined u/s 2(c) of the Copyright Act, 1957 and would be entitled to the full period of copyright protection as evident from the definition of the design u/s 2(d) of the Designs Act. However, the intention of producing the artistic work is not relevant.

g. This is precisely why the legislature not only limited the protection by mandating that the copyright shall cease under the Copyright Act in a registered design but in addition, also deprived copyright protection to designs capable of being registered under the Designs Act, but not so registered, as soon as the concerned design had been applied more than 50 times by industrial process by the owner of the copyright or his licensee.

h. In the original work of art, copyright would exist and the author/holder would continue enjoying the longer protection granted under the Copyright Act in respect of the original artistic work per se.

i. If the design is registered under the Designs Act, the Design would lose its copyright protection under the Copyright Act. If it is a design registrable under the Designs Act but has not so been registered, the Design would continue to enjoy copyright protection under the Act so long as the threshold limit of its application on an article by an industrial process for more than 50 times is reached. But once that limit is crossed, it would lose its copyright protection under the Copyright Act. This interpretation would harmonize the Copyright and the Designs Act in accordance with the legislative intent.

10. He had also relied on the decision of the Division Bench of this Court reported in *Manjeh Cine Productions Vs. A. Sundaresan and Another*, wherein, it had been held as follows:

Section 15 declares that no copyright shall subsist in any design registered under the Indian Patents and Designs Act, 1911. Sub-Section (2) of this section deals with a particular design which is capable of being registered under the Indian Patents and Designs Act, 1911, but, which has not been so registered. Such design shall cease as soon as any article to which the design has been applied has been reproduced more than 50 times by an industrial process by the owner of the copyright or, with his licence, by any other person. Then we have Section

16 which makes it clear that there shall be no copyright except as provided in the Act. Copyright, therefore, is a creation of the statute. Might be that it originally subsisted under the common law. But has been replaced by the statute law and copyright subsists as provided by the Copyright Act, 1957, and by virtue of and subject to its provisions. No person u/s 16 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 the Act or of any other law for the time being in force.

As we have mentioned already, it merely says that 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 Act. This is merely to say that copyright is a creation of the statute. Unless the person who claims copyright can point out to Section 14 and then substantiate that he comes thereunder, he fails to establish copyright. That is all the effect of Section 16.

11. In Time Warner Entertainment Company, L.p. and Others Vs. RPG Netcom, , the Division Bench of the High Court of Delhi had held as follows:

1. These appeals involve a common question of law and arise out of a common impugned Order dated 30th January, 2006 passed in eight different suits. As the facts and issues involved in these Appeals are similar, they are being disposed of by this common Order.

2. The appellants herein are plaintiffs who have filed eight suits seeking permanent injunction against the defendant in each suit. Each defendant is providing cable television services through their associate or affiliated companies, agents, franchises or distributors.

6. The object of copyright law is to prevent copying of physical material and form in the field of literature and art. It is essentially a negative right given to the author, in the sense that the Act does not confer the owner with a right to publish his work but the right to prevent third parties from doing that which the owner is solely allowed to do under the Act. The term "author" has been defined in Section 2(d)1 of the Act in relation to a cinematographic film to mean "owner of the film at the time of its completion". For determining the "author" in relation to a cinematographic film we have to find out the time when the film was completed and the person who was the owner of the film at the time of its completion. "owner" of the film when it is under production or before its completion is not regarded as the author of a cinematographic film within the meaning of Section 2(d) of the Act. Copyright exists in the material object but not in the idea. The object of copyright is not to create any legal or intellectual property rights in the idea but in the final object or the work which is created as a result of the effort made to give a "physical" shape to an idea. Copyright exists in the "work" 2 as defined in Section 2(y) of the Act and includes a cinematographic film.

7. Section 13 of the Act provides that subject to the provisions of the said

Section and other provisions of the Act, copyright shall subsist throughout India in the classes of works specified in the Section which includes "cinematographic film". A reading of Section 13 thus makes it clear that a statutory right has been created in respect of properties mentioned in Section 13, including, cinematographic films. Section 13 of the Act stipulates that right to claim copyright is subject to the provisions of the said Section and the other provisions of the Act and does not exist de hors and outside the Act. It is the right created under the statute and no right outside the said Act can be claimed. This becomes clear when we examine Sections 14, 16 and 55 of the Act. Section 144 of the Act states that copyright means exclusive right by virtue of and subject to the provisions of the Act. Section 165 of the Act further stipulates that no person shall be entitled to copyright or any other similar right in any work whether published or unpublished otherwise than under and in accordance with the Act or any other law for the time being in force i.e. when the said Act was enacted, but it shall not affect or abrogate any right based on breach of trust or confidence.

8. Section 55 of the Act provides for civil remedies in cases of infringement of copyright. The said provision empowers and authorises owner of a copyright to remedies by way of injunction/damages or otherwise as may be conferred, on infringement of a right under the Act in respect of any work.

9. In view of the above provisions, it is not possible to accept the contention of the appellants-plaintiffs that they are entitled to injunction under the law of tort. The Act itself stipulates and specifically confers statutory rights in respect of copyright and also provides for remedies where there is infringement of the statutory right. Section 16 of the Act specifically bars a person from claiming copyright or any other similar right in any work otherwise than in accordance with the provisions of the Act itself or any other law in force. Copyright exists and can be claimed only in accordance with the provisions of the Act or under any law which was in force at the time when the Act was enacted. The appellant-plaintiffs cannot claim copyright and sue for infringement of copyright de-hors the Act. Common law rights under copyright law were abrogated earlier by Section 31 of the Copyright Act, 1911, which was enacted to amend and consolidate the law relating to copyright. Section 31 of the Copyright Act, 1911 read as under:

Section 31. Abrogation of common law rights.-No person shall be entitled to copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment 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.

10. The aforesaid provision, therefore, had the effect of abrogating all common law rights as they existed. A person, therefore, was entitled to copyright only under the provisions of the said Act and any other statutory enactment in force when the Copyright Act, 1911 was enacted. Section 16 of the Act has to be read

in the light of Section 31 of the Copyright Act, 1911.

12. The learned counsel appearing for the appellant had also relied on the decision, in *I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others*, , relating to the rejection of the plaint. The relevant paragraphs of the said decision are as follows:

12. The first point here is whether the power to reject the plaint under Order 7 Rule 11 C.P.C. can be exercised even after the framing of issues, and when the matter is posted for evidence. This point has arisen because the Division Bench of the High Court has referred to this aspect while dismissing the appeal.

13. We may stated that in the context of Order 7 Rule 11 C.P.C., a contention that once issues have been framed, the matter has necessarily to go to trial has been clearly rejected by this Court in *Azhar Hussain Vs. Rajiv Gandhi*, as follows:

In substance, the argument is that the Court must proceed with the trial, record the evidence, and only after the trial....is concluded that the powers under the CPC for dealing with a defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court

The above said judgment which related to an election petition is clearly applicable to suits also and was followed in *Samar Singh Vs. Kedar Nath alias K.N. Singh and Others*, . We therefore hold that the fact that issues have been framed in the suit cannot come in the way of consideration of this application filed by the appellant under Order 7 Rule 11 C.P.C.

13. The learned counsel had also relied on the decision in *Tej Kiran Jain and Others Vs. N. Sanjiva Reddy and Others*, , wherein it had been held that the plaint in a suit is liable to be rejected under order 7 Rule 11 clause (d) of the Civil Procedure Code, according to which the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law.

14. In *Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another*, , the Supreme Court had held as follows:

133. The idea underlying Order 7 Rule 11(a) is that when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of a suit. Having regard to the changes in the legislative policy as adumbrated by the amendments carried out in the Code of Civil Procedure, the Courts would interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose. A litigation which in the opinion of the court is doomed to fail would not further be allowed to be used as a device to harass a litigant. (See *Azhar Hussain Vs. Rajiv Gandhi*,).

135. Yet again in *Samar Singh Vs. Kedar Nath alias K.N. Singh and Others*, it has been held:

In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the CPC for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent.

139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in its entirety, a decree would be passed.

146. It may be true that Order 7 Rule 11(a) although authorises the court to reject a plaint on failure on the part of the plaintiff to disclose a cause of action but the same would not mean that the averments made therein or a document upon which reliance has been placed although discloses a cause of action, the plaint would be rejected on the ground that such averments are not sufficient to prove the facts stated therein for the purpose of obtaining reliefs claimed in the suit. The approach adopted by the High Court, in this behalf, in our opinion, is not correct.

147. In *D. Ramachandran Vs. R.V. Janakiraman and Others*, , this Court had held:

It is well settled that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such. The court cannot probe into the facts on the basis of the controversy raised in the counter.

15. In *Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi*, , the Supreme Court had held as follows:

10. The question arises as to whether in the background of facts already stated, such reliefs can be granted to the plaintiff. Unless there is a term to the contrary in the contract of service, a transfer order is a normal incidence of service. Further it is to be considered that if the plaintiff does not comply with the transfer order it may ultimately lead to termination of service.

Therefore, a declaration that the transfer order is illegal and void, in fact amounts to imposing the plaintiff on the defendant inspite of the fact that the

plaintiff allegedly does not obey order of her superiors in the Management of the defendant Company. Such a relief cannot be granted. Next relief sought in the plaint is for a declaration that she continues to be in service of the defendant Company. Such a declaration again amounts to enforcing a contract of personal service which is barred under the law. The third relief sought by the plaintiff is a permanent injunction to restrain the defendant from holding an enquiry against her. If the management feels that the plaintiff is not complying with its directions it has a right to decide to hold an enquiry against her. The management cannot be restrained from exercising its discretion in this behalf. Ultimately, this relief, if granted, would indirectly mean that the court is assisting the plaintiff in continuing with her employment with the defendant Company, which is nothing but enforcing a contract of personal service. Thus, none of the reliefs sought in the plaint can be granted to the plaintiff under the law. The question then arises as to whether such a suit should be allowed to continue and go for trial. The answer in our view is clear, that is, such a suit should be thrown at the threshold. Why should a suit which is bound to be dismissed for want of jurisdiction of a court to grant the reliefs prayed for, to be tried at all? Accordingly, we hold that the trial court was absolutely right in rejecting the plaint and the lower appellate court rightly affirmed the decision of the trial court in this behalf. The High Court was clearly in error in passing the impugned judgment whereby the suit was restored and remanded to the trial court for being decided on merits. The judgment of the High Court is hereby set aside and the judgments of the courts below, that is, the trial court and the lower appellate court are restored. The plaint in the suit stands rejected.

16. The learned counsel for the appellant had submitted that in the given facts and circumstances of the case and in view of the decisions cited *supra*, the suit filed by the respondents, in C.S. No. 602 of 2007, is not maintainable in law and therefore, the plaint filed in the said suit is to be rejected, in limine.

17. Per contra, Mr. P.S. Raman, the learned senior counsel for the respondent, had submitted that the contentions raised on behalf of the appellant, with regard to the rejection of the plaint filed by the respondent, in the civil suit, in C.S. No. 602 of 2007, cannot be accepted. The appellant has been imitating the industrial drawings of the respondent relating to the parts of the MF 245 DI tractors being manufactured by the respondent and sold in many countries in Asia.

18. The learned senior counsel for the respondent had further submitted that the MF 245 DI tractors manufactured by the respondent is a popular model. The respondent has sold hundreds of such tractors to many parts of India and they had also been exported to other countries. The respondent has been manufacturing the three dimensional tractors by using the two dimensional drawings. The said drawings qualified as artistic works and they are subject to copyright protection, as they belong to the respondent, exclusively. As such, the respondent is entitled to prevent others from reproducing the drawings in any manner. While so, the appellant had been selling STANDARD 348 model tractors,

which are identical to the MF 245 DI and MF 1035 DI model tractors being manufactured and sold by the respondents.

19. The learned senior counsel for the respondent had further submitted that the appellant had made a slavish imitation of the tractors manufactured by the respondent, even though the appellant has no right or authority to use the drawings belonging to the respondent.

20. The learned senior counsel had further submitted that it would not be open to the appellant to pray before this Court that the plaint filed by the respondent in the suit, in C.S. No. 602 of 2007, is to be rejected, in limine. In fact, the plaint cannot be rejected, as prayed for by the appellant, if there are triable issues. As per Clause 2 of Section 15 of the Copyright Act, 1957, a copyright of any design, which is capable of being registered under the Designs Act, 2000, but which has not been so registered, shall cease as soon as any article to which the design applies, if it has been reproduced more than fifty times, by an industrial process, by the owner of the copyright or with his licence, by any other person. However, there is no doubt that a design, which is functional in nature and which has certain functional features, cannot be registered as a design. The definition of the term design is found in clause (d) of Section 2 of the Designs Act, 2000. The said definition of the term design is wider in nature, as compared to its definition found under the provisions of the Designs Act, 1911.

21. The learned senior counsel appearing for the respondent had also submitted that it is open to the respondent to seek an action against the appellant, in respect of passing off, by way of a civil suit, as it is a remedy against "deceit", under the law of Torts. However, the relief in respect of product passing off may not be available under the Copyright Act, 1957.

22. The learned senior counsel had further submitted that the learned single Judge had passed the impugned order, dated 1.8.2012, in Application No. 4618 of 2010, considering all the relevant factors for rejecting the request of the appellant in the said application. The learned single Judge had rightly held that it is not open to the appellant to state that the averments in the plaint do not constitute a cause of action, for the filing of the suit, by the respondent. It had also been rightly held that the provisions of Order 7 Rule 11 of the Civil Procedures Code, 1908, may not be invoked by the appellant, for the rejection of the plaint, filed by the respondent, in the civil suit, in C.S. No. 602 of 2007, as the appellant had not substantiated its claim that the suit filed by the respondent is barred by law.

23. The learned senior counsel had also relied on the decision of this Court, made in Mariappan Vs. A.R. Safiullah, Mr. Dainel, Jayam Industries, by an order, dated 30.6.2008, in O.S.A. Nos. 263 and 283 of 2006, wherein, it had been held that even assuming that the application, under Order 39 Rules 1 and 2 of the Civil Procedure Code, 1908, is not maintainable, in the absence of pleadings regarding the common law right, the Court can invoke Section 151 of the Civil

Procedures Code for granting an order of interim injunction.

24. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available, and in view of the decisions cited supra, we are of the considered view that the appellant has not shown sufficient cause or reason for this Court to interfere with the order of the learned single Judge, dated 1.8.2012, made in A. No. 4618 of 2010, in C.S. No. 602 of 2007.

25. The learned single Judge, in her order, dated 1.8.2012, had clearly held that the plaint filed by the respondent, in the civil suit, in C.S. No. 602 of 2007, cannot be rejected, in limine, in view of the triable issues, which had arisen for the consideration of the Court. Further, the relief prayed for by the respondent in the said civil suit cannot be held as barred by law.

26. The respondent had shown, before the learned single Judge that a prima facie case had existed and that the balance of conveyance was in its favour. Further, it had been shown that if an order of interim injunction was not granted, it would cause irreparable harm and loss to the respondent. Therefore, the learned single Judge had rightly held that Order VII Rule 11 of the Civil Procedures Code, 1908, could be invoked only in specific cases mentioned thereunder, as such provisions are to be read narrowly.

27. A right existing in a person or an entity to seek certain reliefs before a Court of law, when disputes had arisen, cannot be curbed, at the outset, without having proper reasons to do so. As there are triable issues, which are to be decided in the civil suit, in C.S. No. 602 of 2007, we are of the considered view that the present original side appeal is liable to fail. Therefore, for the reasons stated above, we find it appropriate to dismiss the original side appeal. Hence, it is dismissed. No costs. However, we find it appropriate to make it clear that the observations made by the learned single Judge, in paragraph No. 33 of her order, dated 1.8.2012, made in A. No. 4618 of 2010, in C.S. No. 602 of 2007, relating to the merits of the issues raised before the Court, in the civil suit, in C.S. No. 602 of 2007, are to be taken only as prima facie findings of the Court and it ought not to have any influence on the final decision to be made by the Court in the said civil suit. No costs. Connected M.P. No. 1 of 2013 is closed.