

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) 131/2009, 157/2009 & 183/2009**

Reserved on: July 8, 2009.

% Pronounced on: August 13, 2009.

1. **FAO(OS) 131/2009 & CM 8410/2009**

JAININDER JAIN & ORS. Appellant

! Through : Mr Dushyant Dave, Sr. Advocate with
Mr.Ramesh Singh and Mr Navin Chawla, Advocates

versus

\$ ARIHANT JAIN & ORS. Respondent

^ Through : Mr Sandeep Sethi, Sr.Advocate with Mr
Amarjit Singh, Mr Mahendra Rana and Mr Dhruva
Bhagat, Advocates.

2. **FAO(OS) 157/2009 & CM 5965/2009**

JAININDER JAIN & ORS. Appellant

! Through Mr Dushyant Dave, Sr. Advocate with Mr
Ramesh Singh and Mr Navin Chawla,
Advocates

versus

\$ ARIHANT JAIN & ORS. Respondent

^ Through Mr Sandeep Sethi, Sr.Advocate with Mr
Amarjit Singh, Mr Mahendra Rana and Mr Dhruva
Bhagat, Advocates.

3. FAO(OS) 183/2009 & CM 6743/2009

KIRAN JAIN Appellant

! Through Mr Dushyant Dave, Sr. Advocate with Mr
Ramesh Singh and Mr Navin Chawla, Advocates

versus

\$ ARIHANT JAIN & ORS. Respondent

^ Through Mr Sandeep Sethi, Sr. Advocate with
Mr. Amarjit Singh, Mr Mahendra Rana and Mr Dhruva
Bhagat, Advocates.

CORAM:

THE HON'BLE MR. JUSTICE VIKRAMAJIT SEN

THE HON'BLE MR. JUSTICE V.K.JAIN

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Judgment should be reported in the Digest? Yes

V.K.Jain, J.

1. These Appeals are directed against the common Order dated 8.4.2009 passed in IA 2552/2004 in CS(OS) No.155/2004, IA 2551/2004 in CS(OS) No.156/2004, IA 2550/2004 in CS(OS) No.157/2004, whereby the status quo order dated 7.1.97 passed in CS(OS) No.156/04 was vacated and the appellants were restrained from using the trademark

“Kangaro” for stationery items, till the final disposal of these suits. The brief facts, giving rise to these appeals are as under.

2. Late Shri Janki Dass Jain, father of Shri Arihant Jain, Jaininder Jain and Shri Vishwa Jain, who was doing business in the name and style of M/s.Kangaro Industries (Regd.) as its sole proprietor, adopted and started using trademark “**KANGARO**”. On 3.3.1963, late Shri Janki Dass Jain and his son Arihant Jain, vide partnership deed dated 3.4.1963, agreed to become partners in M/s.Kangaro Industries (Regd.), with share of Shri Janki Dass Jain at 63 per cent and that of Shri Arihant Jain at 37 per cent. On 1.4.1974, Shri Vishwa Jain and Mrs. Kiran Jain, (wife of Shri Jaininder Jain), joined as partners in M/s.Kangaro Industries (Regd.). Shri Vishwa Jain having retired on 31.3.1978, late Shri Janki Dass Jain, Shri Arihant Jain and Mrs. Kiran Jain, continued as partners of the said firm, with effect from 1.4.1978. Vide Retirement Deed dated 31.3.1995, Mrs.Kiran Jain, retired from the partnership business and remaining two partners, namely, Shri Janki Dass Jain and Shri Arihant Jain continued the partnership business. At the time of retirement of Mrs.Kiran Jain, it was agreed that she would be paid the amount standing to the credit of her capital account on 31.3.1995. A fresh partnership deed was executed on 1.4.1995 whereby Shri Vishwa Jain and Mrs. Neelam Jain, were admitted as partners of M/s.Kangaro Industries (Regd.). Vide Retirement Deed dated 15.5.1995, late Shri Janki Dass Jain also retired from the firm. The remaining partners, namely, Shri Arihant Jain, Shri Vishwa Jain, Mrs. Raman Jain, (wife of Shri Arihant Jain) and Mrs.Neelam Jain,

(wife of Shri Vishwa Jain) continued as the partners of M/s.Kangaro Industries (Regd.).

3. One firm, M/s.Kanin India was started on 1.4.1989 with Shri Jaininder Jain and Mrs.Neelam Jain as its partners. On 1.1.1995, Shri Arihant Jain, Shri Vishwa Jain, Mrs. Raman Jain, Mr.Amrish Jain, and Mrs. Rachna Jain were taken as partners in this firm. Vide Retirement Deed dated 31.3.1995, Jaininder Jain retired from this firm and thereafter a fresh Partnership Deed was executed on 1.4.1995 between the remaining partners of this firm. On 15.5.1995, Shri Amrish Jain and Mrs.Archana Jain also retired from this firm and a new Partnership Deed was executed on 16.5.1995 amongst the remaining four partners of the firm.

A third firm, M/s.Jain Manufacturing Company was formed in the year 1978 with Mrs.Saraswati Jain, Mr.Vishwa Jain and Mrs.Rachna Jain, as its partners. After death of Mrs. Saraswati Jain, in the year 1988, Shri Vishwa Jain and Mrs.Rachna Jain, continued as its partners. Shri Janki Dass Jain, Shri Jaininder Jain and Mrs.Kiran Jain were admitted as its new partners on 1.1.1995. Shri Vishwa Jain and Mrs.Rachna Jain retired from this firm on 31.3.1995 and a fresh Partnership Deed was executed amongst the other remaining partners, namely, Janki Dass Jain, Jaininder Jain and Mrs.Kiran Jain on 1.4.1995.

4. On 10.4.1995, an Arbitration Agreement was executed between Shri Arihant Jain, Shri Jaininder Jain and Shri Vishwa Jain whereby they appointed Shri Ram Kumar Jain and Shri Raj Kumar Behl as the

arbitrators to settle the dispute that had arisen amongst them from time to time. They also decided not to challenge the decision of arbitrators in the Court of Law. The arbitrators were required to give verdict on the land, building and machinery of M/s.Kangaro Industries (Regd.), M/s.Jain Manufactured Company, M/s.Kenning, M/s.Kangaro Industries Pvt. Ltd. and M/s.Kanning India Private Ltd. They were also to give decision on the working of Jindal Stationary Machinery Company. They further agreed that if there was any issue left unresolved, the same will also be referred to the Arbitrators and will be binding on them.

5. A perusal of the Minutes of the Meeting held on 10.4.1995 in the presence of the Arbitrators and Shri Janki Dass Jain would show that, inter alia, the following decisions were taken in that meeting:

"Part-I:

"That Sh. Jaininder Jain will own the following properties & business:

...

(E) He will also be the sole owner of 'Kangaro' as trade mark after 31st March 1996, but he shall have no right on 'Kangaro' as trade name.

(F) He will also be the sole owner of 'Kanin' as trade name but he shall have no right on 'Kanin' as trade mark after 31.03.96.

(G) However, he shall not be eligible to join hands with the 3rd person to use 'Kangaro' as trade mark or 'Kanin' as trade name until & unless he has his own interest of minimum 49% upto the year 31.3.2000.

...

(K) He will be manufacturing Index File Clip at Plot No.840-Industrial Area 'A' & Stapler

*HP-45, Stapler m-10, Staple Remover SR-300, Stapler HD-10N and Stapler HD-10D at Faridabad under “**Kangaro**” trade mark after 31.03.96, but he will be allowed to use ‘**Kanin**’ also as trade mark upto 31.03.96 only.*

(L) He will not manufacture any identical item manufactured by Mr.Arihant Jain & Mr.Vishwa Jain upto 31.03.1998.

....

Part-II

That Mr. Arihant Jain & Vishwa Jain will own the following properties & business:-

*4) They will be the sole owners of ‘**Kanin**’ as trade mark after 31.03.96, but they shall have no right on ‘**Kanin**’ as trade name.*

*5) They will also be the sole owners of ‘**Kangaro**’ as trade name, but they shall have no right on ‘**Kangaro**’ as trade mark after 31.03.96.*

*6) However, they shall not be eligible to join hands with the 3rd person to use ‘**Kanin**’ as trade mark or ‘**Kangaro**’ as trade name until and unless they have their own interest of minimum 49% upto the year 31.3.2000.*

....

*10) They will be manufacturing all types of Paper Punches being manufactured by the group till 31.03.95 along with staplers manufactured by the group till 31.03.95 except Stapler No.HD-10N, HD-10D, M-10, HP-45 & Staple Remover SR-300. They will also be manufacturing Board Clip & Single Punch & all the other items under “**Kanin**” as trade mark after 31.03.96, but they will be allowed to use ‘**Kangaro**’ also as trade mark upto 31.03.96.*

11) They will not manufacture any identical item manufactured by Mr.Jaininder

Jain upto 31.03.98 except INDEX FILE CLIP, which they will be allowed to manufacture after 31.03.96 in 'Kanin' trade mark which can be identical or may be different."

This document was signed by Shri Arihant Jain, Shri Jaininder Jain and Shri Vishwa Jain and also by their father, Shri Janki Dass Jain and both the arbitrators.

6. Two disputed pages purporting to be an agreement later than 14.4.95 and signed by all the 3 brothers, their father and the arbitrators have been filed by the respondents, but, denied by the appellants. To the extent they are relevant for the purpose of these appeals, these two disputed pages stipulate as under:-

"That Sh. Jaininder Jain will be manufacturing Stapler Models No. 10-N, 10-D, HD-45, 555 & 999 alongwith Index File Clips. Sales of which has been expected to the tune of Rs.5.50 crores in the unit Kanin (India). Focal Point Given to him.

That Mr. Arihant Jain & Mr. Vishwa Jain will be manufacturing all types of Paper Punches, Staple No.10, Model 10-B, HP-10, 10-JA, 45-L, HP-45, M-10, Staple remover & HD-12S-17 & any other model if left therein, sales of which is expected to the tune of Rs. 11.00 crores. All types of Paper Punches means No.52, 280, 480, 500, 600, 600P, 4 Hole, 700 & Board Clip, 520, 540, 560 model 800 & Single Punch. That no identical model will be manufactured by any of the party upto three years i.e. upto 31.3.98."

7. The trade mark '**KANGARO**' which is the bone of contention in these Appeals stands registered as per details given below:-

M/s. Kangaro Industries (Regd.)

REGISTERED TRADE MARK NO.	CLASS	GOODS	DATE OF REGISTRATION
376224	16	Paper Punches and Board Clips	25.5.1981
384556	16	Staple Presses (Office use) and other staples thereof.	23.12.1981
463530	07	Punching Machine	24.11.1986
486516	08	Hand Tools	26.02.1988

M/s.Jain Manufacturing Company

REGISTERED TRADE MARK NO.	CLASS	GOODS	DATE OF REGISTRATION
486510	16	Index File Clip	26.2.1988

8. Registrar of Trade Mark carried out amendments in the Register of Trade Marks, in terms of deeds executed on 31.3.1995 and 1.4.1995. His order was challenged by the appellants in this court vide CO 4/97. Their petition was dismissed by the learned single Judge. That order was upheld by a Division Bench and Special Leave Petition against the order of the Division Bench was also dismissed by the Hon'ble Supreme Court. The appellant Jaininder Kumar Jain had in the meanwhile filed a civil suit setting up the family settlement dated 14.4.95. His wife, appellant Kiran

Jain also filed a civil suit to assert her own right. A civil suit was also filed by the respondents. Injunction against use of Trade Mark "Kangaro" by the opposite group was claimed by both the groups; during pendency of civil suits. All the 3 suits were filed in Ludhiana. An order granting status quo, as regards use of Trade Mark "Kangaro" was passed by Civil Court at Ludhiana on 7.1.1997. Later, all the 3 suits were transferred to this court.

Vide impugned order dated 8.4.09, learned single Judge vacated the status quo order and granted injunction, to the respondents, restraining the appellants, from using the trademark "Kangaro" during pendency of the suits. Being dissatisfied, the appellants have challenged the order passed by the learned single Judge.

9. It is an admitted case that M/s. Kangaro Industries (Regd.) holds four registered trademarks bearing Nos. 376224, 384556, 463530 and 486516 in respect of Paper Punchs and Board Clips, Staple Presses (Office use) and other staples thereof, Punching Machine and Hand Tools whereas Jain Manufacturing Co. holds registered trademark No.486510 in respect of Index File Clip. Admittedly, Smt. Kiran Jain w/o Sh. Jaininder Jain retired from M/s Kangaro Industries (Regd.) with effect from 31.03.1995. Shri Jaininder Jain was never a partner of M/s Kangaroo Industries (Regd.) In terms of clause 3 of the Retirement Deed, whereby Smt. Kiran Jain retired from M/s Kangaro Industries (Regd.), the business, goodwill, property, assets etc. of the firm came to be vested in the continuing partners i.e. Mr. Arihant Jain and Janki Dass

Jain. Sh. Janki Dass Jain having retired on 15th May, 1995, all the properties and assets of M/s Kangaro Industries (Regd.) came to be vested in Shri Arihant Jain and in Sh. Vishwa Jain, Mrs. Raman Jain and Mrs. Neelam Jain who were inducted as partners with effect from 1st April, 1995, after retirement of Smt. Kiran Jain. After retirement of Sh. Vishwa Jain and Mrs. Raman Jain from M/s Jain Manufacturing Company on 31st March, 1995, all the properties and assets of M/s Jain Manufacturing Company came to be vested in Shri Janki Dass Jain, Sh. Jaininder Jain and Mrs. Kiran Jain who were the continuing partners with effect from 1.4.95, as Clause 3 of the Retirement Deed provided that the business, goodwill, property and assets of the partnership will be held by the continuing partners.

If the rights of the parties are determined only on the basis of the Dissolution Deeds dated 31st March, 1995, coupled with Retirement Deed of Sh. Janki Dass Jain, the right to use trademark "Kangaro" vide registration Nos. 376224, 384556, 463530 and 486516 would vest solely in the existing partners of M/s Kangaro Industries (Regd.) and none of the appellants would have any right to use this trademark. Similarly, if the parties are governed only by the Retirement Deeds, registered trademark No.486510 in respect of Index File Clip can be used only by the appellants, who are the partners of M/s Jain Manufacturing Company.

10. However, a sea change in the rights of the parties seems to have been brought about by documents executed on and after 10.4.1995. It is an admitted case that the Arbitration Agreement dated 10th April, 1995

bears signature of all the three brothers, their father and both the arbitrators named in the agreement. It is also an admitted case that the document dated 14th April, 1995, which is termed as a family settlement by the appellant and as a proposal/counter proposal by the respondents is also signed by all the three brothers, namely, Arihant Jain, Vishwa Jain, Jaininder Jain, their father, Sh. Janki Dass Jain, and both the arbitrators. The case of the appellants is that the document dated 14th April, 1995 ran into six pages whereas the case of the respondents is that this document ran into 8 pages. We have perused the disputed two pages. During the course of arguments, it was not disputed before us that these two pages are in the hand of respondent Sh. Arihant Jain, who had written the arbitration agreement dated 10th April, 1995 as well as the document dated 14th April, 1995 consisting of six papers. These two disputed pages, hereinafter referred to by us as 'Supplementary Settlement', purport to bear the signature of the same persons who have signed the arbitration agreement dated 10th April, 1995 and the document dated 14th April, 1995. The original documents have not been filed by either party and the same are stated to be in possession of the arbitrators. We have ourselves compared the signatures on the Supplementary Settlement, with the admitted signatures on the arbitration agreement dated 10th April, 1995 and the admitted document dated 14th April, 1995. Prima facie, we are of the opinion that the persons who signed the arbitration agreement dated 10th April, 1995 and the admitted document dated 14th April, 1995 also signed this supplementary settlement. In any case, as far as the respondents are concerned, they do

not deny the execution of document referred to by as a 'Supplementary Settlement.' We, therefore, are of the view that the document dated 14th April, 1995 alongwith two additional pages filed by the respondents has to be taken into consideration to determine the rights of the parties.

11. That brings us to question as to what is the true nature of the document dated 14th April, 1995. A bare reading of the document dated 14.4.1995 indicates that it incorporates a family arrangement/settlement between the parties and is not only a proposal or counter proposal. It will amount to doing violence to English language, if this document is to be construed as a proposal or counter proposal. A proposal is not recorded as 'a decision'. The use of the words "it has been decided" leads to the inference that this document is not a proposal or counter proposal. The last para of the document which provides for decision by arbitrators on disputes which have remained unsettled is yet another indicator of the document being a settlement of the disputes mentioned therein. The words used in the document are not consistent with the interpretation of its being only a proposal or counter proposal. Moreover, a proposal indicates the name of the proposer and is usually signed only by its maker, so as to bind him. It is not signed by the other parties, unless they agree to it. The document dated 14th April, 1995 as well as the Supplementary Settlement being signed by all the three brothers as well as their father and the arbitrators, is yet another circumstance giving rise to inference that the document(s) is a family arrangement/settlement and not a proposal/counter proposal. Had the document been only a proposal/counter proposal, it would have indicated

the name of the proper, would not have been signed by all the parties to a dispute and the parties would not have used the words “it has been decided” in the document(s).

12. Admittedly, the Respondents had filed a Petition under Section 34 of the Arbitration Act for stay of the suit filed by the Appellants. The document dated 14.4.1995, was all along described as a family arrangement in this application. In paragraph 3 of the application, they alleged that ‘in the family arrangement’, there was a provision for reference to arbitration of any discussion or dispute relating to the said arrangement. In paragraph 4, they stated that under the said ‘family arrangement’, Shri Ram Kumar Jain and Shri Amar Nath Jain were appointed as Arbitrators. An application under Section 8 of the Arbitration and Conciliation Act, 1996 was also filed by the Respondents in the suit. Identical averments were made in that application. A perusal of the order of the learned Single Judge dated May 1, 1997 in IA No.1397/97 in CO 4/97 as well as the order of the Division Bench dated May 10, 2002 in FAO (OS) 130/97 shows that the respondents had consistently been claiming that the applicants before the learned Single Judge (appellants herein) had withheld and suppressed two important pages forming part of the family arrangement, which they (the respondents) had disclosed along with their written statement. A perusal of the judgment of the learned Single Judge dated 1.5.1997 in I.A. 1397/2007 in CO. 4/1997, records the following submissions of the learned counsel for the Respondents.

“It is stated by the learned senior counsel for the respondents 3 to 6 that the complete set of documents forming part of this family arrangement was not filed and two important pages had been suppressed by the petitioners which respondents 3 to 6 had disclosed alongwith the written statement in this Court and respondents 3 to 6 have no objection to the proposed terms in those two sheets being considered and orders passed on the basis of those proposals.”

It is thus evident that the Respondents themselves have at times referred to this document as a family arrangement. Therefore, it is not open to them to say that it was only a proposal/counter proposal. We cannot remain oblivious to the fact that parties to these documents are experienced businessmen, who, having already executed a number of documents, including agreement of 20.3.1992 and various Retirement Deeds and Partnership Deeds, knew very well, what they had to write, to convey their decisions. Therefore, they were unlikely to use the expression ‘decisions’ and “decided”, in a proposal/counter-proposal.

13. An analysis of the family arrangement dated 14.4.1995 would show that besides giving trade mark “Kangaro” and trade name ‘Kanin’ to Shri Jaininder Jain, while giving trade mark ‘Kenin’ and trade name ‘Kangaro’ to Shri Arihant Jain and Shri Vishwa Jain after 31.3.96, the parties also decided, presumably with a view to avoid competition with each other, to allocate some of the models to Shri Jaininder Jain while allocating other models to Shri Arihant Jain and Shri Vishwa Jain. Under this document, Shri Jaininder Jain could manufacture only, Stapler m-10, Staple Remover SR-300, Stapler HD-10N and Stapler HD-10D with effect from 1.4.1996, besides Index File Clip. He, however, was allowed to use

'Kenin' as his trade mark upto 31.3.1996. He was also prohibited from manufacturing any item identical with the items manufactured by Shri Arihant Jain and Shri Vishwa Jain upto 31.3.1998. Thus, under this family arrangement dated 14.4.1995, though Shri Jaininder Jain was given ownership of trade mark 'Kangaro' w.e.f. 1.4.1996 he could not have manufactured all the products in respect of which trade mark 'Kangaro' was granted to M/s.Kangaro Industries and M/s. Jain Manufacturing Company, for three years, i.e., upto 31.3.1998. He could, during this period, have manufactured only those items which were not being manufactured by Shri Arihant Jain and Shri Vishwa Jain. Upto 31.3.1996, he could manufacture, using trade mark "Kanin", any product which was not allocated to Ahihant Jain and Vishwa Jain. With effect from 1.4.1996, he could manufacture Index File Clip and Stapler on 10, Staple Remover SR-300, Staple HD – 10N and Stapler HD-10D using the trade mark "Kangaro". However, after 31.3.1998, there was no restriction on his rights to manufacture any item even if they were being manufactured by Shri Arihant Jain and Shri Vishwa Jain.

Shri Arihant Jain and Shri Vishwa Jain besides ownership of trade mark 'Kenin' w.e.f. 1.4.96 and trade name 'Kangaro' also got right to manufacture all types of paper punches and staplers being manufactured by the group till 31.3.1995 except Stapler No. HD-10, HP-10D, M-10, HP-45 and Staple Remover SR-300. They were also allowed to use 'Kangaro' as trade mark upto 31.3.1996. After 31.3.1996, they were not allowed to use the trade mark 'Kangaro' even in respect of the products which they were allowed to manufacture under clause-10 of

part-II of this Settlement. They could also manufacture Board Clips and Single Punch as well as all other items under trade mark 'Kenin, after 31.3.1996. However, till 31.3.1998, they could not have manufactured Stapler No.HD-10N, HP-10D, M-10, HP-45 and Staple Remover SR-300 since right to manufacture these items was given to Shri Jaininder Jain under Clause (K) of Part-I of this Agreement. Since the prohibition against manufacturing item identical to items manufactured by Shri Jaininder Jain, was applicable only upto 31.3.1998 except Index File Clip, it is obvious that the non-competing clause was to remain in force only upto 31.3.1998.

14. The supplementary Settlement modified the earlier decision taken by the parties and recorded in the family Settlement dated 14.4.1995 to the extent that Shri Jaininder Jain, who was earlier given right to manufacture Index File Clips, Staplers HP-45, Stapler M-10, Staple Remover SR-300, Stapler HD-10N and Stapler HP-10D was permitted to manufacture Stapler Models No.10-N, 10-D, HD-45, 555 & 999 alongwith Index File Clips. It further modified the family Settlement recorded on 14.4.1995 by stipulating that Shri Arihant Jain and Shri Vishwa Jain, who were permitted under the family Settlement recorded on 14.4.1995 to manufacture all types of Paper Punches and Staplers except Stapler HD-10N and HP-10D, M-10 and HP-45 and Staple Remover SR-300, were given right to manufacture all types of Paper Punches, , Staple No.10, Model 10-B, HP-10, 10-JA, 45-L, HP-45, M-10, Staple remover & HD-12S-17 & any other residuary model besides all types of Paper Punches, that is Punches No.52, 280, 480, 500, 600, 600P, 4 Hole, 700 & Board Clip,

520, 540, 560 model 800 and Single Punch. It reiterated that no identical model was to be manufactured by any of the parties upto 31.3.1998.

15. The 'Supplementary Settlement ' has to be read in conjunction with and not in isolation from the Family Settlement/Arrangement dated 14.4.95 for two reasons. Firstly, the opening words of the document "in further continuation of the meeting held in between all three of us" clearly show that the stipulations contained in the document was to be read along with and not divorced from the covenants contained in the document dated 14.4.1995. Had the intention of the parties been to cancel or abrogate the previous document, they would have clearly stated so in the document itself and would not have used the above noted opening words. Secondly, the Supplementary Agreement, if read as a standalone document, does not address the major disputes between the parties as it neither deals with properties nor with ownership of the trademarks 'Mangaro' and 'Kenin'.

16. Thus, the supplementary Agreement did not make any change as regarding ownership of trade mark 'Kangaro ' and 'Kenin', w.e.f. 1.4.1996 and consequently, Shri Jaininder Jain continued to be the owner of the trade mark 'Kangaro w.e.f. 1.4.1996, in terms of the family Settlement dated 14.4.1995. However after execution of the Supplementary Agreement, Shri Jaininder Jain could have manufactured only the models specified in this document. Shri Arihant Jain and Shri Vishwa Jain could have manufactured all types of Paper Punches, Board

Clips, Single Punch, Staplers and Staple removers specified in the document and the residual model, if any. This division of various products and models amongst two groups was to remain in force upto 31.3.1998, as is evident from the stipulation against manufacture of the product of the other party, upto 31.3.1998.

17. The position which emerges from the family Settlement Arrangement dated 14.4.1995 and supplementary Settlement filed by the Respondents is that after 31.3.1998, i.e. with effect from 1.4.1998, there was no restriction on manufacture of any product by any party. They could manufacture any product even it was being manufactured by the other group. But, since the ownership of trade mark 'Kangaro' was given to Shri Jaininder Jain and ownership of the trade mark 'Kenin' was given to Shri Arihant Jain and Shri Vishwa Jain w.e.f. 1.4.1996, neither Shri Jaininder Jain can use the trade mark 'Kenin' nor Shri Arihant Jain and Shri Vishwa Jain, can use the trade mark 'Kangaro', w.e.f. 1.4.1998, if the rights of the parties are to be determined in terms of the family Settlement dated 14.4.1995, whether read with or without the Supplementary Settlement, filed by the respondents.

18. Relying upon the provisions contained in Section 19 of Partnership Act, it was contended by the learned counsel for the Respondents that Shri Vishwa Jain and Shri Arihant Jain, being only two of the four partners, did not have legal authority to assign the trade mark 'Kangaro' to Shri Jaininder Jain. He has, in this regard, relied upon ***Narayanappa versus Bhaskara Krishnappa***, AIR 1966 Supreme Court 1300.

In the above referred case, the Hon'ble Supreme Court observed that during the subsistence of partnership, no partner can deal with any portion of the property as his own nor can he assign his interest in a specific item of partnership property to anyone. There is no quarrel within the proposition of law that only an account of being a partner in the firm, no partner has an implied authority, in law, to assign the property of the partnership firm. However, this does not prevent a partner from assigning the partnership property with the consent of the other partners. In a given case, the consent of the other partners need not be express and may be implied from *inter se* relationship amongst partners and attending circumstances. This is more so, in the case of family firms where only husbands and wives are partners, husbands carry on business of the firm and wives are normally dormant partners. Admittedly, Shri Vishwa Jain and Shri Arihant Jain, who are parties to the 'Family Settlement' were partners in Kangaro Industries (Regd.), on the date of Settlement / Arrangement. Admittedly, their wives were the only other partners in the firm. A perusal of the Agreement dated 20.3.1992 executed amongst M/s.Kangaro Industries, M/s.Jain Manufacturing Company and M/s.Kenning(India), would show that it were only the husbands, i.e. Shri Arihant Jain, Shri Vishwa Jain and Shri Jaininder Jain, who executed this document on behalf of the firm. The wives, though partners in various firms did not come forward to sign this document. This would indicate that in fact, the husbands had been acting not only for themselves but also on behalf of the respective wives and had a verbal authority from them to act for and on behalf of the firm.

In any case, there is no restriction on the right of a partner to permit concurrent users of the property of the firm by another person. If a partner in a firm assigns a property of the firm without consent of the other partners though his implied authority extends only to allow concurrent use of the property of the firm by another person, the firm will be bound at least to the extent of concurrent user. Therefore, in the present case, even if it is assumed that Shri Vishwa Jain and Shri Arihant Jain did not have authority from their wives who were the other partners in the firm, to assign the trade mark 'Kangaro' to the Appellant – Shri Jaininder Jain, in terms of the family Settlement dated 14.4.1995, the firm would be bound to permit concurrent user of the trade mark, as Shri Arihant Jain and Shri Vishwa Jain being partners of the firm had the authority to permit concurrent user of the trade mark by their brother Shri Jaininder Jain, without excluding the partnership from its user. In other words, there cannot be any valid objection from the wives to use as the trade mark 'Kangaro' by the firm in which they are partners as well as by Shri Jaininder Jain. In any case, as noted earlier, the wives of Shri Arihant Jain and Shri Vishwa Jain, have not come forward to assail the family Settlement and have not sought any declaration to the effect that the family Settlement entered into by their husbands, is not binding on them and does not affect the exclusive right of the firm M/s.Kangaro Industries (Regd.) to use the trade mark 'Kangaro' to the exclusion of all others including Shri Jaininder Jain.

19. It was pointed out by learned counsel for the Respondents that the appellants did not set up the family Settlement dated 14.4.1995 before

the Registrar of Trade Mark while applying to record changes in the Register of Trade Mark, in respect of the trade mark 'Kennin' under Registration No.486510, and in fact relied upon the Retirement Deed dated 31.3.1995 for this purpose. In our view, this conduct is not very material in the facts and circumstances of this case. As noted earlier, the family Settlement dated 14.9.1995 is in the handwriting of respondent Shri Arihant Jain and two disputed pages, which have been denied by the appellant, have been filed and relied upon by none other than the respondents themselves. Since the document incorporating the family Settlement amongst the parties has been filed by the respondents themselves, they cannot say that these are not authentic and reliable documents. In fact, this is not the case of the respondents that the documents incorporating the family Settlement dated 14.4.1995 are manufactured documents. Their case is that all these documents are only proposals/counter-proposals and do not amount to a family Settlement. Whether these documents are merely proposals/counter-proposals or constitute a valid family Settlement is to be decided by the Court, on the basis of terms of the documents and attending circumstances, and, prima facie we are of the opinion that they constitutes family arrangement/settlement.

20. It was next contended by the learned counsel for the respondents that in his letter dated 19th August, 1996 sent to Registrar of Trademarks, Sh. P.N. Talwar, then counsel for the appellants specifically wrote that the trademark matter had not been decided till date between his clients and continuing partners of M/s Kangaro Industries (Regd.), which shows

that there was no settlement as is now being claimed by the appellants. We, however, find that in the public notice issued in newspapers on 30th June, 1996, the appellants expressly referred to the family settlement. The public notice having appeared much before the letter written by Sh. Talwar, the letter written by Sh. Talwar loses its significance, as far as setting up of family settlement is concerned. As a matter of fact, the date when the appellants set up family settlement for the first time becomes irrelevant when the existence and authenticity of the document is not disputed by the respondents and the stand taken by them is that though the document was executed, it was not a family settlement but was only a proposal/counter proposal. Therefore, nothing turns on the failure of the appellant to set up the family settlement soon after it was executed.

21. It was also contended by learned counsel for the Respondents that in any case, alleged family Settlement dated 14.9.1995 was not acted upon by the parties as is evident from the fact that Shri Jaininder Jain did not apply to the Registrar of the Trade Marks, for transfer of ownership of the trade mark 'Kangaro' in his name on the strength of the alleged family Settlement.

It is true that Shri Jaininder Jain did not request the Registrar of Trade Mark, at any time, prior to 10.2.1997, for transferring the ownership of trade mark 'Kangaro' in his name. It was only on 10.2.1997 that he applied for rectification of the registration of trade mark and for recording him as the owner of the trade mark 'Kangaro'. But we cannot

lose sight of the fact that Shri Arihant Jain and Shri Vishwa Jain also did not apply for rectification immediately after execution of the Dissolution Deed dated 31.3.1995. They applied for change only on 23.11.1995 which was more than seven months after the Retirement Deeds were executed. If there was no family Settlement between the parties on 11.4.1995, there was no reason for Shri Arihant Jain and Shri Vishwa Jain to wait for more than seven months before applying for changes in record of trade mark Registry. We also have to keep in mind the fact that under the family Settlement, Shri Arihant Jain and Shri Vishwa Jain, were allowed to use 'Kangaro' as trade mark upto 31.3.1996 and ownership in the trade mark 'Kangaro' was to come to Shri Jaininder Jain only w.e.f. 1.4.1996. Therefore, Shri Jaininder Jain was not in a great hurry to apply for transfer of the trade mark in his name immediately after the execution of the family Settlement dated 14.4.1995. The truth of the matter appears to be that though the parties entered into a family Settlement on 14.4.1995 and also subsequently modified it vide an undated Supplementary Affidavit, neither group was happy with all the terms of the Settlement and that is why, neither Shri Jaininder Jain nor Shri Arihant Jain and Shri Vishwa Jain immediately rushed to Trade Mark Registry for necessary changes in term of the document and both the groups chose to take extreme positions of having sole right to use the trade mark 'Kangaro', without any restriction on the use. To our mind, in the facts and circumstances of this case, Shri Jaininder Jain cannot be said to have abandoned or given up his rights under the family

Settlement dated 11.4.1995 merely because he did not rely upon this document before the trade mark Registry soon after 14.4.1995.

22. It was also contended by learned counsel for the respondents that had there be any settlement between the parties on 14.4.1995, it would have been so mentioned in the deed executed by late Shri Janki Dass Jain on 15.5.1995. In our view, there was no reason for Shri Janki Dass Jain to refer to the family Settlement in the Retirement Deed executed by him, as he did not get any right in the trade mark 'Kangaro' under the Family Settlement and had no right or interest left in M/s.Kangaro Industries(Regd.) after execution of the family Settlement amongst his sons. He was only a witness and not a party to the family Settlement and, therefore, had no occasion to refer to it in the Retirement Deed executed by him.

23. It was also contended by learned counsel for the respondents that family Settlement dated 14.4.1995 requires compulsory registration since it affects rights in immovable properties worth more than Rs.100/-. It is settled proposition of law, if a family arrangement by itself declares, creates, assigns or extinguishes rights in immovable properties worth more than Rs.100/-, it requires compulsory registration. But, if the document only evidences an oral agreement between the party, it would not require compulsory registration as in such a case, the document by itself does not create transfer or extinguish any right but is only a record of oral agreement between the parties. *Halsbury's Law of England*

(Vol.17) 3rd Edition at page-215-216) defines the family Settlement and underlies principles governing the same as under:

“Definition of family arrangements. *A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family (a) either by compromising doubtful or disputed rights or by preserving the family property (b) or the peace and security of the family by avoiding litigation (c) or by saving its honour (d).*

The agreement may be implied from a long course of dealing (e), but it is more usual to embody or to effectuate the agreement in a deed to which the term “family arrangement” is applied.

Principles governing family arrangements. *Family arrangements are governed by principles which are not applicable to dealings between strangers(f). The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account(g). Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements(h).”*

The question as to whether a family Settlement requires registration and if so, in what circumstances, came up for consideration before the Hon’ble Supreme Court in ***Kale And Others vs. Deputy Director of Consolidation and Others***, (1976 3 SCC 119). After reviewing case law on the subject, the Hon’ble Supreme Court inter alia held as under:-

“10 (3) The family arrangements may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immoveable properties and therefore does not fall within the mischief of Section (Section of the Registration Act and is, therefore, not compulsorily registrable;

“24. This Court has also clearly laid down that a family arrangement being binding on the parties to the arrangement clearly operates as an estoppel so as to preclude any of the parties who have taken advantage under the agreement from, revoking or challenging the same.

35. Another argument advanced by Counsel for the respondents was that the family arrangement was not valid because the appellant had absolutely no title to the property so long as Mst. Ram Pyari was in lawful possession of the property as the sole heir to Lachman, and if under the family arrangement any title was conveyed to the appellant, the said conveyance can only be by a registered instrument under the provisions of the Registration Act and the Transfer of Property Act. This argument also, in our opinion, suffers from a serious misconception. We have already pointed out that this Court has widened the concept of an antecedent title by holding that an antecedent title would be assumed in a person who may not have any title but who has been allotted a particular property by other party to the family arrangement by relinquishing his claim

in favour of such a done. In such a case the party in whose favour the relinquishment is made would be assumed to have an antecedent title. In fact a similar argument was advanced before this Court in Tek Bahadur Bhujil's case (supra) relying on certain observations made by BOSE, J. in Sahu madho Das's case (supra), but the argument was repelled and this Court observed as follows:

Reliance is placed on the following in support of the contention that the brothers, having no right in the property purchased by the mother's money, could not have legally entered into a family arrangement. The observations are:

"It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and the portions allotted to them respectively.

These observations do not mean that some title must exist as a fact in the persons entering into a family arrangement. They simply mean that it is to be that the agreement clinches and defines what that title is.

The observations' of this Court in that case, therefore, afford complete answer to the argument of the learned counsel for the respondents on this point."

In *Tek Bahadur Bhujil versus Debi Singh Bhuji*, AIR 1966 SC 292, the Hon'ble Supreme Court pointed out that a family arrangement could be arrived at even orally and that a document which was not more than a Memorandum of what had been agreed to did not require registration. In this regard, the Hon'ble Court observed as under:-

“Family arrangement as such can be arrived at orally. Its terms may be recorded in writing as a memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there be no hazy notions about it in future. It is only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess.”

Learned counsel for the Respondents had referred to ***A.C.Lakshmipathy and Another versus A.M.Chakrapani Reddiar and Others***, AIR 2001 Madras 135, where Madras High Court held that if the family arrangement is reduced to writing, it purports to create declare, assign, limit or distinguish any right, title or interest of any immovable property, it must be properly stamped and duly registered as per Stamp Act and Registered Act. We, however, find, in this very judgment, the High Court also said that if a document, is in the nature of a Memorandum and evidences a family arrangement already entered into, and has been prepared as a record of what had been agreed upon, it need not be stamped or registered. The family arrangement, in this case, it prima facie appears to us, does not by itself create, declare, assign, limit or extinguish any right, title or interest, in any immovable property. It only records what the parties to the settlement agreed, to amicably settle their disputes and, therefore, is only an evidence of the oral

agreement between the parties. Such a document would not require compulsory registration.

24. Even if we assume, for the sake of arguments that the document dated 14.4.1995 requires compulsory registration under Section 17(1b) of Registration Act, that would not come in the way of giving effect to that part of the document which deals with granting ownership of trade mark 'Kangaro' to Shri Jaininder Jain and therefore does not require compulsory registration. Section 49 of the Registration Act prescribes effect of non-registration documents which are compulsorily registrable. It provides that if a document is required to be a compulsory registered but is not registered, the document will not affect any immovable property comprised therein and will not be received as evidence of any transaction affecting such property or confers such right, unless it has been registered. It follows that a compulsorily registrable document, if unregistered, will not affect the immovable properties comprised in the documents, is inadmissible only for a limited purpose mentioned in Section 49(c), namely, as evidence of a transaction affecting immovable properties comprised therein. It is admissible for a collateral purpose, i.e., for any purpose, other than that of creating, declaring, assigning, limiting or extinguishing any right or interest in an immovable property. Where a document, which as a whole, requires registration, contains separable parts which do not require registration, these parts may be admitted in evidence to prove transactions which do not affect immovable property of the value of Rs.100/- or more. ***In Hanmant Apparao Vs. Ramobai Hanmant***, AIR 1919 Bombay 38, litigation arose

on a compromise with regard to both movable and immovable property, The High Court held that the document could be looked into for the purpose of claim of a share in respect of a cash allowance, which was treated as a movable property in ***Pirozshah Dajibhoi Malaowalla v. Najamai Rustomji***, AIR 1947, Bombay 464, the agreement between the parties provided that in order to avoid disputes, the plaintiff should receive certain maintenance per month from the defendant and should have a right of residence in two houses. The agreement was not registered. In a suit on the agreement it was contended that the document as a whole could not be received in evidence even of the part of the agreement relating to maintenance as the consideration for the document could not be separated, so as to attach part of it to the maintenance clause and part to the residence clause. It was noted by the High Court that in the case before it though the claim for maintenance as well as the claim of residence were mentioned in the agreement, they were not connected in the agreement except in so far as it provided one consideration for the agreement as well. As a result, the High Court held that the agreement could be used in evidence of the claim for maintenance. In ***Mohd. Qasim and others Vs. Mt. Ruqia Begum*** AIR 1935 Lahore 375, the contract of marriage mentioned the amount of dower and also dealt with right in immovable property. It was contended before the High Court that the document being unregistered could not be used for any purpose whatsoever. The High Court noted that Section 49 of Registration Act lays down in clear terms that the only effect of non-registration will be that the document shall not affect any immovable

property covered by it or be received as evidence of any transaction affecting such property. The High Court noted that the covenant regarding dower stands altogether detached from declarations regarding the immoveable property and therefore was clearly separable. In coming to this decision, the High Court also relied upon a decision of Madras High Court in Thandavan vs. Valliamma 2 MLJ 130 where an instrument provided for distribution of both moveable and immoveable properties but was not got registered. One of the parties to the document sued the other party on the instrument in question to recover his agreed share of moveable property comprised in it. It was held by a Division Bench of Madras High Court that “the unregistered instrument was admissible in evidence in support of the plaintiff’s claim for the moveable property.” In ***Karam Chand Vs. Uma Datt-Hans Raj and others***, AIR 1932 Lahore 545, vide a deed dated 19th May, 1959 executed by four sons of one Thakar Dass in his favour, the business of the family on various places and other moveable property was divided between them and with regard to the immoveables, it was stated that they shall continue to be joined. It was held that even if the declaration qua the immoveable properties required compulsory registration this does not affect the admissibility of first part of the deed which deals with the partition of the moveable. In the present case, though the document dated 14.4.95 purports to evidence settlement of all disputes, including rights of parties in immovable properties, it does not show any direct linkage between ownership in trademarks “Kangaro” and “Kanin” and ownership in

immovable properties. Therefore, the part relating to ownership and use of trademarks appears to be severable from rest of the document.

25. It was contended by the learned counsel for the respondents that the right of the respondents to use the trademark "Kangaro" to the exclusion of the appellants, was upheld not only by Hon'ble the Single Judge but also by the Division Bench as well as by the Hon'ble Supreme Court in the proceedings instituted by the appellants by filing C.O. No.4/97 against the order of Registrar dated 30th October, 1996, passed in favour of the respondents, we should not take a contrary view in these Appeals. We have gone through all the judgments. We find that though the appellants relied upon the family arrangement dated 10/14.4.95, the respondents took the stand that they had not filed complete set of the documents forming part of the family arrangement as they had suppressed two important pages. The respondents specifically stated before the learned single Judge that they had no objection to the proposed terms in these two sheets being considered and orders being passed on the basis of those proposals. The learned single Judge dismissed the petition on the ground that the proceedings which culminated in the order dated 30th October, 1996 was very much in the knowledge of the petitioners. No opinion was expressed by the learned single Judge on the family arrangement set up by the appellants. A perusal of the judgment of the Division Bench dated May 10, 2002 shows that though arguments were advanced on behalf of the parties as regards the evidentiary value and binding character for a family settlement and also the effect of registration of trademark, the Division Bench did not go

into this question since it was hearing appeal against an order passed by the learned single Judge on an interim application. The Division Bench in para 21 of its judgment noted as under:-

“Rights of the parties will have to be decided primarily as regards the family settlement, whether it is final and conclusive or whether it was only a proposal in a pending civil proceedings between the parties at Ludhiana Courts. The scope in this appeal before us is only to examine the legality and validity of the impugned order passed by learned Single Judge that whether the learned Single Judge was justified in not staying the operation of the order of the Trade Mark Registry dated 30.10.1996.”

In para 23 of the judgment, the Division Bench noted as under:-

“It is not in dispute that insofar as the legality and validity of the document, which is the foundation of the appellants’ claims, is the family settlement. The same is already a subject matter of civil suit between the parties, which is pending adjudication in a competent court, which will have to decide the same in accordance with law.

The points, which were raised before us on behalf of the appellants about legality and validity of the so-called family settlement, which are seriously disputed by respondents 3 to 6, cannot be decided by us in this appeal, which will have to be adjudicated and decided in civil proceedings, which are already pending.”

Thus, the validity or otherwise of the family settlement set up by the appellants was not examined either by the learned single Judge or by the Division Bench and the matter was left to be decided by the civil court in the suit filed by the appellants. Therefore, the civil court, for the purpose of deciding application for grant of interim injunction has to take

a *prima facie* view on the nature and validity of the document dated 14.4.95 which has been termed as a family settlement by the appellants and as a proposal/counter proposal by the respondents, though in their application u/s 34 of the Arbitration Act and Section 8 of Arbitration and Conciliation Act, the respondents also referred to this document as a family settlement and while arguing before the learned single Judge, they agreed to an order in terms of the two page document, referred to by us the Supplementary Settlement.

Another important aspect in this regard is that the learned senior counsel representing the respondents before the learned single Judge specifically stated that the petitioners (appellants herein) had obtained an order of status quo and since there was an order against the respondents therefore, there was no injury caused to the petitioners. Thus, the factum of a status quo order having been passed by the civil court, in the suit filed by the appellants at Ludhiana, was also taken into consideration by the learned single Judge while passing the order dated May 1, 1997. The orders passed from time to time in C.O. No. 4/97, therefore, do not come in the way of relief being granted to the appellants on the basis of family settlement dated 14.4.95.

26. It was contended by the learned counsel for the respondents that since they are the registered proprietors of the trade mark 'Kangaro', its use by the Appellants would be contrary to the provisions of Trade Mark Act. We are unable to agree with the learned counsel. Section 2 (r)(ii) of Trademarks Act envisages permitted use by a person other than the

registered proprietor and registered user with the consent of the registered proprietor. Section 29 of Trademarks Act prohibits infringement of registered trademark by persons other than registered proprietors or persons using by way of permitted use. Section 38 of the Act provides for assignment of the trademark by its proprietor. Under family settlement dated 14.4.95, trademark "Kangaro" purports to have been assigned by its registered proprietors to Sh. Jaininder Jain. In any case, he was permitted to use the aforesaid trademark. Therefore, it cannot be said that if the appellants are permitted to use trademark "Kanagaro" during pendency of the suit that would amount to violation of the provisions contained in Trademarks Act.

27. It was contended by the learned counsel for the respondents that if there was a settlement during arbitration proceedings, as is the case of the appellants, the arbitrator would have understood it accordingly and would have passed an award in terms of the settlement as provided in Section 30(2) and (3) of Arbitration and Conciliation Act. No doubt, the arbitrators if requested by the parties would have recorded the settlement in the form of an arbitral award on agreed terms as provided in Section 30(2) of Arbitration and Conciliation Act. But, even if it is not done, it does not lose its character of being a settlement and it does bind the parties to the settlement inasmuch as they are precluded from acting in violation of the terms of the settlement and it is open to any of them to enforce the document as a settlement, though it cannot be enforced and executed as an arbitral award. The document dated 14.4.1995 as well as two pages constituting Supplementary Settlement are signed not only by

the parties but also by the arbitrators. Therefore, it cannot be said that the arbitrators had not understood and interpreted the same to be a settlement of disputes between the parties. If the parties did not request them to record the settlement in the form of an arbitral award, there was no occasion for them to do so. But, as far as the parties are concerned, they became bound by the terms of the settlement.

28. Relying upon the decision of the Supreme Court in *Wander Ltd. and Another -vs- Antox India P. Ltd.* **1990(Suppl.) SCC 727**, it was contended by the learned counsel for the appellant that this court should not interfere with the discretion exercised by the learned single Judge, as the discretion was exercised reasonably and judiciously on the basis of material available on record. The decision of the Hon'ble Supreme Court in *Wander Ltd. and Another* (Supra) envisages interference by the Division Bench if it is shown that the learned single Judge had ignored the settled principles of law regulating grant or refusal of interlocutory injunction.

The principles for grant of temporary injunction either under Rule 1 or 2 of Order 39 or under Section 151 of Code of Civil Procedure are now well settled and the Courts are required to see

1. whether the Plaintiff have a prima facie case;
2. whether the balance of convenience is in favour of the Plaintiff;
3. Whether the Plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is not allowed;

In ***Gujarat Bottling Co. Ltd. vs. Coca Cola Company and Others***, 1995(5) SCC 545, the Hon'ble Supreme Court, inter alia, observed as under:-

“The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the ‘balance of convenience’ lies.”

“Prima facie case” means that the Court should be satisfied that there is a serious question to be tried at the hearing, and there is a probability of Plaintiff obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court. “Prima facie case” is a substantial question raised *bona fide* which needs investigation and a decision on merits. The Court, at the initial stage, cannot insist upon a full proof case warranting an eventual decree. If a fair question is raised for determination, it should be taken that a prima facie case is established. The real thing to be seen is that the Plaintiff’s claim is not frivolous or vexatious. The purpose is to preserve status quo until the question before the Court is finally disposed of.

The learned counsel for the Respondents has referred to ***Ramji Dayawala & Sons (P) Ltd. vers Invest Import***, AIR 1981 SC 2085.

We find that in the above referred case, the Hon'ble Supreme Court, *inter alia*, held as under:

“But it is equally well settled that where the trial court ignoring the relevant evidence, side tracking the approach to be adopted in the matter and overlooking various relevant considerations has exercised its discretion one way, the appellate court keeping in view the fundamental principle can and ought to interfere because when it is said that a matter is within the discretion of the court it is to be exercised according to well established judicial principles, according to reason and fair play, and not according to whim and caprice.”

It is an admitted case that at the time of passing of status quo order by Ludhiana Court on 7.1.97, the appellants as well as the respondents were using the trademark “Kangaro”. It is also an admitted case that for more than at least 12 years from that date, till the injunction was vacated by learned single Judge on April 8, 2009, both the groups were using trademark “Kangaro” on the products being manufactured by them. Same was the position during the pendency of C.O. No. 4/97 as well as the appeals arising therefrom. In para 13 of the judgment, the learned single Judge *inter-alia* noted that “on 14.4.95 a document purporting to be a family arrangement was prepared and signed by all the three brothers, their father and the two arbitrators”. In para 33 of the judgment, the learned single Judge noted that “there appears to be a serious dispute between them over a decade about the use of mark “Kangaro” by each one of them for different items of stationery manufactured and marketed by them. Both of them claim a right to use mark “Kangaro” and have prayed for interim injunction

against each other from using the mark “Kangaro”. In para 51 of the judgment, the learned single Judge noted that “Arihant Group does not dispute the existence of the document dated 10/14.4.95. What it disputes is the nature of the said document, “whether the document is a family settlement or merely a proposal.” Therefore, the learned single Judge recognised that there was a serious dispute between the parties as regards use of the trademark “Kangaro”. The rival contentions raised by the parties as regards use of the trademark “Kangaro” required investigation during trial. The respondents are not disputing the existence or authenticity of the document termed as family settlement by the appellants. Prima-facie, the document does not appear to be a proposal/counter proposal and in fact appears to be a family settlement. Therefore, it cannot be denied that the appellants have made out a *prima facie* case in their favour.

In ***Colgate Palmolive (India) Ltd. versus Hindustan Lever Limited***, 1999(7) SCC 1, the Hon’ble Supreme Court observed as under:-

“10. Another redeeming feature in the matter of grant of interlocutory injunction is that in the event of a grant of injunction in regard to a party defendant where the latter’s enterprise has commenced, and in that event, the consideration may be somewhat different from that where the defendant is yet to commence its enterprise.”

Trademark “Kangaro” having been used more or less as a family trademark till 31.3.1995 and the appellants having concurrently used it for more than 12 years at a stretch, the principles governing grant of injunction necessarily required that the status quo, as regards use of the

registered trademark “Kangaro” should have continued till the court came to a final conclusion on the rival contentions of the parties, after recording evidence and taking a considered view in the light of the oral and documentary evidence which may be adduced at the trial. Since the settled principles in the matter of grant of *ad interim* injunction were not correctly applied, this court would be justified in stepping in and setting aside or modifying the order passed by the learned single Judge.

In ***Ram dev Food Products Pvt. Ltd. versus Arvind Bahl***, 2006(8) SCC 726, the Hon’ble Supreme Court found that the Courts below had proceeded on a prima facie misconstruction of documents and had adopted and applied wrong standards and, therefore, it was of the opinion that a case for interference has been made out. In our opinion, prima facie, the learned Single Judge has misconstrued the family Settlement when he observed that it was not a family arrangement but was only a proposal/counter-proposal and further said that the document required compulsory registration. The document, to us, appears to be family arrangement/Settlement since it only records the arrangement agreed to between the parties and if so, it does not require compulsory registration. In any case, the part which deals with ownership and use of trademarks appears to be severable, from the remaining document and does not require compulsory registration.

29. In the compilation given by the learned counsel for the Respondents, he has relied upon ***Prahalad Singh versus Sukhdev Singh***, AIR 1987 SC 1145, ***Barkat Ali and Another versus***

Badrinarain (Dead) by LRS., 2008(4) SCC 615. ***Midas Hygiene Industries (P) Ltd. and Another versus Sudhir Bhatia and Others,*** 2004 (3) SCC 90, the decision of a Division Bench of this Court dated 29.5.2009 in FAO No.138/96, titled **Amar Singh Chawal wala versus M/s.Shree Vardhman Rice And Genl. Mills,** decision of a Division Bench of this Court in **Atlas Cycles (Haryana) Ltd. vs. Atlas Products Pvt. Ltd.,** 2007(4) RAJ 515, to which one of us was a party and the decision of the Hon'ble Supreme Court in **Satyadhyan Ghosal vs. Smt. Deorajin Debi,** AIR 1960 SC 941, and the decision of the Division Bench of this Court in **Babu Ram Dharam Prakash vs. Izuk Chemical Works,** 2008 (38) PTC 209, to which one of us was a party. In none of these case s, we find any such proposition as would persuade us to agree with the view taken by the learned Single Judge or to maintain the order passed by him.

30. That brings us to the question, as to what would be the most appropriate interim order, in the facts and circumstances of the case. If we go by the family settlement/arrangement, there is a prima facie, case in favour of the appellants who are plaintiffs in two civil suits, as, after 31.3.96, the respondents are not entitled to use the trade mark "Kangaro". If we go only by the Retirement Deeds, excluding the family settlement/arrangement from consideration, the respondents who are plaintiffs in one suit have a prima facie case to exclusive use of the trademark "Kangaro".

Keeping in view the fact that (i) trade mark “Kangaro” was being used more or less as a family trademark till 31.3.1995; (ii) both the groups are using this trademark since prior to 7.1.1997, when status quo order was passed; (iii) No serious effort was made by the respondents for vacation of status quo order dated 7.1.1997, even after dismissal of SLP of the appellants in the proceedings arising out of C.O. No.4/97; (iv) both the groups have substantial turnover from use of the trademark “Kangaro”, though turnover of the respondents is stated to be much brighter than that of the appellants, (v) In some countries the appellants are using this trade mark while in some other countries it is being used by the respondents; (vi) the court can take a final view on the nature, admissibility and applicability of the documents termed as family settlement/arrangement by the appellants and proposal/counter proposal, by the respondents, only after recording evidence, to be adduced during trial, we direct as under:

- 1) During pendency of these suits, the parties shall maintain the status quo, as it existed on 7.1.1997, as regards use of the trademark “Kangaro”, but, in order to ensure that there is no confusion as regards the manufacturer of the product they shall also prominently display the name of the manufacturer on the box in which the product reaches the ultimate customer.
- 2) Both the groups shall maintain and file, in court, quarterly unaudited accounts of the turnover, gross profit and net profit from manufacture and sale of the products sold by them under the trademark “Kangaro”, so that the group which ultimately

succeeds can recover suitable damages from the other group. The accounts should be filed within 90 days of the close of each quarter. They shall also file annual audited accounts, containing the same information, by 30th June each year.

The Appeals stand disposed of. The observations made in this order shall not affect or influence the decision of the suits on merit.

V.K.JAIN, J.

VIKRAMAJIT SEN, J.

AUGUST 13, 2009
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