

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

+ **FAO No. 347/2017**

% **23rd August, 2017**

ADVANCE MAGAZINE PUBLISHERS INC. Appellant

Through: Mr. Amit Sibal, Sr. Advocate with
Ms. Anuradha Salhotra, Mr. Aditya
Gupta, Mr. Sumit Wadhwa and Ms.
Mallika Ahluwalia, Advocates.

versus

BOMBAY RAYON FASHIONS LIMITED & ORS. Respondents

Through: Mr. C.M. Lall, Sr. Advocate with Mr.
N. Roy, Mr. Rupin Bahl and Ms.
Manta Jain, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. Nos. 30169-71/2017 (for exemptions)

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

CAVEAT No. 750/2017

Since counsel for the caveator has entered appearance, the
caveat stands discharged.

FAO No. 347/2017 and C.M. Appl. No. 30168/2017 (for stay)

1. This First Appeal under Order XLIII(1)(r) of the Code of Civil Procedure Code, 1908 (CPC) is filed by the appellant, plaintiff in the suit, challenging the impugned order of the trial court dated 10.7.2017 by which the trial court has vacated the *ex-parte* injunction granted in favour of the appellant/plaintiff, has dismissed the application under Order XXXIX Rules 1 and 2 CPC filed by the appellant/plaintiff, and allowed the application under Order XXXIX Rule 4 CPC filed by the respondent/defendant.

2. The disputes between the parties pertain to the trademark VOGUE. The appellant/plaintiff claims ownership and worldwide reputation in the same having used the same for its magazines and publications. The trademark LINEN VOGUE is used by the respondent/defendant either as itself or with the additional expression LA CLASSE for its goods being fabric/cloth, and user of its trademark by the respondent/defendant is pleaded by the appellant/plaintiff to be infringement etc of appellant/plaintiff's trademark VOGUE.

3.(i) Before I turn to the merits of the case for disposal of the interim injunction application, as also to the arguments urged by the

respective parties, it is relevant to note that at the time of deciding of an injunction application, a court does not conduct a mini-trial and this has been so held by the Supreme Court in its judgment in the case of ***Anand Prasad Agarwalla Vs. Tarkeshwar Prasad and Others (2001) 5 SCC 568***. Para 6 of the judgment in the case of ***Anand Prasad Agarwalla (supra)*** reads as under:-

“6. It may not be appropriate for any court to hold a mini-trial at the satge of grant of temporary injunction. As noticed by the Division Bench that there are two documents which indicated that there was prima facie case to be investigated. Unless the sale certificate is set aside or declared to be a nullity, the same has legal validity and force. It cannot be said that no right could be derived from such certificate. Secondly, when the contesting respondents were in possession as evidenced by the record of rights, it cannot be said that such possession is by a trespasser. The claim of the contesting respondents is their own right. The decisions referred to by the learned counsel for the appellant are in context of there being no dispute as to the ownership of the land and the possession was admittedly with a stranger and hence temporary injunction is not permissible. Therefore, we are of the view that the Division Bench has very correctly appreciated the matter and come to the conclusion in favor of the respondents. In these circumstances, we dismiss these appeals. We may notice thate the time-bound directions issued by the Division Bench will have to be adhered to strictly by the parties concerned and the suits should be disposed of at an early date but not later than six months from the date of communication of this order.”

(ii) A Court which decides the application under Order XXXIX CPC does not go into merits in so much in depth that it would amount to finally deciding on merits the respective cases of the parties. Object of an interim injunction application is to ensure protection of rights of the parties on the basis of the triple factors of *prima facie* case,

balance of convenience and irreparable injury. If the courts while deciding an application under Order XXXIX Rules 1 and 2 CPC goes so much into the depth of the matter and conducts a mini-trial then surely one or the other party is likely to be prejudiced at the final stage in the suit after trial.

4. There are two important aspects which a court bears in mind while deciding the application under Order XXXIX CPC as to whether interim injunction is to be granted. The first aspect is that by grant of the interim relief of injunction then effectively, in a suit such as the subject suit, a final relief is granted, and therefore the court considers whether to allow an interim application thus amounting to decreeing of the suit. The second aspect which is to be noted is that an injunction application is decided not only on the basis of the *prima facie* factor but also with respect to the factors of balance of convenience and irreparable injury, and which factors come into play once there is an arguable case which is urged on behalf of the respondent/defendant.

5. The case of the appellant/plaintiff is this. The appellant/plaintiff pleads that it is using the trademark VOGUE since

more than 100 years i.e from 1892. The appellant/plaintiff has been essentially using its trademark with respect to fashion magazines, though since the last few years appellant/plaintiff pleads that it is using its trademark for Vogue Cafes and which cafes advises start-ups and business for carrying on its businesses. The magazines of the appellant/plaintiff are said to have distribution in 145 countries worldwide including India. In India, the magazines are said to be sold from the year 1990. Appellant/plaintiff has got registrations in India of its trademark VOGUE with respect to different classes as stated in para 14 of the plaint and which are for magazines, publications and aspects directly related thereto. As per the case of the appellant/plaintiff when the respondent/defendant, with respect to its products being fabrics/apparels, uses the trademark LINEN VOGUE or LINEN VOGUE LA CLASSE, then, the rights of the appellant/plaintiff in its trademark VOGUE are adversely affected in that there is infringement of a registered trademark or in any case there is passing off or that there is dilution of goodwill and dilution of the trademark of the appellant/plaintiff. Accordingly, the appellant/plaintiff has filed the subject suit seeking injunctions against

the respondent/defendant that the respondent/defendant be restrained from using its trademark LINEN VOGUE or LINEN VOGUE LA CLASSE with respect to goods of the respondent/defendant being fabric/cloth.

6. Respondent/defendant has in defence argued that there does not arise an issue of infringement because the appellant/plaintiff is essentially into the business of publication of magazines, whether by print out/hard copy or by electronic means, and that registrations granted are essentially for appellant/plaintiff as regards user of its trademark for its published magazines, whereas, the user by the respondent/defendant of its trademark is not for publications but for a totally different product being cloth/apparel. It is further argued that use of the trademark by the appellant/plaintiff since is essentially with respect to magazines, this user of the trademark VOGUE with respect to magazines will not have any connection to or association with the use of the trademark LINEN VOGUE/LINEN VOGUE LA CLASSE by the respondent/defendant with respect to a totally different product being fabric/cloth, because, in such situation it cannot be argued that there are common trade channels/consumers simply because the

public/consumers who read the magazines of the appellant/plaintiff and thus otherwise are aware of the appellant/plaintiff's trademark VOGUE, are also purchasers of fabric/cloth of the respondent/defendant. It is argued by the respondent/defendant that the doctrine of common trade channels and consumers cannot be extended to wholly different products and this aspect of common trade channels/consumers have to be confined to subjects for which appellant/plaintiff claims having registrations or at the very best to fields/products intimately connected to the registrations of the appellant/plaintiff. The respondent/defendant also denies the issues of its passing off or of the respondent/defendant causing any dilution of the trademark and goodwill of appellant/plaintiff.

7. The courts below while deciding the injunction application of the appellant/plaintiff, and the application for vacation of the *ex-parte* injunction by the respondent/defendant, has discussed the issues under different headings of infringement, deceptive similarity, descriptive/generic word, doctrine of dilution and passing off. With respect to each of these headings the trial court has arrived at certain conclusions against the appellant/plaintiff for dismissing the

injunction application. With respect to the case of infringement the trial court has held that there is no case of infringement which is made out as the fields of user of the trademark of the respective parties are different inasmuch as the appellant/plaintiff uses the trademark with respect to publication of a fashion magazine and the respondent/defendant is using its trademarks LINEN VOGUE/LINEN VOGUE LA CLASSE with respect to fabric/cloth. Under this heading the trial court has further held that the trade channels of the respective parties are completely different. Trial court has then held that the appellant/plaintiff is not into the manufacturing or retail business of sale of goods in which the respondent/defendant is engaged. Trial court on the aspects of deceptive similarity has observed that marks have to be read as a whole and once both the marks are seen as a whole it cannot be held that there will arise deception or confusion in the minds of the consumers. With respect to generic/descriptive word, trial court has held that the word 'VOGUE' is a descriptive or a generic word and to which the appellant/plaintiff cannot claim exclusive appropriation. On the aspect of the doctrine of dilution contained in Sub-Section (4) of Section 29 of the Trade Marks

Act, 1999 trial court has held that there does not arise any issue of dilution of the appellant/plaintiff's trademark in the facts of the present case. Trial court has finally held that the appellant/plaintiff has also failed to make out a case of passing off on account of lack of identity between the goods and services of the respective parties and the lack of commonality between trade channels and the consumers and therefore there would be no deception or confusion in the consumer's mind with respect to the two respective trademarks through separate trade channels and consumers.

8. On the first aspect of *prima facie* case, it has to be examined, as to whether the appellant/plaintiff has made out a *prima facie* case for grant of reliefs on the grounds of infringement, passing off and dilution of their trademark by the respondent/defendant. The expression *prima facie* case has different colors in different contexts and facts of different cases. In certain cases grant of interim injunction, and which amounts to grant of final relief, is granted by courts, because for the grant of the interim relief, the suit itself becomes infructuous to wit:- injunctions against dispossession or demolition etc etc. There are however other types of cases where

denial of interim injunction not only does not render the suit infructuous but also the fact that though the plaintiff has made out a *prima facie* case, however even the defendant has made out a *prima facie* case entitling it to the user of the disputed trademark. Once therefore both the parties have comparable and arguable cases, then, in such circumstances grant of interim relief by the courts for decree of the suit ordinarily, depending on the facts of cases, ought not to be granted because the effect of decreeing of the suit by grant of an interim relief amounts to defendant who has an arguable case being shown the door without his case being tried and decided at the stage of final arguments. Also, once both the parties have arguable cases, then, immediately the other two factors of balance of convenience and irreparable injury come in, in inasmuch as, by non-grant of injunction the suit of the plaintiff does not become infructuous and in case the plaintiff succeeds in the suit, then he/it can always be compensated by monetary relief of damages. Automatic grant of interim injunction for registered trademarks is where respective trademarks are identical or more or less identical/same, and also that the goods of the respective

parties are identical or nearly identical/same with the trade channels and consumers being common as regards both the parties.

9. I would like to at this stage record that after hearing some arguments, and then even after hearing complete arguments, I did put a specific suggestion to the learned senior counsel for the appellant/plaintiff that instead of inviting a judgment from this Court, it would be better if this Court gives time bound directions for decision in the suit and which will include time bound directions for completing of evidence and also for the evidence to be recorded before a Local Commissioner, but, learned senior counsel for the appellant/plaintiff on instructions insisted on inviting a judgment. Effectively therefore the appellant/plaintiff argues and seeks that the suit should be decreed at the interim injunction stage itself by restraining the respondent/defendant from using the disputed trademark with respect to the respondent/defendant's business.

10. The provision of Section 29 of the Trade Marks Act requires to be referred to as at this stage as this would be relevant for determining the issues of infringement and dilution of the trademark. So far as the issue of passing off is concerned, the same will be

adverted to later on. Section 29 of the Trade Marks Act reads as under:-

“29. Infringement of registered trade marks.—

(1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.

(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—

(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or

(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or

(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

(3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.

(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which—

(a) is identical with or similar to the registered trade mark; and

(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and

(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.

(5) A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name of his business concern dealing in goods or services in respect of which the trade mark is registered.

(6) For the purposes of this section, a person uses a registered mark, if, in particular, he—

(a) affixes it to goods or the packaging thereof;

(b) offers or exposes goods for sale, puts them on the market, or stocks them for those purposes under the registered trade mark, or offers or supplies services under the registered trade mark;

(c) imports or exports goods under the mark; or

- (d) uses the registered trade mark on business papers or in advertising.
- (7) A registered trade mark is infringed by a person who applies such registered trade mark to a material intended to be used for labelling or packaging goods, as a business paper, or for advertising goods or services, provided such person, when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee.
- (8) A registered trade mark is infringed by any advertising of that trade mark if such advertising—
 - (a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or
 - (b) is detrimental to its distinctive character; or
 - (c) is against the reputation of the trade mark.
- (9) Where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation and reference in this section to the use of a mark shall be construed accordingly.”

11. On behalf of the appellant/plaintiff reliance is placed upon Sub-Sections (2) and (4) of Section 29 of the Trade Marks Act to argue that on account of the user of the trademark LINEN VOGUE/LINEN VOGUE LA CLASSE by the respondent/defendant with respect to fabric/cloth there is bound to be caused confusion in the mind of the public/consumers causing them to have association of the goods of the respondent/defendant with the appellant/plaintiff, and therefore it is argued that Sub-Section (2) of Section 29 of the Trade Marks Act will come into play. The provision of Sub-Section (4) of Section 29 of the Trade Marks Act is relied upon to argue the aspect of dilution of the trademark by arguing that even if the goods and

services of the respective parties are not same or similar or identical but if the registered trademark of the appellant/plaintiff has a reputation in India, and which it has, then, respondent/defendant should not be allowed to use the disputed trademark because it would amount to the respondent/defendant taking unfair advantage of the goodwill and reputation of the appellant/plaintiff associated with the trademark VOGUE and in any case the same would be detrimental to the distinctive character or repute of the registered trademark VOGUE of the appellant/plaintiff.

12.(i) In my opinion, reliance placed by the appellant/plaintiff on Sub-Section (2) of Section 29 of the Trade Marks Act is misplaced because the Sub-Sections (a), (b) and (c) of Sub-Section (2) of Section 29 of the Trade Marks Act specifically use the word 'and', i.e. in each of the Sub-Sections (a), (b) and (c) the identity or similarity of the registered trademark has to be alongwith (i.e and) the similarity of the goods and services of the appellant/plaintiff who has a registered trademark with the goods and services which are compared of the respondent/defendant. Under Sub-Section (2) of Section 29 of the Trade Marks Act the aspect of identity and similarity of respective

trademarks cannot be looked into independently of the products/services of the respective parties because legislature by using the expression 'and' has irretrievably fastened both the aspects of trademarks and goods/services.

(ii) Admittedly, the main business of the appellant/plaintiff is of publication of magazines, whether by hard copy/printing on paper or by electronic means, and the user of the trademark by the respondent/defendant is *qua* a totally separate product being fabric/cloth. Taking the goods of the respective parties as such therefore there is absolutely no connection between the two products being a magazine of the appellant/plaintiff and goods being cloth/fabric of the respondent/defendant, and which are used by the consumers. The only connection or association which may arise is on account of their being common consumers or the common public who may have read the magazine of the appellant/plaintiff under the trademark VOGUE and those very persons of the general public also purchasing goods under the trademark LINEN VOGUE/LINEN VOGUE LA CLASSE of the respondent/defendant, but, simply for this reason of some sort of commonality of trade channels and

consumers, it cannot be pressed or argued by the appellant/plaintiff of identity of trade channels and consumers. This is because a consumer in his mind coming to know of appellant/plaintiff's trademark while purchasing various goods, including the cloth/fabric of the respondent/defendant, is in such situation only reminded of the appellant/plaintiff's trademark but such reminding or knowledge of the appellant/plaintiff's trademark is not an 'association' as contemplated in Sub-Section (2) of Section 29 of the Trade Marks Act. Association will exist only if it is proved/established that a reasonable consumer while purchasing products/goods purchases the same with the understanding that actually he is purchasing goods of the appellant/plaintiff or goods which are endorsed by the appellant/plaintiff. Thus it is not that in all cases, such as the facts of the present case that 'reminding' becomes 'association'. Obviously every member of public purchases hundreds of different goods, and some will purchase both the magazines and also cloth/fabric, but, only for this reason in itself it cannot be argued that there necessarily exists common trade channels and consumers. Therefore, on the plain language of Sub-Section (2) of Section 29 of the Trade Marks Act, the

same will not apply in favor of the appellant/plaintiff, because, there is a complete difference between the products and services of the appellant/plaintiff and that of the respondent/defendant. The benefit of provision of Sub-Section (2) of Section 29 of the Trade Marks Act cannot be given to the appellant/plaintiff because normally/ordinarily the test of consumers being same is with respect to the consumers being the same for the purposes of same products. Putting it in other words, general public of any country may purchase two totally separate products i.e a magazine on the one hand and cloth on the other hand and surely therefore there would be common persons who would be called common consumers with respect to the product of the appellant/plaintiff being magazine sold under the trademark VOGUE and the cloth/fabric sold by the respondent/defendant, but it is doubtful that only for this reason the trade channels and consumers of the two parties can be said to be 'common' as per the parlance of IPR cases. In fact in my opinion if the argument urged on behalf of the appellant/plaintiff of common trade channels and common consumers is accepted at this interim stage, then possibly absurdity will result because the appellant/plaintiff's magazine publishes information and

also endorses hundreds and hundreds of products being used by human being in the nature of cloths, apparels, watches, beauty products, fashion accessories etc etc, and such circumstances surely will result in some common public and common consumers who will read magazines as also buy the products which are endorsed in the magazines of the appellant/plaintiff, but in my *prima facie* view such factual position will not result in there necessarily existing common consumers and trade channels. Of course I do hasten to add that observations which are made by this Court as regards the Sub-Sections of Section 29 of the Trade Marks Act are limited to the purpose of decision of the injunction application of the appellant/plaintiff, and that any final decision on such issues would be taken at the stage of final judgment in the suit and after both the parties have led evidences as per their respective cases. Therefore, in my opinion, at this interim stage, without trial being held, it is not possible to give benefit of Sub-Section (2) of Section 29 of the Trade Marks Act to the appellant/plaintiff for granting injunction amounting to decreeing of the suit and rejecting the defence.

13. In my opinion, no doubt appellant/plaintiff on a *prima facie* reading may seek application of Sub-Section (4) of Section 29 of the Trade Marks Act seeking relief by averring with respect to dilution of its trade mark and the disentitlement of the respondent/defendant to use its trademark in cases where even the goods and services of the respective parties are not similar as provided under Section 29(4)(b) of the Trade Marks Act, however, at the cost of repetition this Court observes that we are today only at the stage of interim injunction and at the stage of interim injunction once both parties have arguable cases, and arguable cases do exist of both the parties in this case, in my opinion, then appellant/plaintiff cannot seek aid of Sub-Section (4) of Section 29 of the Trade Marks Act for grant of interim injunction in the nature of decreeing of the suit itself without evidence being led in favor of the appellant/plaintiff by taking the ingredients of Sub-Section (4) of Section 29 of the Trade Marks Act already existing in favor of the appellant/plaintiff, and which factual ingredients can be dislodged/disproved by the respondent/defendant during the course of its leading evidence. Surely evidence can be led by the respondent/defendant to show that there is no confusion caused or that

there is no detriment to the distinctive character and repute of the trademark VOGUE of the appellant/plaintiff because respondent/defendant is using the trademark LINEN VOGUE/LINEN VOGUE LA CLASSE. The reasoning given hereinabove as regards 'reminding' and 'association' is reiterated and not stated here to avoid repetition and proximity, because, *prima facie* a mere reminding will not lead to unfair advantage to the respondent/defendant or cause detriment to the distinct character or repute of the appellant/plaintiff's trademark. After all the various ingredients of Sub-Section (4) of Section 29 of the Trade Marks Act are factual in nature, and all of which factual ingredients will have to be satisfied to the judicial conscience of the Court after trial i.e evidence is led by both the parties. However, for the appellant/plaintiff to succeed at this stage, this Court cannot come to a final finding in the sense of holding that Sub-Section (4) of Section 29 of the Trade Marks Act unquestionably comes into play in favour of the appellant/plaintiff. This Court would unhesitatingly refuse to jump into the fray for deciding disputed questions of fact by conducting a mini-trial at the interim stage, and before actual trial takes place.

14. Right to claim injunction by pleading passing off is a right which is a step/shade below the right asserted of infringement of a trademark. Claim of passing off is however a step above the right claimed of dilution of trademark or violation of the provision of Sub-Section (4) of Section 29 of the Trade Marks Act. Once interim injunction cannot be granted with respect to the right asserted under Sub-Section (4) of Section 29 of the Trade Marks Act then surely no interim injunction can be claimed for the higher step right of passing off. The right to claim interim injunction in the cause of action of passing off by the appellant/plaintiff is to be rejected for the self same reasons already given hereinabove for refusing interim injunction on the causes of action of infringement and dilution of the trademark under Sub-Section (4) of Section 29 of the Trade Marks Act.

15. I would like to observe at this stage that the trial court, in my opinion, has possibly not rightly decided some of the issues under the headings of generic/descriptive word, passing off, and dilution of the trademark, because it is seen that there are some observations of the trial court, as rightly argued on behalf of the appellant/plaintiff, that are not in accordance with the facts of the case as also the law as

applicable, however, at this stage, it will suffice to state that nothing contained in the impugned order, or even this judgment for that matter will be in any manner be taken as a final reflection on merits of the respective cases of the parties for the different issues to be decided in the suit, and the finality to the issues between the parties in the suit, and some of which were the subject matter of the impugned judgment deciding the injunction application, will not be treated as final either in facts or on the legal propositions which are adverted to and decided by the impugned judgment, and all these issues will be finally decided at the stage of final judgment in the suit.

16. In my opinion, passing off arising on account of any similarity of fonts of the trademarks or any endeavor by the respondent/defendant to allegedly pass off its goods and services as having association with the appellant/plaintiff are factual issues which in the facts of the present case ought to be only decided after trial is conducted and evidence is led by the parties. I have already stated above that the appellant/plaintiff has refused to accept that directions can be issued by this Court as to time bound disposal of the suit.

17. On behalf of both the parties a chain of judgments have been relied upon to support their respective cases and arguments. Whereas the appellant/plaintiff relies upon judgments to argue that there is a clear case of infringement made out or that there exists a clear case of passing off, and that the High Court of Bombay has granted injunction to the appellant/plaintiff, whereas, the respondent/defendant relies upon a different judgment of High Court of Bombay showing that injunction has been denied to the appellant/plaintiff, however, I need not refer to the judgments relied on by the respective parties, because, law with respect to *prima facie* case, balance of convenience and irreparable injury is now well settled in IPR cases. Also, the judgments of other courts, including the High Court of Bombay, in my opinion, would only have a persuasive value and not binding effect on this Court, because binding effect on this Court would only have been if there was a judgment of this Court or of the Supreme Court, and which is not the case. I am, therefore, not adverted to the different judgments relied upon by the respective parties, inasmuch as, going into too much depth would amount to

conducting a mini-trial and which ought not be done at the stage of disposal of the interim injunction application.

18. Learned senior counsel for the appellant/plaintiff very strenuously and passionately argued that the judgment of the trial court should be set aside since it is erroneous on the aspects of dilution of the trademark of the appellant/plaintiff, of arriving at wrong conclusions and relying on wrong tests, and also of wrongly holding that there are no common channels of trade or common consumers. In this regard it is stated that I have already observed above that nothing contained in the impugned judgment will be a final reflection, either on the facts or on law, with respect to issues which have to be decided in the suit.

19. One last aspect which needs to be adverted to by this Court is that the appellant/plaintiff has argued that respondent/defendant has taken out catalogues/publications and in which publications/catalogues the respondent/defendant is using the trademark VOGUE of the appellant/plaintiff by using the respondent/defendant's trademark LINEN VOGUE/LINEN VOGUE LA CLASSE while advertising for sale the clothes/apparel from the

cloth/fabric of the respondent/defendant and therefore the respondent/defendant should be restrained because the issue is of publication in a magazine and publication in magazines and catalogues by the respondent/defendant will amount to infringement or passing off or dilution of the trademark/goodwill of the appellant/plaintiff with respect to the trademark VOGUE which is indubitably used for the same product being publications and magazines. I have thought intensely on this aspect because it is true that the respondent/defendant has catalogues and publications where different models are shown wearing different clothes, and which fashion clothes on different pages of the publications also show the user of the trademark LINEN VOGUE/LINEN VOGUE LA CLASSE by the respondent/defendant, however, I fail to understand as to how the appellant/plaintiff can claim injunction by arguing such facts because surely the respondent/defendant for doing its business will have to advertise including publishing catalogues and publications/magazines, but, these catalogues and publications are not only sold as a product in itself for a price in the market, but are only shown as catalogues and publications to advertise and show off the

goods of the respondent/defendant to the prospective customers. In other words, the catalogues and publications of the respondent/defendant are only as a publication and catalogue to show to a prospective customer and that there is no commercial user by the respondent/defendant by sale as a publication of its catalogues and brochures, unlike the magazines of the appellant/plaintiff being sold commercially as magazines with the trademark VOGUE. At this stage, therefore, this Court would not like to interfere in the publishing of the catalogues and publications by the respondent/defendant showing fashion accessories, fashion clothes and other user of the cloth/fabric of the respondent/defendant with the trademark LINEN VOGUE/LINEN VOGUE LA CLASSE provided that such publications and catalogues will not be sold by the respondent/defendant as a commercial act.

20. In view of the aforesaid, I do not find any merit in the appeal and the same is hereby dismissed. Parties to bear their own costs.

AUGUST 23, 2017

VALMIKI J. MEHTA, J

AK/Ne