

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

NOTICE OF MOTION NO. 752 OF 2015

IN

SUIT NO. 373 OF 2015

1. **ABHAY AGARWAL,**
Of Dubai Inhabitant, with his place of
business behind Ambassador Hotel, Dubai,
UAE.
2. **AJAY AGARWAL,**
Of Dubai Inhabitant, with his place of
business behind Ambassador Hotel, Dubai,
UAE.
3. **PURANMAL RESTAURANT,**
A partnership firm with its place of business
behind Ambassador Hotel, Dubai, UAE. ...Plaintiffs

Versus

PURANMAL GOODS PRIVATE LIMITED

A company incorporated under the Companies
Act, 1956 with its registered office at F-28,
Samalaka, Bandh Road, Near Hotel Uppal's
Orchid, New Delhi 110 037. ...Defendant

APPEARANCES

FOR THE PLAINTIFFS **Ms. Alpana Ghone**, *a/w Mr. Mikhail Behl,*
i/b Sonal Doshi & Co.

FOR THE DEFENDANT **Ms. Tanmayi Rajadhyaksha**, *a/w Ms.*
Sneha Nandkar, Mr. N. Shekh, Mr.
Nimay Dave, i/b Mustafa Motiwala.

CORAM : G.S.Patel, J.

DATED : 27th July 2016

ORAL JUDGMENT:

1. The Plaintiffs seek a restraint order against the Defendant on a cause of action in passing off in relation to a trade mark, combined with a cause of action in copyright infringement. The mark in question, i.e., the one over which the Plaintiffs claim protection is the one shown at Exhibit “C” to the Plaint.¹ This is used, according to the Plaintiffs, in relation to an outlet or chain of outlets in Dubai that serves Indian vegetarian cuisine and also sells a variety of vegetarian savouries, sweetmeats and so on. The mark is “**PURANMAL**”. The artwork in which copyright is claimed shows an Indian male cook. He wears a traditional turban, very like the ones used in parts of Gujarat and Rajasthan, and sports a virile moustache. In his hand he holds a ladle and he seems to be stirring something preparation in a distinctly Indian vessel or pot.

1. *Plaint, p. 40.*

2. If asked to describe the relationship between the Plaintiffs and the Defendant, one might be tempted to fall back on a latter-day meme: *it's complicated*. For, it is not the Plaintiffs' case that the Defendant is unknown to it, a rank stranger that has imitated the mark. In fact, as the following narrative shows, the Defendant's use of the mark was in its inception permissive, and this is common ground. The Plaintiffs' case is that after a certain arrangement or understanding with the Defendant ended, the Defendant was no longer entitled to use the mark in question; and that the continued use of mark after the end of that arrangement amounts to passing off and copyright infringement. The arrangement or agreement pleaded is entirely oral.

3. I have heard Ms. Ghone for the Plaintiffs and Ms. Rajadhyaksha for Defendant at some length. With their assistance I have considered the material on record and the authorities cited. For the reasons that follow, I am not inclined to grant the injunction the Plaintiffs seek. There are far too many difficulties in the Plaintiffs' way, and to hold for the Plaintiffs demands an acceptance of much that little more than the purest conjecture.

4. The Plaintiffs' case leading to the adoption of the mark and the creation of the artwork runs like this. In 1924, one Puranmal Agarwal, the 1st Plaintiff's great-grandfather set up a sweetmeats shop in Mumbai. He traded in the name and style of "**Puranmal Delhiwala**". This continued for several decades. Some sixty years later, in 1984, he dropped the word "Delhiwala". In that year the 1st and 2nd Plaintiffs opened the first Puranmal Restaurant in Dubai. The 1st Plaintiff then claims that some twelve years later, in 1996, he

hired the services of one Gulf Technical Printing Press to create an artistic work for use with the mark **PURANMAL**. There is an invoice from Gulf Technical Printing Press.² The artistic work is the one that I have prescribed above.³

5. Pausing here for a moment, there is an immediate difficulty in the copyright claim. The Plaint proceeds on the footing that because the Plaintiffs say that the 1st Plaintiff engaged the services of this Gulf Technical Printing Press, it therefore automatically follows that the 1st Plaintiff became the owner of the copyright in that artwork. Admittedly, none of the Plaintiffs have an assignment from the Gulf Technical Printing Press. In fact, as Ms. Rajadhyaksha points out, the Plaintiffs could not ever have any such assignment. That assignment would have had to be from an individual employee of Gulf Technical Printing Press or its proprietor; i.e., not the entity but the individual employee or owner. We have no such evidence in the Plaint. Second, that assignment would have had to be in writing under Section 19 of the Copyright Act, 1957. Ms. Ghone's submission is that it is sufficient if the 1st Plaintiff says that he "explained" to Gulf Technical Printing Press "the essential features" of what was required and that the artwork was then created under the 1st Plaintiff's "direction and control". She bases this submission on the decision of a learned single Judge of this Court.⁴ In this judgment, Karnik J considered various authorities. In

2. Plaint, Exhibit "B", p. 39.

3. Plaint, Exhibit "C", p. 40.

4. *Macleods Pharmaceuticals Limited v Indian Institute of Technology & Ors.*, Notice of Motion No. 2278 of 2002 in Suit No. 2814 of 2002, decided on 24th February 2005.

paragraph 13, he drew an analogy with the legal profession to say that if a litigant approached an advocates' firm and some employee in that firm then drew up a plaint or a petition, it would be the employer, i.e. the firm, that would hold the copyright.⁵ This is because of the provisions of Section 17, and, specifically proviso (c) would operate: the 'author' would be the employee, and the work would have to be said to be one done in the course of his employment, thus making the employer-firm the first owner of copyright. This would apply equally to a firm of architects or engineers. What is of essence, however, is that in such a case the commissioning party, viz., the client is not the first owner of copyright. This is quite common today. Large firms that sell consumer goods often go to art studios or design houses for artwork for their packages, pouches, labels and so on. Individuals employed by these design firms draw up the necessary designs. Almost invariably, there follows an assignment of the copyright from the firm, or, where it is a sole proprietorship, from the individual, to the commissioning client. I do not know whether the observations of the learned Judge in paragraph 14 of the *Macleods Pharmaceuticals* decision lend themselves to general applicability. Those observations suggest that as long as there is "some degree of control" then the first owner of the copyright would be the client who commissions the artwork. I believe that given the facts in the case before the Court in *Macleods Pharmaceuticals*, the necessary degree of control or supervision was demonstrated. But this is not something that can be used or applied to every single case where

5. I see the parallel, though I do wonder whether any law firm would ever want to claim copyright in a pleading and what it would conceivably do with it or how it could possibly monetise it.

artwork is commissioned from an outside agency. The *Macleods Pharmaceuticals* paradigm might apply to a case where, for instance, the third-party agency provided only skilled labour and little else, and all the ‘creative’ decisions and inputs were from the client. In the present case, we are only told that the artwork in question was created under the 1st Plaintiff’s direction and control. There is nothing further. We do not know what formed the direction or control took, if any. We do not know if the 1st Plaintiff conceived of the shape, configuration, layout, features or characteristics of the design. We only know that some unknown individual in a named printing press produced the final artwork. When the 1st Plaintiff says that the essential features were ‘explained’, again we do not know what this is supposed to mean. Was the choice of character the 1st Plaintiff’s, or was this a suggestion from an employee of the printing press, one that the 1st Plaintiff only accepted? The two have very different consequences in law.

6. For this copyright claim to hold, the requirements of Section 17 of the Copyright Act, 1957 are to be met. There are seven provisos to this section. We are concerned with the first three.

Section 17: First owner of copyright

Subject to the provisions of this Act, the author of a work shall be the owner of the copyright therein:

Provided that—

- (a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract

of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

- (b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;
- (c) **in the case of a work made in the course of the author's employment under a contract of service or apprenticeship to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;**
- (cc) in case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be,

the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;

- (d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;
- (dd) in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

Explanation.—For the purposes of this clause and section 28A, “public undertaking” means—

- (i) an undertaking owned or controlled by Government; or
 - (ii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or
 - (iii) a body corporate established by or under any Central, Provincial or State Act;
- (e) in the case of a work to which the provisions of section 41 apply, the international organisation concerned shall be the first owner of the copyright therein.

(Emphasis added)

7. The first proviso speaks of a literary, dramatic or artistic work made by an author in the course of employment. That does not apply to the present case. The second proviso (b) speaks of, and this is important, not the general categories of literary works, dramatic works and artistic works, but of specific items such as a photograph, painting, portrait, engraving or a cinematograph film; i.e., a subset of the categories mentioned in clause (a). The present case falls in neither clause (a) nor clause (b), and both sides agree that it would be covered by clause (c) of the proviso. The question is, therefore, whether the Gulf Technical Printing Press's engagement by the 1st Plaintiff was a contract of service or apprenticeship. There was clearly no question of an apprenticeship. This leaves only a question of a 'contract of service'. I would have ordinarily understood a contract of service as indicating an element of servitude, i.e., an employer-employee relationship as distinct from a client-consultant relationship. The Plaintiffs do not suggest that their relationship with Gulf Technical Printing Press was that of an employer or an employee. It is for this reason that Ms. Ghone is compelled to invoke the *Macleods Pharmaceuticals* decision: she suggests that this kind of an agreement falls in some grey zone where though not a contract of service, yet because of a degree of control, the person creating the artwork did little more than a mechanical exercise, while all elements of creativity were the work of the client. In other words, the consulting press or agency merely delivered the kind of output that could commonly be done by a computer or a robot today. Of this, there is no evidence in the Plaint at all; and even *Macleods Pharmaceuticals* cannot, I think, be fairly read to suggest that every consultancy agreement is a contract of service, or that no proof of the exercise of a high degree of control is ever required. I do not

think that it is possible to hold that the Plaintiffs have established themselves to be the first owners of the copyright in question.

8. Ms. Ghone's response is that this question is moot: the Defendant has itself claimed to be the assignee of that very copyright; and this posits that the copyright once vested in the Plaintiffs. Unfortunately for Ms. Ghone, the fact that Ms. Rajadhyaksha might be wrong does not mean that Ms. Ghone is right. I must assess the Plaintiffs' case as if there no defence is entered and then test whether the Plaint, taken at its face, demonstrates the vesting of any copyright in the Plaintiffs. All other questions are subsidiary. The Plaintiffs cannot gain from a particular defence taken (or not taken) any advantage or benefit that it could not have had on a reading of the Plaint as it stands. There is very little purpose achieved, therefore, in then contending that the so-called assignment in favour of the Defendant, and to which the Defendant may lay claim, is *non est* because it does not conform to the contours of Section 19 of the Copyright Act since it is not a written assignment as that section requires. The point Ms. Rajadhyaksha makes is more brutal: she says that no question of assailing an assignment to her arises if the Plaintiffs never had copyright in the first place. I believe she is right.

9. Further, the question of copyright is now something of a red herring. The reason is simple. Both sides claim to have and enjoy trade mark protection not just in the name **PURANMAL** but in a device that contains this very artwork. Thus, whether or not any copyright vests in the Plaintiffs, or whether or not there is any assignment of it, are all matter now rendered largely irrelevant.

What I must see instead is whether the claim in passing off in relation to the trade mark has any substance. If it does, an injunction must undoubtedly follow.

10. Returning to the factual narrative, on 25th June 2003, the 1st Plaintiff applied in the United Arab Emirates for the registration of the trade mark **PURANMAL** with the logo or device of the Indian cook (the one I described earlier). In June 2009, says the Defendant, the 1st Plaintiff approached the Defendant's Navneet Sureka and Hemant Lalithraj with a proposal for investment in the Plaintiffs' small restaurant business in Dubai. The Defendant says that the Plaintiffs had at that time told it that the mark **PURANMAL** had become defunct and non-existent because it had not been used for merely 25 years.⁶ This has some bearing on the question of goodwill, to which I will turn shortly. What is of immediate relevance is that a few months later, on 5th February 2010, Navneet Sureka and Hemant Lalithraj promoted the Defendant, Puranmal Foods Pvt. Ltd. The purpose was to do the business of vending Indian vegetarian edibles (savories and sweetmeats) and to open a chain of restaurants under the trade mark **PURANMAL**.

11. Admittedly, the 1st Plaintiff was very much involved in this venture. Both sides agree that the 1st Plaintiff was allotted 15% equity of the value of Rs. 1.5 Crores in the Defendant. Their versions are slightly diverge somewhat as to the terms of this engagement: the 1st Plaintiff says that he paid Rs. 1.5 crores by an RTGS remittance but that the shares were never actually issued to

6. Notice of Motion paperbook, Affidavit in Reply, paragraph 2, *p.* 22.

him. Ms. Ghone says that there is a statement of account which shows this remittance in two tranches of Rs. 1 Crore and Rs. 50 Lakhs.⁷ The Defendant proceeds on denials. On its own, this statement of account shows nothing. The account narration does not show payment to the Defendant; I will assume that it is such a payment. Whether this was in fact towards share subscription or for some other reason is unknown. This is not the kind of assertion that lends itself to an assumption of any kind. After all, this is a payment made through banking channels allegedly to acquire shares. That requires more documentation of the usual formality to be shown. There is no other surrounding contemporaneous documentation toward this purchase price of equity shares. The question of how and on what terms the 1st Plaintiff acquired equity in the Defendant is thus one that should be quickly dispatched as being entirely outside the frame of any sort of *prima facie* acceptance.

12. It is also not disputed that the 1st Plaintiff permitted the Defendant to use such intellectual property rights as the Plaintiffs held in the name and logo. Neither side claims there was a formal assignment. Therefore, the question of how and on what terms the Defendant was allowed to use the mark and logo is undocumented. The 1st Plaintiff claims that the understanding was that the intellectual property would always remain with him so long as he continued to be in charge of the Defendant's operations; and on that on this arrangement ending, the intellectual property would revert to him. This is expressly said to be an oral agreement. The strange aspect of this is that I find no evidence of any such oral agreement.

7. Notice of Motion paper book, Affidavit in Rejoinder, p. 354.

Even in the Complaint, the terms of this oral agreement are not clearly set out. There is no surrounding corroborative material either. The only document on which Ms. Ghone relies is a very strange email, ostensibly of 2nd March 2012.⁸ In the last paragraph of this email, there is some sort of an assertion or claim by the 1st Plaintiff to his intellectual property rights. Ms. Rajadhyaksha makes a complaint that no inspection of this email was ever given to the Defendants. Ms. Ghone responds by saying that the email is not denied. That is all very well, and might perhaps occupy us for some time at the trial of Suit, but I do believe at this *prima facie* stage that there are very many things about this email print out that are entirely unsatisfactory, and possibly suspicious. I have never seen an email print out that looks like this. The date is offset to the right, something that never happens in a routine print out of an email. There is no subject line. There is no manner of identifying the email client (the actual software program), if any. What is even odder is that, although it shows the 1st Plaintiff as the sender, it does not do so in the usual email format. There is, strangest of all, no addressee whose email address is shown. All that we see are the words “to me”. Who this “me” is supposed to be remains unknown. The Complaint does not tell us. Ms. Ghone says that this email was sent to Navneet Sureka. If so, that makes matters worse. For then the word ‘me’ must surely reference him (Navneet Sureka), and it is wholly unexplained how an email sent to Navneet Sureka (the so-called ‘me’) and also apparently printed by him came to find its way into the 1st Plaintiff’s hands and thus into the Complaint as an exhibit. The other possible alternative is that this email was forwarded to

8. Complaint, Exhibit “N”, pp. 104–105.

somebody else by the 1st Plaintiff and that other person then printed it. We have no explanation at all.

13. This email is the solitary document in this entire correspondence in which the 1st Plaintiff makes any sort of claim to intellectual property rights. There are other emails as well. None are in this format. None make this claim. In all of them, the 1st Plaintiff only demands a return of money: some Rs. 1.29 crores. Apart from the fact that I am unable to reconcile this demand for a refund with his statement of contribution, I do not see why, if the intellectual property was this important, the 1st Plaintiff did not make a demand for it directly and consistently.

14. The point, however, of significance is what emerges from the events *following* the incorporation of the Defendant. Not only does the record indicate that the Plaintiff was involved in the operations in India of the Defendant, which included setting up several restaurants and points of sale, but the 1st Plaintiff was also appointed an Additional Director of the Defendant on 10th August 2010. The very next day, the Defendant applied for registration of a trade mark consisting of a logo or device of a man shown to be cooking. This was under Application No. 2007963 in Class 30.⁹ It is inconceivable that the 1st Plaintiff, as a Director, in full knowledge of his statutory rights, would permit a competing right to be set up in this fashion if, as he now claims, the Defendant only had a temporary right of permissive user of that mark. The 1st Plaintiff was on the board of the Defendant when it made its application. I do

9. Plaintiff, Exhibit "J", p. 294.

not think it is at all possible for the Plaintiff to now claim that there was some sort of an oral agreement for a temporary use or that the Defendant's use of the mark and logo was in any way dependent on the 1st Plaintiff's continued position in the Defendant. Indeed, as I have noted, there is absolutely nothing in the correspondence to indicate this. I note also that there is no such agreement in writing clearly spelling out the terms. It cannot even be ascertained from any correspondence, whether by email or otherwise.

15. Subsequent events further bolster the case against the Plaintiff. The Defendant then applied on 11th August 2010 for registration of the word **PURANMAL** in Class 30,¹⁰ the device of a male cook in Class 30¹¹ and in Class 43.¹² A few months later, on 30th October 2010, it registered the domain name www.puranmal.com. Even at this time, the 1st Plaintiff was with the Defendant and knew, or must be deemed to have known, about this. Indeed, I do not see how the 1st Plaintiff could have been unaware of the Defendant's growing business and its use of the mark and the device: the 1st Plaintiff's half-sister one Ms. Anjali Agarwal was commissioned to design the layout of the Defendant's website. The Plaintiff gave instructions. This is evident from some of the correspondence annexed to the Affidavit in Reply.¹³

16. The disputes between the Plaintiffs and the Defendants cropped up only in August 2011, though the material indicates that

10. Notice of Motion paper book, Exhibit "J", *p.* 297.

11. Notice of Motion paper book, Exhibit "J", *pp.* 294–295.

12. Notice of Motion paper book, Exhibit "J", *pp.* 300–301.

13. Notice of Motion paper book, Exhibit "K", *p.* 308.

these had been brewing for some time before then. What followed is even more curious: for on 22nd September 2011, the Plaintiffs applied for a registration of an identical device mark with the trade mark **PURANMAL** in Class 29,¹⁴ separately for registration of the word mark **PURANMAL** in Class 30,¹⁵ and of the device of a male cook with the word **PURANMAL** inscribed under it also in Class 30.¹⁶ The result is that both parties have registrations of the same device. The only difference is that the Plaintiffs' registration in India is subsequent to the Defendant's registration, but uses the word **PURANMAL** on the device.

17. I am not concerned with the subsequent correspondence about the business affairs of the Defendant. It is enough to note that in all this correspondence, except for the solitary mail to which I have referred, the 1st Defendant did not once make any grievance or claim to the intellectual property rights. The 1st Plaintiff resigned from the directorship of the Defendant on 11th July 2012. He continued to claim unpaid dues of Rs. 1.29 crores. I find that even in the 1st Plaintiff's Advocates' letter of 17th August 2012, this monetary demand is repeated, but there is no other claim in regard to the intellectual property rights.

18. This Suit was brought in December 2014. On 13th January 2015, for reasons that are today not immediately obvious, the Defendant agreed to delete the word **PURANMAL** from the logo

14. *Plaint, Exhibit "I", pp. 96-97; Exhibit "J", pp. 98-99.*

15. *Plaint, Exhibit "K", p. 101.*

16. *Notice of Motion paper book, Affidavit in Rejoinder, Exhibit "B", pp. 355-356.*

that it had adopted as its trade mark. That statement was made without prejudice to the parties' rights and contentions.

19. This is how matters stand today. Ms. Ghone submits that she is entitled to an injunction because there is no doubt that the intellectual property rights first vested in and originated from the Plaintiffs. She also claims that the Plaintiffs have a considerable transborder reputation and, therefore, even under Section 29 of the Trade Marks Act, they are entitled to injunctive relief. Ms. Rajadhyaksha disagrees. So do I. There is no case at all made out to show the slightest transborder reputation. In order to sustain such a claim, there must be cogent and clear evidence of a reputation in India. All that the Plaintiffs say is that many people from India often come to Dubai. Some visit Puranmal in Dubai — I cannot imagine why; this seems rather like carrying, if not coals to Newcastle, at least mithai to Mathura — and buy some edibles there. Unfortunately, none of this is of much help to the Plaintiffs. What is annexed to the plaint, as Ms. Rajadhyaksha points out, are a series of undated brochures and flyers.¹⁷ These prove absolutely nothing. There is a tabulated statement of alleged sales.¹⁸ It bears no caption whatever. It purports to be a statement of the Plaintiffs' alleged revenue from 1984 to 2013 in US Dollars. The Plaintiffs claim to have revenue of nearly USD 46 million in the year 2013. If that be so, I imagine they should have been able to afford the services of a Chartered Accountant to certify these statements. I am unable to understand why they have sought to scrimp on that expense; the

17. Plaint, Exhibits "D1" to "D-42", *pp.* 41–82.

18. Plaint, Exhibit "E", *p.* 83.

statements are entirely unauthenticated. The same goes for the promotional expenses, also uncertified and unauthenticated.¹⁹ The invoices that follow,²⁰ are all of 2013 and do not establish sufficiency of reputation even in Dubai let alone in India.

20. As I have noted earlier, there is no question in this case of a trade mark infringement action because the Defendant itself is a registered Proprietor. The case on copyright infringement I have already dealt with, and held to be irrelevant. This leaves the case in passing off. For that to succeed, the Plaintiffs must show that the Defendant's adoption is since its inception dishonest. Every action in passing off is an action in deceit. The classical trinity of tests will apply. The Plaintiffs must establish goodwill and reputation and must also establish an attempt to trade on that goodwill and reputation. In particular, the Plaintiffs must be able to show that the Defendant is trying to pass off its goods and services as those of the Plaintiffs. In this particular case, it seems to me that the Defendants do not need to do anything of this sort. They have an independent registration and use going back at least to 2010–2011. They commenced their business with the participation, concurrence, permissions and assent of the Plaintiffs. Their adoption of the mark cannot, therefore, be said to be dishonest in any sense of the term. Mrs. Rajadhyaksha may be correct when she says that such goodwill as exists in India is entirely that of the Defendant and none of it belongs to or accrues to the Plaintiffs. She is probably also correct in saying that the mark itself was ceded to the Defendant, and the

¹⁹. *Plaint, Exhibit "F", p. 84.*

²⁰. *Plaint, Exhibits "G1" to "G6", pp. 85–90.*

Defendant used it, with the Plaintiffs' concurrence, to grow its business. This began at the time when the 1st Plaintiff was associated with the Defendant. It can hardly disclaim that knowledge. From 2012 to 2014, the Plaintiff has taken no action whatsoever.

21. I do not see how the authorities relied on by Ms. Ghone in any way assist her. The decision of the Supreme Court in *M/s. Bengal Waterproof Limited v M/s. Bombay Waterproof Manufacturing Company & Anr.*²¹ is inapplicable to the facts of this case. On the other hand, Ms. Rajadhyaksha relies on the decision in *Kores (India) Ltd. v Whale Stationery Products Ltd.*²² by Dr. D.Y. Chandrachud J of this Court (as he then was), for the proposition that when a business is abandoned in a country in which it has been previously carried on, the goodwill associated with the use of that mark in the country perishes, even if continued to be used in other countries. Therefore, even assuming that the Plaintiffs had any goodwill in India, once they abandoned all business in India, their goodwill, if any, perished. In any case, there is no evidence of the Plaintiffs having independently done any business in India after they shifted to the UAE.

22. It may be true that the Defendants have not specifically pleaded abandonment. Yet, when facts as stark as these are put before a Court, I do not think that it is possible to ignore the Plaintiffs' own conduct as they would today have me do. I am unable

21. AIR 1997 SC 1398.

22 2008 (3) Mh.L.J. 523.

to hold that the Plaintiffs have made out any sort of a *prima facie* case for grant of an injunction.

23. The Notice of Motion is dismissed. The Defendants will be entitled to recover the actual costs of the Notice of Motion at the time of final hearing of the Suit.

24. The statement made by the Defendants at the ad-interim stage on 13th January 2015 to the effect that the word **PURANMAL** will be deleted (and nothing further) from the Defendant's logo will continue to operate for a period of four weeks from today.

(G. S. PATEL, J.)