

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER ST. NO.29778 OF 2017
with
CIVIL APPLICATION ST. NO.29779 OF 2017
IN
APPEAL FROM ORDER ST. NO.29778 OF 2017

Lily Packers Pvt. Ltd.

... Appellant

Vs.

Welspun India Limited & Ors.

... Respondents

with
CROSS OBJECTION ST. NO.29926 OF 2017

Mr.D.D. Madon, Senior Advocate with Mr.Pankaj Sawant, Senior Advocate, Ms.Tripty Kapadia, Sachin Midha, Ms.Kunjal Patil, Mr.Murlidharan, Mr.Sai Redij and Mr.Kaushal Parsekar i/b Joy Legal Consultants for the Appellant

Mr.Janak Dwarkadas, Senior Advocate with Bindi Dave, Sameer pandit and Ms.Madhu Preetha Elango for Resp. Nos.1 and 2

Mr.S.U. Kamdar, Senior Advocate with Bindi Dave, Sameer pandit and Ms.Madhu Preetha Elango for Respondent No.3

Mr.Pravin Samdhani, Senior Advocate with Snehal Shah, S. Iyer, Debashree Mandpe, Kavita Sharma i/b Ganesh & Co. for Resp. No.4

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: NOVEMBER 20, 2017

P.C.:

1. This Appeal from Order is directed against the order dated 13.10.2017 passed in Notice of Motion No.3483 of 2017 in Suit

(stamp) No.10735 of 2017 by the learned Judge of the City Civil Court, Mumbai, thereby vacating the ad-interim relief under Order 39 Rule 4 of Civil Procedure Code. The Notice of Motion is pending.

2. The appellant / plaintiff is a private limited company carrying on the business of manufacturing of corrugated boxes since 2009. Respondent Nos.1, 2 and 3 are the companies, who are operating under a common brand name “Welspun” manufacturing towels and is having a business in other countries. They have received order mainly for Christmas of 2017 for supplying the towels in huge quantity from Respondent No.7/defendant No.7, the wholesalers and giant retailers, namely, Costco Wholesale Corporation in USA. Respondent Nos.4 are the packers with whom the order of packing the towels is placed by respondent Nos.1, 2 and 3. It is the case of the appellant/plaintiff that respondent Nos.1, 2 and 3 i.e., the original defendant Nos.1, 2 and 3 (hereinafter called respondent Nos.1 to 3), had approached the appellant in May, 2017 and asked them to prepare the sketches or designs of the boxes as per the specifications given by respondent No.7. The appellant, therefore, considering the business relations between them, prepared the

designs of the cartons for the towels according to the requirement of defendant No.7; sent the online images to the defendants, however, made it explicitly clear that appellant has intellectual right in the said information and it is a confidential information and hence, it is not to be shared with third party, except defendant No.7. Further, an email was sent of the images to defendant No.7 for their approval. It is the case of the appellant that defendant Nos.1, 2 and 3 sent the designs and sketches prepared by the appellant to defendant No.7 and the said designs were approved by defendant No.7. However, on 9.9.2017, the appellant came to know that defendant Nos.1, 2 and 3 have placed the order of cartons for packing their towels to send them to defendant No.7 in USA and the cartons which are prepared by defendant No.4 are based on the designs prepared by the appellant and approved by defendant No.7 and thus, there is a breach of confidentiality by defendant Nos.1, 2 and 3. Therefore, the appellant has approached the civil Court for injunction and other reliefs.

3. The suit was filed for injunction on 6.1.2017. On the same day, the trial Court granted *ex-parte* ad-interim order in favour of the appellant. The defendants filed their reply and contested the

matter. Then, the Court after hearing the submissions and on going through the record, vacated the order of ad-interim injunction and gave some directions about the preservation and sealing of one such sample box and kept it in the custody of the Court. Being aggrieved with order of vacating injunction, the appellant approached this Court.

4. The admitted facts can be summarised as follows:

Defendant No.7 placed the order of towels alongwith the cartons and defendant Nos.1, 2 and 3 have approached the appellant in May, 2017 in respect of supplying the designs of the cartons as per the specifications given by defendant No.7. The appellant had prepared the designs of the corrugated boxes as per the specifications given by defendant No.7 and had sent them to defendant Nos.1, 2 and 3 online. Those designs were forwarded to defendant No.7 by defendant Nos.1, 2 and 3. Defendant No.7 approved the sketches sent by defendant Nos.1, 2 and 3 and placed the order of towels in the approved specified cartons. This correspondence has taken place between the months of May, 2017 and September, 2017. In September, 2017, respondent No.4 sent five samples of cartons to defendant No.7 which were

approved by defendant No.7 and, therefore, defendant Nos.1 to 7 placed the order of cartons for packing their towels which were to be exported to USA. There was a continuous correspondence through email between the appellant and defendant Nos.1, 2 and 3 so also, between defendant Nos.1, 2 & 3 and defendant No.7. On this background, the submissions of both the sides are to be considered.

5. Mr.Madon, learned Senior Counsel appearing for the appellant, has submitted that not all the specifications were provided by Respondent No.7 – Costco Corporation but the design of the cartons is an exclusive creation of the appellant. The learned Counsel relied on emails exchanged between the parties and also the pictures of the cartons prepared by the appellant, which were sent to defendant Nos.1, 2 and 3. The learned Counsel also read over the clause where confidentiality is claimed by the appellant. The learned Counsel has submitted that the designs of the cartons are very specific and as per the order of defendant No.7 and, therefore, these designs are the intellectual property of the appellant. The learned Counsel has relied on the print-outs of the powerpoint presentation (PPT) of these designs

and has submitted that the images from the same powerpoint presentation were sent by defendant Nos.1, 2 and 3 to defendant No.7 with deliberate changes by hiding the logo of the appellant and those designs were approved by defendant No.7. However, the water mark could not be deleted or wiped out and it shows that these images are taken from the powerpoint sent by the appellant.

6. In support of his submissions on the point of injunction, he relied on the judgment of the Supreme Court in the case **Gujarat Bottling Co. Ltd. & Ors. vs. Coca Cola Co. & Ors.**¹ He also relied on the judgment in the case of **Devendra Kumar vs. State of Uttaranchal & Ors**², on the point that if any order is obtained by fraud or misrepresentation, then, the person violating the law cannot be permitted to take shelter of law. On the point of breach of confidentiality, he relied on the judgment of Division Bench of this Court in the case of **Zee Telefilms Ltd. vs. Sundial Communications Private Limited & Ors.**³ He also relied on the judgments of learned Single Judges of this Court in **Urmi Zuvekar Chiang vs. Global Broadcasting News Limited & anr.**⁴ and

1 (1995) 5 SCC 545

2 (2013) 9 SCC 363

3 2003 (3) Mh.L.J. 695

4 (2008) 2 Bom C.R. 400

Beyond Dreams Entertainment Pvt. Ltd. & ors. vs. Zee Entertainment Enterprises Limited & anr.⁵.

7. Mr.Dwarkadas, learned Senior Counsel appearing for defendant Nos.1 and 2, has argued that the view taken by the learned Judge of the trial Court that the claim can be of monetary valuation and the design is now in the public domain and, therefore, the confidentiality cannot be protected by granting injunction, is legal and correct. He argued that the averments of the appellant that it is a confidential information, is false. He submitted that defendant Nos.1 and 2 have contacted many other manufacturers like the appellant to give the designs and to prepare the cartons as per the designs for packing their towels which are going to be supplied to Costco in USA. He further submitted that the dimensions and the specifications of the cartons were given by the Costco and, therefore, there is no originality in the designs prepared by the appellant. He submitted that the appellant has not shown any speciality or originality in the design and, therefore, he cannot claim confidentiality. The emails exchanged between the appellant and defendant Nos.1 and 2 are relied on by the learned

5 Notice of Motion (L) NO.785 of 2015 in Suit (L) No.251 of 2015

Senior Counsel. Defendant No.1 has sent email dated 16.8.2017 wherein the defendant Nos.1 and 2 disclosed the fact that they have contacted other persons, who are in the business of designing and manufacturing the cartons for their towels. By letter dated 29.8.2017, the defendants have asked the appellant and others to give their quotation. He submitted that in the reply dated 29.8.2017, the appellant did not say a word that whatever is supplied to them is only their work. He submitted this unnatural silence on the part of the appellant shows that there was no issue of confidentiality or originality in the design of the cartons. This being a commercial relationship quotations were called from four companies. He further argued that on 1.9.2017, defendant No.4 prepared five physical cartons and they were sent to Costco, who approved those boxes and, therefore, the order was placed with defendant No.4. He submitted that huge number of towels are ready and are to be supplied to Costco, USA, in the cartons and this order is specially for the Christmas of 2017 and, therefore, all the material should reach before the first week of December, 2017.

8. It was argued that the averments in the plaint disclose inconsistent stand of the appellant on the point of confidentiality.

The learned Senior Counsel relied on the email images sent by defendant No.3 to the appellant. He relied on the table showing the comparison of the information in respect of the measurements and sizes and art work which is sent by the respondent and it is furnished by the appellant in respect of the carton. He referred to a series of emails sent by the respondents to the appellant and the other parties. He argued that the appellant misunderstood that the image sent by him was only sent to respondent No.7 for approval. He has misinterpreted the email correspondence dated 27.7.2017, 28.7.2017, 16.8.2017 and 29.8.2017 that his carton is approved. He submitted that the respondents have communicated the approval of the artwork which is the brain child of the respondents and the appellant has not contributed to it. The learned Senior Counsel submitted that the appellant is not a creator of the original design and it is not confidential design but just to knock out money the appellant has taken out this prosecution against the respondents and have obtained the ex-parte order behind the back of the respondents. The appellant has suppressed the facts.

9. Mr.Dwarkadas also referred to the cases of Zee Telefilms Ltd. vs. Sundial Communications Private Limited & Ors. (supra);

Urmi Zuvekar Chiang (supra); Coco (supra); Terrapin (supra) and submitted that the ratio laid down in these cases is not useful to the appellant because the appellant has not proved its case, prima facie. The learned Senior Counsel has submitted that the appellant has relied on the ratio in the cases above on assumption that the appellant is the original creator of the design and has shared confidential information with respondent Nos.1 to 3, however, it is a wrong assumption. He relied on the case of **Best Sellers Retail (India) Pvt. Ltd. vs. Aditya Birla Nuvo Ltd. & Ors.**⁶ He also relied on the judgments in **Colgate Palmolive (India) Ltd. vs. Hindustan Lever Limited**⁷; **Salim Khan & anr. vs. Sujit Prakash Mehra**⁸ and **Narendra M. Singh @ Sanjay Singh vs. Ketan Mehta & Ors.**⁹ on the point of criteria applied for granting injunction.

10. Mr.Dwarkadas has submitted that the appellant's loss, if any, can be adequately compensated and, therefore, the view taken by the learned Judge of the trial Court is correct. The learned Counsel on the point of granting injunction under Order 39 Rules 1

6 (2012) 6 SCC 792

7 (1999) 7 SCC 1

8 2013(15) PTC 1 [Bom]

9 Notice of Motion (L) No.2071 of 2015 dated 20.8.2015

and 2 of the Civil Procedure Code has submitted that three known parameters for issuing injunction are required to be proved by the appellant and in the present case, the appellant could not show even the prima facie case.

11. Mr.Kamdar, learned Senior Counsel appearing for Respondent No.3, submitted that the appellant has in fact failed to show any right over the confidential information as he claimed. It is argued that respondent No.3 in fact has supplied all the specifications and measurements of the cartons to the appellant and similarly to other respondents. He pointed out that not only the sizes of the carton but even the size of the shipped cartons which were to be sent in the cargo, is also supplied by the respondent No.3 to the appellant. He has thus submitted that the appellant has no right to ask for injunction against the respondents on supplying the towels to respondent No.7 in the cartons.

12. Mr.Samdhani, submitted that defendant No.4 is not having any contract with the original buyer Costco but the offer is accepted by respondent Nos.1, 2 and 3 is of respondent No.4 and not of the appellant and there was a privity of contract between the

appellant and defendant No.1 only and not with Costco. He submitted that defendant No.4 is a box manufacturer and has a special skill of giving engineering drawings. He relied on the affidavit of Mugan Sundha of defendant No.4 and also on the affidavit of defendant No.1 Mr.Ravotri. Sending of the drawings by defendant No.4 to defendant No.1 started from June onwards. He relied on email communication between defendant No.4 and defendant No.1 from 27.6.2017 till 9.9.2017. He pointed out that till 16.8.2017, various artworks, drawings of the cartons with specifications were supplied by defendant No.4 to defendant No.1. On 11.8.2017, defendant No.4 provided a drawing with design given by his printer or internet to Welspun. On 16.8.2017, Welspun wrote to respondent No.4 and a similar letter was written to appellant and other suppliers. Alongwith that, the appellant has supplied a .PDF file. The learned Senior Counsel submitted that it is important to note that the appellant did not claim in letter dated 29.8.2017 to Welspun/Defendant No.1 that the said .PDF file was his powerpoint presentation. The learned Senior Counsel has submitted that respondent No.4 has made actual cartons i.e., PDQs and those PDQs were sent on 1.9.2017, as per the requirements. Defendant No.4 sent 5 samples alongwith email

and that was sent by defendant No.1 to USA, which was received on 6.9.2017 and thereafter on 9.9.2017, it was approved finally by Costco. He submitted that this case comes as an independent angle of balance of convenience as defendant No.4 has produced more than 7000 cartons till today and have supplied nearly 3400 cartons to Welspun. The towels are packed in these boxes and now more 3000 boxes are lying with defendant No.4 which are to be used as they cannot be used for any other purpose.

13. Mr.Madon, in reply, relied on the communication between the appellant and defendant Nos.1, 2 and 3 dated 29.8.2017 and submitted that no inference can be drawn that the appellant has accepted that the powerpoint design were not prepared by the appellant. He submitted that the contract between Costco and Welspun was not only of 7000 boxes but the total requirement of Welspun as per the communication will be 30000 to 40000 pieces a month. The appellant is going to suffer great loss if the ad-interim stay is not restored. There was emergency to move the Court and facts were suppressed. He clarified that not only defendant No.4 but the appellant also sent many physical samples to Welspun.

14. Notice of Motion No.3483 of 2017 is pending before the trial Court. The trial Court had granted ad-interim injunction on 6.10.2017 and therefore, the application was moved by the defendants to vacate the said ad-interim injunction and by order dated 13.10.2017, the trial Court set aside its order of ad-interim injunction with some directions of keeping aside one box from the consignment and seal it and preserve it as evidence. So also, leave was granted under Order 2 Rule 2. The appellant do not challenge other directions i.e., operative portion i.e., clause Nos (ii) (iii), (iv) and (v) but the order of setting aside ad-interim order passed in clause (i) is challenged. Read the pleadings, reply, the law produced by both the parties. Perused the various designs which were emailed between the appellant, respondent Nos.1, 2 and 3 and Respondent No.7 Costco so also the correspondence between respondent No.4 for direct contract with respondent No.7. Respondent No.7 has placed the order of towels with respondent Nos.1, 2 and 3. Thus, the commodity which is to be supplied is bath towels. For the purpose of packing bath towels, cartons are required and, therefore, as per the specifications of the requirement of Costco, the order is placed by respondent Nos.1, 2 and 3 with respondent No.4. However, the appellant claim their

right in the drawings of the cartons which were approved by Costco and so, it cannot be used by any other party. Those cartons prepared by them cannot be used by respondent Nos.1, 2 and 3 for packing their bath towels which are to be sent to Costco. Thus, there is no privity of contract between appellant and defendant No.7 and also no such contract exists between defendant No.4 and defendant No.7. So, the entire communication of approval of the designs of the appellant or respondent No.4 is through respondent Nos.1, 2 and 3. Admittedly, the approving authority is not respondent Nos.1, 2 and 3 but it is Costco, Respondent No.7, the buyer of the product.

15. It is not disputed that the sample PDQs prepared and forwarded by respondent No.4 to respondent Nos.1 to 3 on 1.9.2017 were approved by Respondent No.7. The only question to be answered at this stage is whether prima facie, the appellant show that its designs of the cartons which were prepared as per the requirements matching to the specifications given by Costco, were finally approved or not? The e-correspondence between the parties discloses evidently that respondent No.7 has given the specifications and communicated their requirement to respondent

Nos.1, 2 and 3 and only after approval of the drawings, respondent Nos.1, 2 and 3 were expected to send the samples of the cartons to respondent No.7 for their further approval of the physical product. The appellant's designs with specifications were forwarded by respondent Nos.1, 2 and 3 to respondent No.7 and the same were approved. A query was made to respondent Nos.1, 2 and 3 as to whether the drawings of respondent no.4 were sent by respondent Nos.1, 2 and 3 to respondent No.7 and the same were approved by respondent No.7 or not? No answer is given to this question by respondent Nos.1, 2 and 3. If these were the only approved drawings, then, the possibility of leakage of information by respondent Nos.1 to 3 to respondent No.4, who prepared the actual 5 PDQs based on that approved design, cannot be overruled. Respondent No.7 being very competitive in the business in USA, wanted meticulously perfect and suitable drawings so that accordingly the cartons can be manufactured to pack the towels. The corrugated boxes can be made of any size and shape or without specifications for keeping the goods as per the size. However, respondent No.7 is extremely particular about the design and the specifications. All these cartons are thus customised products made by respondent No.4.

16. In the e-mail communication dated 29.8.2017, respondent Nos.1, 2 and 3 have made it clear that Welspun reserves full right of design and artwork. The appellant has also communicated that as per the terms agreed between them, the design was developed by them and supplied to them on their request and, therefore, that remains their intellectual property and also they have sent samples to them time to time. Not a copyright but right of confidential information is claimed by the appellant only in drawings and not in art-work. The finding given by the trial Court on this point cannot be faulted with.

17. The trial Court has observed that this information of the specifications and designs has not remained confidential because now it is in the public domain and therefore, the trial Court has vacated ad-interim injunction granted earlier. In the e-communication dated 29.8.2017 Welspun has informed that they have received various proposals from many suppliers on development and supply of proposed PDQs, which are not very different than each other. However, it also informed that Welspun has finalised the PDQ design. Therefore, whose design is finalised to make PDQ and, therefore, whose designed is approved by

Costco, is the key question. As this is not satisfactorily answered by Respondent No.3 Welspun, the appellant's case on this point is stronger than the respondents. Thus, the possibility of Welspun transferring this design approved by Costco to respondent No.4 Radiant, cannot be overruled. Thus, though the PDQs are prepared by respondent N.4 as per the specifications or the approved design originally prepared by the appellant and approved by Costco cannot, at this stage, be said that the information is now in the public domain but it is well within the plaintiff, Welspun and respondent No.4.

18. In **Zee Telefilms Ltd. (supra)**, the appellant is required to identify clearly what was the information he was relying on and which is to be treated as confidential.

19. The ratio laid down in the case of **Terrapin vs. Builder Supply Company** that the person who has obtained information in confidence is not allowed to use it as a spring-board for activities detrimental to such person, is very valid, however, factually, it is different and unique case, as it is specifically mentioned in the case of **Coco vs. A.N. Clark (Engineers) Limited**¹⁰.

¹⁰ [1968] FSR 415

20. In the case of **Coco (supra)**, the learned Judge has distinguished the facts of the case of **Coco (supra)** and **Terrapin Builders Supply (supra)**. In the case of **Coco (supra)**, the learned Judge has pointed out whether the Judge has to consider the information is segregated from the information which is partly published and information which is partly provided. In the said case, the learned Judge has dealt with the Spring Board doctrine. In the case of **Coco (supra)**, the learned Judge has mainly discussed the concept of confidentiality of the information and its repercussions if it is leaked in the public domain. Such information is classified into two categories i.e., one, it is the duty not to use the information without consent and secondly, merely a duty not to use the information without paying reasonable sum for it. In the first category, granting injunction is justified and in the second category, the injunction should not be granted. The information claiming confidentiality in the present case prima facie falls in the first category. However, the other case to case facts are also to be looked into while considering the issue of injunction.

21. In the case of **Terrapin (supra)**, two companies, which were involved in the production of rival products were competing with

each other and in the present case, the competition is not between the appellant and respondent Nos.1, 2 and 3 but between appellant and respondent No.4.

22. In the case of **Gujarat Bottling (supra)**, the Supreme Court while dealing with the principles under Order 39 Rules 1 and 2 held that the party in breach not to be allowed to vacate the injunction.

23. In the case of **Best Sellers Retail (India) Pvt. Ltd. vs. Aditya Birla Nuvo Ltd. & Ors. (supra)**, the Supreme Court held that even if prima facie case is found in favour of the appellant, yet, the Court may not grant temporary injunction, if it is found that the injury by the appellant on account of refusal of temporary injunction is not irreparable. Thus, the Supreme Court applied the test of whether the loss suffered by either of the party is irreparable or it can be compensated.

24. In the case of **Colgate Palmolive (India) Ltd. vs. Hindustan Lever Limited (supra)**, the Supreme Court while dealing with section 12A of the Monopolies and Restrictive Trade Practices Act, i.e., of grant of temporary injunction, held that the

Court has to consider prima facie case and also the Court has to weigh the circumstances and find out whether the extent of damages is an adequate remedy and whose case is stronger than the other.

25. In the case of **Salim Khan & anr. vs. Sujit Prakash Mehra**¹¹, there was a dispute in respect of remake of a Hindi film. In the said suit, on the point of remaking of the Hindi film, the issue of injunction for infringing the copyright of the story, dialogue and screenplay was involved. In the said suit, the learned Single Judge of this Court held that the plaintiffs have delayed in filing the suit and have asserted the sum as fair and reasonable monetary compensation and, therefore, the plaintiff's claim falls within the provisions of section 38(3)(C) of the Specific Relief Act and not u/s 38(3)(b) of the said Act and hence, the injunction was refused.

26. In the case of **Narendra M. Singh @ Sanjay Singh vs. Ketan Mehta & Ors. (supra)**, the issue of injunction on the release of film was before the Court. In this case, on balance of convenience, it was held that it tilted in favour of the respondents and thus dismissed the Notice of Motion.

¹¹ 2013(15) PTC 1 [Bom]

27. In the case of **Urmi Zuvekar (supra)**, the plaintiff, a writer of a television serial, has claimed that the defendants made the television programme in a similar manner of her original programme. It was held that in the case of infringement, either of trademark or copyright, normally, an injunction must follow. However, in the present case, copyright is not claimed but there is a limited issue of confidential information. In *Urmi Zuvekar (supra)*, the court has accepted the case of the plaintiff regarding infringement of copyright in relation to her literary work of concept notes articulated by her time to time. In the present case, it was a design of the plaintiffs which was approved by respondent No.7 and, therefore, it can be said *prima facie* that the plaintiff has shared confidential information with respondent Nos.1 to 3.

28. The proposition of the law laid down in various cases as referred to above, are guidelines for the Courts and there is no dispute about the same. Confidentiality is a specie of copyright and there is doubt that a person, who claims confidentiality should identify clearly what was the information he is relying on. The learned Senior Counsel for the respondents have after taking me through various communication of e-designs, tried to impress on

the mind that nothing original is created by the appellant. However, the e-designs prepared by the appellant with water mark 'Lily' are pointed out and they are the ones which were approved by the Respondent No.7. The respondents Welspun themselves have laboured systematically on getting the designs and then got the designs approved. Only thereafter, the actual customised product i.e., carton, was made. Making such a design can be at this stage, said as a creative work. If the specifications are given by the buyer and as per the requirement, the designs are made by 3 to 4 persons, then, each person can claim originality only in his own drawings. Moreover, respondent Nos.1, 2 and 3 have never denied the claim of confidentiality when it was unambiguously stated by the appellant in their e-communication.

29. Mr.Madon, the learned Senior Counsel, has strenuously argued that if at all, the information is held confidential, then, injunction is the only remedy and not the damages. This submission cannot be accepted in the present set of facts. Injunction is an equitable relief and the Court has to take into account all the circumstances and after weighing all the circumstances, use its discretionary power judiciously so that the

rights and obligations of the parties are balanced appropriately. In the affidavit of one Magan Sundha, partner of respondent No.4, it is mentioned that respondent No.4 has manufactured till today 7800 boxes on the basis of specifications provided by respondent No.1 and out of which 3688 boxes have already been supplied to Respondent No.1 and the remaining boxes cannot be used for any other purpose. Therefore, the remaining boxes are to be supplied to respondent Nos.1, 2 and 3 for sending it to respondent No.7 to complete the order.

30. It must be noted that after all this is a business transaction with aggressive competition in free market. Therefore, the steps taken to supply a better and more finished product with low quotation, is not illegal but it is a regular feature of the business world. The appellant cannot insist that the order should be given to them only. The buyer has open market to choose whichever is the best befitting his needs and affordable to his purse. However, the laws protecting the intellectual rights uphold the element of honesty and, therefore, it cannot be disregarded. The parties may endeavour to settle their dispute amicably.

31. Thus, the Appeal from Order is dismissed with the following directions:

- i) The respondents to file reply before the trial Court in the Notice of Motion so that the Notice of Motion can be heard and decided on or before 31.1.2018.
- ii) The respondent Nos.1, 2 and 3 may fulfill their Christmas and New year order of supplying the bath towels to respondent No.7 Costco.
- iii) The respondent Nos.1, 2 and 3 shall deposit a sum of Rs.3 crores on or before 11.12.2017, without fail, in the City Civil Court by way of security towards the damages.
- iv) If respondent Nos.1 to 3 are going to use the same design for the subsequent cartons, then the respondents after giving intimation to the Court and the appellant, may supply towels in the same cartons more than 7800 boxes, on producing proof of the order mentioning the quantity, so that no business losses will be suffered by the respondents.
- v) It is further directed that the respondents shall give an undertaking before the trial Court that they shall not use the

same design of the cartons given by the appellant for fulfilling the order of the towels to Costco or any other client after New year.

v) It is made clear that respondent Nos.1 to 3 may use a different design of the cartons for packaging their towels and supply the same to Costco or any other party. However, such carton is to be produced as a sample before the trial Court and it is to be preserved by the trial Court, for comparison at the time of evidence.

vi) This order shall be operative till the Motion is disposed of by the trial Court.

32. Appeal from Order stands disposed of accordingly. In view of the disposal of the Appeal from Order, Civil Application and the Cross Objections are disposed of.

33. Mr.Madon prays that the order of refusal of setting aside the order of the trial Court in respect of vacating the ad-interim injunction be stayed for four weeks. Learned Counsel for the respondents oppose the same and submit that there is an urgency for the shipment of the product as the order is specifically for

Christmas and New Year and it is to be sent to United States of America.

34. In view of the facts and circumstances of the case and considering the time factor, I am not inclined to stay this order. Stay refused.

(MRIDULA BHATKAR, J.)