

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 23.08.2017
JUDGMENT PRONOUNCED ON: 18.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.2266 of 2017
and CMP Nos.12026, 12027 & 13287 of 2017 and
CMA No.2267 of 2017 and CMP Nos.12028 & 12029 of 2017
and CMA No.2268 of 2017 and CMP Nos.12030 & 12031 of 2017

Sri Krishna Sweets Private Limited,
rep by its Chief Financial Officer and
Authorised Signatory, Mr.K.Venkatasubramaniam,
a company incorporated under the Companies Act 1956,
having its registered office at 137, D.B.Road, R.S.Puram,
Coimbatore -2 and its administrative office at
"Sri Krishna Bhavan" F-1, 1st Floor. Srivari Kikani Centre,
No.2, Krishnasamy Road, Coimbatore.

... Appellant/Applicant/Plaintiffs

Vs

Mr.M.Murali ... Respondent/Respondent/Defendant

These appeals are filed under Order 43 Rule 1 (r) of the Code of Civil Procedure, against the fair and decreetal order dated 05.06.2017 made in IA Nos.886, 887 and 888 of 2016 in O.S.No.425 of 2016 on the file of III Additional District and Sessions Judge, Coimbatore respectively.

For Appellant : Mr.P.S.Raman, Sr. Counsel
Mr.P.H.Aravind Pandian, Sr. Counsel
Mr.W.H.Kane
for Mr.M.Sricharan Rangarajan

For Respondent : Mr.Satish Parasaran, Sr, Counsel
for Mr. R.Parthasarathy

COMMON JUDGEMENT

The plaintiff in OS No. 425 of 2016 has come forward with these appeals, aggrieved by the order of the trial Court, namely III Additional District Judge, Coimbatore, dismissing its applications filed under Order 39 Rule 1 and 2 CPC seeking temporary injunction pending the the suit.

2. The suit in OS.No.425 of 2016 has been filed by the plaintiff, which is a Private Limited Company, seeking permanent injunction restraining the defendant, his servants, dealers, distributors and agents from infringing the plaintiff's registered trade marks bearing Nos.404943, 484524 and 484525 by using the name and mark "Sri Krishna Sweets" or any other name or mark containing the words "Krishna" or any other name deceptively similar to the plaintiff's registered trademarks bearing the above numbers, for a permanent injunction restraining the defendant himself or any other person claiming under him from marketing, advertising Sweets and other similar goods in the name of "Sri Krishna Sweets" or any other name deceptively similar to the well known name and mark of Sri Krishna Sweets or launch any new brand using the said trade mark or otherwise using the same in respect of sweets or similar goods; for a direction to the defendant to pay a sum of Rs.1,00,000/- towards damages for infringing the plaintiff's aforesaid registered trademarks or in the alternative for a true and faithful accounts of profits made by him by sale of sweets and similar goods in the name of "Sri Krishna Sweets", for a mandatory injunction directing the defendant to deliver to the plaintiff for destruction of all goods and packing materials bearing the name marked "Sri Krishna Sweets" and for costs.

3. Pending the said suit, the plaintiff filed three applications claiming interim injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure. The prayers in the said applications are as follows:

i. IA No.886 of 2016:

For an order of interim injunction restraining the respondent his men and agents, dealers, stockists and distributors or anybody claiming through him from issuing any advertisements in newspapers, TV Channels and web site etc by infringing the proprietary rights of the petitioner by using the name and mark "Sri Krishna Sweets" or any other name or mark containing the word "KRISHNA" or any other name or mark deceptively similar to the petitioner's registered trade marks bearing Nos.404943, 484524 and 484525 all registered under clause 30 in respect of sweets pending disposal of the suit.

ii. IA No.887 of 2016:

For an order of temporary injunction restraining the respondent, his servants, dealers, distributors and agents from infringing the petitioner's registered trade marks bearing Nos.404943, 484524 and 484525 all in clause 30 by using the name and mark "Sri Krishna Sweets" or any other name or mark containing the word "KRISHNA" or any other name or mark deceptively similar to the petitioner's registered trade marks bearing Nos.404943, 484524 and 484525 all in clause 30 in respect of sweets, or other similar goods or by offering or exposing sweets or similar goods for sale or putting them on the

market or stocking them for those purposes under the name and or mark or any other name or mark containing the word "KRISHNA" or under any other name or mark deceptively similar to the petitioner's aforesaid registered trade marks and/or by using the domain name <http://srikrishnasweets.com/> or any other domain name containing the word 'KRISHNA' or in any other manner whatsoever till the disposal of the suit.

iii. IA No.888 of 2016:

For an order of temporary injunction restraining the respondent, his agents, dealers or anybody claiming through him from opening any new branches by infringing the petitioner's registered trade mark bearing Nos.404943, 484524 and 484525 all in clause 30 in respect of sweets under the name of "Sri Krishna Sweets" or any other name or mark deceptively similar to the petitioner's well known name and mark "Sri Krishna Sweets" pending disposal of the suit.

The case of the plaintiff in brief is as follows:

4. Originally, one Mahandera Iyer, father of the defendant and the Managing Director of the plaintiff company Mr.M.Krishnan started the business in 1948 as a restaurant called "Sri Krishna Bhavan" in Coimbatore. In the year 1979, the elder son namely M. Krishnan started the business - "Sri Krishna Sweets" in partnership with his mother and Aunt, which is evident from the partnership deed dated 01.01.1980. On 02.05.1983, the said M. Krishnan, had obtained registration of trademark bearing the image of Lord Krishna with the word "Krishna" written in a stylized form. On 21.01.1998, the said M.Krishnan, obtained registration of the trademark for the word "KRISHNA" in a stylized form alone. On the same day i.e., 21.01.1998, the said M.Krishnan also obtained registration of the trademark of the word "Krishna", written in capital letters. These three registrations namely the figure mark of "Lord Krishna", the word "Krishna" in the stylized form and the word mark "Krishna" in capital letters bore the Registration Nos.404943, 484524 and 484525 respectively. All the registrations were made under Part A of the Trade and Merchandise Marks Act, 1958 in respect of business in sweets.

5. The plaintiff would further contend that the partnership firm was dissolved on 01.04.1985 and the said M.Krishnan became a sole proprietor of the business. It is also its contention that the patent right or the Trademarks right attached to the said business were taken over by M.Krishnan absolutely. On 14.04.1990, it is claimed that the defendant M.Murali was allowed to start a restaurant called "SKS" restaurant and the elder brother namely M.Krishnan and the defendant M.Murali had entered into the licence agreement in and by which the elder brother M.Krishnan, who is the proprietor of "Sri Krishna Sweets" had licensed the younger brother M.Murali to run a restaurant in the premises of "Sri Krishna Sweets" at

Coimbatore. It is also claimed that on 01.01.1993, the defendant, as the proprietor of "Sri Krishna Bhavan complex" entered into a lease agreement with the said M.Krishnan leasing out a portion of the property in "Sri Krishna Bhavan complex" situate at Dr.Nanjappa Road, Coimbatore, for running a Sweet stall in the name of "Sri Krishna Sweets". On 06.06.1996, the defendant, namely the younger brother, started a business in Chennai in the name of "Kovai Sri Krishna Sweets" with the logo "SKS" and he also used the catch words that were used by the elder brother for his business at Coimbatore namely "Divine Sweets, Davine Taste" and "Anbai Solla Azhagana vazhi"

" md;ig brhy;y mHfhd tHp"

6. It is claimed that the proprietor of the trademark, namely M.Krishnan had orally licensed his younger brother to use the registered trademarks referred to supra. On 23.02.2002, the younger brother was made a Director of the Private Limited Company namely "Sri Krishna Sweets Private Limited", which was incorporated in the year 1983 by the elder brother. On 24.03.2002, the elder brother namely M.Krishnan had transferred the rights in the registered trade marks in favour of his wife Mrs.Usha Krishnan. The said transfer is evidenced by a deed of assignment. The rights in the trademarks that were transferred under the said deed of assignment are

- a) KRISHNA (word per se) - Trade Mark No.484525
- b) Devise of Krishna - Trade Mark No.404943
- c) SKS - Trade Mark No.484523B
- d) KRISHNA (Letter Style) - Trade Mark No.484524

7. On 30.06.2002 the company namely "Sri Krishna Sweets Private Limited" represented by the defendant in OS No.425 of 2016 viz. the younger brother M.Murali entered into a business purchase agreement with the elder brother M.Krishnan and as per the said business purchase agreement the company had purchased the running businesses, known as "Sri Krishna Sweets" having its Head Office at No.23 Mettupalayam Road, Coimbatore, and branches at Coimbatore, Pollachi, Madurai, Erode, Salem, Trichy, Mettupalayam, Tripur, Bangalore and Karur as a going concern together with all its assets for the present and future. Subsequently, a resolution was also passed on 01.07.2002 resolving that all the assets and liabilities pertaining to the business of the "Sri Krishna Sweets" owned by M.Krishnan at the close of business on 30.06.2002, be taken over by the plaintiff company. It appears that a supplementary agreement was also entered into on 30.06.2002. In the meantime, the said M.Krishnan had also applied for registration of the full name namely "Sri Krishna Sweets" as trade mark. The said application was accepted for registration subject to association with Registration No.484525 and application was also directed to be advertised on 15.05.2006. Thereafter, it appears that the said M.Krishnan had withdrawn the application for registration

because he had already transferred the previous trade marks and he does not have any proprietorship over and above the trademark with which the present trade mark has been directed to be published as an associated trademark.

8. On 27.08.2010, the younger brother namely M.Murali resigned from the Directorship of the Private Limited Company called "Sri Krishna Sweets" and it is alleged that he had started his own private Limited company called M.K.Mahadeva Enterprises Private Limited. It is also contended that in the year 2010, the younger brother M.Murali applied for a trademark for the words 'Sri Krishna' for business in spices and he claims to be user of the said trademark. It is also stated that he had subsequently abandoned the said application. It is claimed that on 01.04.2015, Mrs.Usha Krishnan, who had obtained the rights in trademark assigned in her favour on 24.03.2002, assigned those rights to the plaintiff company. It is also contended that all the shares in 'Sri Krishna Sweets Private Limited' are held by the elder brother M.Krishnan, and his wife.

9. According to the plaintiff, since the Trade Marks Act, 1999 which came into force which required all licenses and assignments to be in writing, the elder brother namely M.Krishnan had required the younger brother M.Murali who was running the business in the name of "Sri Krishna Sweets" in Chennai and other places, to record the oral permission and finalise the procedure for documenting and confirming the oral permission already granted. This letter is dated 30.09.2015. The defendant sent a reply claiming that the name "Sri Krishna Sweets" and the business were actually started by the father and it is the gift by the father to the children. However, this was not to the liking of the elder brother and by a letter dated 30.10.2015, he had informed the elder brother that the company had passed a resolution 26.10.2005 revoking the permission granted to the younger brother to use the name "Sri Krishna Sweets" and also to withdraw the support that was being extended till then. In an by the said letter the defendant was called upon by the plaintiff to refrain from using the name. Thereafter, the plaintiff company has come forward with the present suit on 07.10.2016. Along with the said suit, three injunction applications, as detailed above, had been filed.

10. The applications for injunctions were resisted by the defendant contending that the name "Sri Krishna Sweets" is not a registered trademark. What has been registered is only the figure of Lord "KRISHNA", the words Krishna in a stylized form and the word Krishna written in capital letters. Therefore, the present action which is for infringement of the trademark and not one based on passing off, is not maintainable. It was also further contended that the predecessor of the plaintiff company

namely M.Krishnan, was never the owner of the trademark "Sri Krishna Sweets". According to the defendant, the name "Sri Krishna Sweets" was originally used by the father and therefore, the said M.Krishnan had no proprietary right to the same.

11. According to the defendant, the name "Sri Krishna Sweets" was coined by the father even during his lifetime in respect of the restaurant and the sweet business as early as 1948. He also claimed that the defendant had, with the encouragement of the parents and his elder brother M.Krishnan, independently built a business of manufacturing of sweets and savories in the name of "Sri Krishna Sweets" having started the same in 1996 in Chennai. It is also contended that the withdrawal of the registration of the logo "SKS" and the label "Sri Krishna Sweets" would by itself, show that the predecessor in interest of the plaintiff M.Krishnan knew that he had no right over the logo SKS and the name "Sri Krishna Sweets". The defendant would also point out that in the bills issued by the units of the plaintiff company situate at Coimbatore and other towns, the Website of the plaintiff company as well as in the advertisements issued by the plaintiff company, it is categorically stated that the business commenced in 1948 by the father. Therefore, the defendant would contend that the plaintiff company or its predecessors in interest had no exclusive right over the name "Sri Krishna Sweets". He is the son of "Mahadeva Iyer, who had started the business in Sweets in the year 1948 and is entitled to use the name as well as logo 'SKS'. It is also further contended that the name/mark "Sri Krishna Sweets" is an unregistered trade name or trade mark. The goodwill therein had all times remained share goodwill between the brothers, after the lifetime of the father. The defendant would further contend that the claim that he was permitted by a oral license to use the name "Sri Krishna Sweets" is false even to the knowledge of the predecessor in interest of the plaintiff company. In fact, when their father late Sri.Mahadeva Iyer was alive, he had blessed both the sons by allowing them to set up business in the name of "Sri Krishna Sweets" at various places and till the death of the father, the predecessor in interest of the plaintiff had not claimed any exclusive right over the name or the logo "Sri Krishna Sweets" and "SKS". It is also contended that the plaintiff is guilty of suppression of facts. The defendant would further claim that he admittedly had commenced business in 1996 in Chennai and has been carrying on the business over two decades and therefore, the status quo that existed for over two decades, cannot be disturbed by way of an interim order.

12. The sum and substance the claim of the defendant is that the name "Sri Krishna" was conceived by their father Late Mahadeva Iyer during his lifetime as early as in the year 1948 and the same was thereafter used and exploited by the sons,

namely M.Krishnan and the defendant with the father's blessings and permission. Since the father was common source of the business for both the sons and the name and trademark "Sri Krishna" the brothers were treated as persons equally entitled to use the same. Therefore, according to the defendant, the predecessor in interest of the plaintiff cannot claim exclusive right over the user of the trademark. On the above contentions the defendant sought for dismissal of the applications for injunction.

13. Before the learned Trial Judge the parties did not let in any oral evidence but documents were produced on either side. While the plaintiff produced Exs.P1 to P49, defendant produced Exs.R1 to R77.

14. The learned Trial Judge after considering the rival claims disposed of all the three applications by a common order dated 05.06.2017. The learned Trial Judge found that the plaintiff has not made out a prima facie case. The learned Trial Judge also concluded that there had been acquiescence on the part of the registered holder of the trademark for over two decades. The learned Trial Judge also found that the balance of convenience is in favour of the defendant. On the aforesaid findings, the learned Trial Judge dismissed the applications for injunctions. Aggrieved, the plaintiff has come forward with these appeals.

15. By consent of all the counsels, the appeals were taken up for final hearing. I have heard Mr.P.S.Raman, and Mr.P.H.Aravind Pandian, learned Senior Counsels and Mr. W.H. Kane, learned counsel appearing for Mr.Sricharan Rangarajan for the appellant and Mr.Satish Parasaran, learned Senior Counsel appearing for Mr. R. Parthasarathy, for the respondent/defendant.

16. Mr.P.S.Raman, learned Senior counsel appearing for the appellant would contend that in view of the fact that the business - "Sri Krishna Sweets" was started by the elder brother M.Krishnan, in the year 1979 in partnership with his Mother and Aunt having been admitted, the trial Court is not right in concluding that the name - "Sri Krishna Sweets" was in fact started by the father and the brothers have equal right or share over the goodwill. The learned Senior counsel would further submit when once the trademark, the word mark "Krishna" has been registered in favour of the elder brother M.Krishnan, who is said to be have been carrying on business in the name of "Sri Krishna Sweets", the entire coinage "Sri Krishna Sweets" would exclusively belong to the registered holder of the trademark. It is also contended by Mr.P.S.Raman, learned Senior Counsel appearing for the appellant that the father only started a business as a restaurant called "Sri Krishna Bhavan". It was the elder brother who started the business "Sri Krishna Sweets"

in the year 1979. Therefore, the claim of the respondent that the business was conceived by the father and was carried on by the father himself and after the lifetime of the father, the sons have a equal right cannot be accepted. He would also contend there was clear demarcation of the business interest of the two sons. Prior to 1996, the younger son M.Murali was carrying on business in restaurant and the elder son was carrying on business in sweets in the name and style of "Sri Krishna Sweets". Referring to the license agreement dated 14.04.1990, the learned counsel would contend that the defendant was in fact licensed to run restaurant called 'SKS' restaurant in the premises of "Sri Krishna Sweets" by the elder brother M.Krishnan. Similarly, the younger brother, who runs the partnership of "Sri Krishna Bhavan", had entered into a lease deed with elder brother for running "Sri Krishna Sweets" in the premises of "Sri Krishna Bhavan". Therefore, according to Mr.P.S.Raman, learned Senior Counsel, the two brothers have been engaged in different businesses till 1996, when the younger brother shifted to Chennai and started the business on 06.06.1996 and with all good intention, the elder brother had permitted the younger brother to use the name "Sri Krishna Sweets" as well as the catch words "Divine Sweets, Divine Taste" "Anbai Solla Azhagana vazhi" - "md;ig brhy;y mHfhd tHp" coined by him for his business. He further contended that the plaintiff company has got 66 branches all over the world. Mr.P.S.Raman, learned Senior Counsel would also rely upon the partition deed dated 29.07.2000 entered into between Narayani Ammal, wife of Late M.K.Mahadeva Iyer, M.Krishnan and M.Murali who are the sons of Mahadeva Iyer and Jaya Sivarama Krishnan and Pushpa Natarajan the daughters of Mahadeva Iyer.

17. Citing the absence of the business "Sri Krishna Sweets" in the said partition deed, it is contended that the father never claimed any right over the business "Sri Krishna Sweets". It is also pointed out that it is the defendant who had represented the plaintiff company as its Director when it entered into the purchase agreement with the elder brother M.Krishnan. Stressing the fact that the marks were registered under Clause 30 of part A of the Trade Marks Act, 1999, Mr.P.S.Raman, learned Senior Counsel would contend that the very fact that the marks are registered in the name of M.Krishnan carrying on business as "Sri Krishna Sweets" would entitle him to prevent any one from using the name as a registered proprietor. Mr.P.S.Raman, learned Senior Counsel would further contend that the plaintiff company being the assignee of the rights of M.Krishnan, under the trade mark registered in his name would be entitled to exercise the right conferred thereunder. It is also contended that the fact that the defendant made attempts to registered the mark "Sri Krishna Sweets" in the year 2010 would show that the claim of the shared goodwill and the claim that the business called "Sri Krishna

Sweets" was conceived by the father M.K.Mahadeva Iyer and both the sons have equal rights over the same have been only made for the purpose of this case. Mr.P.S.Raman, learned Senior Counsel would also rely upon the judgment of this Court in Durga Fabrics, Chennimalai Rep. By its Partner, A.M.Patnaswami Mudaliar and Ors. v. Sri Durga Textiles, Karur Rep. By its Partner K.N. Ramamurthi, reported in 1980 (2) MLJ 577, to contend that in that case, the term "Sri Durga Textiles" being a registered mark and the word Durga formed part of the registered mark namely "Sri Durga Textiles" the plaintiff was held entitled to an injunction restraining the defendant from using the name "Durga Fabrics". According to the learned Senior Counsel Mr.P.S.Raman, the question of phonetic similarity or deceptive similarity would not arise in infringement actions. Finally, Mr.P.S.Raman, learned Senior Counsel would contend that the status quo could be maintained, but at the same time the defendant should not be allowed to start business in the same name in other areas except those in which he has been carrying on business so far.

18. Mr.Aravind Pandian, learned Senior Advocate appearing for the appellant to buttress the submissions of Mr.P.S.Raman contended that factually it is not shown that the father had any interest in the business "Sri Krishna Sweets". It was commenced in 1979 by the elder brother in partnership with his Mother and Aunt and after the dissolution of the firm in 1985, the elder brother, as a sole proprietor, has continued the business. The registrations of the trademark were obtained in the year 1983 and 1988 and when the defendant started the business in 1996 in the same trade name, it could have been only with the permission of the elder brother, namely M.Krishnan, who was, by then, the proprietor of the registered trademark. There is no question of the defendant claiming that the business or the name was conceived by the father and it amount to a shared goodwill between the two sons.

19. Mr. W.H. Kane, learned counsel appearing for the appellant would rely upon two documents namely the joint venture agreements dated 10.03.2004 and 11.12.2005 between the company namely Sri Krishna Sweets Pvt Limited and the promoters of "Sri Krishna Sweets LLC Limited Dubai as well as Sri Krishna Sweets Pvt Ltd and "Sri Krishna Sweets USA Inc". Referring to the fact that the defendant is a co-signatory to the agreement of joint venture dated 11.12.2005 entered into between the plaintiff and the promoter in Dubai and inviting my attention to Clause 3 which relates to ownership of trade mark and trades secrets which reads as follows:

"The tradename of "Sri Krishna Sweets" "Krishna" and any relevant sign and symbol to represent Sri Krishna Sweets and SKS and its trade secrets and all rights attached there with shall solely be owned by

M.Krishnan in his personal capacity.

M.Krishnan hereby grants a license use to such name, sign and symbols of the new entity namely Sri Krishna Sweets LLC.

Mr.W.H.Kane would contend that the defendant had in fact acknowledged the right of the elder brother Mr.M.Krishnan.

20. Reference was also made to a similar clause found in the joint venture agreement dated 10.03.2004 entered into by the plaintiff company with the promoters in United States. Though the defendant is not a party to the said document, it is contended that the effect of these two instruments would be to show that the defendant himself has accepted the exclusive right of the predecessor in interest of the plaintiff namely the elder brother M.Krishnan to the trade name "Sri Krishna Sweets" and the logo "SKS". Therefore, it is sought to be contended that the father had nothing to do with the business in sweets called "Sri Krishna Sweets" and the business absolutely belongs to the predecessor in interest of the plaintiff namely M.Krishnan and he being the registered proprietor, he is entitled to prevent the defendant from carrying on business in the same name. The plaintiff being the successor in interest would also be entitled to the same rights of proprietor of the trademark namely M.Krishnan.

21. Countering the aforesaid submissions Mr.Satish Parasaran, learned Senior Counsel appearing for the respondent would contend that the plaintiff itself is not sure as to whether the present action is based on passing of or infringement. According to the learned counsel, the registered trademarks that are said to have been assigned to the plaintiff are (1) The devise of lord Krishna, (2) The word "Krishna" written in a stylized form and (3) the word Krishna written in capital letters. The devise of lord Krishna was registered by way of an application dated 02.05.1983 and the user claimed for the said devise is from 1979. The applications for registration of the word Krishna in a stylized form as well as the capitalized letters were made on 21.01.1988 and they were eventually registered in the year 1995, 1997 and 1999 respectively. He would further contend that the trade name as such namely "Sri Krishna Sweets" has not been registered and either M.Krishnan or his successor Mrs.Usha Krishnan or the plaintiff being the assignee from Mrs.Usha Krishnan have any registered proprietorship over the trade name. He would also further contend that according to the defendant, the business in sweets was originally started by the father late Mahadeva Iyer, in Coimbatore and he has been carrying on the said business, he also had invented a new variety a common sweet called "Mysore Pauk" and named it as "Mysore Pa" which gave an unique identity to his business. The predecessor in interest of the plaintiff namely M.Krishnan being the elder son entered the business a

little earlier and the defendant being a younger son made a late entry.

22. According to the learned Senior counsel for the defendant, the name "Sri Krishna Sweets" and the letters "SKS" written in a particular style were used by the father Mahadeva Iyer, and the sons also started using it as of right. The claim of the plaintiff that the defendant was allowed, orally, to use trade name as well as the devise of lord Krishna registered by the elder brother, namely M.Krishnan, is stoutly denied. According to the defendant, as the son of the Mahadeva Iyer, he is entitled to use the trade name "Sri Krishna Sweets" also the letters "SKS".

23. Mr.Satish Parasaran, learned Senior Counsel would also contend that the withdrawal of the application for registration of "Sri Krishna Sweets" as the trade mark by M.Krishnan would show that the name "Sri Krishna Sweets" was never intended to be registered as a trade mark. Though the request made by M.Krishnan to register the name as a trademark was accepted by the trade mark registry subject to association with the trade mark 'KRISHNA' registered as trade mark No.484525, the said application for registration of the name "Sri Krishna Sweets" was abandoned and withdrawn by the applicant namely M.Krishnan. Therefore, according to Mr.Satish Parasaran, learned Senior Counsel appearing for the respondent the name "Sri Krishna Sweets" is not a registered mark and therefore, an infringement action will not lie.

24. Pointing out to the pleadings wherein the plaintiff had made it clear that the present action is only an infringement action and had reserved its right to sue for passing off, Mr.Satish Parasaran, learned Senior Counsel would submit that such an action for infringement of an unregistered trade mark cannot lie. It is his further contention that even assuming, for the sake of arguments, that M.Krishnan was the proprietor of the mark "Sri Krishna Sweets" and as a successor in interest, the plaintiff is entitled to the same. In view of the claim made by the plaintiff that M.Krishnan had permitted the defendant to carry on business in the same name as early as in 1996 and the defendant has been carrying on business for over 20 years, there cannot be an order of injunction restraining the defendant from carrying on the said business. The learned counsel would also contend that the claim that trade mark "Sri Krishna Sweets" is an associated mark cannot be sustained, in view of the fact that the same has not been registered as an associated mark. He would also contend that the plaintiff is not entitled to seek an injunction against the defendant. Mr.Satish Parasaran, learned Senior Counsel would further contend that Section 34 of the Trade Marks Act, 1999 permits a prior user to continue with the use of the mark. Pointing out

that the application for registration of the trade marks "Sri Krishna Sweets" was made on 24.04.1996 and the defendant had commenced his business at Chennai on 06.06.1996 and the said application having been withdrawn, the plaintiff, who claims as successor in interest of M.Krishnan cannot claim an exclusive right over the trademark. Mr.Satish Parasaran, learned Senior counsel would also contend that there is no assignment of the unregistered mark namely "Sri Krishna Sweets" by M.Krishnan to Mrs.Usha Krishnan or by Mrs.Usha Krishnan, to the present plaintiff. What has been assigned under the assignment deeds are only the registered marks. It is his further contention that the unregistered mark adopted a separate path from the registered marks. He would also further contend that in view of Section 38 of the Trade Marks Act, an unregistered mark not assigned will not travel with the registered mark. There has to be a separate transmission or assignment of the unregistered mark.

25. Pointing out the fact that when the registered trademarks were assigned to Mrs.Usha Krishnan on 24.03.2002, the business was not transferred to her, the business purchase agreement between M.Krishnan and the present plaintiff was on 30.06.2002. He would also contend that the unregistered trademark not assigned independently will go with the business. He would also point out that the Act itself recognizes a permitted user of a registered trade mark. And a person could be registered as a user of a trademark owned by another person in such an event the benefits arising out of the user by the person registered as user alone would go to the registered proprietor of the trademark. He would also contend that in the cases of third party users, it can be done by way of assignment and license. Contending that the user of the name "Sri Krishna Sweets" with the logo "SKS" by the defendant is not either by way of license or by way of assignment from the plaintiff's predecessor, it is, according to the learned Senior Counsel, under the permission granted by the father.

26. Regarding the claim that the mark "Sri Krishna Sweets" is an associated mark with the registered marks of "Krishna" Mr.Satish Parasaran, learned Senior Counsel would contend that the association should be between the two marks and not between the mark and the owner. Relying upon Section 16 of the Trademarks Act, 1999, the learned Senior Counsel would contend that a mark could be registered as an associated trademark only if it is likely to deceive or cause confusion if used by the person other than a proprietor. Even then, according to the learned Senior Counsel, the defendant had in fact started using the mark "Sri Krishna Sweets" along with letters "SKS" even during the year 1996 and the predecessor in interest of the plaintiff had knowingly withdrawn the application for the registration of the said mark.

27. Refuting the claim of the appellant/plaintiff that the father Mahadeva Iyer had nothing to do with the business of "Sri Krishna Sweets", Mr.Satish Parasaran, learned Senior Counsel would rely upon the advertisement issued by the plaintiff as well as the Website of the plaintiff, wherein it is very clearly stated that the business "Sri Krishna Sweets" was established by "Amudha Semmal Sri.M.K.Mahadeva Iyer" in the year 1948. He would also rely upon the advertisements issued by the plaintiff and its predecessor in interest wherein it is claimed that M.K.Mahadeva Iyer was the founder of Mysore Pa and his birth day is to be celebrated as "Mysore Pa day". This conduct, according to Mr.Satish Parasaran, learned Senior Counsel would show it is M.K.Mahadeva Iyer, who had started the business of "Sri Krishna Sweets" and the plaintiff's predecessor in interest had entered the business earlier because he is the elder son. The said entry in to the business alone would not confer an exclusive right in him so as to prevent the younger brother namely the defendant from using the said name. He would also point out that the entire shares of the plaintiff company are owned by the said M.Krishnan and his wife and the present Directors are the said M.Krishnan and his two daughters. Therefore, according to the learned Senior Counsel, the elder brother has schemingly adopted the mechanism of assignment of trade mark through his wife to the company only with a view to prevent the younger brother namely defendant/respondent from carrying on the business successfully. He would also draw my attention to the turnover of business of the defendant/respondent and contend that the plaintiff or predecessor in interest of the plaintiff cannot be allowed the pull the rug under his feet after having allowed him to use the trade name for more than 20 years.

28. Mr.Satish Parasaran, learned Senior Counsel further contends that the claim of the plaintiff that the business itself was commenced in 1979 by M.Krishnan is false to the knowledge of the plaintiff. Pointing out the various invoices for purchase of sweets from the appellant's outlets in Coimbatore wherein it has been specifically stated that the business has been carried on since 1948, particularly the words "Sweet Tradition since 1948", the learned Senior Counsel would contend that the claim, it was the elder brother who founded "Sri Krishna Sweets" 1979 is not correct. He would also point out that the words "Sweet Tradition since 1948" were removed in the subsequent invoices. The advertisements issued by the plaintiff were also relied upon to show that the plaintiff had celebrated the birth day of late M.K.Mahadeva Iyer as "Mysore Pa" day wherein it is specifically claimed that the founder of "Sri Krishna Sweets" is M.K.Mahadeva Iyer. It is also pointed out that when the father stood as a guarantor paving way for the elder son to commence business, the mother stood as a guarantor for the younger son namely defendant to commence business in

Chennai. Therefore, according to Mr.Satish Parasaran, learned Senior Counsel, the plaintiff has no independent right over the names "Sri Krishna Sweets" or the letters "SKS". Both being unregistered marks the plaintiff cannot bring an infringement action against the defendant. On the above contentions Mr.Satish Parasaran, learned Senior Counsel seeks dismissal of the appeals.

29. The appellant has come forward with an application in CMP No.13287 of 2017 in CMA No.2266 of 2017 under Order 41 Rule 27 of the Code of Civil Procedure seeking production of certain documents as additional evidence. The documents sought to be produced are the partnership deed with respect to "Sri Krishna Bhavan Complex", the assignment deed of trade mark between M.Krishnan and Mrs.Usha Krishnan, the Joint Venture agreement dated 11.12.2005 between the appellant company and the Franchise at Dubai, the minutes of the meeting of the appellant company approving Joint Venture company in Dubai, the Joint Venture agreement between the petitioner/appellant and Saran Enterprises for opening outlets in United State of America, the Balance sheet of the appellant for the financial year 2005-2006, on-line visa application of the respondent in the year 2004, screen shots of the respondent Website using the name "Sri Krishna Sweets" with mark ® and an application made by the respondent in relation to incorporation of "Sri Krishna Sweets" and food products, the balance sheet of the respondent for the year ended in 31.03.1997.

30. Making submissions on this application Mr.P.S.Raman, learned Senior Counsel for the appellant would submit that these documents would show that the respondent himself had acknowledged the exclusive title and ownership of the trademarks by M.Krishnan the predecessor in interest of the appellant. Heavily relying upon two joint venture agreements and the identical recitals therein, which are to the effect that the trade name "Sri Krishna Sweets" "Krishna" and any relevant sign and symbol to represent "Sri Krishna Sweets" and "SKS" and its trade secrets and all rights attached there with shall solely be owned by M.Krishnan in his personal capacity and pointing out that the joint venture agreement in respect of Dubai has been signed by the defendant in the year 2005 to be precise in December 2005, Mr.P.S.Raman would contend that the defendant had accepted the exclusive right of the predecessor in interest of the plaintiff and therefore, he cannot be heard to contend that the name "Sri Krishna Sweets" never belonged to the predecessor in interest of the plaintiff but it is shared goodwill of the family. The other document that has been filed is a deed of assignment, in and by which, M.Krishnan had assigned the rights and the registered trademarks in favour of his wife Mrs.Usha Krishnan. Mr.P.S.Raman, learned Senior Counsel further point out the advertisement material that has been produced which would show that the respondent himself has

used the symbol ® to indicate "Sri Krishna Sweets" or "SKS" are registered trademarks. Even in the website it has been shown as a registered trademark. This, according to Mr.P.S.Raman, learned Senior Counsel would show that the defendant was aware of the fact that the name "Sri Krishna Sweets" and the letters "SKS" written in a particular form belong to the plaintiff and its predecessor in interest and therefore the contention of the defendant that he has right to use it cannot be sustained.

31. Mr.Satish Parasaran, learned Senior Counsel appearing for the respondent would contend that an application under Order 41 Rule 27 of the Code of Civil Procedure itself is not maintainable even assuming these documents can be looked into by the Court. It cannot be concluded that the defendant had acknowledged the title or the exclusive proprietorship of the trade mark in the predecessor in interest of the plaintiff. He would point out that the Joint Venture agreements are dated 10.03.2004 and 11.12.2005 and as on that date M.Krishnan had no proprietary interest over the trademarks in India since he had assigned them in favour of his wife Mrs.Usha Krishnan on 21.03.2002. Therefore, whatever acknowledgment contained in those two documents namely Joint Venture Agreement dated 10.03.2004 and 11.12.2005 could only be confined to any right that may be acquired either at United States or at Dubai and not in India. As regards the user of the symbol Mr.Satish Parasaran, learned Senior Counsel would contend that in fact it was the same advertising agency that advertises on behalf of both the brothers. Therefore, the addition of the letters cannot be attributed to any specific intention. The other documents, according to Mr.Satish Parasaran, learned Senior Counsel, are not relevant for the purpose of these proceedings.

32. I have considered the rival submissions. Insofar as the application in CMP No.13287 of 2017 is concerned, I am of the considered opinion that the following documents namely the assignment deed dated 21.03.2002, the Joint Venture Agreements dated 10.03.2004 and 11.12.2005 and the screen shots of the website of the respondent dated 11.10.1999, 26.07.2002 and 06.08.2002 alone will be relevant for the purposes of deciding the controversy which relates to grant or refusal of interim injunction pending suit. The other documents, in my considered opinion, are not very germane to decide the issues in these appeals. Therefore, application in CMP No.13287 of 2017 is partly allowed and the documents namely assignment dated 21.03.2002, the joint venture agreements dated 10.03.2004 and 11.12.2005 and the screen shots of the website dated 11.10.1999, 26.07.2002 and 06.08.2002 alone are received in evidence as documents on the side of the appellants and they are ordered to be marked as Exs. P50 to P56. The application with reference of other documents will stand rejected.

33. Coming to the main appeals the following point arises for determination.

Whether the plaintiff would be entitled to injunction sought for by it in applications in IA Nos.886, 887 and 888 of 2016 in OS No.425 of 2016 pending disposal of the said suit?

34. The sum and substance of the arguments of the learned Senior Counsels for the appellant is that the appellant being the assignee of registered trademark from the registered proprietor, is entitled to an injunction restraining the defendant/respondent from using the same. Contending that once the words "Krishna" has been registered the words "Sri" and "Sweets" being generic terms, the non registration of the coinage "Sri Krishna Sweets" will not prevent the appellant from seeking an injunction restraining the respondent from using the words "Sri Krishna Sweets". Relying upon the judgment of this Court in Durga Fabrics, Chennimalai Rep. By its Partner, A.M.Patnaswami Mudaliar and Ors. v. Sri Durga Textiles, Karur Rep. By its Partner K.N. Ramamurthi, reported in 1980 (2) MLJ 577, Mr.P.S.Raman, learned Senior Counsel would contend that the registered proprietor of the trade mark Durga Textiles was held to be entitled to an injunction restraining another person from using the coinage Durga Fabrics. Therefore, Mr.P.S.Raman, learned Senior Counsel would contend that once the word "Krishna" has been registered and it is the only word that has to be considered the appendage namely 'Sri' and 'Sweets' being generic in nature would not make any difference and usage of the word "Krishna" with any appendage in a similar business can be prevented by the registered proprietor by seeking an injunction in the Court of law on the ground of infringement. He would also further rely upon the judgment of the Delhi High Court in M.D.Iftekhar v. M/s.Karim Hotels Pvt. Ltd., reported in 2014 (59) PTC 144, wherein it was held that registered proprietor of the mark "KARIM" & KARIM'S could seek an injunction against the user of the name of "KARIM MUGHLAI CUISINE" or any other name identical or deceptively similar name to the name Karim/Karim's. Reliance is also placed upon the judgment of the Delhi High Court in Lalit Kumar Arya and ors. v.Prabhat Zarda Factory International (Noida) and Ors., reported in 2015 (64) PTC 300, wherein the registered proprietor of the trademark "Ratna", "Ratnachhap", numeral '300', and 'Prabhat Zafrani Patti' was held to be entitled to an injunction restraining the appellant therein from using the registered trademarks. He would also further rely upon the Judgment of this Court in Carrefour v. V.Subburaman and Ors., reported in 2007 (35) PTC 225. On the basis of the principles evolved in the aforesaid judgments, the learned Senior Counsel would contend that the plaintiff being the successor in interest of the registered proprietor, is entitled to an injunction by operation of law.

35. Per Contra Mr.Satish Parasaran, learned Senior Counsel appearing for the respondent would contend that the grant of injunction would depend on the following factors namely prima facie case, balance of convenience and irreparable injury. Laying thrust on the fact that the defendant has been running the business for nearly 20 years, the learned Senior Counsel would contend that if an injunction is issued, it will bring the entire business of the defendant to a standstill. He would also contend that the learned Trial Judge has exercised his discretion in the proper perspective and such discretion exercised in matters relating to grant of injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure need not be interfered with by the appellate Court. For the aforesaid proposition he would rely upon the judgment of the Hon'ble Supreme Court in Wander Ltd. And another v. Antox India Pvt Ltd, reported in 1990 (Supp) SCC 727.

36. Mr.Satish Parasaran, learned Senior Counsel would also rely upon the Judgment of the Bombay High Court in Colgate Palmolive Company and another v. Anchor Health and Beauty Care Pvt Ltd., reported in 2005 (1) Mh.L.J. 613; and the judgment of the Court of Appeal in Francome and Another v. Mirror Group Newspapers Ltd and others, reported in 1984 WLR 892. Drawing my attention to the following passage of the Judgment of the Court of appeal, Mr.Satish Parasaran, learned Senior Counsel would contend that the matters relating to grant of injunction requires establishment of prima facie case, balance of convenience and irreparable injury,

What then should we do? I stress, once again, that we are not at this stage concerned to determine the final rights of the parties. Our duty is to make such orders, if any, as are appropriate pending the trial of the action. It is sometimes said that this involves a weighing of the balance of convenience. This is an unfortunate expression. Our business is justice, not convenience. We can and must disregard fanciful claims by either party. Subject to that, we must contemplate the possibility that either party may succeed and must do our best to ensure that nothing occurs pending the trial which will prejudice his rights. Since the parties are usually asserting wholly inconsistent claims, this is difficult, but we have to do our best. In so doing, we are seeking a balance of justice, not of convenience.

37. Countering the submission of Mr.P.S.Raman, learned Senior Counsel based on the judgment of this Court in K.R.Chinnikrishna Chetty v. K.Venkatesa Mudaliar and another, reported in AIR 1974 Madras 7, wherein this Court had dealt with the dispute with regard to usage of the words "Sri Andal" which is deceptively similar to the word "Sri Ambal" Mr.

Satish Parasaran, learned Senior Counsel would submit that the question of deceptive similarity does not arise in an infringement action. The question that has to be decided in the present case which is claimed to be an infringement action is as to whether the plaintiff's predecessor in interest could claim an exclusive right to use the unregistered mark "Sri Krishna Sweets" and thereby prevent the defendant from using the said trade name for the business in the same goods carried on by him.

38. During the course of arguments, Mr. P.S. Raman, learned Senior Counsel appearing for the appellant would submit that for the purposes of the interlocutory applications the Court may consider preserving the status quo so that the defendant would not enhance the area of his operation, including launching of online sales. The suggestion of Mr.P.S.Raman, learned Senior Counsel is that the defendant should not venture to open new branches and the plaintiff would also refrain from opening any branch in the area in which the defendant is now operating excepting to honour the commitment under the agreement entered into by the plaintiff with Reliance Retail Store, Big Basket, Swiggy and Big Bazaar. Dubbing the said suggestion as wholly unjust Mr.Satish Parasaran, learned Senior counsel would contend that it is the plaintiff which entered the market in the areas in which the defendant is operating through reliance Retail stores and indulged in undercutting by pricing the products at a rate lower than that of the defendant. While claiming that the defendant would not open new branches, the plaintiff had entered the territory through the back door. Therefore, the plaintiff cannot attempt to project that it is being very magnanimous in allowing the defendant to carry on the business in areas in which he has been already operating. The learned Senior Counsel would also submit that the Status quo would mean status quo for both the parties and not a situation where one party is required to maintain status quo and the other is allowed to expand its business.

39. Reliance is also placed by the counsels on the judgment of the Bombay High Court in Kamat Hotels (India) Limited v. Royal Orchid Hotels Limited and anr., reported in 2011 (7) ALLMR 514, wherein the question of grant of Status quo was considered and finally Hon'ble Dr.Justice D.Y.Chandrachud, concluded that in order to prevent the damage which may result to the existing enterprises, which has a substantial turnover and reputation, an order of Status quo could be granted but at the same time the defendant should not be permitted to commence any new Hotel or line of business with the mark that infringes the registered trademark of the plaintiff. Placing reliance of the above observations of the Bombay High Court, Mr.P.S.Raman, learned Senior Counsel would contend that there should atleast be an injunction restraining the defendant from commencing any new business.

40. Though both the Senior Counsels appearing on either side had argued the matter elaborately, I am constrained to point out at the outset that the scope of these appeals is limited to the questions that could be decided in an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure. I am conscious of the fact that any conclusion arrived at by me on the materials that are placed before me would definitely have an impact on the trial of the suit. Therefore, even here I would like to make it clear that any observation made in this Judgment should not be taken as a conclusive pronouncement on the rights of the parties which are to be decided after a complete trial. With the above caveat, I shall consider the merits and demerits of the claims of the rival parties.

41. The very basis of the claim of the plaintiff is that its predecessor in interest M.Krishnan, who had proprietary interest in the trademark and the defendant was orally permitted to commence a business using the trade name. Since the word "Krishna" has been registered under Clause 30 of Part I of the Trade and Merchandise Act, 1958 that is for the business in sweets, the defendant can be prevented by the plaintiff from using the word "Krishna" for the business of sweets along with or without of any appendages like "Sri" and "Sweets". The said claim of the plaintiff is resisted by the defendant contending that the business in sweets was started by the father in 1948 and the name "Sri Krishna Sweets" is a trade name that belonged to the father inherited by the both the sons. Therefore, it should be treated as share of goodwill between sons of Late M.K.Mahadeva Iyer and both the sons namely the predecessor in interest of the plaintiff as well as the defendant have acknowledged him as a common founder. From the various documents as well as the contents of the Website of both the plaintiff as well as the defendant, it is seen that both the parties have traced their lineage in the business to Mahadeva Iyer and he has been celebrated as the founder of 'Mysore Pa'. In fact I find that both the predecessor in interest of the appellant/plaintiff and the respondent had celebrated his birth day as "Mysore Pa day". The plaintiff had consistently claimed that it had been established in 1948. If it had been established in 1948, the said establishment could have been only by Mahadeva Iyer and not by M.Krishnan, who was born much later. It is also seen from the documents produced that the plaintiff had, after the filing of the suit, deleted the words "Sweet Tradition since 1948" from its bills and advertisement materials. Similarly the Website has undergone changes where the name of M.K.Mahadeva Iyer is conspicuously absent. Thus we could see an attempt made by the plaintiff to disconnect the name "Sri Krishna Sweets" from Mahadeva Iyer.

42. The plaintiff would further claim that Mr.M.Krishnan had assigned the trademark to his wife by way of written deed of assignment in the year 2002 and his wife had in turn allowed the plaintiff to use the trademark owned by her after the business purchase agreement which followed the assignment of the trademark in the year 2002. To a pointed query by this Court as to how the trademark or the trade name being used by the plaintiff from the date of the business purchase agreement dated i.e. 30.06.2002 till date of the assignment of the trademark by the said Mrs.Usha Krishnan in favour of the plaintiff on 01.04.2015, Mr.P.S.Raman, learned Senior Counsel would submit that there was again an oral license for use. In fact no such plea was made in the plaint. Of course as on 30.06.2002 there was no prohibition for a oral license being granted under the Trade and Merchandise Marks Act, 1958, as the new Act namely Trademarks Act, 1999 came into force only in the year 2003 the theory of oral license is not convincing. From the conduct of the parties who entered into documents evidencing each and every assignment or license in the course of several years of their business relationship, the claim that there was an oral license by M.Krishnan in favour of the defendant and again an oral license of user by Mrs.Usha Krishnan in favour of the plaintiff company from the date of the business purchase agreement dated i.e.. 30.06.2002 till the date of the assignment dated 01.04.2002, does not inspire the confidence of this Court. Atleast prima facie, I am bound to point out that the parties who had entered into license agreement to enable the elder brother to open a retail outlet in "Sri Krishna Bhavan Complex", a lease agreement for the younger brother to open a restaurant in "Sri Krishna Sweets Complex" and a partnership, in respect of Sri Krishna Bhavan Complex which entered into on 19.05.2000 on the very day M.K.Mahadeva Iyer died would show that these oral licenses now claimed are only used as a tool of convenience and not with conviction. Therefore, prima facie I am of the view that the very claim of oral licence itself is unbelievable. Thus it could be seen that the foundation of the case is very shaky.

43. Apart from the above, admittedly, the defendant has been running the business since 1996 at Chennai and other areas. Neither the predecessor in interest of the plaintiff M.Krishnan nor his successor Mrs.Usha Krishnan had raised their little finger against such user of the registered mark or the trade name by the defendant. Of course, parties had made certain applications for registration and those applications were subsequently withdrawn. Such actions cannot, in any manner, give a right to the plaintiff to seek an injunction which has been sought for in the present form. Of course the contention of Mr.P.S.Raman, learned Senior Counsel that the defendant had acknowledged the right of the predecessor in interest of the

plaintiff namely M.Krishnan to the trademarks under the joint venture agreements dated 11.12.2005 and 10.03.2004 appears very attractive, it over looks the fact that M.Krishnan had already parted with the right over the registered trademarks in India even on 24.03.2002 in favour of his wife. Therefore, whatever could be acknowledged by the defendant was only the rights that may accrue either at Dubai or United States of America. It is also claimed that the use of the name of the father Shri. M.K.Mahadeva Iyer was out of reverence and that will not confirm the right on the defendant to use the name "Sri Krishna Sweets". In this context, it will be useful to refer the Judgment of Hon'ble Mr.Justice V.Ramasubramanian, in Narasus's Coffee Company v, Narasu's Roller Flour Mill case wherein the learned Judge has held that when there is a trademark dispute between family members, the Court should not treat it as a trademark dispute simplicitor. On the facts of the said case it was found that some of the family members had a registered trademark for a particular business and others had a registered trademark for other businesses, both of which used the words Narasus's. While considering the claim for injunction by one of the parties, learned Judge pointed out that this dispute between the son on one hand and father and sister on the other. Therefore, the Courts must definitely look at it as a dispute among family members. In this case on hand as rightly pointed out by Mr.P.S.Raman learned Senior Counsel in his opening remarks, it is unfortunate case of sibling rivalry.

44. As rightly contended by Mr.Satish Parasaran, learned Senior Counsel appearing for the respondent, the Appellate Court, while considering an appeal for grant or refusal of discretionary order of injunction, must be slow in interfering with the discretion so exercised by the trial Court. In Wander Ltd. And another v. Antox India Pvt Ltd, reported in 1990 (Supp) SCC 727, cited supra, the Hon'ble Supreme Court while considering a trademark dispute had absorbed as follows:

"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be

justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial Court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph*.

"...These principles are well established, but as has been observed by Viscount Simon in *Charles Osondon & Co. v. Jhanaton* ... 'the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arise is due only to the application of well settled principles in an individual case'."

The appellate judgment does not seem to defer to this principle.

45. From the perusal of the judgment of the trial Court, I do not find that the trial Court had either exercised his discretion arbitrarily or capriciously or perversely and acted ignoring the settled principles of law while refusing interim injunction. It is settled proposition of law that the Appellate Court will not substitute its own discretion, in the place of the discretion exercised by the Court of first instance. It is needless to say that the said Judgment in *Wander Ltd.*, has been followed by other Courts consistently. Therefore, I do not think that any case has been made out so as to enable this Court to interfere with the discretion exercised by the learned District Judge in dismissing the application for injunction.

46. On the plea for maintainance of Status quo made by Mr. P. S. Raman, learned Senior Counsel appearing for the appellant, I am constrained to hold that if it had had been an offer for maintainance of Status quo by both the parties, then it would have been reasonable. The qualified offer of status quo in my considered opinion cannot result in the discretion exercise by the trial Court being varied.

47. Considering the nature and scope of the appeals before me I have not dealt with each and every one of the documents separately, since I feel that such an indepth analysis of the documents by me would prejudice either of the parties at the time of trial. Therefore, I have only analysed the prima facie case and tested the order of the trial Court on the principles governing the grant or refusal of injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure as well as

the right of the Appellate Court to interfere with the discretion exercised by the trial Court. Considering the limited scope of the appeals, I do not see any reason to interfere with the order of the trial Court and therefore appeals are liable to be dismissed and accordingly they are dismissed. However in the circumstances of the case I make no order as to costs. Consequently, the connected miscellaneous petitions are closed.

48. Considering the fact that the dispute relates to trademark and both the parties will be put to considerable financial implications, I feel that it would be proper to direct the Trial Court to dispose of the suit within a specified period. From the proceedings, I find that the pleadings have been completed and hence the III Additional District Judge, Coimbatore, is directed to dispose of the Suit in OS.No.425 of 2016 within a period of one year from the date of receipt of a copy of this order and report such disposal to this Court.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

jv

To

1 The III Additional District and Sessions Judge,
Coimbatore.

+2 Ccs to Mr. Sricharan Rangarajan, Advocate sr 67879.

सत्यमेव जयते

CMA.No.2266 of 2017
and CMP Nos.12026, 12027 & 13287 of 2017 and
CMA No.2267 of 2017 and CMP Nos.12028 & 12029 of 2017
and CMA No.2268 of 2017 and CMP Nos.12030 & 12031 of 2017

GJII(CO)
sp(20/09/2017)