

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

COMMERCIAL APPEAL NO.115 OF 2017
IN
NOTICE OF MOTION NO.1142 OF 2015
IN
SUIT NO.157 OF 2014

Eurobond Industries Private Limited,	]
a company incorporated under	]
the Companies Act, 1956,	]
having its office at C-5, Gala and	]
Sethia Enterprises Building, 3 rd	]
Floor, Road No.11, MIDC, New	]
Zenith House, Andheri (East),	]..Appellant
Mumbai 400 093	(Org. Defendant)

Versus

1] Euro Panel Products Pvt. Limited,	]
Originally known as Archer Trading	]
House Private Limited, a company	]
incorporated under the Companies	]
Act, 1956, having its registered	]
office at B-17, Mandpeshwar	]
Industrial Premises, Prem Nagar,	]
Off. S.V.P. Road, Borivali (W),	]
Mumbai 400 092	]
2] Euro Ceramics Ltd. A company	]
incorporated under the Companies	]
Act, 1956, having its registered	]
office at 208 Sangam Arcade,	]
Vallabhbhai Patel Road,	]..Respondents
Vile Parle (W), Mumbai 400 056	(Org. Plaintiffs)

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IN
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Sethia Enterprises Building, 3rd]
Floor, Road No.11, MIDC, New]
Zenith House, Andheri (East),]
Mumbai 400 093]..Applicant

IN THE MATTER BETWEEN

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Zenith House, Andheri (East),]..Appellant
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Vile Parle (W), Mumbai 400 056	(Org. Plaintiffs)

Mr. Ravi Kadam, Senior Advocate a/w Mr. Ashish Kamat I/by Mr. Jitendra M. Pathade, Advocate for the Appellant/Applicant.

Mr. Aspi Chinoy, Senior Advocate a/w Mr. Kevic Setalvad, Senior Advocate, Mr. S. K. Srivastav, Mr. Kushal A. Amin, Mr. Gaurav Srivastav, Ms. Manorama Mohanty and Mr. A. P. Singh I/by M/s. S. K. Srivastav and Company, Advocate for Respondent No.1.

Ms. Leena Sapra, Advocate for Respondent No.2.

**CORAM : B. R. GAVAI &
RIYAZ I. CHAGLA, JJ.
DATE : 4th DECEMBER, 2018**

ORAL JUDGMENT (Per B. R. Gavai, J)

1] The Appeal challenges the judgment and order dated 15th June 2015, passed by the learned Single Judge of this Court in Notice of Motion (L) No.2854 of 2014 in Suit No.1017 of 2014, thereby granting an injunction against the present Appellant in respect of the EUROBOND registered trademark under No.1165712 in Class 6 in respect of any goods falling within Class 6 of the

Schedule IV to the Trade Marks Rules, 2002.

2] The facts in brief giving rise to the present Appeal are as under :-

It is the case of the Plaintiffs that in or around 2002, the Plaintiff No.2, which was the then Private Limited Company, conceived of the marks “EURO” and “EUROBOND” and EURO device of 'a globe depicted within the letter 'U'.' The Plaintiffs applied on 10th January 2003 for registration of the EURO device with the word EUROBOND written below the device, as trademark in Class 6 in respect of aluminum composite panels. The said registration has been granted on 29th April 2005, however, with effect from 10th January 2003. The Plaintiff No.2 has also registered various other EURO and EURO composite or combination marks such as EURO Standard (label), Euro (label), U Euro (label), Euro Whiteware (label), Euro Sanitaryware (label), Euro Tile-o-bond etc. in various clauses such Class 6, 11, 19 and 35.

3] It is the case of the Plaintiffs that EURO device forming part of many of these trademarks also appears on the letterheads

and visiting cards, as also packaging materials of the Plaintiff No.2 since 2003. The Plaintiff No.2 claims to have acquired tremendous reputation and goodwill in the EURO marks, by reason of extensive turnover and advertisement. It is also the claim of the Plaintiff No.2 that it had entered into an agreement dated 31st March 2007 with one Neelam Metals, who has used trademark continuously since 2007 under the licence agreement for Aluminum Composite Panels. It is further the case of the Plaintiffs that on 29th July 2004, the Plaintiff No.2 gave its 'no objection' to four individuals, who were part of the former's group namely, Suresh D. Gala, Dhiraj D. Gala, Chintan D. Gala and Hiren R. Nandu, to incorporate a new company using the word EUROBOND as part of its trading name. The Defendant Company was accordingly incorporated by the said Suresh D. Gala and others in the name of "Eurobond Industries Private Limited". A formal agreement dated 21st September 2006 was entered into between Plaintiff No.2 as owner of the mark EURO and the Defendant, thereby granting licence to use the word EURO as part of its corporate name, trading style and in respect of its products solely in connection with the Defendant's trading activities relating to manufacturing of Aluminum Panel Sheets, on the terms

and conditions contained therein.

4] It is the further case of the Plaintiffs, that in view of the change in the patten of shareholding of the Defendant, Plaintiff No.2 vide its letter dated 23rd December 2013, terminated the licence agreement dated 21st September 2006 with immediate effect and called upon the Defendant to discontinue the use of the corporate logo in any form and also to discontinue the use of the name EURO in any form within 60 days. The Plaintiff No.2 also issued through its attorneys a cease and desist notice to the Defendant with respect to its registered trademark EUROBOND (label). Vide its letter dated 29th January 2014, the Defendant replied and sought time till 30th June 2014 to exhaust their stock, packing material, stationary etc. bearing the trademark and trade name EUROBOND and to complete the formalities with the Registrar of Companies. By the said communication, the Defendant also assured the Plaintiff No.2 that on or from 1st July 2014, they would totally discontinue the use of EUROBOND as a trademark as well as part of the trade name and requested the Plaintiff No.2 to waive their claim for damages and costs.

5] The Plaintiff No.2, thereafter by Assignment Deed dated 16th May 2014, assigned the trademark EUROBOND (Device) to the Plaintiff No.1 for a consideration and upon terms and conditions mentioned therein. It is now thus claim of the Plaintiff No.1, that it has become a subsequent proprietor of the trademark EUROBOND in Class 6. The application filed by the Plaintiff No.1 for recording the said assignment in Form TM-23 is pending before the Registrar of Trade Marks. It is the case of the Plaintiffs that contrary to the assurance given in the letter dated 29th January 2014, Defendant addressed a letter dated 29th September 2014, purportedly replying once again to the cease and desist notice and claiming to have become proprietor of the mark EUROBOND. The Defendant claimed to have acquired the right of the said mark alongwith goodwill from their predecessor in title, M/s. Gala and Gala Brothers. It was the claim of the Defendant that the user of Gala and Gala Brothers was prior to that of the Plaintiffs.

6] In this background, Plaintiffs filed the aforesaid suit claiming various reliefs including the order of injunction restraining the Defendant from using in any manner the EURO trademark and

EURO (device) and words EUROBOND or EURO in any manner.

7] Along with the suit, a Notice of Motion also came to be filed for order of temporary injunction restraining the Defendant from using the trademark or the words EURO or EUROBOND. The Notice of Motion was resisted by the Defendant by filing its reply. There were further rejoinders and sur-rejoinders. Finally by the order dated 15th June 2015, the learned Single Judge has passed the impugned order. By the impugned order, the learned Single Judge has stayed the suit pending the hearing and final disposal of the Defendant's application for rectification in respect of the Plaintiff's registered trademark EUROBOND. The learned Single Judge also restrained the Defendant from using EUROBOND trademark and device or any other mark containing the words EURO or EUROBOND or the device of globe comprised within the arms of 'U' or any other mark identical to or deceptively similar with the Plaintiffs' registered trademark under No.1165712 in Class 6, in respect of any goods falling within Class 6 of the Schedule IV. The learned Single Judge has also restrained the Defendant from using the marks either in relation to goods or as part of its corporate name

or trading style, so as to pass off their goods and/or business as and for the goods or business of the Plaintiffs. The learned Single Judge has granted three months period to the Defendant to change its corporate name and trading style and also dispose of its existing stock of goods bearing trademark EUROBOND. Being aggrieved by the order of injunction, the Appellant/Defendant has approached this Court.

8] Mr. Kadam, learned Senior Counsel appearing on behalf of the Appellant submits that the learned Single Judge has failed to take into consideration that the user of the Appellant/Defendant of the trademark EUROBOND was prior in point of time, than that of the Plaintiffs. It is submitted that Gala and Gala company was using the said trademark prior to that of the Plaintiffs. He submits that it could be seen that the said company had applied to Sales Tax Registrar on 10th January 2003. He further submits that learned Single Judge ought to have seen that at least from the said date, said Gala and Gala Company was using the trademark EUROBOND. Learned Senior Counsel submits that in any case, even the application made by the Plaintiff No.2 for registration of the

trademark EURO is on 10th January 2003 i.e. the same date on which the application was made by Gala and Gala Company to Sales Tax Registrar. Learned Senior Counsel in the alternative submits that, learned Single Judge ought to have taken into consideration that the use by the present Appellant of the trademark EUROBOND was of honest and concurrent user and as such could not have granted the injunction.

9] Mr. Kadam, learned Senior Counsel further submits that the learned Single Judge has grossly erred in coming to a conclusion that the use by the Appellant of the trademark EUROBOND was a permissive user. Relying on the provisions of Section 48 r/w Section 2(r) of the Trade Marks Act, 1999 (herein-after referred to as “the said Act”), learned Senior Counsel submits that, a person can be said to be a permissive user, only when there is consent of registered proprietor in a written agreement. Learned Senior Counsel submits that Plaintiffs have not been in a position to point out anything, which would amount to consent by written agreement and as such, finding of the learned Single Judge with regard to the Appellant being permissive user is totally unsustainable. Learned

Senior Counsel further submits that findings of the learned Single Judge with regard to the licence agreement dated 21st September 2006 are also unsustainable. He submits that firstly, the said agreement is a forged document, which is created by one of the directors of the Defendant company, who was son-in-law of one of the Galas. He submits that in any case, the said agreement pertains to the trademark EURO and not EUROBOND. He submits that when the trademark EUROBOND is separately registered, unless the licence agreement was with respect to the said trademark, a finding of the learned Single Judge that a licence agreement which was only for the trademark EURO, would also cover the EUROBOND is totally untenable in law. He submits that when different trademarks are registered for different products, then the licence agreements will have to be deemed to have been entered only for the purpose of the trademark named in the said licence agreement and not any other trademarks. Learned Senior Counsel submits that the learned Single Judge has erred in considering the licence agreement for the EURO trademark, also to be applicable to the EUROBOND, which is totally distinct. He submits that at the most, action of infringement at the behest of Plaintiffs in respect of the EURO trademark may be

tenable, however, an action for infringement for any trademark other than EURO, would not be tenable in law.

10] Learned Senior Counsel further submits that, at least insofar as clause (iii) of the operative part of the order passed by the learned Single Judge is not sustainable in law. Learned Senior Counsel submits that for granting an injunction on the basis of passing off, various factors are required to be taken into consideration. He submits that at least prima-facie, Plaintiffs are required to show that their products in market are for considerable length of time and that they have acquired huge global reputation and global goodwill for the said products. Learned Senior Counsel further submits that the learned Single Judge has grossly erred in taking into consideration the business of Neelam Agencies as the business of the Plaintiffs.

11] Learned senior counsel submits that none of this has been taken into consideration by the learned Single Judge and therefore clause (iii) of the operative part would not be sustainable. He submits that as a matter of fact, the material on record would show that the said Neelam Agencies was distributor for the

Defendant's products and was selling Aluminum Composite Panels manufactured by the Defendant. It is therefore submitted that the business experience of the said Neelam Agencies was required to be considered as that of the business of the Defendant and not that of the Plaintiffs. He submits that for granting ad-interim injunction on the basis of passing off, it is necessary for the Plaintiffs to establish that the Defendant has attempted to pass off its goods as that of the Plaintiffs and on account of such passing, high reputation of the Plaintiffs has suffered damages. It is submitted that only after taking into consideration these factors alongwith the factors of balance of convenience and irreparable injuries, an order of injunction could have been granted.

12] Mr. Chinoy, learned Senior Counsel appearing on behalf of the Respondents/Plaintiffs submits that the scope of appellate jurisdiction of this Court in an appeal arising from grant or refusal of injunction is very limited. Learned Senior Counsel submits that unless this Court finds that the view taken by the learned Single Judge is impossible and contrary to the settled legal position, it will not be permissible for this Court to upset the same. He further

submits that merely because two views are possible and the Appellate Court finds the other view to be more probable, cannot be a ground to interfere with the same when the view taken by the learned Single Judge is also a probable view. He submits that the learned Single Judge has taken into consideration all the relevant factors, which are required to be taken into consideration for grant of injunction and as such, no interference would be warranted.

13] Mr. Chinoy, learned Senior Counsel submits that the Plaintiffs are the registered owners. The Plaintiffs have granted licence to the Defendant to use their trademark vide agreement dated 21st September 2006. Learned Senior Counsel submits that the said agreement itself reserves its right to terminate the agreement in the happening of any of the eventualities as mentioned in the said agreement. He further submits that the agreement also provides for the consequences which are to follow upon termination of the agreement. Learned Senior Counsel submits that once the agreement is validly terminated by the Plaintiffs, the Defendant had no right to continue to use the trademark EURO or EUROBOND. In this premise, it is submitted that the learned Single

Judge has rightly granted injunction as sought by the Plaintiffs.

14] With the assistance of the learned counsel for the parties, we have scrutinized the material on record.

15] The scope of exercise of jurisdiction by this Court, in an Appeal under Order XLIII Rule 1(r) of the Code of civil Procedure, challenging the order of grant of injunction has been laid down by the Hon'ble Apex Court in the case of Wander Ltd. And another Vs. Antox India P. Ltd.¹. It will be relevant to refer to paragraph 14 of the said order :-

“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

¹ 1990 (Supp) SCC 727.

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* (1960) 3 SCR 713 : AIR 1960 SC 1156 (SCR 721)

“...These principles are well established, but as has been observed by Viscount Simon in *Charles Oseston & Co. v. Jhanaton* 1942 AC 130 '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 arises is due only to the application of well settled principles in an individual case'.”

It could thus be seen that, Their Lordships of the Apex Court have held that 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. It has further been held that 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 the Court was reasonably possible on the material. It

is equally not permissible to interfere with the exercise of discretion under appeal solely on the ground that, if the the appellate court had considered the matter at the trial stage, it would have come to a different conclusion. It has further been held that 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.

16] In the light of these principles, we will have to examine the present case. Undisputedly, the Plaintiffs' trademark 'EUROBOND' has been registered on 29th April 2005 with effect from 10th January 2003. Undisputedly, the said trademark has been renewed from time to time and is valid till 10th January 2023. It is further to be noted that various trademarks for Words as well as Labels beginning with the word EURO, which have been invented by the Plaintiff, have also been registered with the trademark authorities. It will be relevant to refer to the list of such trademarks :-

Application Date	Trade Mark Name	L/W	Class	Appl./Reg. No	Journal No	Status/Renewed Upto Jr.No
15/05/2002	EURO CERAMICS	Word	19	1104620	1322	16/05/2022-1539
10/01/2003	EUROTILES	Word	6	1165711	1324	10/01/2023-1580
10/01/2003	EUROBOND	Word	6	1165712	Mega-4	10/01/2023-1580
16/08/2007	EURO SANITARYWARE	Label	11	1591094	1399	Registered-16/08/2017
16/08/2007	EURO SANITARYWARE	Label	19	1591095	1399	Registered-16/08/2017
16/08/2007	EURO WARE	Label	11	1591096	1399	Registered-16/08/2017
16/08/2007	EURO WARE	Label	19	1591097	1424	Registered-16/08/2017
16/08/2007	EURO WHITEWARE	Label	11	1591098	1399	Registered-16/08/2017
16/08/2007	EURO WHITEWARE	Label	19	1591099	1424	Registered-16/08/2017
16/08/2007	EURO STANDARD	Label	11	1591100	1399	Registered-16/08/2017
16/08/2007	EURO STANDARD	Label	19	1591101	1424	Registered-16/08/2017
16/08/2007	EURO MARBLE	Label	11	1591102	1399	Registered-16/08/2017
16/08/2007	EURO AGGLOMERATED MARBLE	Label	11	1591103	1399	Registered-16/08/2017
16/08/2007	EURO MARBLE	Label	19	1591104	1424	Registered-16/08/2017
16/08/2007	EURO AGGLOMERATED MARBLE	Label	19	1591105	1430	Registered-16/08/2017
16/08/2007	EURO THE STILE STATION	Label	35	1591106	1430	Registered-16/08/2017
27/08/2007	EURO WHITEWARE new logo	Label	11	1595283	1423	Registered-27/08/2017
27/08/2007	EURO WHITEWARE new logo	Label	19	1595284	1423	Registered-27/08/2017
04/10/2007	EURO Tile-O-Bond	Label	19	1608177	1421	Registered-04/10/2017
06/12/2008	EURO with globe device	Label	19	1761023	1435	Registered-06/12/2018
06/12/2008	EURO	Label	19	1761026	1434	Registered-06/12/2018

It could thus be seen that the Plaintiffs are having a registered trademark of EURO and EUROBOND and various other Words and Labels beginning with EURO.

17] Undisputedly, the Plaintiff No.2 has also entered into an

agreement dated 21st September 2006, vide which a licence has been given to the Defendant to use the trademark of the Plaintiff No.2, namely EURO. It will be relevant to refer to certain clauses of the agreement. The preamble of the agreement reads thus:-

“WHEREAS PROPRIETOR is the owner of the name “Euro” and has applied for registration of the same as a trademark in Classes 19 and 20 under the Trade Marks Act, 1999'

AND WHEREAS User is a company in India incorporated interalia in the business of Manufacturer of Aluminum Panel Sheets;

AND WHEREAS Proprietor has at the request of User agreed to grant to the latter a licence to incorporate the name “Euro” as its corporate name and trading style, solely in connection with the activities of the User'

AND WHEREAS User has been incorporated in the State of Maharashtra, under the name and style of “Eurobond Industries Pvt. Ltd.”, and is using the name “Euro” as a part of its corporate name and/or in its products/services and otherwise in its day to day activities;

AND WHEREAS the Parties hereto are desirous of recording the terms and conditions upon which User has been allowed to using the letters “Euro” in its corporate name and/or trade name as also use the “Euro” logo on its products/services and otherwise in its day to day activities;”

It could thus be seen that from the preamble clauses, it

is specifically stated therein that the Plaintiff No.2 is the owner of the name EURO and has applied for registration of the same as a trademark in Classes 19 and 20 under the Trade Marks Act, 1999. It is specifically stated that the user is the company in India incorporated inter alia in the business of manufacturing Aluminum Panel Sheets. It will further reveal that it is stated in the agreement that proprietor has at the request of User, agreed to grant to the latter a licence to incorporate name EURO as its corporate name and trading style, solely in connection with the activities of the user. It will further reveal that the user is incorporated in the State of Maharashtra, under the name and style of "Eurobond Industries Pvt. Ltd.", and is using the name EURO as a part of its corporate name.

18] It would further be relevant to refer to clause 1.1 of the agreement, which reads thus :-

"1.1 Proprietor grants to User, including to any amalgamated or demerged entity involving the User, a non-transferable and non-exclusive, perpetual and irrevocable right, subject to Article II, and licence to use the letters "Euro" as a part of its corporate name, trade name and trading style and to use Euro Logo in connection with the activities specified by the main object clauses of its Memorandum of Association."

Perusal of the said clause would reveal, that the Plaintiff No.2 has granted to the Defendant a non-transferable and non-exclusive, perpetual and irrevocable right, subject to Article II, a licence to use letters EURO as a part of its incorporate name, trading name and trading style and to use EURO Logo in connection with the activities specified by the main object clauses of its Memorandum of Association.

19] Article II deals with termination of the agreement. It will be relevant to refer to clause (d) of Article 2.1 :-

“2.1 Notwithstanding anything contained in this Agreement, Proprietor shall be entitled to terminate this Agreement forthwith upon the happening of any or all the following events :

(a)

(b)

(c)

(d) Upon there being a change in the shareholding pattern or ownership pattern of the User or changes in voting powers of the shares, or other change in beneficial or legal ownership of the User, which in the sole and unfettered discretion of the Proprietor, is prejudicial to the interest of the Proprietor or one or more other companies to

whom a similar name licence has been granted orally or in writing or otherwise.”

It could thus be seen that the agreement specifically provides that upon there being change in the shareholding pattern or ownership pattern, of the user or changes in voting powers of shares, or other change in beneficial or legal ownership of the user, which in the sole and unfettered discretion of the proprietor, is prejudicial to the interest of the proprietor or one or more other companies to whom a similar name licence has been granted orally or in writing, the proprietor is entitled to terminate the agreement, notwithstanding anything contained in other parts of the agreement.

20] Clause 4.2 of the said agreement reads thus :-

“4.2 Upon termination of this Agreement, User shall forthwith and not later than 60 days from the date of such termination

(a) discontinue the use of the name “Euro” in any form or manner as a part of its corporate name, trading style or trade name and in its products/services and otherwise in its day to day activities and change its corporate name trading style or trade name in such manner as to delete therefrom the name “Euro” and”

It could thus be seen that upon termination of the agreement, the user is required to discontinue the use of the name EURO in any form or manner as a part of its corporate name, trading style or trade name and in its products/services and otherwise in its day to day activities and is also required to change its corporate name, trading style or trade name in such manner as to delete therefrom the name EURO.

21] It could thus clearly be seen that the Plaintiff No.2 has ownership of not only the trademark EUROBOND, but also of EURO and various other words and labels with the prefix of EURO. A list of which is reproduced herein-above. Undisputedly, when the agreement was entered into between the Plaintiff No.2 and the Defendant on 21st September 2006, the Plaintiff No.2 was having a registered trademark of EUROBOND, which was registered on 29th April 2005 with effect from 10th January 2003. The said trademark is for Class 6. Class (6) of the Schedule IV, reads thus :-

“6. Common metal and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of

common metal not included in other classes; ores.”

22] Perusal of the agreement would reveal that the agreement specifically records that the Defendant is in the business of manufacturing of Aluminum Panel Sheets. The licence, which is given by the Plaintiff No.2 for using the name EURO is solely in connection of the activities of the user. The activities of the user i.e. Defendant, of manufacturing Aluminum Panel Sheets are referable to only Class 6 of the Schedule IV. In that view of the matter, we find that the contention of the Appellant that the licence was only for the word EURO and not for the word/label EUROBOND, in our consideration is without substance. The licence agreement specifically provides granting licence to use the word EURO. It is only because of the licence given by the Plaintiff No.2 under the said agreement to use the word EURO, the Defendant could have incorporated the company under the name and style of EUROBOND.

23] The licence further provides for termination of the agreement, if any of the eventualities mentioned in the agreement occur. Undisputedly, as per the agreement, the Plaintiff No.2 has reserved a sole and unfettered discretion to terminate the

agreement notwithstanding anything contained in any part of the agreement, in the event the Plaintiff No.2 finds any change in in the shareholding pattern or ownership pattern of the user or changes in voting powers of shares, or other change prejudicial to the interest of the proprietor or one or more companies to whom a similar name licence has been granted. The agreement further provides, as to what shall be consequences upon termination of the agreement. It provides that on the agreement being terminated, the Defendant would not be in a position to use the word EURO and will have to change its corporate name, trading style or trade name in such manner as to delete therefrom the name EURO.

24] The Full Bench of this Court in the case of Lupin Ltd. Vs. Johnson and Johnson², had an occasion to consider the situation when an injunction is sought against a registered proprietor of the trademark. It will be relevant to refer to the following observations :-

“55. We are, therefore, of the view that while the registered proprietor of a trade mark would ordinarily be entitled to finding of the Civil Court in its favour that the trade mark registered in its name is prima facie valid, the

² 2015(1) Mh.L.J. 501.

jurisdiction of the Court is not barred for considering the plea of the Defendant at the interlocutory stage that the registration in the Plaintiff's favour is so fraudulent or is so apparently invalid that the Court should not grant an injunction in favour of the Plaintiff. Of course, a very heavy burden lies on the Defendant to rebut the strong presumption in favour of the Plaintiff at the interlocutory stage. The Civil Court obviously cannot give any final finding on this question as the jurisdiction to give such final finding is conferred on Appellate Board in the rectification proceedings, but it is not possible to accept the Plaintiff's contention that at the interlocutory stage the jurisdiction of the Civil Court is completely barred."

25] Perusal of the aforesaid observations would reveal that the Full Bench has held that while the registered proprietor of a trade mark would ordinarily be entitled to finding of the Civil Court in its favour, that the trademark registered in its name is prima-facie valid, the jurisdiction of the Court is not barred for considering the plea of the Defendant at the interlocutory stage, that the registration in the Plaintiff's favour is so fraudulent or so apparently invalid that the Court should not grant an injunction in favour of the Plaintiff. It has further been held that a very heavy burden lies on the Defendant to rebut the strong presumption in favour of the Plaintiff at the interlocutory stage. It has further been observed that the Civil Court cannot give final finding on this question as the jurisdiction to give such final finding is conferred on the Appellate Board in the

rectification proceedings.

26] It could thus be seen that, a registered proprietor of a trademark would ordinarily be entitled to finding of the Civil Court in its favour, that the trademark registered in its name is prima-facie valid. Only in case where the Defendant is in position to establish that the registration in the Plaintiff's favour, is so fraudulent or is so apparently invalid, the Court would refuse to grant an injunction in favour of the proprietor of the registered trademark. For proving the same, a heavy burden lies on the Defendant. Undisputedly, the case as is sought to be made out by the Defendant does not fall in the aforesaid category. In that view of the matter, we find that no inference would be warranted in the finding of the learned Single Judge that the Plaintiffs are entitled to injunction against the Defendant from using its registered trademark.

27] Perusal of the impugned order would further reveal, that the learned Single Judge has granted sufficient period of three months to the Defendant to change its corporate name and trading style and also to dispose of the existing stock of goods bearing the trademark EUROBOND.

28] Insofar as clause (iii) of the operative part is concerned, we find that learned Senior Counsel for the Defendant is justified in contending that the learned Single Judge could not have granted injunction in terms of clause (iii). For granting an order of injunction, when the action is based on passing of, various factors, which have been enumerated herein-above are required to be taken into consideration. However, we find that there is no discussion in the order of the learned Single Judge, as to on what basis the injunction has been granted.

29] In that view of the matter, we find that no interference is warranted with clauses (i), (ii), (iv) and (v) of the operative part of the order. However, for the reasons stated above, clause (iii) of the impugned order needs to be set aside.

30] In the result, we pass the following order :-

ORDER

I) Appeal is partly allowed.

II) Clause (iii) of the operative part of the impugned

order is quashed and set aside.

III) Rest of the clauses in the operative part are maintained.

IV) In the facts and circumstances of the case, no order as to costs.

V) In view of disposal of Appeal, Notice of Motion does not survive and accordingly stands disposed of.

31] At this stage, Mr. Kadam, learned Senior Counsel appearing on behalf of the Appellant/Defendant seeks stay of the order for a period of six weeks from today.

32] The said prayer is vehemently opposed by Mr. Chinoy, learned Senior Counsel for the Respondents/Plaintiffs. Perusal of the record would reveal that the Learned Judges of the Division Bench on 27th July 2015 have continued the interim relief granted by the learned Single Judge while allowing the motion. The said interim relief has been continued from time to time. It could thus be

seen that the interim relief granted in paragraph 15 of the order dated 15th June 2015 has been continued for a period of almost three and half years. In that view of the matter, we are inclined to continue the said arrangement for further period of six weeks from today.

[RIYAZ I. CHAGLA, J.]

[B. R. GAVAI, J.]