

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.09.2018

Date of Decision : 04.10.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

O.A.Nos.329 and 330 of 2018

in

C.S.No.225 of 2018

1.Pradeep Cholayil,
No.8, J Block, 6th Avenue,
Anna Nagar East, Chennai-600 102
rep by its Constituted Attorney
Mr.Heeroon Rasheed M.S.

2.Cholayil Private Limited,
No.8, J Block, 6th Avenue,
Anna Nagar East, Chennai-600 102
rep by its Manager-Legal
Mr.Heeroon Rasheed M.S. .. Applicants in
both applications

Vs.

Karnataka Soaps and Detergent Limited,
P.B. 5531, Poona Highway,
Bangalore-560 055
Karnataka, India .. Respondent in
both applications

O.A.No.329 of 2018 is filed under Order XIV Rule 8 of Original Side Rules read with Order XXXIX Rules 1 and 2 and Section 151 CPC seeking to grant a temporary, interim injunction restraining the respondent by themselves, their directors, their legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers or any one claiming through or under them from in any manner manufacturing, selling, offering for sale, stocking, trading, advertising directly or indirectly dealing in soaps which infringe the applicants' trademark MYSOP by use of confusingly similar mark MYSOAP or any other mark deceptively similar to the applicant's registered trademark MYSOP or in any other manner whatsoever, pending disposal of the suit.

O.A.No.330 of 2018 is filed under Order XIV Rule 8 of Original Side Rules read with Order XXXIX Rules 1 and 2 and Section 151 CPC seeking to grant a temporary, interim injunction restraining the respondent by themselves, their directors, legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from committing acts of passing off and

enabling others to pass off by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in soaps or any other product bearing the deceptively similar mark MYSOAP which is confusingly similar to applicant's mark MYSOP or in any other manner whatsoever which would be considered to be similar to the applicants' mark MYSOP, pending disposal of the suit.

For Applicants : Mr.Arun C.Mohan

For Respondent : Mr.R.Harikrishnan

- - - - -

COMMON ORDER

This common order will govern both these applications, i.e., O.A.Nos.329 and 330 of 2018.

2 There are two plaintiffs and a sole defendant in the main suit. Plaintiffs 1 and 2 are applicants 1 and 2 respectively in both these applications. Sole defendant in the main suit is the lone respondent in both these applications. Parties in these two applications are referred to by their respective ranks in the main suit for the sake of convenience and clarity.

3 The fulcrum of this entire suit is a registered trade mark bearing number 1754540, in the name of V.S.Pradeep in Class 3, the date of registration being 18.11.2008 vide certificate number 1021877 dated 16.09.2011, trade mark type is 'WORD' and the mark is 'MYSOP', goods and description as found in the 'Legal Use Certificate' ('LUC' for brevity) are Soap; Antiperspirant Soaps; Cakes of Soap; Deodorant Soap; Disinfectant Soap; Soap for Foot perspiration; Toilet Soap all in Class 3. This registered trade mark which is the fulcrum of this entire suit shall hereinafter be referred to as 'suit TM' for the sake of convenience and clarity.

4 It is the case of the plaintiffs that they are manufacturing, marketing and selling cosmetics soaps and that the suit TM is being applied on the same. It is also the case of plaintiffs that they are using suit TM from 2008, a decade, i.e., 10 years later, some time in February 2018, plaintiffs came to know that the sole defendant is infringing the suit TM and passing off its products by marketing the same products, i.e., cosmetics / soaps using the mark which is deceptively similar to suit TM. It is the further case of plaintiffs that on coming to know about such infringement and passing off by the defendant, cease and desist notice dated 09.02.2018 was caused to be issued, but defendant neither replied nor responded though cease and desist notice was duly served on defendant.

5 In the aforesaid scenario, instant main suit, i.e., C.S.No.225 of 2018 was presented / filed on 06.04.2018. Along with the main suit, the instant two applications were taken out with interim prayers to interdict the defendant qua infringement of suit TM and passing off. Vide common order dated 16.04.2018, an ad interim ex parte injunction was granted, the same was extended from time to time and it is now operating.

6 Sole defendant entered appearance, filed written statement and a common counter affidavit in the main suit and in the instant applications respectively. Plaintiffs have filed a common rejoinder to the common counter affidavit which completes pleadings in the instant applications.

7 Though no application for vacate injunction was taken out, sole defendant insisted that instant applications be heard out as interim order is operating against sole defendant. Interlocutory applications were heard out. Mr.Arun C Mohan, learned counsel on behalf of plaintiffs and Mr.R.Harikrishnan, learned counsel on record for sole defendant were before this Commercial

Division. I heard both learned counsel.

8 Before proceeding to examine the rival submissions and analysing the same, it is necessary to see the depiction of marks. Plaintiffs' depiction of suit TM has been filed as plaint document No.11 and the same is as follows :

9 Defendant is using a mark 'MYSOAP' and depiction of the defendant's mark has been filed as plaint document No.12 and the same is as follows :

10 To be noted, plaintiffs' suit TM, i.e., 'MYSOP', the alleged offending mark of the sole defendant, i.e., 'MYSOAP' and depiction of two marks on their respective products, i.e., cosmetic soap are not in dispute. In other words, this aspect of the matter which has been alluded to supra, particularly, marks as they appear in the wrappers / cartons of the respective products are undisputed and there is no dispute or disagreement between both sides with regard to the same.

11 It is deemed appropriate to broadly encapsulate the rival submissions.

12 Broad submissions of plaintiffs are as follows :

- (a) 1st plaintiff was originally known as 'V.S.Pradeep' and he changed his name as 'Pradeep Chodayil' vide gazette publication dated 14.11.2012. 1st plaintiff is a primary shareholder and Managing Director in second plaintiff company, second plaintiff has licence from the first plaintiff to use the suit TM and therefore, the instant suit has been launched by plaintiffs 1 and 2 inter-alia under Section 52 of 'The Trade Marks Act, 1999' (hereinafter referred to as 'TM Act' for brevity);
- (b) Plaintiffs are prior users and are in the market from 2008, whereas the sole defendant even according to its own averment (paragraph 25 of written statement) is in the market only from 2013 and therefore, plaintiffs are entitled to interim orders on 'First in the Market' principle as well as 'Prior user' principle;
- (c) Undisputedly, the products are the same, i.e., cosmetic soaps and a perusal of the suit TM of plaintiffs and the alleged offending mark of sole defendant, i.e., 'MYSOAP' will show that it is a clear case of infringement and passing off;
- (d) The case of infringement and passing off qua suit TM is buttressed and bolstered by depiction of the mark as can be seen from the undisputed wrapper / carton (to be noted, wrappers / cartons have been scanned and reproduced supra).

13 Sole defendant's submissions broadly are as follows :

- (a) Plaintiffs do not qualify as registered user of suit TM and therefore, plaintiffs are not owners of suit TM;
- (b) There is no provision for licensing under the TM Act;
- (c) There is no proof of assignment of suit TM by first plaintiff to second plaintiff;
- (d) There is no phonetic, visual or structural similarity between suit TM and the mark that is being used by the sole defendant and there is no scope for confusion. As a sequitur, there is no infringement or passing off qua suit TM.
- (e) Suit TM is clearly publici juris and therefore, plaintiffs cannot claim any exclusivity.

14 In the light of the aforesaid rival submissions of plaintiffs and defendant, before embarking upon comparison of the two rival marks, it may be necessary to ascertain plaintiffs' legal status qua suit

TM. From the rival submissions that have been encapsulated, summarised and adumbrated supra, three provisions of TM Act need to be looked into. Those three provisions are Section 2(1)(v), which defines 'registered proprietor', section 2(1)(x) which defines 'registered user' and section 2(1)(r) which defines 'permitted use'.

15 From the narrative supra, it is clear as daylight that first plaintiff qualifies as a 'registered proprietor' qua suit TM within the meaning of section 2(1)(v) of TM Act. However, there is one caveat to this. As mentioned above, the name of the proprietor in the trade mark registration certificate, i.e., LUC, with regard to suit TM, has been shown as 'V.S.Pradeep'. First plaintiff in this suit has been described as 'Pradeep Cholayil'. As already mentioned, it is the specific case of plaintiffs that first plaintiff changed his name from 'V.S.Pradeep' to 'Pradeep Cholayil' vide gazette publication dated 14.11.2012.

16 Sole defendant disputes this name change, refers to order dated 23.1.2013 in amalgamation proceedings in the Company Court being Company Petition Nos.169 and 170 of 2012 and submits that it has not been established clearly / proved conclusively that the first plaintiff has changed his name from 'V.S.Pradeep' to 'Pradeep Cholayil'. What is of significance is that the address of V.S.Pradeep has been given as 'No.8, J Block, 6th Avenue, Anna Nagar East, Chennai-600 102' in the LUC and the same is the address in the short and long cause titles in the instant plaint also. What is being placed before this Court as plaint document No.6 is an order dated 23.01.2013 made in C.P.Nos.169 and 170 of 2012. Company petitions are of the year 2012. The name change was vide gazette notification dated 14.11.2012. Apparently, the name had not been changed at the time of inception of Company Petitions. Therefore, it is quite possible that first plaintiff did not intimate the name change to the Company Court or the Company Court's order could have proceeded without the name change. These are all matters for trial. Attempting to say something conclusively in this regard in these interlocutory applications (on affidavits and counter affidavits) will tantamount to hazarding a guess which will be in the realm of surmises and conjectures. Prima facie, there is a Government gazette publication showing change of name and the address as found in the LUC and in the short / long cause titles of the plaint are the same. To be noted, the address of first plaintiff as in the Government gazette is also same. Therefore, while dealing with interlocutory applications, on a prima facie view, it is clear that first plaintiff has changed his name from 'V.S.Pradeep' to 'Predeep Cholayil' and therefore, he qualifies as registered proprietor qua suit TM, i.e., registered proprietor within the meaning of Section 2(1)(v) of TM Act.

17 This takes us to the question as to whether second plaintiff company qualifies as 'registered user' within the meaning of Section 2(1)(x) of TM Act. To be a registered user under the said provision of TM Act, a person should have been so registered under Section 49 of TM Act. Learned counsel for plaintiffs submitted that the license of a trade mark is an obtaining practice in the industry. A perusal of Section 49 of TM Act reveals that Section 49 was brought into the TM Act in its present form on the basis that licensing of trade mark is recognised universally as an important industrial property right. It has been brought in for streamlining the procedure for registration of registered user, simplifying the same and to encourage such registration.

18 Admittedly, there is no registration under section 49 in the instant case, but on that basis alone, it cannot be gainsaid that second plaintiff is not a licensee qua suit TM, when viewed in the light of the object behind introduction of section 49 which has been alluded to supra. However, a document styled as 'Permitted User agreement' has been filed along with the plaint (plaint document No.5) and the same is dated 20.09.2011. According to learned counsel for plaintiffs, by this document, second plaintiff will qualify as 'permitted user' under sub-clause (ii)(c) of clause (r) of sub-section (1) of section 2 of TM Act. In other words, second plaintiff will qualify as 'permitted use' under Section 2(1)(r)(ii)(c) of TM Act is his say. However, learned counsel for sole defendant disputes the validity of this plaint document No.5 in the light of Registration Act, 1908 and Indian Stamp Act, 1899. In other words, it is his specific say that the permitted user agreement dated 20.09.2011 has not been properly stamped and has not been registered and therefore, the same cannot be pressed into

service.

19 Considering that there is a provision for document to be impounded and stamp duty to be paid even during trial, it is appropriate to leave this question open for trial. The reason is, these applications can be decided by leaving open such questions, as the first plaintiff in any event qualifies as registered proprietor qua suit TM under Section 2(1)(v) of TM Act, first plaintiff is a primary shareholder and Managing Director in second plaintiff's company and therefore, plaintiffs certainly have established prima facie right qua suit TM and their rights to pursue suit against alleged infringement and passing off. In this regard, defendant pressed into service a judgment rendered by a learned Single Judge of this Court in M/s.Nico Quality Products Vs. M/s.N.C.Arya Snuff & Cigar Co. reported in CDJ 2014 MHC 083 to say that Section 35 of the Indian Stamp Act, 1899 is absolute. Nico Quality Products case does not help the defendant at this stage for more than one reason. One reason is, Nico Quality Products case pertains to assignment which stands on a different footing unlike permitted use under Section 2(1)(r). In Nico Quality Products case (unlike factual matrix of instant case), registered proprietor was not before the Court as coplaintiff. The plaint in Nico Quality Products was laid by the plaintiff solely in the capacity of an assignee of the mark therein. In the instant case, the registered proprietor is a coplaintiff, i.e., plaintiff No.1. Therefore, Nico Quality Products case is clearly distinguishable on facts also and it does not help advancing the case of sole defendant in this regard. To be noted, the sole defendant drew my attention to Explanation to Section 134 of TM Act and say that for a person to institute a suit or proceedings, he should either be a registered proprietor or registered user. In this case, as plaintiff No.1 is clearly a registered proprietor, at the interlocutory application stage, this issue stands doused.

20 This takes us to the next submission of defendant that the suit TM is publici juris. In support of publici juris argument advanced by the defendant, learned counsel for sole defendant pressed into service three judgments. One is a judgment rendered by a learned Single Judge of Karnataka High Court reported in United Breweries Ltd. Vs. Khodays Breweries Limited reported in 2013 (55) PTC 513 [Kar]. The second case law is a judgment of Hon'ble Supreme Court being Skyline Education Institute (Pvt.) Ltd. Vs. S.L.Vaswani and another reported in AIR 2010 SC 3221. The third case law pressed into service is a judgment made by a learned Single Judge of this Court in G.M. Pens International Pvt. Limited Vs. Bright Brothers Limited reported in CDJ 2017 MHC 073.

21 United Breweries Ltd. case is a judgment rendered by a learned Single Judge of Karnataka High Court. Be that as it may, that is a case where the label produced by the plaintiff clearly indicated that the product is for sale in West Bengal only. There is no such territoriality issue in the instant case. There is no dispute or disagreement that both parties are selling their products in common territories. Therefore, United Breweries Ltd. case does not advance the case of defendant qua publici juris point.

22 Skyline Education Institute (Pvt.) Ltd. case law on facts was a case pertaining to an educational institution and defendant had already admitted students. Therefore, applying balance of convenience principle, a learned Single Judge of the High Court granted a limited interim injunction which was confirmed by a Division Bench in an intra court appeal. This injunction was ultimately vacated by Hon'ble Supreme Court holding that balance of convenience principle has not been correctly applied. Further, it is pointed out by learned counsel for plaintiffs that in Skyline Education Institute (Pvt.) Ltd. case, there was evidence before the Court to show that the term 'Skyline' is used by any number of entities in contradistinction to the facts of the present case where there is no such material. I have no difficulty in accepting the plea that this aspect makes the Skyline Education Institute (Pvt.) Ltd. case distinguishable on facts. To be noted, one other aspect that makes Skyline Education Institute (Pvt.) Ltd. case distinguishable on facts is students having been already admitted in an educational institution which has been alluded to supra. Therefore, Skyline Education Institute (Pvt.) Ltd. case also does not help the case of defendant qua publici juris point.

23 With regard to G.M.Pens International Pvt. Limited case, it was a case where products are

completely different. While the plaintiff's product was ball pen, the defendant's product was kitchen utensils. On this one score alone, it becomes clear that G.M.Pens International Pvt. Limited case does not apply to the facts of the instant case and the sole defendant cannot place reliance on the same much less for publici juris principle.

24 However, the most important and clinching point with regard to publici juris aspect is, learned counsel for plaintiff pointed out that defendant applied for registration of the very same mark, namely 'MYSOAP' vide application bearing reference number 1842146 and this has been placed before the Court by sole defendant itself as part of its typed set. It is pointed out that while plaintiffs' suit TM is 'MYSOP', defendant has attempted to get 'MYSOAP' registered. While 'Soap' is a dictionary word, 'Sop' is not. Be that as it may, on this basis, it was submitted by learned counsel for plaintiffs that sole defendant is clearly estopped from raising this publici juris point, as defendant itself has applied for getting 'MYSOAP' registered as a trade mark. In support of estoppel, learned counsel for plaintiffs pressed into service two judgments of this court in the same case. One was rendered by a learned Single Judge and the other by a Division Bench of this court when the matter was carried in appeal. This case is Ashok Leyland case made by learned Single Judge of this court being Ashok Leyland Limited Vs. Blue Hill Logistics Pvt. Ltd. reported in 2011 (4) CTC 397. When this was carried in appeal, the Division Bench confirmed the order of learned Single Judge by dismissing the appeal. This is vide judgment dated 05.05.2011 in Blue Hill Logistics Private Ltd. Vs. Ashok Leyland Limited reported in 2011 (48) PTC 564 (Mad.)(DB). As the learned Single Judge's order has merged with the Division Bench's order, it will be appropriate to refer to Division Bench's order alone. Relevant paragraphs are paragraphs 33, 37 and 38 and the same read as follows :

□33.Whether two marks are identical or similar is a question of fact to be decided based on the tests that are applied to comparison of the marks. It is important to consider the mode in which the marks are used. In the Plaintiff's buses the word "LUXURA" is displayed in front and in big fonts on the left side of the bus. In the bus service operated by the 1st Defendant, there is a clear display of the impugned mark "L U X U R I A" with reclining chair on the left side of the bus. Excepting for the reclining chair and slight variation in the font, there is no difference between the user of the infringing mark "LUXURIA". 1st Defendant is using almost identical trade mark "LUXURIA" prominently displayed on the buses in the same position as that of the Plaintiff.

37.The words "LUXURA" and "LUXURIA" are only variants of the descriptive term "LUXURY" and as a consequence, the protection available is not so strong. But the 1st Defendant cannot take advantage of the same. As pointed out by the learned single Judge, 1st Defendant himself had applied for registration of trade mark "LUXURIA" under Classes 39 and 35 despite the fact that there is a prohibition under Section 9(1)(b) of the Act. The person claiming exclusive right over the expression cannot challenge the same expression as generic.

38. The same points were raised in 2007 (35) PTC 474 (Mad.) [HEALTH & GLOW RETAILING PVT. LTD. v. DHIREN KRISHNA PAUL, TRADING AS HEALTH AND GLOW CLINIC & ANOTHER]. Rejecting the said contention, in the said decision, Justice V.Ramasubramaniam,J held as under:- "48. The objection that the trade mark of the plaintiff was not an invented word and hence not entitled to protection, could have been raised only at a pre-registration stage. But after registration, a person is entitled to raise such an objection only by taking recourse to the remedies available under the Act (such as rectification of the Register) and not by committing an infringement. Otherwise, the Proprietor of a registered mark would have no more protection than the Proprietor of an unregistered mark. ..."

25 There is no difficulty in following the aforesaid principle as the same applies to the facts of this case. Therefore, this Commercial Division has no difficulty in holding that the sole defendant is estopped from raising publici juris issue, canvassing that the suit TM is publici juris and therefore,

plaintiff cannot pursue this suit.

26 This takes us to the last aspect of the matter, namely, the submission of sole defendant that there is no phonetic, visual or structural similarity between suit TM and the alleged offending mark that is being used by sole defendant. To be noted, suit TM as depicted in the wrapper of plaintiffs' product and the alleged offending mark of defendant as depicted in the wrapper of defendant's product have already been scanned and reproduced supra.

27 It is now for this Commercial Division to compare the aforesaid two depictions and decide whether prima facie case for interlocutory injunctive reliefs qua infringement and passing off has been made out.

28 Learned counsel for plaintiffs pressed into service a judgment written by me in Adyar Ananda Bhavan Sweets and Snacks Vs. Sree Keerthi Bhavan. This judgment is dated 15.03.2018 made in C.S.No.981 of 2017 and the same is reported in MANU/TN/1420/2018. Relevant paragraph is paragraph 17 and the same reads as follows :

¶17.While applying the aforesaid Parle judgment and comparing Ex.P.5 on one hand and Ex.P.8 and Ex.P.9 on the other hand, what I have done is I have seen plaintiff's mark, i.e., Ex.P.5, taken it away from the sweep of my eyes, thereafter seen Exs.P.8 and P.9 and asked myself a question as to whether a man of average intelligence with imperfect recollection and ordinary prudence be lulled into the belief that what he is seeing now (alleged offending mark) is what he saw earlier (plaintiff's mark). To be noted, all these exhibits placed before me were in colour (owing to which, I had the benefit of comparing the colour scheme also), whereas the scanned reproduction of the same supra are in black and white. I have no doubt in my mind that the answer is emphatic and in the affirmative.¶

29 Inspiration for me to adopt the aforesaid mode of comparison is a time honoured and celebrated judgment of Hon'ble Supreme Court in what is now popularly known as 'Parle principle' being Parle Products (P) Ltd. v. J.P. and Co., reported in (1972) 1 SCC 618. Relevant paragraph is paragraph 9 and the same reads as follows :

¶9. It is, therefore, clear that in order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him. In this case we find that the packets are practically of the same size, the colour scheme of the two wrappers is almost the same; the design on both though not identical bears such a close resemblance that one can easily be mistaken for the other. The essential features of both are that there is a girl with one arm raised and carrying something in the other with a cow or cows near her and hens or chickens in the foreground. In the background there is a farm house with a fence. The word ¶Gluco Biscuits¶ in one and ¶Glucose Biscuits¶ on the other occupy a prominent place at the top with a good deal of similarity between the two writings. Anyone in our opinion who has a look at one of the packets today may easily mistake the other if shown on another day as being the same article which he had seen before. If one was not careful enough to note the peculiar features of the wrapper on the plaintiffs' goods, he might easily mistake the defendants' wrapper for the plaintiffs' if shown to him some time after he had seen the plaintiffs'. After all, an ordinary purchaser is not gifted with the powers of observation of a Sherlock Homes. We have therefore no doubt that the defendants' wrapper is deceptively similar to the plaintiffs' which was registered. We do not think it necessary to refer to the decisions referred to at the bar as in our view each case will have to be judged on its own features and it would be of no use to note on how many points there was similarity and in how many others there was absence of it. ¶

30 To be noted, the aforesaid celebrated and time honoured Parle judgment has been referred to

affirmatively by Hon'ble Supreme Court as late as in the year 2000 in Cadbury's case being S.M. Dyechem Ltd. v. Cadbury (India) Ltd., reported in (2000) 5 SCC 573.

31 I applied the aforesaid test and compared plaintiffs' suit TM as depicted in the wrapper and the mark of defendant considering that the products are cosmetic soaps, i.e., products are same and considering that the same are purchased across the counter with the same channel of marketing. I addressed myself to the question as to whether a man of average intelligence with ordinary prudence and imperfect recollection (who is familiar with suit TM), while seeing the offending mark of defendant (in isolation) be lulled into belief that he is seeing the suit TM. My considered answer is clearly in the affirmative. In other words, the answer in monosyllabic terms is an emphatic 'YES'.

32 To complete this analysis and make it as comprehensive as possible and for the purpose of capturing the trajectory of hearing as it unfolds before me as accurately as possible, it is necessary to record that defendant pressed into service a judgment of a Division Bench of Kerala High Court in Mahavir Rice and Pulse Mills Vs. Jaikrishnan Trading Company reported in 2009 (4) KLT 593 and drew my attention to paragraphs 18 to 24 therein. This case pertains to ingredients that are essential for testing a passing off action. In this context and in the light of the facts of that case, it was held that reputation of mark is an essential ingredient. Instant case is not a passing off action simplicitor. The suit TM is registered and passing off is incidental and dovetailed to an infringement complaint. In any event, the strength of the mark is something which has to be decided in trial. Therefore, this Mahavir Rice and Pulse Mills case does not help advancing the case of sole defendant.

33 Learned counsel for plaintiffs pressed into service a judgment of Andhra Pradesh High Court being Shalimar Chemical Works Ltd. Vs. Surender Oil and Dal Mills (Refineries) and others reported in 2001 (21) PTC 392 and drew my attention to paragraphs 22 to 24. This judgment was pressed into service to emphasize the principle that trade dress is not of great relevance in an infringement action. In the instant case, 'MYSOP' and 'MYSOAP' are clearly too close for comfort and in my considered opinion, infringement is inevitable. Comparison qua depiction of marks on the wrappers of respective products has already been set out supra. Therefore, there need be no further emphasis on this aspect of the matter.

34 As already alluded to supra, sole defendant has completed pleadings in the main suit. Therefore, it would serve the interest of both parties to expedite trial by applying the swift and strict time lines that have been provided for in the amended 'The Code of Civil Procedure, 1908' ('CPC' for brevity) as amended by 'The Commercial Courts Act, 2015' ('said Act' for brevity). Once pleadings are complete, next procedural steps under amended CPC as amended by said Act are 'inspection of documents' followed by 'admission and denial of documents' under Rules 3 and 4 of Order XI of amended CPC as amended by said Act. Parties will do well to complete this exercise within four weeks from the date of pronouncement of this order in open Court. Immediately thereafter, the main suit will be listed under the caption 'CASE MANAGEMENT HEARING' ('CMH' for brevity) under Order XV-A of amended CPC as amended by said Act. Under CMH, time lines for trial followed by written arguments and oral arguments can be scheduled within the outer time limit of six months. A perusal of the scheme in CMH under Order XV-A would reveal that the same provides for this. Thereafter, judgment will be pronounced within three months. The aforesaid time lines will ensure that the main suit itself will be disposed of within ten months. Giving buffer and making allowance for certain relaxation in time lines, the suit can certainly be disposed of within one year if both parties adhere to the aforesaid time lines.

35 Therefore, in the light of the discussions supra, interim injunctions already granted in these two applications on 16.04.2018 are confirmed post contest and shall operate for a period of one year from the date of pronouncement of this order in the open Court. Considering the trajectory of the hearing, parties are left to bear their respective costs for the present leaving open the issue of costs also to be decided in the main suit.

36 If there is delay in the aforesaid time lines being adhered to, it is open to the party complaining of delay to move this Court for continuing or not continuing this order beyond aforesaid one year

period.

37 I part with these applications in the hope that such a situation does not arise and if it does, such a plea for continuing / not continuing shall be dealt with on its own merits.

38 Both applications are disposed of on above terms.

04.10.2018

Speaking order

Index : Yes

vvk

M.Sundar, J.

vvk

order in

O.A.Nos.329 and 330 of 2018

in

C.S.No.225 of 2018

04.10.2018