

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Civil Miscellaneous Appeal No. 1296 of 2017

ORDER

The appellants Smt.K.Jayanthi and her husband Sri K.Venkateshwar Rao are the defendants 1 and 2 in O.S.No.349 of 2017 filed by the plaintiff/respondent herein-M/ s Models India rep.by its Proprietor Y.Srikrishna(brother of D.1-Smt. K.Jayanthi), on the file of the learned X Addl.Chief Judge: City Civil Court, at Hyderabad to declare the plaintiff as sole proprietor and for prohibitory injunction restraining D.1 and D.2 from using the name and style of M/ s Model India Private Limited and its logo of the plaintiff and consequently to cancel the proceedings given by D.3-Amaravathi Development Corporation Limited(shown as not necessary party in the plaint) in favour of D.1 and D.2. Pending suit, the plaintiff filed petition in I.A.No.482 of 2017 under Order XXXIX Rules 1 and 2 r/w 151 CPC for temporary prohibitory injunction, which is after contest allowed by order dated 21.10.2017 of the trial Court and consequently by dismissing the I.A.No.483 of 2017 filed by the plaintiff for stay of all further proceedings including sanction of any amounts to the D.1 and D.2 by D.3.

2. Impugning the same, the present appeal is preferred by the D.1 and D.2 with the contentions in the grounds of the appeal vis-à-vis the oral submissions by the learned counsel for the appellants-D.1 and D.2 that the impugned order of the trial Court is contrary to law and weight of evidence, that D.1 was architect by profession and after resigned from the plaintiff's firm, she established a separate self

proprietary concern under the name of M/s Models India and registered it with Government of India and obtained trademark license in the year 1999 under the Trade Marks Act, 1999 and also under Copyright Act, 1972 on 11.05.2002 and Permanent Registration Certificate on 23.01.2011 and thus she was running her business separately without disturbing the business of the plaintiff's Concern. The plaintiff's documents show the name of the plaintiff's Concern M/s Models India Private Limited and registered in the year 1997 and also applied for the tender of D.3 in the name of M/s Models India Private Limited only. The plaintiff has no locus to file a suit in the name of M/s Models India for the simple reason that according to his own documents, all his tender applications were submitted to D.3 in the name of M/s Models India Private Limited only. Therefore, the lower Court ought to have rejected the suit and injunction applications on this ground alone. The D.1 and D.2 are registered and lawful trade mark users from 1999 onwards and as such the application of plaintiff for interim injunction is liable to be dismissed. The D.1 and D.2 pleaded and proved the case beyond reasonable doubt by marking all necessary documents Exs.R.1 to R.63 that they are registered owners and licensed trademark users in carrying on business and they are no way concerned with the business of plaintiff's entity. The plaintiff is not having registered trademark of M/s Models India and its Logo but the trial Court erroneously gave a finding that the plaintiff being prior user is entitled for the interim injunction. Except self-serving statements of the plaintiff no single piece of document is filed to show that he was actively doing business in the name of M/s Models India. The learned judge failed to

appreciate that even the Ex.P.5-Memorandum & Articles of Association of plaintiff's Company clearly reflects that the name of the company was incorporated on 14.08.1997 under the name of Models India Private Limited before the Registrar of Companies, Orissa. Therefore, it is clear that the plaintiff is carrying on its business in the name and style of Models India Private Limited only but not under the name of Models India as mentioned by the plaintiff. The learned Judge failed to appreciate the Trade Mark license wherein it is clearly stated that the Trade Mark was in respect of Visiting Cards, Letter Heads, Brochures, Calendars, Diaries, Plans, Sign Boards, Banners, Covers, Books and Envelops but the trial Court erred in holding that no mention of involving in fabrication of dimensional Acrylic Models and failed to note that plans includes fabrication of Dimensional Acrylic Models. Therefore, the finding of the lower Court is erroneous and contrary to the concept and object of obtaining the Trade Mark license by D.1 and D.2. The lower Court failed to note that there is no infringement by the defendants of any of the rights of the plaintiff's in her doing business right from its Registration and the plaintiff by filing the suits one after the other is damaging the reputation of the defendants Concern. The lower Court failed to appreciate the factual aspects brought to its notice in the counter that the appellant did not seriously contest the previous suits solely on the ground that they are not interfering with the rights of the plaintiff on the simple ground that they are registered and obtained license under the Trade Mark Act, 1999, and the Copyrights Act and are carrying on their business legally and ignored the false and frivolous litigations filed by the plaintiff who is none other than

the brother of the D.1. The lower Court failed to note that in the release deed, there is no clause or covenant that D.1 should not use the firm name and it deals with settlement of accounts only and further the plaintiff floated a company in the year 1997 which means that he dissolved the Partnership Firm and he himself has converted the Models India Partnership Firm into Models India Private Limited. The trial Court ought to have observed that D.1 was sole proprietrix at the time of commencement of Models India and later all the family members have joined and all of them converted it into Partnership Firm and the same is evident from Ex.P.4-Release Deed. The lower Court ought to have seen that the plaintiff never challenged the registered Trademark, Copyright and Permanent Registration Certificate obtained by D.1 and D.2 and as such the plaintiff is not entitled to any injunction restraining D.1 and D.2 to continue their own business. The lower Court failed to note that D.3 in their counter categorically stated that after thorough perusal of correspondence and mails between themselves and respondents and in view of the urgent need, they have allotted tender to D.1 and D.2 and also received one of the Models. The lower Court though held that D.1 and D.2 are successful bidders to supply the Models to D.3 and all the models are ready and one of the models was already delivered to D.3 and entitled to receive the amounts from D.3 for the models, but erroneously passed an injunction in favour of the plaintiff restraining the defendants 1 and 2 not to proceed further which is not only causing serious damage to the defendants but also causing severe hardship and mental agony to them. It is therefrom to set aside the

temporary injunction order granted by the lower Court on 21.10.2017 in I.A.No.482 of 2017 by dismissing the said injunction petition.

3. Whereas, it is the submission of the learned counsel for the plaintiff/ 1st respondent that the order of the lower Court is supported by reasons and for this Court while sitting in appeal there is nothing to interfere by drawn attention to the impugned order and the legal position and the facts referred therein with reference to the document exhibited therein.

4. Heard both sides and perused the material on record including the documents referred in the lower Court covered by Exs.P.1 to P.19 and R.1 to R.63.

5. The affidavit averments of the plaintiff show that the plaintiff's company initially established by father of plaintiff and D.1 by name late Y.Rama Mohan Rao who is proprietor of plaintiff's company. It is involved in fabrication of dimensional Acrylic Models and established in 1988 under the name and style of MODELS INDIA, thereafter in 1992 converted into partnership firm with Y.Ram Mohan Rao (Managing Partner), his two sons and daughters(including plaintiff and D.1). In 1996, D.1 retired from partnership firm on receipt of Rs.4,25,000/- towards her share and executed a release deed on 14.05.1996 with a condition that she released her right on MODEL INDIA and she also gave an affidavit stating that she settled her account in the firm and also issued letter to the Assistant Commercial Tax Officer, Ashok Nagar, Hyderabad intimating that she is nothing to do with said partnership w.e.f. 21.03.1996. Since Y.Ram Mohan Rao expired on 01.11.1993 and the D.1 also retired, the plaintiff, his

brother Y.Viswa Prasad and their mother have constituted said firm as partners and shares have been re-adjusted among them. In the year 1997 the other two partners retired from partnership firm on plaintiff's giving substantial amounts to other partners. Therefore, Y.Sikrishna has become proprietor of the plaintiff's firm and in the year 1997 the plaintiff registered the name '*Models India Limited Private Limited*' at Registrar of Companies, Orissa. Even though D.1 executed release deed, she along with her husband-D.2 has been running similar nature of business with same name and logo contrary to the documents executed by them and they approached the clients of the plaintiff claiming that they have done certain works which were actually done by the plaintiff's firm. Hence, the plaintiff was constrained to file a suit O.S.No.605 of 2000 on the file of VII Senior Civil Judge, City Civil Courts, Hyderabad and obtained permanent injunction restraining the D.1 and D.2 from using their name "MODELS INDIA" and its logo. In the year 2002, D.1 and D.2 again approached and obtained order using the name of plaintiff's firm and logo. As such the plaintiff filed another suit O.S.No.518 of 2002 on the file of the VI Junior Civil Judge, City Civil Court, Hyderabad against D.1 and D.2 and other companies which gave orders to D.1 and D.2 and the said suit was decreed in favour of the plaintiff. In the month of October, 2016, the D.3 gave an advertisement for appointment of agency for preparation of integrated infra-structure 3D Models for Amravati Capital city for which the plaintiff filed its tender. On 18.11.2016, the plaintiff sent a mail to D.3 stating that one Venkat is trying to use the name of the plaintiff and spoil the reputation. The D.3 on 31.10.2011 sent a mail to the plaintiff stating that the said

CCDMC is opening the financial proposals of technically qualified bidders are a) M/s Ikix 3D Prints, Pvt.Ltd., b) M/s Models India and c) M/s Models India Pvt. Ltd. On 18.11.2016 the plaintiff sent a mail to D.3 and attached the judgments to the said mail. It was also informed that the plaintiff is proprietary firm and have not represented themselves as a private Limited firm in any of correspondence and also requested to restrict misrepresentation entities. On 02.12.2016 the plaintiff informed through e-mail to D.3 that the plaintiff sent one legal notice to the D.3 through his counsel. On 05.12.2016 the plaintiff sent mail and also attached the said legal notice to the said mail. Again on 07.02.2017 the plaintiff sent mail to D.3 intimating that he came to know that he is the lowest bidder and having vast experience of making similar models and also requesting that he wanted to visit office of D.3 and on 01.12.2016, D.3 gave reply stating that they would do all needful as per tender conditions. The plaintiff not received any reply from D.3. on 12.04.2017 the plaintiff gave an application for furnishing information under Right to Information Act requesting D.3 to furnish the details of participated bidders etc., but the plaintiff has not received any reply from the respondents. Hence, the plaintiff does not have any other option except to file the suit against the defendants. The documentary evidence of the plaintiff would manifest that he is sole and absolute proprietor of the plaintiff firm and as such the plaintiff has made out a prima facie case to approach the Court seeking relief of injunction against the defendants. It is also alleged that the balance of convenience also lies in favour of the plaintiff.

6. On the other hand, D.1 and D.2 filed counter in both the petitions I.A.Nos.482 and 483 of 2017 with similar averments that D.1 being Architect by profession started self-proprietary business under the name and style of 'MODELS INDIA'. The nature of business is preparation of architectural models. After retirement from the partnership firm of her father again she started her business as proprietary concern and have got the trade mark registered with Government of India and obtained trade mark license by making her application,dt.26.12.1999 and the same was released in the year 2005 in the name of 'MODELS INDIA'. Thus she is carrying on business uninterruptedly till date. In the instant case, the plaintiff lodged various complaints to D.3 but the D.3 without taking into consideration of objections raised by the plaintiff awarded the contract to D.1 and D.2. They never suppressed any facts or misquoted trade mark to any agency about their name, as they have registered trademark and copyright holder, they have participated in the tender with their registered name and succeeded in getting the contract awarded. Admittedly, the plaintiff filed his tender as '*M/s. Models India Pvt. Ltd.,*' but the D.1 and D.2 have filed tender as 'MODELS INDIA' and both of them are separate legal entities and they never infringed the rights of the plaintiff. It is contended that once the plaintiff has converted his business into a private Limited Company by incorporating and registering with the Registrar of Companies, there is no question of holding proprietary concern by him as 'MODEL INDIA'. Though D.1 had executed release deed by releasing her right and shares in the partnership firm, which is family concern, but she never gave up her own right through the said deed as pleaded

by the plaintiff. It is contended that the suits in O.S.No.605 of 2000 and O.S.No.518 of 2002 filed by the plaintiff were not contested by these D.1 and D.2 on simple ground that they are not interfering the rights of the plaintiff. Thus the D.1 as a lawful trademark holder, copyright holder, has every right to do her business and the plaintiff does not have any right to question or challenge the business carried upon by them. The suit filed, without joining the necessary and proper parties, is liable to be dismissed. The D.3 already awarded the contract and entered into an agreement with these defendants and they have already furnished first model to D.3 which was approved, the second and third models were made ready and about to be delivered and the D.3 is about to release initial payment to D.1 and D.2. By the date of exparte order, the tender was awarded and part of contract was performed. Thus the suit filed by the plaintiff became infructuous and liable to be dismissed. The plaintiff do not have any prima facie case, balance of convenience in its favour and on the other hand, these defendants got contract and commenced, they would be put to great loss and hardship in view of the status quo order granted by this Court. Hence, to dismiss the petition.

7. The D.3 filed counter in I.A.No.483 of 2017 and admitted about mails sent by the plaintiff and also stated that they have not made any payment to any party and that it will abide by the decision of the Court in making payment to the party entitled to receive the same. The D.3 has time bound programme to complete the work and there is urgency in the matter, since the project is very prestigious to the Government of Andhra Pradesh and the inputs through these

Models are critical and be permitted for execution of the work. So far as the work done by the D.1, this court may modify the order permitting D.1 to execute the work, so that the D.3 would be able to meet the dead lines, as from the date of receipt of orders, the work has been stopped.

8. The plaintiff filed rejoinder contending that D.1 got the trademark registered with the Government of India contrary to her release deed dt.14.05.1996. The D.1 business is registered in respect of business relating to Visiting Cards, Letter heads, Broachers, Calendar, Diaries, Plans, Sign-boards, Banners, Covers, Books and Envelops only. That the D.1 also filed another application dt.28.12.2016 before the Trade Mark Registry vide application No.3443432 in respect of 'Architectural Models' and the same was objected by the said Registry. The plaintiff filed an application vide No.926167 in respect of 'Drawings & Engineering, Architectural, Miniatures, Structural Designs' the same is advertised before acceptance. Even after receipt of complaints given by the plaintiff, D.3 ignored and awarded the contract to D.1 and D.2. The D.1 and D.2 have no right to file the tender in the name and style of 'M/s Models India Pvt. Ltd.' knowingly that the plaintiff filed his tender under the name and style of 'M/s Models India' represented by Proprietor Y.Sikrishna. The D.1 and D.2 stated that they filed tender as a registered trade mark holder in the name of MODELS INDIA as a Proprietrix concern. The D.3 gave a letter of acceptance dt.08.12.2016 to Mr.Venkat(D.2) M/s Models India knowingly that K.Venkat is no way concerned in the said tender. The plaintiff never

filed any tender in the name and style of M/s Models India Pvt. Ltd. in the office of D.3. The defendants knowing fully well about the judgment and decree passed in O.S.No.605 of 2002 still they continuing said business under the name and style of 'M/s Models India' and logo. Hence to allow the applications.

9. During enquiry, the trial Court got marked Exs.P.1 to P.19 on behalf of the plaintiff and Exs.R.1 to R.63 on behalf of the respondents and on hearing both sides referring legal position and certain provisions of Trade Marks Act, 1999, allowed I.A.482 of 2017 granting temporary injunction in favour of the plaintiff restraining the D.1 and D.2 from using the plaintiff's firm and its logo pending disposal of the main suit and dismissed the I.A.No.483 of 2017.

10. The father of the plaintiff and D.1 by name Y.Ram Mohan Rao (since died) established in 1988 a proprietary concern with a name and style MODELS INDIA in fabrication of dimensional acrylic Models and in 1992 the said proprietary concern changed to partnership firm with partners of said Ram Mohan Rao as Managing partner and his two sons and daughter (including the sole plaintiff and the D.1) covered by Ex.P.3 partnership deed dt.30.08.1992 not in dispute including from para-4 of the counter averments of the appellants/ defendants 1 and 2 in I.A.No.482 of 2017. It is also not in dispute that the D.1 herein executed original of Ex.P.1 release deed, dt.14.05.1996 also not in dispute. A perusal of the release deed executed between the D.1 on one hand and mother and the two brothers of the D.1 on the other hand shows that in their joint family, they were carrying on family business under the name and style of MODELS INDIA by formerly

mentioned the name of the D.1 herein as if proprietrix of said 'MODELS INDIA' at the time of commencement of business that was looked after by their father Ram Mohan Rao who died on 06.11.1993 after said proprietrix concern commenced in 1988 converted into partnership concern in 1992 supra where the D.1 Smt. Jayanthi got 30%, the plaintiff Srikrishna got 30%, their brother Viswa Prasad got 30% whereas their father Ram Mohan Rao having 10% and in the place of their father, their mother Smt. Jhansilaxmi is substituted in the partnership for the 10% share of him in the business. However, there are certain problems and difficulties cropped up between them and to avoid any scope of further disputes having settled the matters through elders, the release deed is executed wherein the first party Smt. Jayanthi (D.1) herein released and relinquished of her rights in the said family Concern 'MODELS INDIA' including even goodwill etc., described in the release deed ~~schedule~~ in favour of the others the Releasees who held the same absolutely as owners to carry on business by virtue of the release w.e.f. 01.11.1995 by taking her consideration of Rs.4,25,000/- towards the 30% share and Smt. Jayanti shall issue no objection and letters to all concerned like APGST, IT and Banks etc., to enable the releasees and the consideration supra is referred as received by 3 post-dated cheques dt. 01.06.1996 and 15.06.1996 (two cheques) bearing Nos. 172901, 172902 and 172903 drawn on Vyshya Bank Chikkadapalli. It is also referred consequently the releasees re-fixing of shares of Jhansilaxmi 40%, Vishwaprasad 30%, Srikrishna-plaintiff herein 30% The Releasees shall have full and absolute right over the trademark

and implement M/s. Models India business and the Releaser shall not use and misuse the trademark licences of the MODELS INDIA.

11. It is subsequently in between the plaintiff and his brother and mother of MODELS INDIA business with Copyright and Trademark etc., there was another release deed, dt. 25.06.1997 covered by Ex.P.4 executed whereunder the plaintiff's mother and brother relinquished their rights in favour of the plaintiff-Sri Krishna by re-arrangement of 10% share only to Jhansilakshmi, 40% to Vishwa Prasad and remaining 50% to plaintiff-Sri Krishna and it speaks Vishwa Prasad and Smt. Jhansilakshmi having received for his 40% share and her 10% share relinquished rights in favour of the plaintiff-Sri Krishna who has become solely with absolute rights in him over the trademark and implement M/s Models India business. A perusal of the certificate of registration consequently of the plaintiff's entity as 'MODELS INDIA' entity incorporated into a private limited company pursuant to the above covered by Memorandum and Articles of Association of the company and certificate of incorporation issued by the Registrar of Companies under Ex.P.5 shows it is the MODELS INDIA incorporated as 'Models India Private Limited' and there is no any separate MODELS INDIA wherein D.1 got a right consequent to the above.

12. Coming to Ex.R.1 certificate of registration of trademark of the D.1 with name and style MODELS INDIA registered trademark No.894746, dt.28.12.1999 J No.1328 (S-V) with particulars groundfloor, opposite My Home, Madhuban of Srinagar colony main road, Hyderabad, in respect of visiting cards, letter heads, brochures, Calendars, Diaries, Plans Signboards, Banners, Covers, Books and

Envelopes to manufacture and it was issued on 05.12.2005 by the Registrar of Trademarks, Mumbai. Coming to the extract from the Registrar of Copyrights in this regard covered by Ex.R.2, the D.1 as owner with class and description of the work 'Artistic' and the title of the work 'MODELS INDIA' saying published from time to time and last published in 1998 as My Home and etc., supra, and the work is architectural, industrial and Engineering. The application dated 26.12.1999 and date of receipt of the application is 11.01.2000 and registration No. is A-61274-2002, dt.11.05.2002. Even placed reliance on it, the plaintiff herein in fact filed a suit O.S.No.605 of 2000 against the defendants herein on the file of the VII Senior Civil Judge, City Civil Court, Hyderabad, for the relief of permanent injunction restraining the defendants from using the 'MODELS INDIA' and its logo with the above averments of originally it is the proprietary business of their father and later converted into partnership business of 'Models India' later converted into partnership of the family members and later relinquishment of her share and also other facts supra in saying the plaintiff of his business with name 'MODELS INDIA' registered as 'Models India Private Limited Company'. The defendants, which the plaintiff came to know recently, have been running similar nature of business with similar name and logo which is contrary to the relinquishment deed executed by her supra including for goodwill in claiming as if done certain works which in fact actually done by the plaintiffs entity, he having own reputation in the market and the attempt by the defendants in using the name of the plaintiff and its logo effects the business of the plaintiff and D.1 also issued letter to the Asst. Commercial Tax Officer, Ashok Nagar, Hyderabad, intimating

that she has nothing to do with the partnership business w.e.f. 21.03.1996 having relinquished her right by relinquishment deed supra and having left the firm she and her husband-the defendants having no right to use 'MODELS INDIA' and its logo that belongs to the plaintiff. The contest by the defendants herein as defendants in O.S.No.605 of 2000 was that the D.1 herein is proprietrix of 'MODELS INDIA' and denied the execution of the release deed and giving of effect to the Commercial Tax Officer saying alleged release deed is an accrued one, that she is the diploma holder in Architecture and Engineering since 1987 Academic year and commenced self-made business of fabrication of 3 dimensional Acrylic Models with name and style 'MODELS INDIA' with the logo 'MODELS INDIA' and logo in 88-89 the business was shifted to Hyderabad and she is continuing as a proprietrix of said business and she has been filing I.T. returns and she got good reputation in the field of fabrication and was rewarded with best women in partnership by Government of A.P. and news item in Eenadu daily also published in this regard. It is averred that the plaintiff by misrepresenting as original proprietor of MODELS INDIA got works done for which the defendants initiated proceedings against him, having waited all through because of the relation of her brother to her saying not entitled to the relief of injunction.

13. In the suit during trial, the plaintiff was examined as P.W.1 and Exs.P.1 to P.9 viz; release deed executed by Smt.K.Jayanti-D.1 and release deed executed by brother and mother of plaintiff, affidavit given by the D.1 supra and the partnership deed of K.Jhansilakshmi, Vishwa Prasad and Srikrishna were mainly filed and

on behalf of the defendants, Smt. K.Jayanthi did not come to witness box but for her husband-D.2-K.Venkateshwar Rao as D.W.1 and one T.M.R as D.W.2 with no documentary evidence. The suit was ultimately decreed on 24.04.2003 undisputedly by granting permanent injunction restraining the defendants their men etc., from using the name of 'MODELS INDIA' and its logo.

14. The judgment became final for the defendants did not choose to appeal against it and is not even in dispute including with reference to Ex.P.6. In the said judgment in O.S.No.605 of 2000 covered by Ex.P.6, there is finding about said Jayanti-D.1 relinquished her right in the business, in the logo and in goodwill of the business in 'MODELS INDIA'. Further Ex.P.7 is another decree and judgment in O.S.No.518 of 2003 filed by the plaintiff-Srikrishna of 'Models India' as its proprietor against M/s India com Directories Limited represented by its Branch Manager and Tata Donnalley Limited represented by its Branch Manager Srikrishna, K.Jayanthi and K.Venkateswara Rao are defendants 3 and 4 herein. It is also a suit for permanent prohibitory injunction against the defendants by restraining the D.1 and D.2 from accepting the insertions from D.3 and D.4 in the name and style of 'MODELS INDIA' along with its logo and against the D.3 and D.4 by restraining them from issuing insertions to the D.1 and 2 in the name and style of 'Models India' along with its logo and the suit on contest with reference to the release deed executed by Smt. Jhansilakshmi in favor of the plaintiff and others and her letter addressed to the Commissioner Tax Department mainly among Exs.A.1 to A.6 marked and the plaintiff-Srikrishna as P.W.1 deposed and the defendants

having contested did not adduce any evidence and the suit was decreed covered by Ex.P.7.

15. From the above, it is crystal clear that the 'MODELS INDIA' trademark and the logo belongs to the plaintiff presently proprietor of 'MODELS INDIA'. In fact once there is a relinquishment deed executed by Smt. K. Jayanti relinquishing her rights in the trademark and logo and in the business including any goodwill, she cannot use it and two Courts in two suits granted injunction against her and her husband-the D.1 and 2 herein on any use of the logo and trademark and the name and style of MODELS INDIA to carry on any business for she already left the business having relinquished in favor of the plaintiff and other family members, in turn relinquished in favour of the plaintiff, the rights and goodwill etc. therein. Once these facts are not in dispute irrespective of the contention of the D.1 and D.2 of so called relinquishment deed is a forged one or fabricated one or in 1999 and in 2002 respectively of trademark registration and copy right registration obtained by the D.1 with name and style of 'MODELS INDIA' and its logo she cannot have any right having relinquished including goodwill therein of the erstwhile family business where she was one of the family members by virtue of the original of Ex.P.1 relinquishment deed relates back to 14.05.1996 from the terms referred supra. Once that is the case from these documents there is a prima facie case in favor of the plaintiff.

16. Now coming to balance of convenience from perusal of the patent rights and claims, even the balance of convenience is in favor of the plaintiff and coming to the next aspect of irreparable injury, herein, no doubt between the claims of plaintiff and D.1 and D.2,

which the D.1 and D.2 not accept as referred supra to use name and style of 'MODELS INDIA'. The third party right is involved with the D.3-CCDMC represented by its Chairman and Managing Director) by the defendants 1 and 2 which is pursuant to the advertisement for appointment of agency for preparation of integrated infra-structure 3D Models for Amaravati Capital city. The plaintiff and the D.1 filed tenders. The plaintiff also on 18.11.2016 sent e-mail to D.3 stating one Venkat(D.2) is trying to use the name of the plaintiff and he also spoiled the reputation of the plaintiff. D.3 on 31.01.2017 sent a mail to the plaintiff stating CCDMC opened the financial proposals of technically qualified bidders whereunder 'M/s MODELS INDIA' (of the D.1 and D.2) and 'M/s Models India Private Limited' father of the plaintiff) and one M/s Ikix 3D Prints became qualified bidders on 18.11.2016 and the e-mail of the plaintiff received by the D.3 along with the attached judgments, however mentioned that the plaintiff is a proprietary firm and not represented as a private limited firm in the said judgments. The plaintiff sent a letter on 02.12.2016 through e-mail to the D.3 and also notice also through an advocate and again on 07.02.2017 another mail and D.3 not even choose to give reply to any of the same including for the another mail dt.05.03.2017 but for one reply of the D.3 wayback on 01.12.2016 stating that they will do the needful claiming tender conditions for the information sought under the RT Act by the plaintiff covered by the Exs.P.14 to 16, leave about the mails and notice covered by Exs.P.8 to 13 and 18 and 19 supra and letter under Ex.P.17, dt.03.05.2017, the plaintiff sought from D.3 to furnish details of participated bidders which is with no reply. In this scenario, the contest of the D.1 is she is lawful trademark holder and

copyright holder with right to do her business and the plaintiff has no manner of right, the question or challenge of her business including in her bid and participation in the bid with the D.3 for analyst as agency and in showing the D.3 already awarded contract and entered into agreement with the D.1 and D.2 having approved one of the models furnished by them and it is about to be delivered and amount is to be released. What the D.3 contested is abide by the decision of the Court in making payments to the party entitles to receive the same for the D.3 has not made any payment to any party so far in saying is time bound programme to complete the work and there is urgency as the project is prestigious to the Government of A.P. hence to be permitted to execute the work.

17. The lower Court from this material, with reference to Exs.P.1 to P.19 and R.1 to R.63 observed from para-10 onwards of the impugned order that after retirement of the D.1 from the partnership firm, she is carrying on her business of her own and got her business under trademarks Act and copyright Act registered and by obtaining certificates referred supra under Exs.R.1,2 and R.3 filed tenders in the name of 'Models India Limited' and about the Contract awarded by D.3 to D.1 and D.2 even from the above though the plaintiff has not registered trademark in the name and style 'MODELS INDIA' but for the D.1 under Ex.R.1 from December, 2005 even perusal of Ex.R.1 shows it is in respect of Visiting Cards, Letter heads, Broachers, Calendars, Diaries, Plans, Signboards, Banners, Covers, Books and Envelopes and there is no mention of the trademarks registration activity involving fabrication of dimensional acrylic models in which

the plaintiff has been dealing since 1988 from perusal of Exs.P.1 to P.19 referred supra being a prior user therefrom of the business with that name and logo 'MODELS INDIA' u/ sec.27(2) of the Trademarks Act, plaintiff is entitled to maintain the suit and for that conclusion referred the expression of the Apex Court and other High Court's and observed of plaintiff is entitled to temporary injunction in answering point No.1 observed on Point No.2 as to stay of further proceedings including sanction of amounts to D.1 and D.2 by D.3 from D.3 stated not made any payments to any party for the contract awarded by D.3 to the D.1 and D.2 from the tender submitted by the D.1 and D.2 in the similar name and identical name of the plaintiff is not entitled to stay of further proceedings of sanction of any amount to D.1 and D.2 by D.3 in respect of work already done. However on perusal of the order of the lower Court having dealt with the prima facie case, balance of convenience except irreparable injury. The perusal of the counter of the D.3 in particular shows a time bound work for which the tender is finalized. The lower Court also not chosen to stay of payment of amount for the work already done by the D.1 and D.2 to the D.3 while granting injunction in favor of the plaintiff against the D.1 and D.2 from using the name and logo of the Models India.

18. Having regard to the above, the trial Court should have considered to subserve the ends of justice to complete work undertaken by the D.1 and D.2 with the D.3 of the time bound programme subject to condition of depositing of amount payable including so far paid on finalization of the tenders in entrustment of the work to the credit of the suit and to pay, out of it, to the D.1 and

2 only 50% and to deposit the remaining amount of 50% to the credit of the suit for final disposal of the same subject to the ultimate entitlement if any of the suit claim by the plaintiff.

19. Accordingly and in the result, the appeal is partly allowed while granting the injunction restraining the D.1 and D.2 from using the name and logo of MODELS INDIA including under the guise registered trademark and copy right from the passing of rights and allowing user of the plaintiff's right from 1988 including from the material on record and the lease covered by earlier two judgments with the findings made final of the relinquishment executed by the D.1 in favor of the plaintiff and family members, having received goodwill and relinquished her right in the business in using the name and style of MODELS INDIA; even plaintiff as one of the partners along with D.1, their mother and brother after death of their father, from the firm re-constituted and after her relinquishment of rights by D.1 to the firm, the brother and mother of the plaintiff also relinquished their rights in favor of the plaintiff-the sole entity entitled to use of the name and logo and the business including from the goodwill, there is nothing to interfere with the temporary injunction order passed by the lower Court but for to the extent of the contract between the D.1 and D.2 and the D.3 for permitting to comply it however subject to condition of D.3 depositing amount payable to the credit of the suit and out of which the trial Court to permit the D.1 and D.2 to withdraw only 50% and the remaining 50% shall be kept in the credit of the suit for the trial Court to early dispose of the suit to dispose of the amount for ultimate entitlement by whom to decide.

Consequently, miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 22.02.2018
vvr