

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.No.2847 of 2016

and

C.M.P.Nos.20596/2016 & 5525/2017

1.TSI Engineering Industries Private Limited
Rep by its Managing Director
Having Office at
Kali Mandir Path, Jyotikuchu, Lokhra Road
Guwahati - 781034.

2.Mr.Madhusudahan Shahi
M/s.Trade Supply India
Having its Principal Office at
Kumudhini Commercial Complex
A.T.Road, Guwahati - 781001.

... Appellants/Respondents/Defendants

-Vs-

C.R.I Amalgamations Private Limited
Rep by its Director G.Soundararajan
7/46-1, Keeranatham Road
Saravanampatti, Coimbatore - 641035.

... Respondent/Petitioner/Plaintiff

PRAYER : Appeal against the fair and final order dated
20.12.2016 made in I.A.No.87 of 2015 in O.S.No.40 of 2015 passed
by the learned Principal District Judge, Coimbatore.

For Appellants : Mr.Sivanandharaj
for Mr.V.Sankaranarayanan

For Respondent : Mrs.Elizabeth Seshadri
for M/s.Iyer and Thomas

J U D G M E N T

The appeal has been preferred by the defendants, who suffered an order of interim injunction pending disposal of the suit, restraining them from infringing the plaintiff's/respondent's trademark by using deceptively similar mark "MRI" or any other marks similar or deceptively similar to the mark of the respondent namely, "CRI".

2.The respondent is a part of "CRI" Group of Companies, which is the registered proprietor of trademark "CRI" for various goods falling under various classes of goods and services covered under the Trademarks Act, 1999. The trademark "CRI" has been licensed to one of the CRI Group Companies namely, CRI Pumps Private Limited, which is engaged in the business of manufacture and sale of pumps, motors, valves, pipes, cables and pump accessories and spare parts by virtue of user licence agreement dated 2nd April, 2007. The mark "CRI" has been in continuous use by the group companies of the respondent ever since 1973. The said subsidiary company of the respondent/plaintiff, namely, "CRI Pumps Private Limited" has a global network of market selling its products in about 100 countries.

3.The 2nd defendant/2nd appellant is a businessman carrying on the business of trading in pumps. As the proprietor of Trade Supply India, he became a dealer of CRI Pumps Private Limited in 2011 by way of dealership agreement dated 15.05.2011 and has been doing only the said business of dealing in CRI brand Pumps and other products. In the meanwhile, it has come to the knowledge of the respondent that the 2nd appellant had been indulging in some unfair business practices behind the back of CRI Pumps Private Limited. The 2nd appellant along with his relatives and associate entities had promoted a private limited company in the name and style of TSI Engineering Private Limited, the 1st appellant herein with an address different from that of the 2nd appellant's proprietorship concern "Trade Supply India".

4.It had come to the knowledge of the respondent that the new company namely, the 1st appellant is trading in pumps bearing the trademark "MRI" which closely resembles and is very much similar in form, style and phonetics to that of trademark "CRI" belonging to the respondent.

5.The respondent came to understand that the 1st appellant had applied for registration of the mark "MRI" encircled by an oval shaped device for the goods, Capital MonoBlock Pump, Submersible Pump, Centrifugal Pump and Electric Pump before the Registrar of Trademarks, Kolkata, claiming use of the mark from February, 2012. The appellants' wilfully and dishonestly adopted the mark which is deceptively similar to that of the respondent and falsely applied the same as their trademark and trade name knowing fully well that such use constitutes infringement and passing off the respondent's exclusive right, in the established trademark, trade name and trading style, as is available to them, under law, to a registered proprietor as well as the owner of a well known trademark.

6.The respondent would state that by infringement and passing off the respondent's trademark CRI, the appellants are unauthorisedly and illegally making commercial gains grabbing the goodwill and reputation of the respondent's trademark thereby infringing the exclusive right enjoyed by the respondent. By using the trademark "MRI", which is visually and phonetically resembling the mark of the respondent, the appellants are not only causing infringement of the registered trademark of the respondent within the meaning of Section 29 of the Trademarks Act, 1999 but have also falsely applied the said trademark on goods and services within the meaning of Section 102 of Trademarks Act, 1999.

7.In view of the above, CRI Pumps Private Limited issued a letter dated 28.06.2014 to the 2nd appellant warning that the 2nd appellant should desist from using the mark MRI to which an evasive reply was sent by the 2nd appellant. As the 2nd appellant was acting contrary to the mandatory terms of dealership agreement, he had floated the 1st appellant company to circumvent the same and had been applying the said trademark. Another letter dated 04.09.2014 was also issued to the 2nd appellant followed by caution notice dated 05.09.2014 through their trademark attorneys to the 1st appellant, warning them not to use the mark MRI, which received a reply dated 11.10.2014. Thereafter, CRI Pumps Private Limited terminated the dealership of the 2nd appellant through notice dated 16.09.2014. In spite of that, the 2nd appellant continued to indulge in infringement. As the 2nd appellant was an authorised dealer in CRI Pumps, it became easy for the appellants herein to do so and thereby they are not only increasing the likelihood of confusion , but also indulging in trade practice that is bound to deceive the public and unwary consumers.

8. Since the appellants continued to use the trademark MRI, causing enormous damage to the reputation of the respondent's trademark, in order to protect the property rights of the respondent, which respondent had created due to enormous efforts, hardwork, time, cost and efforts, the respondent filed O.S. No. 40/2015 against the appellants under Order VII Rule 1 CPC read with Sections 28, 29, 134 & 135 of the Trademarks Act, 1999 seeking a decree of perpetual prohibitory injunction restraining the appellants herein from in any manner using in the course of their trade, CRI or MRI or any other mark, which clearly resembles or identical or similar or deceptively similar to CRI in relation to any of their goods and services in any manner whatsoever and for mandatory injunction directing the appellants to deliver-up the labels, brochures, leaflets, advertisements, audio/visual reproduction and any other publicity materials / print outs or any other form of work in which the said infringing mark has been imprinted or embossed for destruction of the same. Pending disposal of the above suit, an order of interim injunction was sought for, in I.A. No. 87 of 2015.

9. Initially, an ex parte order of injunction was granted by the Trial Court in I.A. No. 87/2015 on 12.02.2015, which was challenged by the appellants in CRP (PD) No. 1368/2015 before this Court. This Court, by order dated 27.09.2016 set aside the ex parte order holding that no speaking order has been passed and remanded the matter by order dated 27.09.2016 for fresh consideration.

10. Thereafter, the appellants filed a counter denying/resisting the plea of the respondent. The 2nd appellant started his proprietary concern, Trade Supply India and was a dealer for various types of goods for various trading companies. The 2nd appellant was appointed as a dealer of the respondent company during the year 2011. Trade Supply India was never exclusively dealing with CRI Pumps Private Limited and was acting as a dealer for the pumps of several other entities. On 20.01.2012, the 1st appellant company was incorporated under the Companies Act, 1956 with three Directors namely, Madhusudan Shahi, the 2nd appellant herein, Reena Shahi and Ishika Shahi. The said company started using MRI trademark in its products since 01.02.2012. The mark MRI is the genuine invention of the 1st appellant company and its creation was not influenced in any way by the CRI mark. The combination of letters "MRI" was chosen as mark based on the 1st alphabets in the names of Madhusudhan Shahi, Reena Shahi and Ishika Shahi whereas CRI mark is derived from the words "Commitment, Reliability and Innovation". The 1st appellant Company registered the artistic

work of MRI mark before Registrar of Copyrights, Government of India and obtained Copyright Registration Certificate on 16.09.2013 and filed an application with the Registrar of Trademarks, Kolkata, in its own name under Sections 18(1) Rule 25(2) of the Trademarks Act, 1999 for the MRI product under Class 7 in respect of "Monoblock Pump, Submersible Pump, Centrifugal Pump and Electrical Pump".

11. On 28.06.2014, two years after the 1st appellant Company started using the MRI mark, the respondent sent a letter alleging that the appellants were selling pumps under the MRI mark in direct competition with the respondent company's products bearing the CRI mark and that the marks were deceptively similar. A reply notice dated 01.07.2014 was sent by Trade Supply India stating that it was not supplying and had never supplied any pumps under the MRI brand. Through letter dated 04.09.2014, CRI Pumps Private Limited sent a letter to Trade Supply India accusing the 1st appellant's company of using the MRI mark to infringe the respondent's CRI mark. Through reply dated 11.10.2014, the 1st appellant Company stated that it has been using the MRI mark since 2012 and had gained immense popularity and thereby distinguished itself from other brands and the question of deceptive similarity does not arise. On 02.02.2015, the respondent Company filed the suit.

12. The appellants would contend that the mark of the appellants is not visually and phonetically similar to that of the respondent so as to deceive or confuse the customers. The font size, font type and font colour, background colour, structure and basic get-up of MRI is different from the trademark CRI of the respondent.

13. After hearing both parties, the learned Trial Judge came to the conclusion that both marks are deceptively similar, visually and phonetically. That factor has been taken into consideration for prima facie case for grant of injunction and considering the amount spent for advertisement by the respondent and doing business for a long time, the Trial Court was of the opinion that the balance of convenience was also in favour of the respondent. Therefore, the order of interim injunction was granted. Moreover, if an order of interim injunction is not granted, the business of the respondent would sustain loss and therefore, granted an order of interim injunction as prayed for. The said order is being challenged before this Court.

14. Heard Mr. Sivanandaraj, learned counsel for the appellants, who made the following submissions:

(i). The appellants have been selling the products with MRI mark from 2012 onwards and they applied to the authorities for registration in 02.08.2012. The products with MRI mark is confined only to Assam and therefore, the balance of convenience also lies in favour of the appellants.

(ii).By comparing the two trademarks and the detailed difference between the two marks, he would submit the background colour and letters of MRI mark are light green and dark green respectively, the background colour of CRI mark is white and letters are fixed in white colour with red outline; their trade descriptions are different and similarly, the product names;

(iii).The plaint does not disclose as to how the two trademarks are phonetically and visually similar or dissimilar;

(iv).The test of deceptive similarity was not done by the Trial Court;

(vi).There is no discussion with regard to the similarity or dissimilarity in detail by the learned Trial Judge and therefore, the order of interim injunction granted by the Trial Court has to be set aside.

15.The learned counsel also relied upon the judgment rendered in S.N. Dyechem Limited V. Cadbury (India) Limited reported in (2000) 5 SCC 373 to contend that dissimilarities of the marks have to be taken into consideration. Another judgment relied upon is the one in J.R. Kapoor V. Micronix India Private Limited reported in 1994 Supp (3) SCC 215 wherein the colours used in Micronix and Microtel have been taken into consideration and found that they were dissimilar and different and injunction application was dismissed by the Honourable Apex Court.

16.On the other hand, Mrs.Elizabeth Seshadri, learned counsel for the respondent would support the order of the Trial Court. She would submit that the appellants have been deliberately using the mark MRI similar to CRI only to make unjust enrichment out of the reputation of the respondent's products, which have become very popular, not only in India, but also in other countries. Taking advantage of the position as a dealer of respondent's products, the appellants have been, deliberately, selling products with MRI mark, which are similar to products with CRI mark. She would submit that the overall similarity and the first impression of the products in the mind of a person of average intelligence has to be taken into consideration and should avoid meticulous comparison. She would submit that the names "MRI" and "CRI" would keep on causing confusion in the minds and superficial difference cannot be taken into consideration. She would rely upon the judgment of the Honourable Supreme Court in the judgment rendered in Cadila Health Care Limited V. Cadila Pharmaceuticals Limited reported

in (2001) 5 SCC 73 wherein it has been held that what has to be seen in the case of passing off action is the similarity between competing marks and to determine whether there is likelihood of deception or confusion. She would also point out that the decision in Dychem Limited case that the difference in essential features is relevant has been overruled by the judgment of the Honourable Supreme Court in Cadila Health Care Limited (cited supra) wherein it has been held that similarity between competing marks have to be considered. Therefore, she would submit that the Trial Court rightly allowed the injunction application and no interference is called for.

17.It is evident from the records that the respondent Company is the registered proprietor of the trademark "CRI" for various products. The trademark "CRI" has been licensed to "CRI" Pumps Private Limited, which is engaged in the business of manufacture and sale of pumps, motors, valves, pipes, cables, pump accessories and spare parts since 1973 by virtue of User Licence Agreement dated 2nd April, 2007, which has been marked as Ex-P5. The respondent applied for and obtained trade mark registration under Section 23(2), Rule 65(I) of Trade and Merchandise Marks Act, 1958 registering "CRI" Trade mark in respect of Pumps, Motors, Generators, Starters, Bearings, Engines, Grinders and Washing Machines included in class 7 which has been marked as Ex.P.13. Ex.P.12 is the copy of the Trade Mark Registration Certificate registering the Trade Mark CRI on 19.10.1981. Ex.P.15 dated 31.03.2007 is the assignment deed executed by the respondent in favour of CRI Industries Private Limited. EX.P.16 dated 25.06.2008 is the order passed by the Trademark Deputy Registrar. Ex.P.9 series are the Annual Returns of the respondent and Ex.P.20 dated 04.09.2014 is the annual returns for the year 2013-2014. The above documents would show that right from 1973, the respondent Company had been using the mark "CRI" and various products have been manufactured and sold in the market by the respondent, not only in India, but also in various other countries as proved by Ex.P.17 series documents.

18.It is seen from the certificate of statutory auditors Ex.P.21 of the respondent herein, the details of the amount spent by the user of the respondent mark for the past 5 years (2009 - 2014) which would reveal that a huge sum of rupees has been spent towards advertisement and sales promotion (Brand Building) of the plaintiff's trade mark (respondent herein). The same is usefully extracted hereunder:

Sl.No.	Financial Year	Amount Spent Rs. in Lacs
1	2009-2010	777.48
2	2010-2011	1607.28
3	2011-2012	1017.73
4	2012-2013	1635.45
5	2013-2014	2059.93

19. Therefore, the respondent/company has been doing business by manufacturing and selling products using the trade mark CRI from the year 1981 onwards uninterruptedly.

20. As far as the second appellant is concerned, it has become a dealer of the respondent company's products by virtue of the dealership agreement dated 15.05.2011. A perusal of the dealership agreement entered between the CRI and Trade Supply of India (second appellant company) would reveal that under clause 26, the dealer shall inform to the respondent about the duplicate goods similar to the respondent company's products being sold in the market. The said clause 26 is usefully extracted hereunder:

"26. Trademarks and related matters:

a. The dealer shall inform the company at once upon knowledge that duplicate goods similar to that of the company's products are being sold in the market and should provide adequate details to the company and cooperate to initiate legal action against the offenders.

b. The dealer shall also inform the company immediately / upon knowledge about goods sold in the market with names or trade marks similar to those of the company (of which the company is either the proprietor or the licensee), whether such sales takes place in the opinion of the dealer with an intention of misrepresenting the origin of goods or not and whether it is likely to deceive or mislead the public either by passing off by such goods as that of the company or otherwise.

c. The dealer shall protect the trademark, copyright, patent, getup, colour scheme and design of the trademark of which the company is either the proprietor or the licensee and shall not allow unauthorized use of the same by himself or any other person."

21. Thus, it is proved by the respondent that the second appellant having entered into a dealership agreement on 15.06.2011 has floated the first appellant company on 20.01.2012

in direct violation of the dealership agreement. Further, on 27.09.2013, the first appellant applied for registration of Trade Mark "MRI" in respect of Monoblock Pump, Submersible Pump, Centrifugal Pump and Electric Pump, as evident from Ex.P.11.

22. Therefore, it is very clear that when the dealership agreement is in existence between the respondent and the second appellant for dealing with the goods with CRI mark which includes all kinds of pumps, motors and its spare parts, components and accessories including Pipes, Cables, Electric wires, Electrical & Electronic Devices, Winding wires etc also includes Monoblock Pumpsets, Submersible Pumpsets, Submersible Pumps, Submersible Motors, Booster Pumps, Sewage Pumps, Circulatory Pumps, Inline Pumps, Centrifugal Pumps, A.C. Induction Motors, D.C. Motors, Open Well Submersible Pumpsets, Borewell Submersible Pumpsets, Self Priming Pumps, Regenerative Pumps, Jet Pumps, Non-Return Valves, Globe Valves, Air Valves, Check Valves, Ball Valves, Foot Valves, Butterfly Valves and all kinds of valves; Air Compressors, Electrical and Electronic Starters, Pressure Booster Pumps, Water Level Monitor, Pressure Tank, Pressure Switch, Pressure Gauge, Five way Connector, Drainage Pumps, the first appellant which has been floated by the second appellant along with others has registered the Trade Mark "MRI" for Monoblock Pump, Submersible Pump, Centrifugal Pump and Electric Pump, which is in violation of the dealership agreement / user agreement especially when there is a duty cast upon the second appellant under clause 26 of the dealership agreement.

23. What is surprising is that when a notice dated 28.06.2014 under Ex.P.22 was issued by the respondent to the second appellant stating that the second appellant is indulging in business which is directly in competition with that of the respondent and that inspite of being a dealer of the respondent/company, the appellants are simultaneously selling pumps in their own brand name "MRI" to many of the respondent's dealers and sub-dealers, making it appear to the consumer that the brand "MRI" is also associated with the respondent's company, resulting in loss and further usage of the brand name be stopped immediately, the second appellant by virtue of reply dated 01.07.2014 under Ex.P.23 merely denied that the second appellant does not do any retail marketing with MRI pump and he is not supplying any pumps to any dealers or sub-dealers. It is also reiterated that no such Trade mark viz., MRI was registered in the name of Trade Supply India.

24. The said reply, as rightly pointed out by the learned

counsel for the respondent was sent in a cover which had a mark "MRI pumps". Further, it is clear from the Certificate of Incorporation and Memorandum of Articles of Association of the first appellant dated 20.01.2012 that Madhusudhan Shahi who is the proprietor of Trade Supply India is one of the Directors of the first appellant Company along with two others namely Reena Shahi and Ritika Shahi. Therefore, Madhusudhan Shahi has deliberately suppressed the floating of the first appellant company along with two others and registering of the Trade mark "MRI" and selling of the products under the brand name "MRI".

25. Though it is contended by Mr. Sivanandaraj, learned counsel for the appellants that the plaint filed by the respondent does not disclose as to how the two Trade Marks are phonetically and visually similar or dissimilar, a close scrutiny of the two Trade Marks viz., CRI and MRI would reveal that both are deceptively similar.

26. The explanation given by the appellants for MRI is that it contains the first alphabet of their family members namely, Madhusudhan Shahi, Reena Shahi and Ritika Shahi. However, it is seen from the documents that the subscribers/promoters of the company are Madhusudhan Shahi, Reena Shahi and Ritika Shahi and if the first alphabet of all the three subscribers are to be used as Trade Mark, then it should be as MRR or different combination of the same alphabets viz., RMR, RRM. Therefore, there is no occasion for inclusion of the alphabet "I" as it does not indicate the first alphabet of any of the subscribers mentioned in the Memorandum of Association. Though in paragraph 13 a of the counter affidavit filed before this Court, it has been stated that the Trademark MRI is named after the first alphabet of second appellant's family members, the same ground was not raised before the Trial Court and therefore, the said ground must only be an afterthought.

27. Further, the mark MRI has been designed calculatedly so as to make it similar to that of CRI. Though the first letter of both the Trade Marks viz., C and M are different, if the names are pronounced, they are phonetically similar. Furthermore, even the size and style of the letters CRI and MRI are one and the same. Therefore, the customers would definitely be made to believe that the Trade Marks, CRI and MRI are one and the same, especially when the same dealer deals with both the products.

28. Though it is stated that "MRI" is a combination of dark green and light green with a background of light green and

dark green and "CRI" is a combination of red and white with letters in the mark being filled with white and red outline, the visual appearance of two Trade Marks do not appear to be entirely distinct and the logos of two Trade Marks are deceptively similar. Any ordinary person with average intelligence would not meticulously analyze or look into the marks and they will only go by the general appearance, as held by the Hon'ble Apex Court in the case of Amritdhara Pharmacy v. Satya Deo reported in AIR 1963 SC 449. Further, for ordinary customers, the tag line of MRI namely, "Umeedion se adhika" "Exceeding Expectations" and the tag line of CRI namely, "Pumping trust. Worldwide" does not make any difference as they cannot be expected to analyze the marks and their descriptions very meticulously.

29. Therefore, the visual appearance of both the marks are similar and definitely, it would lead to confusion among the customers and there is every likelihood of ordinary customers, in the instant case farmers, who are the consumers with imperfect recollection, to believe that the Trademarks MRI and CRI are one and the same. Hence, it can be safely concluded that the Trademarks MRI and CRI are "deceptively similar" both visually as well as phonetically.

30. It is submitted by the learned counsel for the appellants that the Trial Court has not given any finding regarding the test of "deceptively similar". In paragraph 10 of the Trial Court judgment, after analyzing the mark MRI which has been exhibited before the Court by way of photographs under Ex.P.28, found that the English letters in both the Trademarks are of the same size and categorically given a finding that both the Trademarks are deceptively similar. Therefore, the contention made by the learned counsel for the appellants that the test of deceptive similarity was not done by the Trial Court has to be summarily rejected.

31. As regards the contention of the learned counsel for the appellants that there is colour difference in both the Trademarks, as already observed, when both the Trademarks are similar in size and form, an average customer would only be carried away by first impression and he is not expected to go into the niceties to find out the colour difference in the two Trademarks. The impression developed by the original customer is only by the physical appearance of the Trademarks and therefore, going into the details of size and colours and various dissimilarities do not arise. As already stated, this Court had also compared the two Trademarks and found that "MRI" and "CRI" are phonetically and visually similar and therefore, the finding

of the Trial Court that both the Trademarks are similar has to be sustained.

32. Though nobody has got exclusive right to use the alphabets and generic letters and any alphabets can be used in the Trademarks, what has to be seen is the similarities between the Trademarks. As already observed, the respondent has established that it has been using the Trademark "CRI" from the year 1981 after registering the same under the provisions of Trade and Merchandise Marks Act, 1958. Definitely, it is the case of passing off the appellants' goods as though the appellants' have got some kind of association with the respondent company and it would also be the case of infringement on the respondent's registered Trademark. The similarities between the Trademarks CRI and MRI, phonetically and visually would definitely deceive and confuse the customers to make it appear that the first appellant's products are the same as that of the respondent's products, thereby infringing the respondent's registered Trademark.

33. Mr. Sivanandharaj, learned counsel for the appellants mainly relied upon the following judgments of the Hon'ble Apex Court reported in (2000) 5 Supreme Court Cases 573, S.M.Dyechem Ltd., v. Cadbury (India) Ltd., and 1994 Supp (3) Supreme Court Cases 215, J.R.Kapoor v. Micronix India, to contend that the dissimilarities of the Trademarks have to be taken into consideration. No doubt, the Hon'ble Apex Court speaks about the dissimilarities. In the case of S.M.Dyechem Ltd., v. Cadbury (India) Ltd., the plaintiff which was using the mark "PIKNIK" filed a suit for injunction against the defendants which was using the mark "PICNIC" for some of the chocolates sold by it. Though the Trial Court granted interim injunction on the ground that the defendant mark was deceptively similar, the same was reversed by the High Court. The order of the High Court was also confirmed by the Hon'ble Apex Court holding that the difference in essential features in competing marks are relevant. The relevant portion of the said judgments in paragraphs 39, 43 and 51 are usefully extracted hereunder:

"39. As to the first test, whether there are any peculiar features of the common part which have been copied, it is seen that the peculiar aspects of the common features of PIKNIK namely the peculiar script and the curve have not been copied; then, as to the second test, we have to see the dissimilarity in the part or parts and if it has made the whole thing dissimilar. Absence of the peculiar script in the letters, the curve and the absence of the caricature of the boy with a hat, in our view, have made the whole thing look dissimilar. Then, as to the third

test, the above three dissimilarities have to be given more importance than the phonetic similarity or the similarity in the use of the word PICNIC for PIKNIK. That is how these three tests have to be applied in this case. On first impression, we are of the view that the dissimilarities appear to be clear and more striking to the naked eye than any similarity between the marks. Thus, on the whole, the essential features are different.

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43. Section 29 uses the words 'deceptively similar' and section 2(1)(d) defines 'deceptively similar' as situations where one is 'deceiving' others or 'confusing' others. We have to keep in view the distinction between the words 'deceive' and 'confuse' used in section 2(1)(d). These words which occur in the various trade mark statutes have been explained in Parker-Knoll vs. Knoll International [(1962) RPC 265(HL) (pp.273-274)] by Lord Denning as follows: "Looking to the natural meaning of the words, I would make two observations: first, the offending mark must 'so nearly resemble' the registered mark as to be 'likely' to deceive or cause confusion. It is not necessary that it should be intended to deceive or intended to cause confusion. You do not have to look into the mind of the user to see what he intended. It is its probable effect on ordinary people which you have to consider. No doubt, if you find that he did not intend to deceive or cause confusion, you will give him credit for success in his intentions. You will not hesitate to hold that his use of it is likely to deceive or cause confusion. But if he had no such intention, and was completely honest, then you will look carefully to see whether it is likely to deceive or cause confusion before you find him guilty of infringement. Secondly, 'to deceive' is one thing. To cause 'confusion' is another. The difference is this: when you deceive a man, you tell him a lie. You make a false representation to him and thereby cause him to believe a thing to be true which is false. You may not do it knowingly, or intentionally but still you do it, and so you deceive him. But you may cause confusion without telling him a lie at all, and without making any false representation to him. You may indeed tell him the truth, the whole truth and nothing but the truth, but still you may cause confusion in his mind, not by any fault of yours, but because he has not the knowledge or ability to distinguish it from the other pieces of truth known to him or because he may not even take the trouble to do so." The above passage has been quoted by this Court in Roche vs. Geoffrey Manners [AIR 1970 SC 2062 (2064)].

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51. In *Schweppes Ltd. vs. Gibbens* (1905) 22 RPC 601 (HL) Lord Halsbury said, while dealing with a passing off action that "the whole question in these cases is whether the thing - taken in its entirety, looking at the whole thing - is such that in the ordinary course of things a person with reasonable comprehension and with proper insight would be deceived". Defendant's name on his goods is an indication of there being no case of passing off: "

34. However, a full bench of the Hon'ble Apex Court in the decision reported in (2001) 5 Supreme Court Cases 73, *Cadila Health Care Ltd., v. Cadila Pharmaceuticals Ltd.*, overruled the earlier decision of the Hon'ble Apex Court made in the case of (2000) 5 Supreme Court Cases 573, *S.M. Dyedhem Ltd., v. Cadbury (India) Ltd.*, rendered by the bench consisting of two Hon'ble Judges holding that dissimilarity in essential features are more important and held that in the case of a passing-off action what is essential is the similarity between the competing marks and to determine whether there is likelihood of deception or causing confusion. Thus, the Hon'ble Apex Court restored the dictum given in the case of *National Sewing Thread Co. Ltd., v. James Chadwick and Bros.*, reported in AIR 1953 SC 357; *Corn Products Refining Co. v. Shangrila Food Products Ltd.*, reported in AIR 1960 SC 142; *Amritdhara Pharmacy v. Satya Deo Gupta* reported in AIR 1963 SC 449; *Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories* reported in AIR 1965 SC 980; *Hoffmann-La Roche & Co. Ltd., v. Geoffrey Manner & Co. (P) Ltd.*, reported in (1969) 2 Supreme Court Cases 716. Paragraphs 17 to 20 of the decision is usefully extracted hereunder:

"17. Our attention was drawn to a recent judgment of this Court in *S.M. Dychem Ltd. Vs. Cadbury (India) Ltd.* (2000) 5 SCC 573 where in a passing off action, the plaintiff, which was carrying on the business under the mark of *Piknik*, filed a suit for injunction against the defendant which was using the mark of *Picnic* for some other chocolates sold by it. On the allegation that the defendant's mark was deceptively similar, the trial court had issued an injunction which was reversed by the High Court. On appeal, the decision of the High Court was affirmed. One of the questions, which this Court considered, was that for grant of temporary injunction, should the Court go by the principle of *prima facie* case, apart from balance of convenience, or comparative strength of the case of either parties or by finding out if the plaintiff has raised a triable issue. While considering

various decisions on the point in issue, this Court rightly concluded at page 591 as follows:

"Therefore, in trade mark matters, it is now necessary to go into the question of comparable strength of the cases of either party, apart from balance of convenience."

On merits of the case, this Court took note of some English decisions and observed in Dyechems case (supra) at page 594 that "where common marks are included in the rival trade marks, more regard is to be paid to the parts not common and the proper course is to look at the marks as a whole, but at the same time not to disregard the parts which are common."

This Court sought to apply the principle that dissimilarity in essential features in devices and composite marks are more important than some similarity. This Court, after considering various decisions referred to hereinabove, observed in Dyechems case (supra) at page 596 as follows:

"34. Broadly, under our law as seen above, it can be said that stress is laid down on common features rather than on differences in essential features, except for a passing reference to a limited extent in one case."

Notwithstanding the aforesaid observations this Court in Dyechems case (supra) proceeded to observe as follows:

"35. It appears to us that this Court did not have occasion to decide, as far as we are able to see, an issue where there were also differences in essential features nor to consider the extent to which the differences are to be given importance over similarities. Such a question has arisen in the present case and that is why we have referred to the principles of English Law relating to differences in essential features which principles, in our opinion, are equally applicable in our country."

18. We are unable to agree with the aforesaid observations in Dyechems case (supra). As far as this Court is concerned, the decisions in the last four decades have clearly laid down that what has to be seen in the case of a passing off action is the similarity between the competing marks and to determine whether there is likelihood of deception or causing confusion. This is evident from the decisions of this Court in the cases of National Sewing Thread Co. Ltd.s case (supra), Corn Products Refining

Companys case (supra), Amritdhara Pharmacys case (supra), Durga Dutt Sharmas case (supra), Hoffmann-La Roche & Co. Ltd.s case (supra). Having come to the conclusion, in our opinion incorrectly, that the difference in essential features is relevant, this Court in Dyechems case (supra) sought to examine the difference in the two marks Piknic and Picnic. It applied three tests, they being 1) is there any special aspect of the common feature which has been copied ? 2) mode in which the parts are put together differently i.e. whether dissimilarity of the part or parts is enough to make the whole thing dissimilar and 3) whether when there are common elements, should one not pay more regard to the parts which are not common, while at the same time not disregarding the common parts ?. In examining the marks, keeping the aforesaid three tests in mind, it came to the conclusion, seeing the manner in which the two words were written and the peculiarity of the script and concluded that the above three dissimilarities have to be given more importance than the phonetic similarity or the similarity in the use of the word PICNIC for PIKNIK.

19. With respect, we are unable to agree that the principle of phonetic similarity has to be jettisoned when the manner in which the competing words are written is different and the conclusion so arrived at is clearly contrary to the binding precedent of this Court in Amritdharas case (supra) where the phonetic similarity was applied by judging the two competing marks. Similarly, in Durga Dutt Sharmas case (supra), it was observed that:

"In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendants mark is likely to deceive, but where the similarity between the plaintiffs and the defendants mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiffs rights are violated."

20. Lastly, in Dyechems case (supra), it was observed in para 54 as under:

"54. As to scope of a buyer being deceived, in a passing-off action, the following principles have to be borne in mind. Lord Romer, L.J. has said in Payton & Co. Vs. Snelling, Lampard & Co. (1900) 17 RPC 48 that it is a misconception to refer to the confusion that can be created

upon an ignorant customer that the courts ought to think of in these cases is the customer who knows the distinguishing characteristics of the plaintiffs goods, those characteristics which distinguish his goods from other goods in the market so far as relates to general characteristics. If he does not know that, he is not a customer whose views can properly be regarded by the Court. (See the cases quoted in N.S. Thread & Co. Vs. Chadwick & Bros. AIR 1948 Mad 481 which was a passing-off action.) In Schweppes Case (1905) 22 RPC 601 (HL) Lord Halsbury said, if a person is so careless that he does not look and does not treat the label fairly but takes the bottle without sufficient consideration and without reading what is written very plainly indeed up the face of the label, you cannot say he is deceived."

These observations appear to us to be contrary to the decision of this Court in Amritdharas case (supra) where it was observed that the products will be purchased by both villagers and townfolk, literate as well as illiterate and the question has to be approached from the point of view of a man of average intelligence and imperfect recollection. A trade may relate to goods largely sold to illiterate or badly educated persons. The purchaser in India cannot be equated with a purchaser of goods in England. While we agree that in trade mark matters, it is necessary to go into the question of comparable strength, the decision on merits in Dyechems case (supra) does not, in our opinion, lay down correct law and we hold accordingly."

Thus, it is very clear that the similarities alone have to be taken into consideration and not the dissimilarities of the mark. Therefore, the contentions raised by the learned counsel for the appellants that there are certain dissimilarities viz., colours in the logo are different and the trade descriptions are different cannot be accepted and what is to be seen is only the similarities between the competing Trademarks and whether there is likelihood of deception or causing confusion because of the similarities.

35. Though many judgments have been relied upon by the learned counsel appearing on either side in support of their respective cases, since the issue in question has been settled by the full bench judgment rendered in the case of (2001) 5 Supreme Court Cases 73, Cadila Health Care Ltd., v. Cadila Pharmaceuticals Ltd., this Court deals only with the points based on the aforesaid judgment.

36. In the instant case, as rightly observed by the Trial Court as well as by this Court, there is similarity in the name "CRI" and "MRI" both phonetically and visually and that would exactly fit into the definition of "deceptively similar" as defined under Section 2(1)(h) of the Trade Marks Act, 1999. Therefore, the Trial Court had rightly granted an order of interim injunction and the same has to be confirmed.

37. The prima facie case made out by the respondent is that the respondent company had registered its Trademark as early as in the year 1981 and continued to be using the same till date and the products of the company are sold in more than 70 countries and that the respondent company had spent enormous amount of money for promoting the said mark. It is also proved before the Trial Court as well as before this Court that many products are sold with the mark "CRI" especially CRI Pumps for which the second appellant served as a dealer using the dealership agreement/user license agreement.

38. As already pointed out, the first appellant used the deceptively similar [both phonetically and visually] brand name "MRI" as that of the brand name of the respondent viz., "CRI" and thereby tried to sell its products by portraying it as that of the respondent company's products.

39. For grant of interim injunction, three cardinal steps have to be followed viz., Prima facie case, balance of convenience and irreparable injury. In the instant case, as already pointed out by the learned counsel for the respondent, if an order of interim injunction is not granted, the appellants would continue to make gain, thereby passing off their products using the deceptively similar Trademark and in that event, there is irreparable loss caused to the respondent. The Trial Court in paragraph 16 of its judgment has clearly held that the grant of interim injunction will not affect the appellants in any manner as they could sell their products using any other brand name except "MRI" which is deceptively similar to the brand name of the respondent viz., "CRI".

40.For all the foregoing reasons, this Court finds no merit in the appeal and hence, the Civil Miscellaneous Appeal is dismissed. The Trial Court is directed to dispose of the matter before the end of December 2020. Consequently, connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Principal District Judge
Coimbatore

copy to
The Section Officer
VR Section High Court Madras

+1 cc to Mr.M.Karthik Seshadri Advocate sr90203

+1 cc to Mr.V.Sankaranarayanan Advocate sr90485

C.M.A.No.2847 of 2016

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