



C.S.Nos.96 & 102 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	15.02.2023
Pronounced On	03.03.2023

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.S.Nos.96 & 102 of 2018

(Comm. Suits)

and

O.A.Nos.137 & 142 of 2018

P.Periyasamy

... Plaintiff in
both Suits

Vs.

1.M/s.Jaya Jeya Agro Mills,
Represented by its Managing Director/
Director/Partner/Proprietor,
Kallur, Thirumayam Taluk,
Pudukottai – 622 209.

2.Raja,
Managing Director/Director/
Partner/Proprietor,
M/s.Jaya Jeya Agro Mills,
Kallur, Thirumayam Taluk,
Pudukottai – 622 209.

... 1st & 2nd Defendants
in C.S.No.96/2018

3.M/s.Suguna Foods Private Limited,
Represented by its
Managing Director/Director,



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Feed Mill, Plot.A-11, S.F.No.1641/Pt.,
Sipcot, Gangaikondan Village,
Tirunelveli Taluk, District – 627 352.

... 1st Defendant in
C.S.No.102/2018

4.K.Saravanan

... 3rd Defendant in
C.S.No.96/2018 &
2nd Defendant in
C.S.No.102/2018

Common Prayer:- Civil Suits are filed under Order IV Rule 1 of Madras High Court Original Side Rules r/w. Order VII Rule 1 of the Civil Procedure Code, 1908 r/w. Sections 13, 14, 51, 55 and 62 of the Copyright Act, 1957 praying to pass a Judgment and Decree in favour of the plaintiff and against the respondents as follows:-

- (a) Granting a permanent injunction restraining the defendants jointly and severally, their co-proprietors herein, partners, staff, contractors, men, servants, agents, associates or anyone claiming through or under them from in any manner infringing the plaintiff's registered copyright in his artistic and literary work of chimney construction registered as copyright under the title "A Tube in Trestle, Precast Concrete Chimney (Constructional Details with Drawings)", under Copy Right Registration No.L-58600/2014, dated 20.05.2014 presently or in future and from constructing and/or erecting any chimney identical or similar to the plaintiff's said copyright registered drawings and literary work.



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- (b) Mandatory injunction directing defendants to jointly and severally to dismantle/demolish the chimney in entirety as constructed/erected by the defendants at Kallur, Thirumayam Taluk, Pudukottai-622209, Tamil Nadu.
- (c) Directing the defendants to jointly and severally pay compensative and/or punitive damages of Rs.5 lakhs to the plaintiff.
- (d) Directing the defendants to pay the plaintiff the costs of the suit.

For Plaintiff
in both Suits

: Mr.G.K.Muthu Kumar

For D3 in C.S.No.96/18 &

For D2 in C.S.No.102/18 : Mr.R.Sathish Kumar

COMMON JUDGMENT

The respective Suits have been filed by the plaintiff for the following relief:-

C.S.No.96 of 2018	C.S.No.102 of 2018
Granting a permanent injunction restraining the defendants 1 to 3 jointly and severally, their co-proprietors herein, partners, staff, contractors, men, servants, agents, associates or anyone claiming through or under them from in any manner infringing the plaintiff's registered copyright in his artistic	Granting a permanent injunction restraining the defendants 1 and 2 jointly and severally, their co-proprietors herein, partners, staff, contractors, men, servants, agents, associates or anyone claiming through or under them from in any manner infringing the plaintiff's registered copyright in his artistic



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and literary work of chimney construction registered as copyright under the title “A Tube in Trestle, Precast Concrete Chimney (Constructional Details with Drawings)”, under Copy Right Registration No.L-58600/2014, dated 20.05.2014 presently or in future and from constructing and/or erecting any chimney identical or similar to the plaintiff’s said copyright registered drawings and literary work.	and literary work of chimney construction registered as copyright under the title “A Tube in Trestle, Precast Concrete Chimney (Constructional Details with Drawings)”, under Copy Right Registration No.L-58600/2014, dated 20.05.2014 presently or in future and from constructing and/or erecting any chimney identical or similar to the plaintiff’s said copyright registered drawings and literary work.
Mandatory injunction directing defendant 1 to 3 to jointly and severally to dismantle/demolish the chimney in entirely as constructed/erected by the defendants at Kallur, Thirumayam Taluk, Pudukottai-622209, Tamil Nadu.	Mandatory injunction directing defendant 1 and 2 to jointly and severally to dismantle/demolish the chimney in entirely as constructed/erected by the defendants at Kallur, Thirumayam Taluk, Pudukottai-622209, Tamil Nadu.
Directing the defendants 1 to 3 to jointly and severally pay compensative and/or punitive damages of Rs.5 lakhs to the plaintiff.	Directing the defendants 1 and 2 to jointly and severally pay compensative and/or punitive damages of Rs.5 lakhs to the plaintiff.
Directing the defendants to pay the plaintiff the costs of the suit.	Directing the defendants to pay the plaintiff the costs of the suit.

2. The third defendant in C.S.No.96 of 2018 is the second defendant in C.S.No.102 of 2018. The third defendant in C.S.No.96 of 2018 was formerly employed by the plaintiff. In this order, the third



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defendant in C.S.No.96 of 2018 shall be referred to as 'the contesting defendant' as the principal allegation in the case is only against the said defendant.

3. The first and second defendants in C.S.No.96 of 2018 were served with Suit Summons. However, they failed to file a Written Statement and thus, forfeited their rights to file written statement. The first and second defendants thus remained *ex-parte*. During the course of argument, the learned counsel for the plaintiff also stated that the plaintiff did not wish to press the relief in the above suit against the first and second defendants in C.S.No.96 of 2018.

4. The dispute with the first defendant in C.S.No.102 of 2018 was compromised and therefore no relief is pressed for against the said defendant. Therefore, by an order dated 06.02.2023 of this Court, C.S.No.102 of 2018 against the first defendant was decreed in terms of Ex.P13, Memorandum of Settlement, dated 30.10.2019 entered into between the plaintiff and the first defendant.



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5. By a memo dated 10.02.2023, the plaintiff also gave up all the relief against the second defendant in C.S.No.102 of 2018. Thus, C.S.No.102 of 2018 is liable to be dismissed and is dismissed as not pressed for against the second defendant in C.S.No.102 of 2018. The suit insofar as the first defendant is decreed in terms of Ex.P13 Memorandum of Settlement dated 30.10.2019 entered into between the plaintiff and the first defendant. The copy of the Ex.P13 Memorandum of Settlement dated 30.10.2019 shall form part of the decree in C.S.No.102 of 2018.

6. It is the case of the plaintiff that the contesting defendant has violated the copyright in the drawings of the plaintiff in Ex.P2 Copyright Registration dated 20.05.2014 and had misused the same for putting up concrete chimney for the other defendants namely, the first defendant in C.S.No.102 of 2018 and for the first and second defendants in C.S.No.96 of 2018.

7. It is submitted that the plaintiff is in the field of manufacture, erection and commissioning of Precast Concrete Chimneys for use by



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various industrial establishments since 2001 and has a valid registered copyright under Ex.P2. The contesting defendant, i.e. third defendant in C.S.No.96 of 2018 was the employee of the plaintiff who was involved in the sales activities and in the manufacture and installation of the copyrighted Chimney and thereafter resigned his job.

8. It is submitted that the plaintiff through his marketing team came to know that the defendants in C.S.No.96 of 2018 were erecting the Chimney which is identical to the plaintiff copyrighted work. The plaintiff thereafter asked the defendants in C.S.No.96 of 2018 to stop the construction. However, they did not stop the work.

9. It is submitted that the plaintiff has confirmed that the Chimney constructed at the place of the first and second defendants in C.S.No.96 of 2018 is identical to the plaintiff's copyright based on the visit to the premises of the first defendant in C.S.No.96 of 2018.

10. It is also submitted that 5 photographs in Ex.P6 of the Chimney constructed at the place of the first and second defendants in C.S.No.96 of 2018 were taken by the P.W.1 plaintiff's son and were given to P.W.2 Technical Expert to compare with the plaintiff's copyrighted work in



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Ex.P10. The Technical Expert has given a report stating that Photographs in ExP6 in respect of Chimney constructed at the place of the first and second defendants in C.S.No.96 of 2018 are identical to the plaintiff copyrighted work. The said report was marked as Ex.P2. Therefore, the plaintiff is entitled for a protection either as a drawing or as a work of architecture.

11. The learned counsel for the contesting defendant, i.e. the third defendant in C.S.No.96 of 2018 submits that the subject matter, i.e. construction of Chimney cannot be the subject matter of copyright and that the plaintiff has suppressed that he has filed a Patent Application for construction of Concrete Chimneys under No.911/MAS/2000 which was granted vide Ex.D2. It is submitted that the plaintiff has given false particulars to the copyright office while applying for the same only with a view to suppress their filing of Patent in 2002. It is submitted that in the copyright application, the plaintiff has stated that the plaintiff is using the same since 2001.



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12. It is submitted that the suit is based on the infringement of copyright of the write-up/drawings based on Ex.P2 and it is clear that the said registration is for a literary work as the copyright number is prefixed with the letter L which indicates copyright in Literary Work. The copyright pertains to constructions details of an Industrial Chimney.

13. It is submitted that Literary Work was not copied as a Literary Work. The manner of construction cannot be infringed as an Architectural Work. It is submitted that under the Copyrights Act, 1957, there are different kinds of 'work' that are recognized that are subject to copyright protection. Section 2(b) of the Copyrights Act, 1957 specifically defines a 'work of architecture' means any building or structure having an artistic character or design, or any model for such building or structure.

14. It is submitted that a work of architecture is a different work from that of a Literary Work. An artistic work under Section 2(c) of the Act includes a work of architecture. In the instant case, the copyright registration which forms the basis of the suit is for a Literary Work qualified by the prefix L-58600/2014 and therefore, it would be



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impermissible to treat it as an artistic work.

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15. It is submitted that the patent application in No.911/MAS/2002 has been deliberately and completely suppressed in the pleadings and the effect of such suppression is that what is filed as a patent cannot be subject matter of copyright. It is submitted that anything that is a subject matter of the Patent cannot be a subject matter of Copyright. The deliberate suppression of the plaintiff's Patent Application No.911/MAS/2002 would be clearly against the claim of Copyright registration by the plaintiff in this suit.

16. It is submitted that the registered copyright is only for Literary Work and therefore, the plaintiff is not entitled to any injunction as the defendant has not infringed the Literary Work for which the plaintiff is claiming copyright. Since this is a mode of construction of a structure, the copyright whether Literary or Artistic Work would be insufficient.

17. It is submitted that once a patent is applied in the year 2002, the copyright in the year 2014 is clearly barred in law. Section 52(1)(w) of the Copyrights Act, 1957 (as amended in 2012), the use of functional



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features of a technical drawing does not amount to infringement of copyright.

18. It is submitted that literary portion of the said copyright clearly mentions that ‘Construction of the Precast Concrete Chimney’ and therefore, the literary part and the drawings annexed are purely for construction of the Chimneys and hence there cannot be any copyright for the construction process as is clear from Section 13(5) of the Act.

19. It is further submitted that the subject matter of a patent and the subject matter of the copyright is clearly distinct and different. The plaintiff cannot be allowed to illegally extend the monopoly of the expired patent by taking advantage of Section 14(c)(i) of the Act. Though Section 14(c) of the Act states that the owner of copyright can also exploit or prevent a three-dimensional reproduction of a two-dimensional drawing, the same cannot apply to construction process which is the subject matter of the present copyright by the plaintiff. It is submitted that the said Section 14(c) of the Act would apply to any artistic appearance of the article only and not to the construction process of the said article.



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20. It is submitted that the patent having expired or not renewed falls in public domain. In other words, the process of construction has fallen in public domain and therefore, everyone including the defendant is free to use the same process.

21. It is submitted that the plaintiff has miserably failed to prove that the defendant has infringed the plaintiff's copyright in alleged artistic work and that the plaintiff is therefore not entitled for other relief. Hence, the issue may also be decided against the plaintiff and in favour of the contesting defendant.

22. The plaintiff has filed a Proof Affidavit. On behalf of the plaintiff, the following two witnesses in C.S.No.96 of 2018 were examined:-

P.W.1 - Mr.P.Dhiyaneswaran (son of the plaintiff)

P.W.2 - Mr.A.AbdulAashik (Technical Expert)

23. The contesting defendant has filed a Proof Affidavit. On behalf



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of the defendant, Mr.K.Saravanan, the defendant (third defendant in C.S.No.96 of 2018 and the second defendant in C.S.No.102 of 2018) was examined as D.W.1.

24. The following Exhibits were marked in C.S.No.96 of 2018 on behalf of the plaintiff:-

Sl. No.	Ex. No.	Date	Description
1	P1	06.07.2019	Authorisation Letter of Plaintiff to PW1
2	P2	20.05.2014	Copy Right Registration No.L-58600/2014 of plaintiff (with artistic work/photograph and literary work)
3	P3	20.11.2017	Plaintiff's Legal Notices to the defendants and postal acknowledgement card.
4	P4	02.12.2017	Returned Notice of 2 nd defendant and Reply Notice of 3 rd defendant.
5	P5	2001 onwards	Photographs of copyrighted chimneys.
6	P6	-	Photographs of infringing chimney of defendant under construction.
7	P7	20.12.2017	Affidavit of Technical Expert.
8	P8	20.12.2017	Affidavit under Section 65(b) of Evidence Act.
9	P9	20.05.2004	Letter of copyright office.
10	P10	20.05.2004	Copyright Registration Certificate (Final version of write up & drawings)



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25. The following Exhibits were marked in C.S.No.96 of 2018 on behalf of the contesting defendant:-

Sl. No.	Ex. No.	Date	Description
1	D1	17.12.2013	Copy of complaint given by plaintiff to the Erode District Police against 2 nd Defendant.
2	D2	05.12.2002	Patent Application filed by the Plaintiff under No.911/MAS/2002.
3	D3	28.05.1974	Copy of US Patent No.3812771 under the title of 'STEEL TOWER CHIMNEY'.
4	D4	08.08.1978	Copy of US Patent No.4104868 under the title of 'PRECAST CHIMNEY SYSTEM'.

26. Following issues were framed by this Court on 25.06.2019 in both the Suits:-

- i. Whether the plaintiff is entitled to the relief of copyright infringement for his registered copyright in his literary cum artistic work titled, "A Tube in Trestle, Precast Concrete Chimney (Constructional Details with Drawings)?"
- ii. Whether the second defendant is a habitual infringer of the plaintiff's said registered copyright?
- iii. Whether the second defendant had knowledge of the plaintiff's copyright?
- iv. Whether the first and second defendant supplied the technical specification and design of the suit



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- chimney to the third defendant?
- v. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for against the defendants?
 - vi. Whether the plaintiff is entitled to damages and cost as prayed for?
 - vii. Whether the plaintiff is entitled to any other relief?

27. Though this Court by its order dated 25.06.2019 framed the above mentioned issues, the core issues that arise for consideration to be decided in the present case are as under:-

1. Whether the plaintiff in C.S.No.96 of 2018 has established the fact that the third defendant has utilized the aforesaid diagram/drawing for constructing Concrete Chimney for first and second defendants?
2. Whether the plaintiff in C.S.No.96 of 2018 has any copyright in the diagram/drawing in Ex.P2 literary work consisting of artistic work viz., diagrams / drawings?
3. Whether the plaintiff in C.S.No.96 of 2018 can seek any relief against the third defendant under Copyright Act, 1957?
4. Whether the plaintiff in C.S.No.96 of 2018 had suppressed the material facts relating to patent that was granted to the plaintiff *vide* Ex.D2 dated 15.12.2004, in respect of the very same method of construction of Chimney containing the same diagram/drawings as in Ex.P2 dated 20.05.2014?
5. Whether the plaintiff is entitled to damages and cost as prayed for?
6. Whether the plaintiff is entitled to any other relief?



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WEB COPY 28. I have perused the Plaint, Proof Affidavit, Exhibits marked on behalf of the plaintiff, Deposition of the witnesses of P.W.1 and P.W.2 for plaintiff and the Written Statement of the defendant, Proof Affidavit of the third defendant and the Deposition of D.W.1, the third defendant.

29. I shall deal with the above issues in *seriatim*.

30. A patent application that was filed by the plaintiff *vide* Patent Application No.911/MAS/02 on 05.12.2002 for which Ex.D2 was granted which was required to be renewed by paying the requisite renewal fee under the provisions of the Patent Act, 1970 read with Patent Rules. However, the plaintiff failed to renew it.

31. The protection which was granted to the plaintiff under Ex.D2 patent expired for want of renewal of the patent by paying the necessary renewal charges. It is this statutory right the plaintiff seeks protection as a copyright which the plaintiff lost for want of renewal of the patent in Ex.D2.



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32. What the plaintiff is trying to attempt is to extend the process/method of construction and the design in the erection, installation and commissioning of Concrete Chimney which was earlier protected under Ex.D2.

33. It is under these circumstances, the plaintiff filed application for copyright. Ex.P2 dated 20.05.2014 Copyright Registration was obtained for the literary work which was essential patent specification in Ex.D2.

34. The diagram/drawings in Ex.P2 and Ex.D2 are identical. It is the case of the plaintiff that the plaintiff has a copyright over the diagram/drawings and any reproduction of the diagram/drawings in any material form by depiction in three dimensions would amount to a violation of the Copyright Act, 1957 under Section 14(1)(c)(i)(B) of the Copyrights Act, 1957 and thus attracting Section 51(a)(i) of the Copyright Act, 1957, warranting action under Section 55 of the Copyrights Act, 1957, for infringement of copyright in patent.



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35. On the other hand, it is the case of the defendant that the plaintiff cannot claim copyright over the method of construction in view of exception provided under Section 13(5) of the Copyright Act, 1957.

36. It is submitted that the drawings/diagrams in Ex.P2 and Ex.D2 merely describes the method of construction work of Architecture within the meaning of Section 2(b) of the Copyrights Act, 1957 and therefore clearly there is a bar under Section 59 of the Copyright Act, 1957.

Issue No.1

37. In support of the above plea, Ex.P7, an Affidavit of P.W.2, a Technical Expert named Mr.Abdul Aashik, an Engineer by profession who holds a Degree in B.E. Civil Engineering and M.E. Structural Engineering was marked. In the aforesaid Ex.P7 Affidavit of P.W.2 dated 20.12.2017, P.W.2 has made a comparison between the artistic work and the photographs of the Chimney/Chimneys constructed by the contesting defendant at the place of the other defendants.



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38. In Ex.P7, it has also been concluded that original features of artistic work in Ex.P2 Copyright Registration dated 20.05.2014 were found in the Chimney constructed by the defendant. During the course of trial, the said Expert namely, P.W.2 also filed a Proof Affidavit, wherein, more or less, the content of Ex.P7 Affidavit of Technical Expert dated 20.12.2017 was reiterated. During the Cross Examination, P.W.2 Expert has however confirmed that he has not personally seen the Chimney/Chimneys constructed for other defendants and that an opinion was given based on the photographs and the write-up given by the plaintiff to the said P.W.2 Expert.

39. During the Cross Examination, P.W.2 Expert has also confirmed that it is not possible to give a report about the construction of Architectural Chimney based on mere photographs and that he has not verified whether the photographs in Ex.P6 were actually taken at the other defendants premises and that he prepared report after Ex.P10 was given by the plaintiff during 2017 for comparison.

40. Thus, it is clear that the plaintiff has not established that the



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contesting defendant had indeed utilized the drawings in Ex.P2 Copyright Registration dated 20.05.2014 for construction of Chimney at the other defendants' premises.

41. Therefore, the Issue No.1 has to be answered against the plaintiff and in favour of the contesting defendant. Therefore, the suits are liable to be dismissed. However, since elaborate arguments were advanced on the scope of copyright protection under Copyright Act, 1957, I shall proceed to answer the rest of the issues.

Issue No.2

42. The snap shots of the diagram/drawings in Ex.P2 Copyright Registration dated 20.05.2014 and Ex.D2 dated 05.12.2002 and the patent specifications are identical in all respect. The facts on record indicate that the plaintiff herein had patented an improved version of Chimney suitable for small and medium scale industries and had obtained a patent *vide* Ex.D2 dated 05.12.2002.

43. The abstract on the invention in Ex.D2 of the plaintiff reads as under:-



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“Abstract:

This invention related to an improved version of Chimney suitable for small and medium scale industrial units having a steel structure as an outer component having tapering top and a broad base at the ground level (7) wherein the steel is not reinforced with individual units of pre-casted heat resistant cement concrete material and the said Chimney (1) is supported by the steel tower (2) and said steel tower (2) comprises of steel rod(s) (3) cross rod(s) (4) steel ring(s) (5) steel string(s) (6) wherein the distance between the steel tower and the centre of the Chimney is ranging from 0.3 metre to 5 metres. The Chimney wall thickness is ranging from 10mm to 500mm according to the height of Chimney. The height of Chimney is ranging from 20 metres to 100 metres according to the necessity of the consumer. The Chimney is made up of number of individual units of pre-casting heat resistant cement concrete tubular (9) and brick (9B) shape without using of steel as an inner component.”

44. Section 2(c) of the Copyright Act, 1957 defines the expression ‘artistic work’. The definition of ‘artistic work’ in Section 2(c) of the Copyright Act, 1957 not only includes diagrams but also work of architecture. The expression ‘work of architecture’ has been defined in Section 2(b) of the Copyright Act, 1957. Sections 2(b) & 2(c) of the Copyright Act, 1957 are reproduced below:-



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Section 2 (c)	Section 2 (b)
2(c) “ <u>artistic work</u> ” means,— (i) a painting, a sculpture, a <u>drawing</u> (including a <u>diagram</u> , map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality; (ii) a <u>work of architecture</u> ; and (iii) any other work of artistic craftsmanship;	2(b) “ <u>work of architecture</u> ” means:- any building or structure having an artistic character or design, or any model for such building or structure.

45. Under the Copyright Act, 1957, registration of copyright is not compulsory as compared to the registration of “Designs” and for registration of invention as a “Patents” under the Designs Act, 2000 and the Patent Act, 1970.

46. Though copyright subsist in any artistic work which includes both drawings and work of architecture, in terms of Section 13(5) of the Copyrights Act, 1957, in the case of work of architecture copyright subsist only in the artistic character and design and does not extend to the process or method of construction in terms of Section 13(5) of the



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Copyrights Act, 1957.

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47. Section 13(5) of the Copyrights Act, 1957, reads as follows:-

“In the case of an work of architecture, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.”

48. The plaintiff has also obtained a Copyright Registration in Ex.P2 as a literary work. A copyright exists both in the literary and artistic work in a patent specification. The plaintiff can be said to be the author and artist of the literary work and the diagram/drawing in Ex.P2 and Ex.D2.

49. The copyright and patent specification filed by the plaintiff in Ex.P2 and Ex.D2 contains a write up. Ex.P2 is a literary work. The diagram/drawing in Ex.P2 and Ex.D2 literary work is an artistic work within the meaning of Section 2(c) of the Copyright Act, 1957.

50. An artistic work in a literary work will independently qualify



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for a copyright protection irrespective of the fact that the artistic work viz., diagram/drawing was intended to describe the method of construction or explains the literary work.

51. Independently, there is a copyright in EX.D2 patent specifications which consist of literary and artistic work filed before the patent office for grant of patents. The literary and artistic work is a matter of copyright protection irrespective of the fact whether the specification qualified for grant of patent or not or was independently registered or not under the provisions of the Copyright Act, 1957.

52. The argument that the plaintiff has no copyright in the diagram/drawings which is depicted in Ex.P2 and Ex.D2 cannot be countenanced as not only the literary work but also the artistic work entitles an author of a literary work a Copyright protection.

53. The work of architecture is an artistic work and therefore, the distinction that was sought to be made by the defendant is not correct.



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54. Therefore, Issue No.2 is answered in favour of the plaintiff.

However merely because Issue No.2 is answered in favour of the plaintiff, it would not mean that the plaintiff is entitled for a decree in the present suits.

Issue No.3

55. The plaintiff had a protection under the Patents Act, 1970, *vide* Ex.D2. As long as Ex.D2 was kept renewed under the provisions of the Patent Act, 1970 and the Rules made thereunder, the third defendant could not have copied the method of construction that was patented.

56. Once the patent expires or there is a failure to renew the patent, the inventor loses the right that was available under the Patent Act, 1970. This is exactly what has happened in the case of the plaintiff.

57. The plaintiff having failed to protect the patent that was granted *vide* Ex.D2 attempted to protect his right by registering the copyright in the literary work *vide* Ex.P2/Ex.P10.

58. Even though, copyright exist and subsist in the



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diagram/drawings in Ex.P2 and Ex.D2 dated 20.05.2014 and 05.12.2002, the method of construction by reproducing the artistic work in any material form is another issue altogether.

59. The plaintiff is seeking to injunct the third defendant by attempting to enforce the right of which the plaintiff lost for want of renewal of Ex.D2. Section 14(1)(c)(i)(B) of the Copyright Act, 1957 reads as under:-

14. Meaning of Copyright.— (1) For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

(a)

.....

(c) in the case of an artistic work,—

(i) to reproduce the work in any material form including—

(A)

(B) depiction in three-dimensions of a two-dimensional work; or

60. As per Section 14(1)(c)(i)(B), copyright means an exclusive right subject to provisions of the act to do or to authorize the doing of any of the acts in respect of a work or any substantial part thereof in any



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artistic work to reproduce the work in any material form including depiction in three dimensions of two dimensional work.

61. What is contemplated is a depiction on a three-dimensional object. What is not contemplated is construction of a work or a contrivance in the artistic work. For instances, if the diagram was printed or engraved or etched on a three-dimensional work, such work without authorization of the author would be violation of the such author.

62. Printing of an artistic work on a plain sheet of paper can be construed as a depiction in two-dimension. It is two-dimensional work. What is contemplated in Section 14(1)(c)(i) (B) of the Copyright Act, 1957, is depiction of an artistic work in a two-dimensional work in three-dimensions. A concrete chimney is not an artistic work, it is an architectural work.

63. Such a copying of artistic work by creating contrivance by itself would have been subject matter of protection either under the Patent Act, 1970 or Designs Act, 2000, in which case, the Registration of



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Patent of Design is mandatory to claim a monopoly right. The plaintiff has admitted that there is no such rights under the either of the enactments.

64. Mere, utilization of an artistic work for creating a device or a material object as a contrivance in a three-dimensional form or material object incorporating the essential feature from the artistic work could not amount to depiction in three-dimensions of a two-dimensional work as is contemplated in Section 14(1)(c)(i)(B) of the Copyright Act, 1957, unless depiction of such work in the three-dimensional work is an artistic work.

65. The diagram/drawings in Ex.P2 dated 20.05.2014 and Ex.D2 dated 05.12.2002 which are identical are no doubt a two dimensional artistic work as it is printed on a plain surface namely paper.

66. In my view, the plaintiff cannot seek protection by way of injunction restraining the defendants from utilizing the right that was conferred to the plaintiff by virtue of Ex.P2 which expired for want of



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renewal by paying the renewal charges.

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67. Therefore, the plaintiff is not entitled for any relief. Issue No.3 is answered against the plaintiff.

Issue No.4

68. The plaintiff has indeed suppressed the material facts and attempted to salvage the protection that was earlier granted to the plaintiff *vide* Ex.D2 by obtaining copyright registration. Mere obtaining the copyright registration does not entitled any relief which the plaintiff seeks in the suit. Therefore, Issue No.4 is also answered against the plaintiff.

Issue Nos.5 & 6

69. As the Issue Nos.1, 3 & 4 are answered against the plaintiff, Issue Nos.5 & 6 are also answered against the plaintiff as the plaintiff is not entitled to any other reliefs.

70. In the result,

- i. C.S.No.96 of 2018 is dismissed.



C.S.Nos.96 & 102 of 2018

- ii. C.S.No.102 of 2018 against the first defendant was already decreed in terms of Memorandum of Settlement, dated 30.10.2019 *vide* order dated 06.02.2023. The copy of the Ex.P13 Memorandum of Settlement dated 30.10.2019 shall form part of the decree in C.S.No.102 of 2018.
- iii. C.S.No.102 of 2018 against the second defendant is dismissed as not pressed for.
- iv. Parties to bear their own cost.
- v. Consequently, connected Applications are closed.

03.03.2023

Internet : Yes/No

Index : Yes / No

Rgm / Jen

Plaintiff's witness in both Suits:

1.P.Dhiyaneswaran : P.W.1

2.A.Abdul Aashik : P.W.2

Defendants' witness in both Suits:

K.Saravanan : D.W.1

Documents exhibited by the Plaintiff in C.S.No.96 of 2018:



C.S.Nos.96 & 102 of 2018

Sl. No.	Exhibits	Date	Particulars of Documents
1	Ex.P1	06.07.2019	Authorisation Letter of the plaintiff to PW1
2	Ex.P2	20.05.2014	Copyright Registration No.L-58600/2014 of the plaintiff (with artistic work / photograph and literary work)
3	Ex.P3	20.11.2017	Plaintiff's legal notices to the defendants and postal acknowledgement card
4	Ex.P4	02.12.2017	Returned Notice of the second defendant and Reply Notice of the third defendant
5	Ex.P5	2001 onwards	Photographs of copyrighted chimneys
6	Ex.P6	-	Photographs of infringing chimney of the defendant under construction
7	Ex.P7	20.12.2017	Affidavit of Technical Expert
8	Ex.P8	20.12.2017	Affidavit under Section 65(b) of Evidence Act
9	Ex.P9	20.05.2004	Copy of Letter of Copyright Office
10	Ex.P10	20.05.2004	Copyright Registration Certificate (Final version of write up & drawings)

Documents exhibited by the Plaintiff in C.S.No.102 of 2018:

Sl. No.	Exhibits	Date	Particulars of Documents
1	Ex.P1	06.07.2019	Authorisation Letter of the plaintiff to PW1
2	Ex.P2	20.05.2014	Copyright Registration No.L-58600/2014 of the plaintiff (with artistic work / photograph and literary work)
3	Ex.P3	20.11.2017	Plaintiff's legal notices to the defendants



C.S.Nos.96 & 102 of 2018

Sl. No.	Exhibits	Date	Particulars of Documents
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4	Ex.P4	02.12.2017	Returned Notice of the second defendant and Reply Notice of the third defendant
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7	Ex.P7	20.12.2017	Affidavit of Technical Expert
8	Ex.P8	20.12.2017	Affidavit under Section 65(b) of Evidence Act
9	Ex.P9	30.09.2017	Copy of Judgment in A.S.No.305 of 2016
10	Ex.P10	17.12.2013	Copy of FIR in CC.134 of 2015
11	Ex.P11	27.06.2017	Copy of Order in O.A.No.528 of 2017 in C.S.No.383 of 2017
12	Ex.P12	05.10.2017	Copy of Memo of Settlement executed in C.S.No.445 of 2017
13	Ex.P13	20.05.2004 & 30.10.2019	Copy of Letter of Copyright Office & Copy of Memo of Settlement executed in C.S.No.102 of 2018
14	Ex.P14	-	Printout of the GST status of the second defendant company
15	Ex.P15	-	The structural design of the chimney issued by DW1
16	Ex.P16	-	Photocopies of the place used for fabricating the precast rings and chimneys

Documents exhibited by the Defendants in C.S.No.96 of 2018 :



C.S.Nos.96 & 102 of 2018

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Documents</i>
1	Ex.D1	17.12.2013	Copy of complaint given by the plaintiff to the Erode District Police against the second defendant
2	Ex.D2	05.12.2022	Patent Application filed by the plaintiff under No.911/MAS/2002
3	Ex.D3	28.05.1974	Copy of US Patent No.3812771 under the title of 'STEEL TOWER CHIMNEY'
4	Ex.D4	08.08.1978	Copy of US Patent No.4104868 under the title of 'PRECAST CHIMNEY SYSTEM'

Documents exhibited by the Defendants in C.S.No.102 of 2018 :

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Documents</i>
1	Ex.D1	05.12.2022	Patent Application filed by the plaintiff under No.911/MAS/2002
2	Ex.D2	28.05.1974	Copy of US Patent No.3812771 under the title of 'STEEL TOWER CHIMNEY'
3	Ex.D3	08.08.1978	Copy of US Patent No.4104868 under the title of 'PRECAST CHIMNEY SYSTEM'

CSNJ

C.SARAVANAN, J.
Jen



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C.S.Nos.96 & 102 of 2018

Pre-Delivery Common Judgment
in
C.S.Nos.96 & 102 of 2018
(Comm. Suits) and
O.A.Nos.137 & 142 of 2018

03.03.2023