



Civil Suit No.873 of 1998

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 26.04.2024

JUDGMENT DELIVERED ON : 01.08.2024

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Civil Suit No. 873 of 1998

Indcon Structurals Pvt.Ltd.,
represented by its Director,
D.P.Devnath,
No.161, Greams Road,
Chennai – 600 006.

... Plaintiff

Vs.

1. Ultra Tiles Pvt. Ltd.
26, 11th Avenue, Ashok Nagar
Chennai – 600 083
Represented by Mr.Lingumgunta Venkata Shyam Sundar
Interim Resolution Professional
No.17, 3rd Floor, Gandhi Road,
Alwarthirunagar, Chennai – 600 087.

[1st Defendant amended as per order dated 20.10.2021
in A.No.2932 of 2021]

2. Krishnamurthy

... Defendants



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Prayer:-

Civil Suit has been filed under Order VII Rule 1 CPC, 1908, read with Order IV Rule 1 of O.S.Rules of Madras High Court and Section 55 of the Copyright Act, 1957 prays for a judgment and decree against the defendants :

a) granting a permanent injunction restraining the defendants, their men, servants, agents or any one claiming through them from in any manner infringing the plaintiff's copyright over the drawings in respect of the subject tiles "CATHERINE" by reproducing in three dimensional form the said drawings or in any other manner infringing the copyright in the said drawing.

b) granting a permanent injunction restraining the defendants, their men, servants, agents or any one claiming through them from in any manner passing off the tiles manufactured by it by copying the plaintiff's drawings in respect of subject tiles as and for the plaintiff's unique tiles marketed under the name "CATHERINE" either by manufacturing or by selling or in any manner advertising the same.

c) directing the defendants to surrender to the plaintiff the entire stock of the unused offending tiles together with moulds and dyes for destruction.



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d) directing the defendants to render a true and faithful account of the profits earned by them by selling their tiles by copying the plaintiff's drawings in respect of the subject tiles and awarding the profits made there from as damages.

e) directing the defendants to pay to the plaintiff the costs of the suit.

For Plaintiff : Mr.K.Ashok Kumar

For Defendants : Mr.A.Prasanna Venkat

J U D G M E N T

The suit is instituted by the plaintiff against the defendants for :-

(i) permanent injunction restraining the defendants, their men, servants, agents or any one claiming through them from in any manner infringing the plaintiff's copyright over the drawings in respect of the subject tiles "CATHERINE" by re-producing in three dimensional form the said drawings or in any other manner infringing the copyright in the said drawing;



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(ii) granting permanent injunction restraining the defendants, their men, servants, agents or any one claiming through them from in any manner passing-off the tiles manufactured by it, by copying the plaintiff's drawings in respect of subject tiles as and for the plaintiff's unique tiles marketed under the name "CATHERINE", either by manufacturing or by selling or in any manner advertising the same;

(iii) directing the defendants to surrender to the plaintiff the entire stock of the unused offending tiles together with moulds and dyes for destruction;

(iv) directing the defendants to render a true and faithful account of the profits earned by them by selling their tiles by copying the plaintiff's drawings in respect of the subject tiles and awarding the profits made there from as damages; and

(v) directing the defendants to pay to the plaintiff the costs of the suit.

2. The averments made in the plaint in a nutshell are as follows:-

2.1. The plaintiff/Company is the first and largest manufacturer of pre-polished cement concrete tiles in India and has been carrying on



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the business since 1984. In the course of business, the plaintiff has conceived and adopted a distinctive trade mark "EUROCON TILES" for its tiles and the plaintiff manufactures and markets its different types of tiles under the said trade mark. The plaintiff has also obtained registration of the said trade mark under the Trade and Merchandise Marks Act, under No.437663 with effect from 13.05.1985 and the same has been renewed from time to time. The plaintiff is a pioneer in semi- indoor and outdoor applications and external wall claddings.

2.2. In the course of business, the plaintiff/Company has designed and developed a modern graphic variety of tile, which is manufactured and marketed under the name and trade mark "CATHERINE" from June 1996. The plaintiff has designed and developed the said tile by employing enormous skills, energy, labour and capital, and thus, the plaintiff has become the owner of the copyright in respect of the drawing and no person is entitled to use the same to manufacture any product by substantially re-producing the drawing in three dimensional forms or use the drawing in any other manner whatsoever. The drawing of "CATHERINE" is a "work", in which copyright subsists within the



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meaning of Section 13(1)(a) of the Copyright Act. The drawing when applied to the raw materials by an industrial process, produces the finished article, namely "CATHERINE TILE". In view of the uniqueness of the said tile, it has come to execute several prestigious projects with the said tile. While that being so, it came to the knowledge of the plaintiff on 05.11.1998 that identical tiles are being manufactured by the first defendant under the name and style "OPUS". The said "OPUS" is virtually same as that of "CATHERINE" with minor difference of 2 to 3 mm. The ratio of length to breath which is 2.5 has also been slavishly copied and re-produced in toto. The area of both "CATHERINE" and the offending tiles, are the same, namely 0.3 sq.ft. approximately. All these will go to show that the offending title is a clear infringement of the plaintiff's copyright over the drawing of "CATHERINE". The offending tile "OPUS" is thus a substantial re-production in three dimensional form of the drawing "CATHERINE".

2.3. The plaintiff's copyright over the drawing of "CATHERINE" is a copyright which is not capable of registration under the Designs Act. To be a design capable of registration under the Designs Act, the product evolved by applying the drawing should be judged solely by the eye and



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come within the sweep of Section 2(5) of the Designs Act. Therefore, the plaintiff's copyright over the drawing does not come within the scope of the special provisions of Section 15 of Copyright Act. Further, the intellectual property right in an industry like "tiles industry", can be protected only under the Copyright Act, as far as the drawings are concerned. The registration of a copyright is not at all a condition precedent for claiming copyright.

2.4. It is the claim of the plaintiff/Company that the first defendant/company was promoted by two of its ex-employees, namely V.Krishnamurthy, the second defendant herein and one Vigneshwar Sundar. In fact, the first defendant/Company was incorporated in August 1993, during which period, the said persons were in the employment of the plaintiff/Company. The second defendant was in charge of production and the said Vigneshwar Sundar was in charge of design and development in the plaintiff/Company. While that being so, the second defendant left the services of the plaintiff/Company in December 1993 and Vigneshwar Sunder resigned only in February 1994. Thus, after resigning from the plaintiff/Company, the second defendant and the said



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Vigneshwar Sundar have ventured to copy the plaintiff's unique drawings and pass-off their products as and for the plaintiff's unique tiles, by cashing on the reputation of the plaintiff's products. The second defendant herein is now in-charge and responsible for the affairs of the first defendant/Company. The defendants are causing confusion in the minds of the public and are causing loss and hardship and injury to the plaintiff, which is irreparable and immeasurable. The action of the defendants in substantially re-producing in three dimensional form of the plaintiff's drawings in respect of "CATHERINE" tiles, is as such an infringement of the plaintiff's copyright over the same. Therefore, the plaintiff/Company has filed the present suit.

3. The defendants, in the written statement, denies various allegations made in the plaint and has also stated that the plaint averments do not give cause of action for filing the present suit for infringement of copyright. Further, the relief claimed itself is patently for infringement of the design in "CATHERINE" tiles. The main allegation of the plaintiff/Company is that the defendants' "OPUS" tiles are similar to that of the plaintiff's "CATHERINE" tiles and hence, the plaintiff sought a



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relief to restrain the defendants from manufacturing the tiles bearing the trade mark "OPUS". As such, relief can only be claimed under the Designs Act and that too, only if the plaintiff had obtained the registration of their design under the Designs Act, and not under the Copyright Act.

3.1. In paragraph No.6 of the plaint, the plaintiff/Company has alleged that no one can claim the copyright in respect of the geometrical shapes. If the said claim is accepted, it amounts to granting exclusive rights to the plaintiff alone to use the geometrical shapes which are used in the alleged "CATHERINE" tiles, whereas, these geometrical shapes are commonly used by all the manufacturers. The allegations made in the plaint clearly shows that the alleged drawings are made based on the "CATHERINE" tiles and therefore, the said drawings are not original and hence, the plaintiff cannot claim any copyright over the alleged artistic work. The plaintiff cannot claim to be the author of the said drawings, since no such drawings existed before the tiles came into existence. The alleged drawings are not original. The said drawings are made from the tiles, which were designed earlier based on the geometrical shapes like, squares, rectangles, triangles, etc. Therefore, no one can claim any



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exclusive rights over them, as already, such shapes and designs were commonly used in the conventional tiles from time immemorial. Further, the plaintiff/Company has alleged that they came across the defendants' tiles "OPUS" only on 05.11.1998. However, the plaintiff/Company is well aware of the manufacturing and marketing of "OPUS" tiles, much earlier to 05.11.1998. The defendants' "OPUS" tiles have attracted large customers and are highly demanded by the general public due to their effectiveness and unique eye appeal. The plaintiff/Company, after noticing the enormous demand for the defendants "OPUS" tiles, had come forward to file the present suit only due to business rivalry and to harass the defendants.

3.3. The defendants' tiles "OPUS" no way resemble to that of the plaintiff's "CATHERINE" tiles. The dimensions and the areas of both the tiles are different. The defendants' tile has 0.5 mm thickness in the cubical projection, whereas, the plaintiff's tiles exceeded more than 1 mm. Even from the averments made in the plaint and the affidavit, the design with "CATHERINE" tiles, if it is a novel and unpublished share and configuration, can be registered under the Designs Act. The function attributed to the tiles, is not created by the shape and configuration of the



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tiles, but they are created by materials and the process used for manufacturing the tiles is capable of being registered under the Designs Act. In view of the fact that the plaintiff/Company had admittedly manufactured more than 50 numbers of tiles by industrial process and three dimensional object is also capable of registration under the Designs Act, the copyright if any subsisted over the drawings of "CATHERINE" tiles, shall cease to subsist by virtue of Section 15(2) of the Copyright Act.

3.4. The plaintiff is not the author of the said drawing / artistic work. Even if the plaintiff had Copyright, the same has been lost by Section 15(2) of the Copyright Act, as the plaintiff had manufactured more than 50 tiles using the drawings. The second defendant has left the services of the plaintiff/Company in the year 1993 and the subject tiles "CATHERINE", even according to the plaintiff, are being manufactured only from 1996. Therefore, there is no chance or possibility of the second defendant copying the plaintiff's design. The defendant's tiles "OPUS" were independently developed and it has nothing to do with the plaintiff's "CATHERINE" tiles. The plaintiff's allegations are very vague and no



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particulars regarding copying of any other designs, had been furnished.

Earlier, the plaintiff/Company has filed a suit in C.S.No.2084 of 1995 on the file of this Court in respect of tiles with trade mark "AQUARIUS". As the plaintiff could not get *ex-parte* interim orders, the plaintiff/Company withdrew the suit, even without obtaining leave of this Court to file fresh suit on the same cause of action and filed O.S.No.1 of 1996 before the District Court, Chengalpattu, making similar allegations as if the second defendant copied the drawings of the plaintiff in respect of the tiles "AQUARIS", which came to be dismissed stating that the design of the defendants' tiles, is entirely different from that of the plaintiff's tiles. If the defendants are prevented from manufacturing and marketing their "OPUS" tiles, they will be put to serious loss, hardship and injury. The tiles of the defendants are entirely different from that of the plaintiff's and there are no similarities between them. Hence, the suit may be dismissed.

4. Upon considering the pleadings made by the parties herein, the following issues were framed by this Court on 03.01.2023 :-

"1.Whether the plaintiff has a copyright over the design applied for the tile manufactured by traded as "Catherine" and / or whether the plaintiff



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has a right to protect the said design under the provisions of the Designs Act, 2000 ?

2. Whether the first defendant's tile traded as "Opus" is / was similar to that of the tile manufactured and traded as "Catherine" by the plaintiff and if so whether the plaintiff is entitled for any injunctive relief ?

3. Whether the suit for infringement of copyright is maintainable, in view of the provisions of the Designs Act, 2000 ?

4. Whether the plaintiff is entitled to relief of infringement as prayed for ? And

5. What other reliefs the plaintiff is entitled to ?

5. After framing of issues, during trial, on the side of the plaintiff, one M.Jayakumar was examined as P.W.1 and 12 documents were marked as Exs.P1 to P12 and M.O.I and M.O.II were marked. No oral and documentary evidence were let in by the second defendant.

6. Learned counsel for the plaintiff submitted that the plaintiff-Company in the course of their business, has designed and developed a



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particular variety of tile, which is manufactured and marketed under the name and trademark "CATHERINE" from June 1996. The said tile has a thoroughly modern graphic structure and is used widely in internal and external walls, modern office walls, internal walls of houses and external facia. The plaintiff has designed and developed the said tile by employing enormous skills, energy, labour and capital. "CATHERINE" tile has now widespread public acclaim. The said drawing is the property of the plaintiff/Company, which has sole right to produce and re-produce the said drawing and as such, no other person is entitled to use the same to manufacture or produce by substantially re-producing the said drawing in any manner. To substantiate the case of the plaintiff/Company, it has produced Ex.P.4/original drawing of CATHERINE. While that being so, the defendants have made an attempt to confuse their tiles with that of copyright and design of the plaintiff/Company. Learned counsel for the plaintiff has categorically pleaded that one V.Krishnamurthy and Vigneshwar Sundar, who are the ex-employees of the plaintiff/Company, have left the services of the plaintiff/Company and have joined in the first defendant/Company. The second defendant/V.Krishnanmurthy is the root cause for all these infringement of copyright. Actually, the second



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defendant was working as in-charge of production in the plaintiff/Company. While in service with the plaintiff/Company, the second defendant had motive to start a Company to compete using the drawings of the plaintiff. In this regard, the first defendant/Company came into existence from 1996. The first defendant/Company ran into liquidation in the year 2019 and an Interim Resolution Professional (IRP) was appointed by the National Company Law Tribunal (NCLT), Chennai, in the place of the second defendant to administer the first defendant/Company. Even thereafter, without any authority, the second defendant and his son were communicating and eliciting business in the name of the first defendant/Company, which is evident through Exs.P.5 to P.7, which goes to show that the second defendant is an habitual offender of law and morality. He has gone to the extent of divesting the fund of the first defendant/Company after appointment of the IRP.

7. Learned counsel for the plaintiff further submitted that, except the pleadings, the defendants have not let in any oral and documentary evidence to show that Ex.P.4/original drawing of "CATHERINE", squarely comes within the purview of the Designs Act



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and does not come within the framework of Copyright Act. Further, no evidence is let in by the defendants to show that the drawings of the plaintiff differs from that of the defendants. On the other hand, the plaintiff has pleaded about the three dimensional aspects of Ex.P.4 in detail and exhibited M.O.1/plaintiff's tiles and M.O.2/defendants' tiles, which are as that of the plaintiff and the defendants. The defendants are attempting to digress from the issue of infringement of copyright, by claiming it as a design. Even assuming without admitting that the defendants have raised such a plea, the same cannot be countenanced, as it is not supported by any evidence. Under such circumstances, Ex.P.4/drawing does not come under the purview of the Designs Act and it is well within the domain of the Copyright Act. Hence, the plaintiff has filed the present suit for infringement of copyright, as Ex.P.4/drawing squarely comes within the purview of the Copyright Act and does not fall within the scope of the Designs Act.

8. Learned counsel for the plaintiff further submitted that the specific case of the plaintiff/Company is that their any work had been infringed and as the owner of the copyright, they are entitled to all such



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remedies by way of injunction, damages and accounts for infringement of the Copyright. He further submitted that the defendants are well aware of the design of the tile "CATHERINE". The second defendant, who was working in the plaintiff/Company, as in-charge of production, knows very well about the designs of the plaintiff and have left from service of the plaintiff/Company in the year 1993 itself and he joined in the first defendant/Company and copied the plaintiff's unique drawings and designs and passing off of their products as and for the plaintiff's unique tiles. He further submitted that, it is very clear that Ex.P.4 does not come within the ambit of Designs Act, as Section 2 of the Designs Act clearly exempts any artistic work as defined in Clause (c) of Section 2 of the Copyright Act. That being the case, the provisions of the Designs Act, are not attracted to Ex.P.4. Even though the first defendant/Company is under liquidation and an IRP was also appointed by NCLT, Chennai, still the second defendant is running the first defendant/Company and therefore, the suit is maintainable and the plaintiff is entitled to decree as sought for in the plaint.

9. Learned counsel for the defendants submitted that the first



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defendant's tiles "OPUS" were independently developed and it has nothing to do with the plaintiff's "CATHERINE" tiles. Earlier, the plaintiff/Company has filed the suit in C.S.No.2084 of 1995 before this Court in respect of tiles with trade mark "AQUARIUS" and the same was withdrawn by the plaintiff. Thereafter, the plaintiff filed a suit in O.S.No.1 of 1996, on the file of the District Court, Chengalpattu, making similar allegations as if the second defendant had copied the drawings of the plaintiff in respect of tiles "AQUARIS" and the same came to be dismissed stating that the design of the defendants' tiles is entirely different from that of the plaintiff's tiles. Aggrieved by the same, the plaintiff has filed an appeal in A.S.No.433 of 1994 before this Court, which came to be dismissed on 12.04.2012, holding observing that the plaintiff's tile and defendant's tile are not similar, as there was no infringement of copyright, nor was there any passing-off committed by the defendants. Insofar as the design is concerned, this Court made an observation that, unless the design has been registered under the Designs Act, such design cannot be protected through any prohibitory order that the design of the concerned person has been infringed under the Designs Act. Therefore, the plaintiff is not entitled to seek any remedy invoking



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the provisions of the Designs Act for grant of injunction and also the relief of passing-off also. Thereafter, the plaintiff has filed the present suit, for the very same relief as sought for in the earlier suit. Even in the earlier suit itself, the plaintiff came across the very same allegations as if the second defendant had copied the drawings of the plaintiff and has also stated that the plaintiff was shocked and surprised to come across during December 1995, about the tiles of identical shape and design manufactured by the defendants and the second defendant herein left the services of the plaintiff/Company in December, 1993 itself and one Vigneshwar Sunder had left the services of the plaintiff/Company in February, 1994 and he was in-charge of the design and development and also one Mr.Krishnamurthy was in-charge of production at the relevant point of time. Therefore, all these facts are identical in the present suit. In the present suit, the plaintiff has stated that, on 05.11.1998, it came to the knowledge of the plaintiff that identical tiles are being manufactured by the first defendant/Company under the name and style "OPUS". Therefore, the plaintiff has not come to the Court with clean hands.

10. Learned counsel for the defendants submitted that the main



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contention of the plaintiff/Company is that no one can claim the copyright in respect of the geometrical shapes. If the said claim is accepted, it would amount to granting exclusive rights to the plaintiff alone to use the geometrical shapes, which are used in the alleged "CATHERINE" tiles, whereas, these geometrical shapes are commonly used by all the manufacturers. Further, the plaintiff/Company has alleged that they came across the defendants' tiles "OPUS" only on 05.11.1998. However, the plaintiff is well aware of the manufacturing and marketing of "OPUS" tiles, much earlier to 05.11.1998. The defendants' "OPUS" tiles have attracted large customers and are highly demanded by the general public, due to its effectiveness and unique eye appeal. The plaintiff/Company, after noticing the enormous demand for the defendants "OPUS" tiles, has come forward to file the present suit only due to business rivalry and also to harass the defendants. It is further stated that the defendants' tiles "OPUS" no way resemble to that of the plaintiff's "CATHERINE" tiles. He further submitted that the plaintiff is not the author of the said drawing/artistic work. Even assuming that if the plaintiff had Copyrighted design "CATHERINE", Section 15(2) of the Copyright Act, will not be applicable to this case, as the plaintiff has manufactured more than 50



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numbers of tiles by using the said drawings. However, the defendants' tiles "OPUS" were independently developed and it has nothing to do with the plaintiff's "CATHERINE" tiles. Therefore, the plaintiff is not entitled to the relief as sought for in the plaint.

11. Heard Mr.K.Ashok Kumar, learned counsel for the plaintiff and Mr.A.Prasanna Venkat, learned counsel for defendants 1 and 2 and perused the materials available on record.

12. Issue No.1 : Whether the plaintiff has a copyright over the design applied for the tile manufactured by traded as "Catherine" and / or whether the plaintiff has a right to protect the said design under the provisions of the Designs Act, 2000 ?

12.1. According to the plaintiff/Company, in the course of their business, they have designed and developed a modern graphic variety of tiles, which are manufactured and marketed under the name and trade mark "CATHERINE" from June 1996. The plaintiff had become the owner of the copyright in respect of the said drawing and no person is entitled to



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use the same to manufacture any product by substantially re-producing the said drawing in three dimensional form or use the said drawing in any other manner whatsoever. Further, the drawing of "CATHERINE" is a "work", in which copyright subsists within the meaning of Section 13(1)(a) of the Copyright Act. The drawing, when applied to the raw materials by an industrial process, produces the finished article, namely "CATHERINE TILE". In view of the uniqueness of the said tile, it has come to execute several prestigious projects with the said tile. While that being so, it came to the knowledge of the plaintiff on 05.11.1998 that identical tiles are being manufactured by the first defendant/Company under the name and style "OPUS". The said "OPUS" is virtually same as that of "CATHERINE" with minor difference of 2 to 3 mm. The ratio of length to breath which is 2.5, has also been slavishly copied and re-produced in toto. Therefore, all these facts will go to show that the offending tile is a clear infringement of the plaintiff's copyright over the drawing of "CATHERINE". However, the defendants have denied the same stating that the plaintiff cannot claim geometrical shapes, which are commonly used by all the manufacturers. The defendants have also taken a stand that even if the plaintiff had copyrighted the same, it has



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been lost by Section 15(2) of Copyright Act, as the plaintiff/Company has manufactured more than 50 numbers of tiles, using the said drawing. However, to substantiate their claim, the defendants have not let in any oral and documentary evidence. Further, the plaintiff has admitted that the first defendant/Company was under liquidation and even during the cross examination, P.W.1 himself admitted that Ex.P.6 is the web copy of the order passed by the National Company Law Tribunal, Chennai Bench.

12.2. During cross examination, P.W.1 has stated the defendants have re-produced the plaintiff's drawings and have named the same as "OPUS" and also stated that one more suit in O.S.No.1 of 1996 was filed against the defendants on the earlier occasion and the said suit was dismissed by the trial Court on 19.06.1998, which was upheld by this Court, vide common judgment and decree passed in A.S.No.433 of 1999 and O.P.No.328 of 1998. P.W.1 has further stated that the earlier suit was filed in the name of Mr.D.P.Padmanaban, who was working as Managing Director of the plaintiff/Company. P.W.1 has also admitted that the plaintiff is claiming the copyright in the drawing "CATHERINE" and



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also admitted that Ex.P10 (Brochure) and M.O.II is the defendants' tile and they are claiming that both tiles are identical. When both M.O.I and M.O.II were shown to P.W.1 in the open Court and when the question was asked as to what is identical in both the tiles, he has stated that line in the plaintiff's tiles, had been reduced in the defendants' tile, but the drawing is the same. However, they are not claiming any copyright over the colour of the tiles. The design on top of the plaintiff's tile, had been reduced in the defendant's tiles, however, the drawings are same. When a question was asked before P.W.1, as to what do you mean by drawing of the tile, he answered that it means that drawing on the paper. Ex.P.4 was shown to the witness and asked the question as a matter of trade practice as to how will tile drawing be made and he answered that with pen or pencil, for which, they have engaged Company's designer. P.W.1 has admitted that if the drawing is made with pen and paper, then even the defendant's drawing could have been made by looking at the tile of the defendant. Though P.W.1 has stated that plaintiff's tile "CATHERINE" was introduced by the plaintiff in the year 1996, but he has not produced any document to establish the same. However, he referred Ex.P.9/Original brochure of the plaintiff/Company's tiles and has stated that it was



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published in the year 1998, but it was not mentioned in Ex.P.9 and it was published in the year 1998. P.W.1 further admitted that, till date, they are using the tile "CATHERINE" and also admitted that they have not applied for copyright with respect to "CATHERINE" tiles. When one question was put before P.W.1 as to whether he was aware that first defendant/Company was ordered to be liquidated during March 2022 and are purposefully suppressing the truth, he denied the same. P.W.1 has admitted that they have not applied copyright for any of their other tiles and they have also not applied for "design registration" for "CATHERINE" tiles under the Design Act. Therefore, from the evidence of P.W.1, it is clear that the plaintiff neither registered the trademark under the Copyright Act, nor under the Designs Act.

12.3. In the above content, It is relevant to extract Section 15(2) of the Copyright Act, as follows :

"15. Special provision regarding copyright in designs registered or capable of being registered under the Designs Act,1911.- (1) Copyright shall not subsist under this Act in any design which is registered under the Designs Act, 1911.



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(2) Copyright in any design, which is capable of being registered under the Designs Act, 1911, but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright or, with his license, by any other person."

Admittedly, the plaintiff has manufactured more than 50 numbers of tiles by using the said drawing. Though the second defendant left the plaintiff/Company in the year 1993 itself, the subject tile "CATHERINE", even according to the plaintiff is being manufactured only in the year 1996 and therefore, there is no chance of possibility of the second defendant copying the plaintiff's design. Therefore, the contention of the defendants that the defendants' tiles "OPUS" was independently developed, it has nothing to do with the plaintiff's "CATHERINE" tiles.

12.4. On a perusal of M.O.1/plaintiff's tile and M.O.2/defendants' tiles, it reveals that both are not similar, as far as geometrical shape is concerned, which is newly used by all the manufacturers, and therefore, one party cannot claim any exclusive claim over the geometrical shapes.



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Further, P.W.1 himself admitted that the plaintiff's drawing was not registered under the Designs Act. Therefore, the plaintiff is not entitled to protect the design of the plaintiff's tile "CATHERINE" under the provisions of the Designs Act. Therefore, Issue No.1 is answered against the plaintiff in the above terms.

13. Issue No.2 : Whether the first defendant's tile traded as "Opus" is / was similar to that of the tile manufactured and traded as "Catherine" by the plaintiff and if so, whether the plaintiff is entitled for any injunctive relief ?

13.1. It is the claim of the plaintiff/Company that the first defendant's tile "OPUS" is identical to that of the plaintiff's tile "CATHERINE", however, the defendants have denied the same. During the cross examination, P.W.1 himself admitted that the line in the plaintiff's tile, had been reduced in the defendants' tile, but other features are similar. On a perusal of both tiles, M.O.I and M.O.II, it is seen that both are not identical or similar. The main contention of the plaintiff/Company is that the second defendant, who was an ex-employee



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of the plaintiff/Company, has left the services of the plaintiff/company in the year 1993 itself and has ventured to copy the plaintiff's unique drawings and passing-off of their products as and for the plaintiff's unique tiles, by cashing on the reputation of the plaintiff's products. However, the plaintiff has admitted in their pleadings and evidence that they have manufactured "CATHERINE" tiles from June 1996 onwards. PW.1 has stated that Ex.P.9/Original brochure of the plaintiff Company's tiles, was published in the year of 1998, even though he has admitted that Ex.P.9 does not indicate the year 1998 and he has also admitted that the drawing can be done only through experts by using pen and pencil, even though they filed the suit for infringement of copyright under the Copyright Act. As per Section 15(2) of the Copyright Act, it is clear that, if the plaintiff manufactured more than 50 numbers of tiles by using the said drawing, he cannot prevent other persons from doing so. Admittedly, the plaintiff's tile was not registered under the Designs Act and hence, the present suit filed for infringement of copyright itself is not maintainable.

13.2. It is settled law that copyright is a right to stop others from



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exploiting their right without the consent or owner of the copyright. The copyright law presents the balance between the interest and right of author and that of the public and protecting the public domain of the claim of the copyright or protect it under the copyright's statute. It is well accepted principle of copyright law that there is no copyright in the facts, *per-se*, as the facts are not created, nor have they originated with the author any work which embodies these facts. The issue of copyright is closely connected with that of the commercial validity and commercial implications. The object of the Copyright Act is to protect the author of the copyright work from unlawful re-production of exploitations of the work by others. Though registration of the copyright is not mandatory, however, in this case, the plaintiff claims the rights of the design in the tile "CATHERINE". Admittedly, the design was not registered under the Designs Act. However, Section 15(2) of the Copyright Act is very clear that, in any design, which is capable of being registered under the Designs Act, but which has not being so registered, shall cease as soon as any article to which the design has been applied, has been re-produced more than fifty times by an industrial process by the owner of the



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copyright or, with his licence, by any other person.

13.3. Admittedly, in this case, the plaintiff/Company manufactured "CATHERINE" tiles from 1996 onwards and they came to know about the infringement of the defendants on 05.11.1998. Since the design of the "CATHERINE" tile was not registered under the Designs Act, the plaintiff has manufactured more than 50 numbers of tiles by using the said design. Moreover, both the designs are not similar. Therefore, the plaintiff is not entitled to any right under the Copyright Act and there is no infringement. Therefore, the plaintiff is not entitled for any injunctive relief as sought for in the suit. The issue No.2 is answered against the plaintiff.

14. Issue No.3 : Whether the suit for infringement of copyright is maintainable, in view of the provisions of the Designs Act, 2000 ?

As already stated, the plaintiff is claiming the right of the design "CATHERINE" tiles under the Copyright Act. The plaintiff has filed the suit for infringement of copyright and admittedly, the plaintiff had not registered the said design under the Designs Act, and hence, Section



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15(2) of the Copyright Act, would get attracted. Therefore, infringement of the copyright is not maintainable, in view of the Designs Act, due to non registration of the design under the Designs Act. The issues No.3 is answered against the plaintiff.

15. Issue Nos. 4 and 5 :

Whether the plaintiff is entitled to relief of infringement as prayed for ? and

What other reliefs the plaintiff is entitled to ?

Since all the other issues are answered against the plaintiff, the plaintiff is not entitled to the relief of infringement and the plaintiff is also not entitled for any other relief as sought for in the suit.

16. Admittedly, the first defendant/Company is under liquidation. The plaintiff/Company itself marked the proceedings and though the plaintiff has stated that the first defendant/Company is under liquidation and the same was run by other persons, however, the same has not been established by examining any oral and documentary



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evidence. Further, the plaintiff himself admitted that, earlier, the plaintiff/Company has filed a suit in respect of tiles with trade mark "AQUARIUS" and the same was dismissed by the trial Court and this Court, in the appeal, upheld the judgment of the trial Court, as both the tiles are not similar. It is pertinent to note that the plaintiff has filed the earlier suit (O.S.No.1 of 1996) in the year 1996 and the same was dismissed by the trial Court on 19.06.1998, and thereafter, the plaintiff has filed the present suit in the year 1998. The plaintiff has also filed an appeal in A.S.No.433 of 1999, before this Court challenging the judgment and decree of the trial Court in O.S.No.1 of 1996. Pending the present suit, the appeal in A.S.No.433 of 1999 was decided on 12.04.2012. At the time of hearing the appeal, the plaintiff has not disclosed about the pendency of the present suit. As stated already, the earlier suit in O.S.No.1 of 1996 came to be dismissed on 19.06.1998 by observing that the plaintiff's design and defendants' designs are not similar in nature, but in the present suit, there is a difference in the name of the tiles, designs and trademark. In the earlier suit, the appellate Court has clearly stated that no suit for infringement of copyright over the design, is maintainable, unless the said design is registered under the



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Designs Act. The plaintiff/Company had not registered their products under the Design Act, and therefore, the prayer for permanent injunction is not maintainable. Since the plaintiff's design was not registered under the Designs Act, as per Section 15(2) of Copyright Act, even if it is not registered, they shall cease the right of claim of copyright, as the plaintiff/Company has manufactured more than 50 numbers of tiles by using the same design. Therefore, the plaintiff is not entitled to get any relief as sought for in the suit, as the plaintiff/Company has not established their case factually and legally.

17. For the foregoing reasons, the Civil Suit is dismissed. There shall be no order as to costs. Consequently, connected pending applications, if any, are closed.

01.08.2024

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation : Yes/No
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List of Witness examined on the side of the plaintiff



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WEB COPY

M.Jayakumar

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PW1

List of documents marked on the side of the plaintiff

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Board Resolution	09.03.2023
2.	P2	Original covering letter sent for the defendant's OPUS tiles	06.11.1998
3.	P3	Original Invoice for the defendant's OPUS tiles	06.11.1998
4.	P4	Original drawing of the plaintiff's Catherine Tiles	
5.	P5	Photocopy of the communication by the first defendant	28.06.2019
6.	P6	Web copy of the order passed by the NCLT, Chennai Bench	
7.	P7	Photocopy of the letter dated 21.09.2021 issued by the defendant to its customer.	
8.	P8	Photocopy of the quotation by the defendant to its customer	21.09.2021
9.	P9	Original brochure of the plaintiff Company's tiles	
10.	P10	Original brochure of the defendant's company tiles	
11.	M.O.I	Plaintiff tiles	
12.	M.O.II	Defendant tiles	
13.	P11	Photograph of the plaintiff tiles	
14.	P12	Photograph of the defendant tiles	

List of Witness examined on the side of the defendants :- Nil



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List of documents marked on the side of the defendants :- Nil



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P.VELMURUGAN, J.

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01.08.2024