



OP(CR) No.1 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.06.2025**

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR

RAMAMOORTHY

OP(CR) No.1 of 2024

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1. Mr.A.Ruthramoorthy,
Trading as M/s.Bharani Engineering Work,
11, Rasathalvalasu, Muthur Post,
Kangayam Taluk, Tiruppur-638 105,
Tamil Nadu, India.

2. Mr.R.Logenthiran, Trading as
M/s.Bharani Engineering Work,
11, Rasathalvalasu, Muthur Post,
Kangayam Taluk, Tiruppur-638 105,
Tamil Nadu, India.

... Petitioners

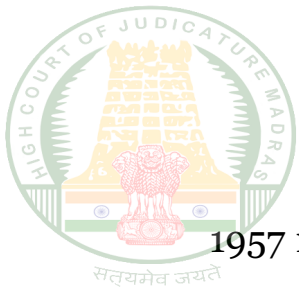
-VS-

1. Mr.P.Moorthy,
233, Kannudaiyampalayam,
Ganapathypalayam, Erode-638 153,
Tamil Nadu.

2. The Registrar of Copyrights
Boudhik Sampada Bhawan, Plot No.32,
Sector 14, Dwarka, New Delhi-110 078, India.

... Respondents

Prayer: Original Petition (Copyright) filed for rectification of
Copyright from the Register under Section 50 of the Copyright Act,



OP(CR) No.1 of 2024

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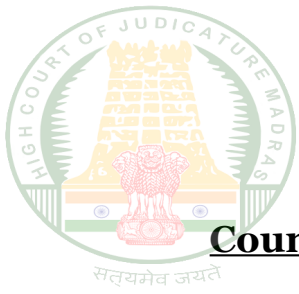
1957 read with Rule 6 of the Madras High Court Intellectual property Rights division Rules, 2022 prays to rectify/expunge the copyright, “ARTISTIC WORK PHOTOGRAPH OF PUMP ASSEMBLY FOR AIR COMPRESSOR” having Copyright registration No.A-146894/2023 registered in the name of the 1st Respondent, from the Copyrights Register and pass further or other orders as the Hon'ble Court deems fit considering the facts and circumstances of the case and thereby render justice.

For Petitioners : M/s.G.Ramesh, N.Hansika, Alice Bibiana H.,
Subashini I.M, Advika M, Arivindh S.

For Respondents: M/s.G.K.Muthukumar, R.Praveen,
I.Arun Kumar for R1
Ms.R.Durgarani, CGSC for R2

ORDER

The first respondent applied for registration of copyright for an artistic work titled “ARTISTIC WORK PHOTOGRAPH OF PUMP ASSEMBLY FOR AIR COMPRESSOR” on 02.05.2023. The said artistic work was registered under Registration No.A-146894/2023. By this petition, the petitioners seek rectification/expunging the registration of the said work from the Register of Copyrights.



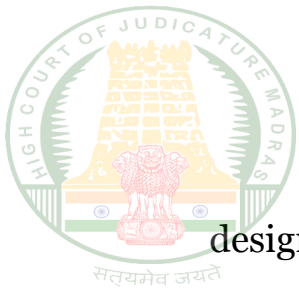
OP(CR) No.1 of 2024

Counsel and their contentions

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2. Mr.Ramesh Ganapathy, learned counsel for the petitioners, submitted that the register of copyrights is liable to be rectified insofar as it relates to the copyright of the first respondent in view of Section 15 (1) of the Copyright Act, 1957 ('Copyright Act'). In this connection, he refers to the certificate of registration dated 09.07.2020 in respect of Design No.325033-01, with effect from 26.12.2019.

3. By comparing the image of the article in respect of which the design registration was granted with the work in respect of which the copyright registration was granted, learned counsel submits that the common article in both cases is the Pump Assembly for Air Compressor. By referring to the relevant dates, learned counsel emphasizes that the design registration was obtained with effect from 26.12.2019 whereas the copyright registration was obtained subsequently with effect from 02.05.2023. According to learned counsel, Section 15 (1) of the Copyright Act is intended to ensure that copyright shall not subsist under the Copyright Act in respect of any



OP(CR) No.1 of 2024

WEB COPY

design which is registered under the Designs Act, 2000 ('Designs Act'). Learned counsel next referred to the examination report of the Copyright Office dated 08.06.2023, wherein the same objection was raised by the Copyright Office by pointing out that the work cannot be registered as per Section 15 as it is already registered under the Designs Act. He also referred to the first respondent's reply dated 06.07.2023 to the Examination Report and pointed out that the first respondent misconstrued Section 15(1) in the said reply. He further submitted that the first respondent also applied for and obtained a patent in respect of the same article.

4. In support of the contention that copyright shall cease to subsist in this situation, learned counsel relied on the judgment of the Division Bench of the Delhi High Court in *Kiran Shoes Manufacturers v. Registrar of Copyrights and another* 2012 (129) DRJ 105 (DB) ('Kiran Shoes Manufacturers'), particularly paragraph 11 thereof. After pointing out that the Division Bench had followed an earlier judgment in the case of *Microfibres Inc. v. Girdhar & Co. and another*, 2009 SCC OnLine Del 1647 ('Microfibres'), learned counsel

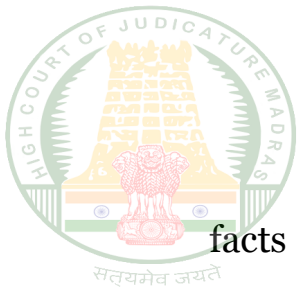


OP(CR) No.1 of 2024

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referred to the said earlier judgment. By drawing specific reference to paragraphs 29 to 32 and 46 thereof, learned counsel submitted that the interplay between the Copyright Act and the Designs Act was analyzed therein and that the Court concluded that once the design is created and registered under the Designs Act, whether or not the design is exploited on a commercial scale, the design loses its protection as an artistic work under the Copyright Act.

5. By applying the said principle to the case at hand, learned counsel contends that the first respondent applied for and obtained registration of the design for the Pump Assembly for Air Compressor with effect from 26.12.2019. Consequently, by virtue of Section 15(1) of the Copyright Act, he contends that the copyright in the work shall cease to subsist. He next placed on record, the recent judgment of the Hon'ble supreme Court in *Cryogas Equipment Private Limited v. Inox India Limited and Others*, 2025 SCC OnLine SC 780 ('*Cryogas Equipment*'), particularly paragraphs 55 to 61 thereof, to contend that copyright protection would be extended to an artistic work which is created prior to the creation of a derivative design therefrom. On the



OP(CR) No.1 of 2024

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facts of that case, he submitted that the Hon'ble Supreme Court recognised the copyright in the industrial drawings from which a design was subsequently created. By contrast, he contends that the design was created first in this case and that copyright registration for the same article/work was obtained subsequently.

6. On the interpretation of Section 15 of the Copyright Act, learned counsel also relied upon the judgment of the Division Bench of this Court in *Urooj Ahmed, Lords Enterprises (India) v. Preethi Kitchen Applicances Pvt. Ltd. (DB), 2013 (6) CTC 247 (Urooj Ahmed)*, especially paragraphs 5(c)(ii) and 5(c)(iii). He pointed out that the Division Bench held that Section 15 of the Copyright Act is a special provision mandating that no copyright shall subsist in any design which is registered under the Designs Act.

7. Mr.G.K.Muthukumar, learned counsel, responded to these contentions. By referring to page 28 of typed set dated 19.11.2024, learned counsel submitted that a Chinese manufacturer called D&R Metal Industries had copied the petitioners' photograph and posted



OP(CR) No.1 of 2024

the same on its website. He submits that this was the reason behind

the decision to apply for registration of the copyright on 02.05.2023.

By referring to the reply of the first respondent to the examination report of the Copyright Office, learned counsel submits that the first respondent pointed out that the design cannot be considered as the photograph/artistic work and that the original photograph cannot be considered as the finished article, which can be judged solely by the eye. By accepting the said explanation, learned counsel submits that the Copyright Office proceeded to grant registration.

8. Since the artistic work in respect of which copyright registration was obtained is not a design as per the Designs Act, learned counsel submits that the present petition is liable to be dismissed. He also placed reliance on the judgment of the Division Bench of the Delhi High Court in *Kiran Shoes Manufacturers*, which was relied on by learned counsel for the petitioners. He refuted the contention that a patent was granted in respect of the same product by submitting that the patent was granted for an invention titled “BOREWELL FOOT VALVE FOR AIR COMPRESSOR”, which is in



respect of a pump with a single water outlet in contrast to the pump with dual water outlet forming the subject of design registration.

Discussion, analysis and conclusion

9. At the heart of this dispute is the interpretation of Section 15 of the Copyright Act. Section 15 is as under:

*“15. Special Provision regarding copyright in designs registered or capable of being registered under the [***] [Designs Act, 2000],-(1) **Copyright shall not subsist under this Act in any design** which is registered under the [***] [Designs Act, 2000 (16 of 2000)].*

*(2) Copyright **in any design**, which is capable of being registered under the [***] [Designs Act, 2000(16 of 2000)], 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 licence, by any other person.” (emphasis added)*



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10. On perusal of sub-section (1) of Section 15, it is clear that copyright shall not subsist under the Copyright Act in any design which is registered under the Designs Act. The phrases “under this Act” and “in any design”, which have been emphasized in bold font above are of special significance in construing the meaning of this provision. The object appears to be to restrict the copyright in registered designs to the term provided in the Designs Act and to prevent assertion of copyright under both statutes.

11. Sub-section (2) of Section 15 applies to a design which is capable of being registered under the Designs Act, but is not so registered. As regards such designs, sub-section (2) provides that the copyright shall cease to exist as soon as the article to which the design has been applied has been reproduced more than 50 times by an industrial process by the owner of the copyright or a licensee. Once again, the phrase “in any design” finds place therein. Interestingly, the phrase “under this Act” is not found in sub-section (2) probably because copyright does not subsist in an unregistered design under the Designs Act, thereby ruling out the option of asserting copyright



under both statutes. The problem of the author of a work, which is also a design, commercially exploiting the design but not applying for registration under the Designs Act and, consequently, circumventing sub-section (1) of Section 15 still had to be resolved. If sub-section (2) were not in the statute, in that context, it would have been possible for the author to commercially exploit the design while asserting copyright and the remedies available under the Copyright Act for the much longer duration specified in the Copyright Act. With a view to prevent that form of abuse, sub-section (2) provides for a commercial exploitation threshold of 50. Effectively, both sub-sections (1) and (2) only apply to copyright in designs, which are either registered or capable of being registered under the Designs Act. Therefore, the definition of design warrants close consideration.

12. Section 2(d) of the Designs Act defines design as under:

“(d) “design” means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any



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OP(CR) No.1 of 2024

industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-section 1 of section 2 of the Trade and Merchandise Marks Act, 1958 (43 of 1958) or property mark as defined in section 479 of the Indian Penal Code (45 of 1860) or any artistic work as defined in clause(c) of section 2 of the Copyright Act, 1957(14 of 1957);”

From the above definition, the following is discernible:

(i) design registration may be obtained only in respect of the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article;

(ii) such application is required to be by any industrial process or means, whether manual, mechanical, chemical, separate or combined; and

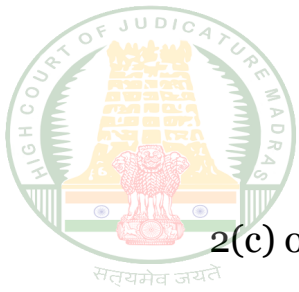


(iii) the above mentioned features in the finished article should appeal to and be judged solely by the eye.

13. Even if one or more of the features specified above were to be applied to an article and all the above requirements were to be satisfied, the definition proceeds to exclude from its ambit the following:

- (i) any mode or principle of construction or anything which is in substance a mere mechanical device;
- (ii) a trade mark as defined in clause (v) of subsection (1) of Section 2 of the Trade Marks Act, 1999;
- (iii) a property mark as defined in Section 479 of IPC; and
- (iv) an artistic work as defined in clause (c) of Section 2 of the Copyright Act.

14. Since an artistic work is expressly excluded from the definition of design under the Designs Act, it is pertinent to examine the definition of artistic work under the Copyright Act to verify if it similarly excludes a design, as defined in the Designs Act. Section



2(c) of the Copyright Act defines an artistic work as under:

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"(c) artistic work" means,—

- (i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;*
- (ii) a work of architecture; and*
- (iii) any other work of artistic craftsmanship;"*

It is noticeable that the expression applies to the following: (i) painting, (ii) sculpture, (iii) drawing, (iv) engraving and (v) photograph. In each case, it applies whether or not any such work possesses artistic quality. It also applies to works of architecture and any work of artistic craftsmanship. Significantly, unlike Section 2(d) of the Designs Act, which excludes an artistic work from the scope of design, the above definition of artistic work does not expressly exclude a design.

15. Section 2(d) of the Copyright Act stipulates that the author of a photograph is the person who took the photograph and Section



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17 recognises the author as the first owner of the copyright. As per Section 13, copyright shall subsist throughout India *inter alia* in artistic works and, as per Section 14, copyright means the exclusive right to do or authorise the doing of *inter alia* the following in relation to an artistic work: reproduction, communication to the public, issuing copies to the public and adaptation. Section 22 provides that copyright shall subsist in *inter alia* an artistic work published during the lifetime of the author until sixty years from the beginning of the calendar year following the author's year of death. While Section 45 enables *inter alia* the owner to apply for entering the particulars of a work in the Register of Copyrights, unlike other intellectual property statutes, under Section 55, even an owner whose name is not entered in the Register may sue for infringement. Against this statutory backdrop, I turn to the material facts of this case.

16. The extract from the Register of Copyrights dated 20.07.2023 discloses that copyright registration was granted in respect of a work titled 'ARTISTIC WORK PHOTOGRAPH OF PUMP ASSEMBLY FOR AIR COMPRESSOR' to the first respondent. A copy



OP(CR) No.1 of 2024

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of the work is annexed to the extract. It is evident from the extract and the copy of the work that the artistic work forming the subject of copyright protection is the photograph and not the Pump Assembly for Air Compressor. As is evident from the definition of artistic work, a photograph qualifies as an artistic work.

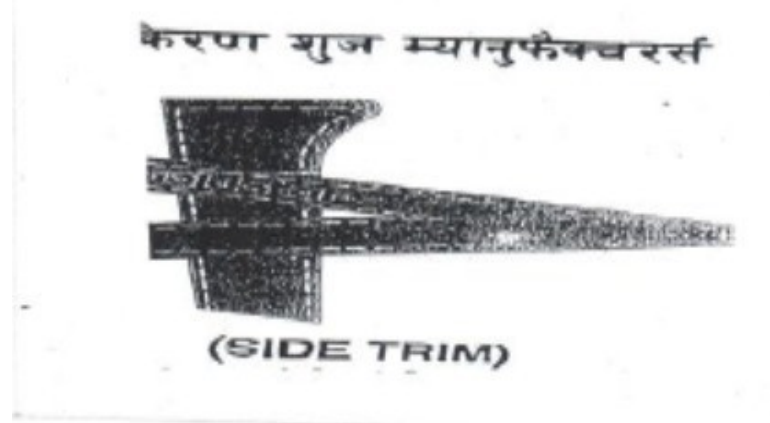
17. The next question that arises for consideration is whether Section 15 is applicable in respect of this artistic work. As noticed earlier, sub-section (1) of Section 15 applies to designs which were registered under the Designs Act, and sub-section (2) to designs which are capable of being registered thereunder, but were not so registered. In view thereof, the question to be examined is whether the photograph/artistic work is a design, as defined in the Designs Act. In order to qualify as a design, one or more of the features enumerated in Section 2(d) should have been applied to an article by an industrial process or means. This certainly cannot be said about the photograph/artistic work. The manner in which these provisions were construed earlier warrants analysis next.



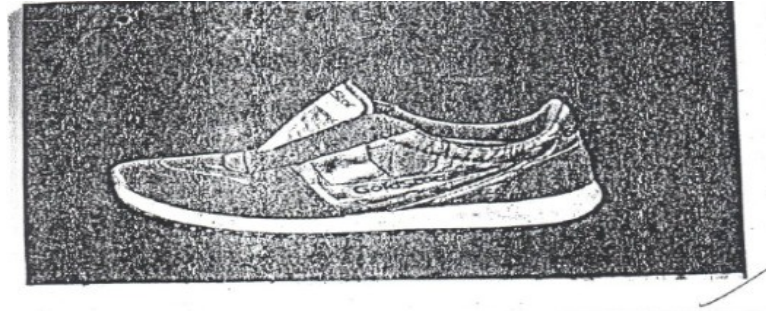
18. In *Kiran Shoes Manufacturers*, which was relied on by both

the contesting parties, it was held as under:

“For the purpose of this case, it is the above mentioned interpretation of the expression “design” that has to be kept in mind. The work “side trim” in question which was under the Copyright Act and which registration has been cancelled by the Board is visibly seen as under:



The way it is stretched on the side of the shoe can be seen from the picture of the shoe:



*It would be of significance to state at this stage that the appellant has got the design registered under Reg. No. 178564 in the year 1999 which shows that the aforesaid side trim is fit for registration under the Designs Act, 2000. The Copyright was obtained in the year 2002 for this side trim. After examining the aforesaid side trim minutely and having regard to the aforesaid fact, we are of the view that this side trim is a design under the Designs Act and, therefore, Section 15(2) would clearly be attracted. A Division Bench of this Court in the case of Microfibres Inc. v. Girdhar and Co. and Anr. 2009 (40) PTC 519 held that **if the design is registered under the Designs Act, the Design would lose its copyright protection under the Copyright Act. If***



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OP(CR) No.1 of 2024

it is a design registerable under the Designs Act but has not so been registered, the Design would continue to enjoy copyright protection under the Act so long as the threshold limit of its application on an article by an industrial process for more than 50 times is reached. But once that limit is crossed it would lose its copyright protection under the Copyright Act. This interpretation would harmonize the Copyright and the Designs Act in accordance with the legislative intent.” (emphasis added)

In the above judgment, the Court was concerned with a side trim, which is a part of shoes. After examining the side trim minutely, the Court concluded that the side trim is a design under the Designs Act. In those circumstances, the Court cited *Microfibres* and concluded that Section 15(2) is attracted and that, consequently, the copyright in that design would cease to subsist after the threshold limit specified in sub-section (2) is reached. In *Urooj Ahmed*, the Division Bench of this Court considered whether the replacement of Designs Act, 1911 in Section 15 with Designs Act, 2000 by Act 27 of 2012 would apply to that case and proceeded to hold that the amendment would apply by



virtue of Section 8 of the General Clauses Act, 1896. Hence, the said judgment does not advance the cause of the petitioners.

19. The interplay between the Copyright Act and the Designs Act also fell for consideration before the Hon'ble Supreme Court in *Cryogas Equipment*. In paragraphs 55, 60 and 61 of the judgment, the Hon'ble Supreme Court held as under:

55. The expression 'artistic work' under Section 2(c) of the Copyright Act has a very wide connotation and may also include abstract work(s) comprising a few lines or curves arbitrarily drawn, which could be either two or three-dimensional. It may be clarified that such a work may or may not have any visual appeal. Further, the holder of such an artistic work is entitled to draw protection under Section 14(c) of the Copyright Act, including the exclusive right to reproduce such work in any material form. Such a reproduction may also involve depicting a three-dimension work of a two-dimensional work or vice versa.



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OP(CR) No.1 of 2024

60. *It would therefore be appropriate to espouse the approach already undertaken by the courts of India, as it not only emulates the best practices employed by US courts and the principles enshrined in International Conventions but it also gives due consideration to contemporaneous laws and legislations. We have thus formulated a two-pronged approach in order to crack open the conundrum caused by Section 15(2) of the Copyright Act so as to ascertain whether a work is qualified to be protected by the Designs Act. This test shall consider: (i) whether the work in question is purely an 'artistic work' entitled to protection under the Copyright Act or whether it is a 'design' derived from such original artistic work and subjected to an industrial process based upon the language in Section 15(2) of the Copyright Act; (ii) if such a work does not qualify for copyright protection, then the test of 'functional utility' will have to be applied so as to determine its dominant purpose, and then ascertain whether it would qualify for design protection under the Designs Act.*



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OP(CR) No.1 of 2024

61. The courts, while applying this test, ought to undertake a case-specific inquiry guided by statutory provisions, judicial precedents, and comparative jurisprudence. It must be kept in mind that the overarching objective is to ensure that rights granted under either regime serve their intended purpose without unduly encroaching upon the domain of the other. With this approach, we have attempted to clarify the treatment of works at the intersection of 'copyright' and 'design' law(s), thereby ensuring coherence and consistency in the application of IP rights in India.”

20. The test formulated by the Hon'ble Supreme Court is whether the work in question is purely an artistic work entitled to protection under the Copyright Act or whether it is a design derived from such original artistic work and subjected to an industrial process. If the work does not qualify for copyright protection, the Court held that the test of functional utility should be applied to determine the dominant purpose and then ascertain whether it could



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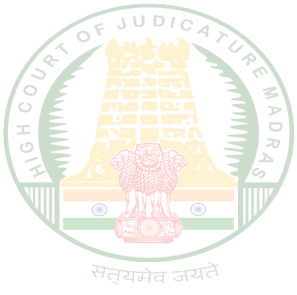
qualify for design protection under the Designs Act. If the said principles were applied to this case, as noticed earlier, the photograph/artistic work does not qualify as a design in terms of Section 2(d) of the Designs Act.

21. The object and purpose of Section 15 of the Copyright Act may be illustrated in the following manner. The definition of artistic work includes a sculpture. Sculptures are typically three dimensional articles. It is conceivable that the features of shape or configuration or even pattern may be applied thereto by industrial means. Unlike the Designs Act, which expressly excludes an artistic work from the scope of design, the definition of artistic work in the Copyright Act does not contain a corresponding carve out with regard to designs. Therefore, in the above example, these sculptures could meet the requirements of both artistic work and design. For the same reasons, a work of architecture, which also falls within the scope of artistic work and is defined to include a building or structure having an artistic character or design, could also satisfy the requirements of both artistic work and design.



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22. In the situation outlined in the preceding paragraph, if the author/proprietor asserts ownership of a copyright in the artistic work, without registering it as a design although it meets the requirements therefor, protection would be extended for the lifetime of the author plus 60 years. On the other hand, if design registration were to be obtained, the term of such design registration would be for an initial term of 10 years, which cannot be extended beyond 15 years. One more aspect should be noticed: under Section 11 of the Designs Act, the registered proprietor of a design has a copyright in the design and only such registered proprietor may sue for piracy of a registered design. In contrast, as stated earlier, even without making an entry in the Register of Copyrights, the owner of the copyright may sue for infringement and the copyright would ordinarily continue to subsist for the term mentioned above. In order to prevent this mischief, Section 15 prescribes that the copyright in a design, which is either registered or capable of being registered but not registered, would cease to subsist in the manner prescribed in sub-sections (1) and (2) thereof.



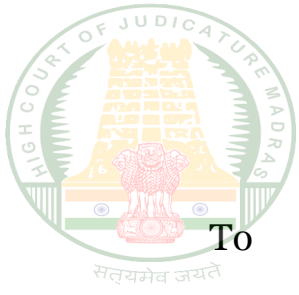
OP(CR) No.1 of 2024

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23. Apart from raising this objection on the basis of Section 15(1) of the Copyright Act, the petitioners have not assailed the copyright registration on any other ground. In view of the conclusion that the Pump Assembly for Air Compressor and not the photograph was registered as a design and the further conclusion that the photograph/artistic work does not meet the requirements of a design, the petition fails. OP(CR) No.1 of 2024 is, consequently, dismissed without any order as to costs.

10.06.2025

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No
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To

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The Registrar of Copyrights
Boudhik Sampada Bhawan, Plot No.32,
Sector 14, Dwarka,
New Delhi-110 078,
India.



OP(CR) No.1 of 2024



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OP(CR) No.1 of 2024

SENTHILKUMAR RAMAMOORTHY J.

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OP(CR) No.1 of 2024

10.06.2025