



O.A. No.715 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2025

CORAM:

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

O.A. No.715 of 2024

in

C.S. (COMM. DIV.) No.186 of 2024

Keerthivasan. K

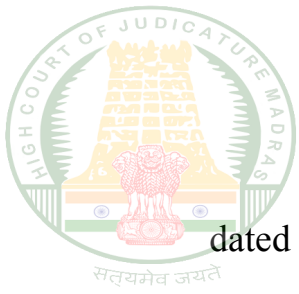
.. Applicant
/Plaintiff

vs.

M/s.JSG Innotech Pvt. Ltd.,
Plot No.-63, Sector 53, HSHDC, Phase V,
Kundli,
Sonipat,
Haryana – 131028, India.

.. Respondent /
Defendant

Prayer : This application is filed under Order XIV and Rule 8 of the O.S. Rule read with Order XXXIX Rule 1 & 2 and Section 151 CPC seeking to grant an order of Interim Injunction restraining the Respondent, their men, agents, partners, associates, staff, servants, distributors, stockist or any one claiming through them from in any manner infringing the Applicant's registered design in any manner by manufacturing the Mosquito Bat with the specific design which is identical with or deceptively similar to the Applicant's Registered Design No.366551-001,



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dated 22.06.2022 in class 22-06 for Mosquito Bat, pending disposal of the suit; and pass such further or other orders as this Court may deem fit and proper.

For Applicant : Mr.Avinesh. V

For Respondent : Mr.R. Abhishek

ORDER

In a suit seeking remedies in respect of alleged infringement of the plaintiff's registered design in a mosquito racquet, the plaintiff has applied for interim relief.

2. The contentions of learned counsel for the plaintiff may be summarised as follows :-

(i) The plaintiff applied for and obtained design registration under Design No.366551-001 with effect from 22.06.2022. The features in respect of which such registration was obtained are limited to shape and configuration as evidenced by the depiction of the different views of the mosquito racquet, which are enclosed with the registration certificate.

(ii) On comparing the plaintiff's mosquito racquet and that



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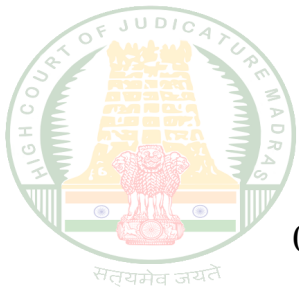
of the defendant, it is evident that the features in respect of which the plaintiff is entitled to monopoly have been copied by the defendant.

(iii) The defendant has indulged in fraudulent imitation. The judgment of the Calcutta High Court in *Castrol India Ltd., vs. Tide Water Oil Co. (I) Ltd. reported in MANU/WB/0501/1994*, particularly paragraphs 25 and 26 thereof, with regard to the meaning of obvious imitation and fraudulent imitation, supports this contention.

(iv) As held by the Hon'ble Supreme Court in *Midas Hygiene Industries (P) Ltd. and another vs. Sudhir Bhatia and others, (2004) 3SCC 90*, particularly paragraph 5, an injunction should follow when the adoption of the mark was itself dishonest.

3. These contentions are refuted by learned counsel for the respondent /defendant, whose submissions may be summarised as under :-

(i) The plaintiff entered into Supply Agreement dated



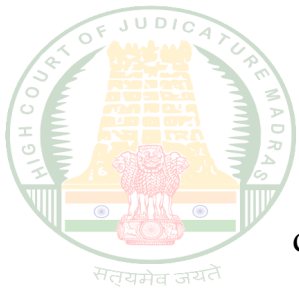
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08.03.2022 with a third party called PCI Pest Control Pvt. Ltd.(PCI Pest Control). Such agreement related to the supply of mosquito racquets. Article 11 thereof records that the customer i.e., the third party, owns IPR in the products supplied under the agreement. It further records that the supplier shall not register or attempt to register any of the IPR in any jurisdiction. In contravention of this contractual stipulation, the plaintiff has obtained design registration by submitting an application on 22.06.2022.

(ii) The third party initiated proceedings before the Bombay High Court by filing applications under Sections 9 and 11 of the Arbitration and Conciliation Act, 1996 in view of the dispute resolution clause in the Supply Agreement which provided for dispute resolution by arbitration. An interim order restraining the plaintiff from manufacturing or dealing in anti-mosquito racquets was issued by the Bombay High Court on 18.04.2023. After the said order had been previously discharged for default, the order was restored by the subsequent order dated 17.06.2025.

(iii) The plaintiff does not qualify as the proprietor of the



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design as per Section 2 (j)(i) of the Designs Act, 2000 (the Designs Act) because the author of the design is PCI Pest Control.

(iv) The design was used earlier by way of supply to PCI Pest Control by the plaintiff. Therefore, such design cannot be registered in terms of Section 4 of the Designs Act.

4. By way of rejoinder, learned counsel for the plaintiff submitted that the Supply Agreement does not relate to the mosquito racquets forming the subject of the suit. By referring to e-mail of 22.03.2022, he submits that the e-mail and the reply thereto indicate that the author of the design is the plaintiff, whereas PCI Pest Control made suggestions relating to the logo, the colour of the push button and other features outside the scope of the design registration.

5. The plaintiff has placed on record the Registration Certificate issued on 26.04.2023. As per section 10(4) of the Designs Act, any matter entered in the register qualifies as *prima facie* evidence thereof. Under Section 22 of the Designs Act, in an infringement suit, the defendant is entitled to raise every ground on which the registration of a design may be cancelled under Section 19 thereof.

6. This application is required to be decided by keeping in mind



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these provisions. In this case, the defendant has placed on record Supply

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Agreement dated 08.03.2022. Article 11.1 thereof is as under :-

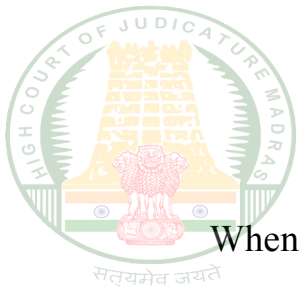
11.1 The Supplier acknowledges the Customer's ownership of all IPR in the Products and agrees and acknowledges that :

a) it shall not obtain any rights in the IPR other than a licence to use such IPR strictly to the extent necessary for the performance of its obligations under this Agreement and

b) it shall not register or attempt to register any of the IPR in any jurisdiction.

7. The Supply Agreement predates the application for registration by three months. Article 11 records the plaintiff's acknowledgement of the ownership of IPR by PCI Pest Control and also records that the plaintiff shall not register or attempt to register any of the IPR. The defendant has also brought to the notice of the Court that the arbitration clause in this agreement was invoked by PCI Pest Control by initiating proceedings under Sections 9 and 11 of the Arbitration and Conciliation Act, 1996 and such proceedings are pending adjudication before the Bombay High Court.

8. The defendant has also relied upon section 2(j) of the Designs Act to contend that the plaintiff does not qualify as the proprietor of the design. The further contention is that the design has been put to use earlier and the said contention warrants examination in course of trial.



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When Article 11 is read with Section 2(j) of the Designs Act, a triable issue is raised with regard to whether the plaintiff qualifies as the real, as opposed to ostensible, proprietor of the design.

9. On the basis of a preliminary assessment of the materials on record, I am of the view that the plaintiff is not entitled to an interim injunction. However, in view of the plaintiff's name finding place in the register of designs, as on date, the defendant is directed to maintain accounts of sales and profits from the impugned mosquito racquets. Such accounts shall be filed into Court on a quarterly basis.

10. This application is disposed of on the above terms without any order as to costs.

11.08.2025
($\frac{1}{2}$)

Index: Yes/ No
Internet : Yes / No
Neutral citation : Yes / No
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SENTHILKUMAR RAMAMOORTHY, J.

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