



2025:DHC:4270-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 93/2025, CM APPL. 31020/2025 & CM APPL. 31021/2025**

TRODAT GMBH & ANR.Appellants
Through: Mr. Jayant Mehta, Sr. Adv with
Mr. C.A Brijesh and Mr. Krisna Gambhir,
Advs.

versus

**ADDPRINT INDIA ENTERPRISES
PVT LTD & ANR.**Respondents
Through: Mr. Neeraj Grover and Dr.
Shilpa Arora, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% **20.05.2025**

C. HARI SHANKAR, J.

1. The appellants are aggrieved by order dated 6 May 2025 passed by the learned Single Judge of this Court in IA 42551/2024 in CS (COMM) 737/2022. The said IA was preferred by the respondent, as the defendant in the suit, seeking permission to manufacture and sell a self-inking stamp which, according to the defendant, would not infringe the design of the self-inking stamp of the appellants/plaintiffs, registered in its favour *vide* Registration Nos. 272348 and 272349 under the names “Flashy 6330” and “Flashy 6903”, under the Designs Act, 2000.



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2. By the impugned order, the learned Single Judge has held the new design proposed to be used by the respondent in respect of the self-inking stamp not to be infringing the afore-noted design registrations subsisting in favour of the appellants and has, therefore, allowed IA 42551/2024.

3. Aggrieved thereby, the appellants have approached this Court by means of the present appeal.

4. We have heard Mr. Jayant Mehta, learned Senior Counsel for the appellants and Mr. Neeraj Grover, learned Counsel for the respondents.

5. We deem it appropriate to reproduce, in *extenso*, the findings and analysis of learned Single Judge as contained in paragraphs no. 11 to 21 of the impugned order, thus:

“11. On the aspect of determination of the question of piracy/infringement of a registered design, the test laid down is the eye of an Instructed Person/ Informed User, i.e., he should know what was common trade knowledge and usage in the class to which the design applies. It is settled principle of law that unlike matters involving trademarks, where the relevant test is to apply the standard from the point of view of an average consumer with imperfect recollection, the relevant test standard to be applied in design matters, is the ‘*Test of informed user*’ and through ‘*Instructed eye*’. An informed user is a user who has experience of other similar articles and is able to appreciate whether an alleged infringement produces a different overall impression. Thus, in the case of **Diageo Brands B.V. and Another v Alcobrew Distilleries India Pvt. Ltd.**¹, this Court has held as follows:

¹ 2022 SCC OnLine Del 4499



189. On the principles of infringement of design Patent, the Federal Court observed thus:

“More than one hundred years ago, the Supreme Court established a test for determining infringement of a design patent which, to this day, remains valid. Gorham Co. v. White. This test requires that “if, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other.” Id. at 528, 20 L. Ed. 731.

For a design patent to be infringed, however, no matter how similar two items look, “the accused device must appropriate the novelty in the patented device which distinguishes it from the prior art. “Sears, Roebuck & Co. v. Talge, Horwitt v. Longines Wittnauer Watch Co. That is, even though the court compares two items through the eyes of the ordinary observer, it must nevertheless, to find infringement, attribute their similarity to the novelty which distinguishes the patented device from the prior art. ...

190. *The hypothetical “informed user”, through whose “instructed eyes” the aspect of infringement is to be addressed, has been given colour and complexion by the judgment of the Supreme Court of the UK in Procter & Gamble Co. v Reckitt Benckiser (UK) Ltd, the ratio decidendi of which stands thus reproduced in Halsbury's Laws of England:*

“A design infringes the right given by registration if it does not produce on the informed user a different overall impression. An informed user is not the same as a person ‘skilled in the art’ of patent law nor the average consumer of trade mark law. The informed user is a user who has experience of other similar articles and who will be reasonably discriminatory; he is able to appreciate enough detail to decide whether a design creates an overall impression which has



individual character and whether an alleged infringement produces a different overall impression.”

191. The informed user, for the purposes of design infringement, or piracy, is, therefore, a specie sui generis. He is neither a “person skilled in the art” nor, as Mr. Sibal would seek to contend, an “average consumer”. He-

(i) has experience of other similar articles,

(ii) is reasonably discriminatory and

(iii) is able to appreciate enough detail.

194. The decision of the coordinate single bench of Vipin Sanghi, J. (as the learned Chief Justice then was) in Carlsberg Breweries also underscores this position. From the passages from the said decision extracted in para 54 supra, the following elucidations of the law emerge:

(i) A pirated design “must be the exact thing; and any difference, however trifling it may be or however unsubstantial, would nevertheless protect it from being made the monopoly of the particular designer who thought proper to take it”.

(ii) The aspect of novelty and originality alone render the design entitled to protection.

(iii) “To determine the question if infringement of a registered design, the eye should be of an instructed person i.e. he should know what was common trade knowledge and usage in the class to which the design applies”.

(iv) The issue has to be decided by a “close examination and comparison of the two designs”.

(v) “It is often helpful to look at what was available before the priority date of the registered design as the eye of the interested addressee could be drawn to details, only if the registered design differs from the prior art by such details. It is only when the new design differs radically from the previous designs, that the interested person's eye would more likely concentrate on and more likely



remember the general form of the new design rather than the details.”

(vi) **“The Court is required to see whether the essential part or the basis of the plaintiff’s claim for novelty forms part of the alleged infringing copy”.**

196. As against this, **Section 22 of the Designs Act does not use the word “infringement”. Significantly, it uses the word “piracy”. The distinction between these two words is important and, in my opinion, has to be kept in mind and cannot be ignored. The provision, thereafter, proceeds to hold that piracy of a registered design takes place where the defendant’s design is a fraudulent or obvious imitation of the design of the plaintiffs. Again, the use of the word “imitation” is significant, especially when juxtaposed with the word “piracy”.**

208. An ignorant observer, who is uninformed of the state of prior art and is merely comparing the design of the plaintiff with the product of the defendant, cannot, therefore, be the person from whose view point the aspect of infringement is examined.

(Emphasis Supplied)

12. Thus, the scope of adjudication of the present application is primarily to ascertain the similarity of new proposed design of the defendant, when compared with registered designs of the plaintiffs on the touchstone of obvious or fraudulent imitation from the point of view of an instructed eye.

13. On the aspect of Test of Design Infringement, or Design Piracy, as encapsulated in Section 22 of the Designs Act, *Halsbury’s Laws of England* in 5th Edition, Volume 79, in Para 739, elucidates as under:

739. Test for infringement. A design infringes the right given by registration if it does not produce on the informed user a different overall impression. An informed user is not the same as a person 'skilled in the art' of patent law nor



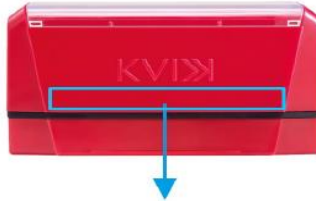
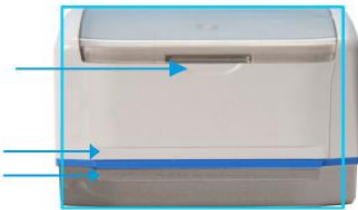
the average consumer of trade mark law. The informed user is a user who has experience of other similar articles and who will be reasonably discriminatory; he is able to appreciate enough detail to decide whether a design creates an overall impression which has individual character and whether an alleged infringement produces a different overall impression. The test of different overall impression is imprecise as it is necessarily subjective. **It is sufficient to avoid infringement if the accused product is of a design which produces a 'different overall impression'; there is no policy requirement that the difference be 'clear'. The overall impression is what strikes the mind of the informed user when it is carefully viewed, not what he may recollect afterwards.**

(Emphasis Supplied)

14. This Court notes the comparison as brought forth by the defendant between the defendant's proposed alternate product, and the earlier injuncted product, which is reproduced as under:

S. No.	Defendants' newly proposed alternate product	Defendants' earlier injuncted product KVIK
1	 Smoky Top Cover with curved shape	 Crystal Clear glass cover
2	Front  Different place dugged surface front boy face	 PROJECTED STEP TYPE FRONT BODY FACE



3	 Dugged shaped body surface  BRAND NAME MARK ON A PLANE BODY SURFACE
4	 Dugged shaped at bottom of top cover  Plane shaped at bottom of top cover
5	 Dugged shape at bottom of top cover  Smooth shape at bottom of top cover
6	  PROJECTED STEP TYPE BACK BODY FACE



7	FINGER EDGE TYPE GRIP  Two line grip connected with dugged bottom line 
8	Seperate Four line grip & bottom square shape  Two line grip connected with dugged bottom line 
9	Square grip on bottom of top cover  Round shape dugged grip on bottom of top cover 
10	 Dugged shape at top of bottom cover  Smooth shape at top of bottom cover



11	 Half Round shape for fixing acrylic cover	 Smooth shape at top of top cover
12	 49.7 MM 76.25 MM	 49.7 MM 76 MM
13	 37.80MM	 37.60 MM

15. Perusal of the aforesaid clearly brings forth distinguishing features and several conspicuous and prominent differences between the earlier injuncted design of the defendant, and the proposed design.

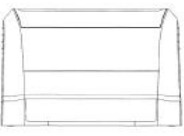
16. The prototype of the products in question, i.e., the plaintiffs' registered design, the defendant's injuncted design and the defendant's proposed alternate product, have been handed over to this Court, and the Court had the occasion to consider the same.

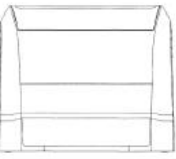
17. This Court further notes the distinction as brought forth by the defendant, with regard to the proposed alternate product, and the plaintiffs' design registration representation and its product, i.e., "FLASHY". The tabular comparison with regard to the same, on record before this Court, is reproduced as under:

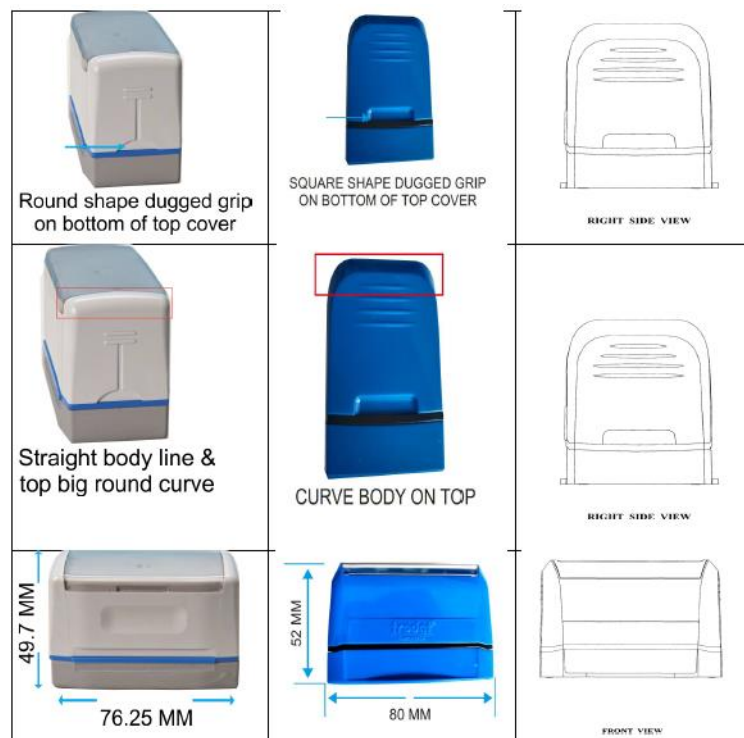
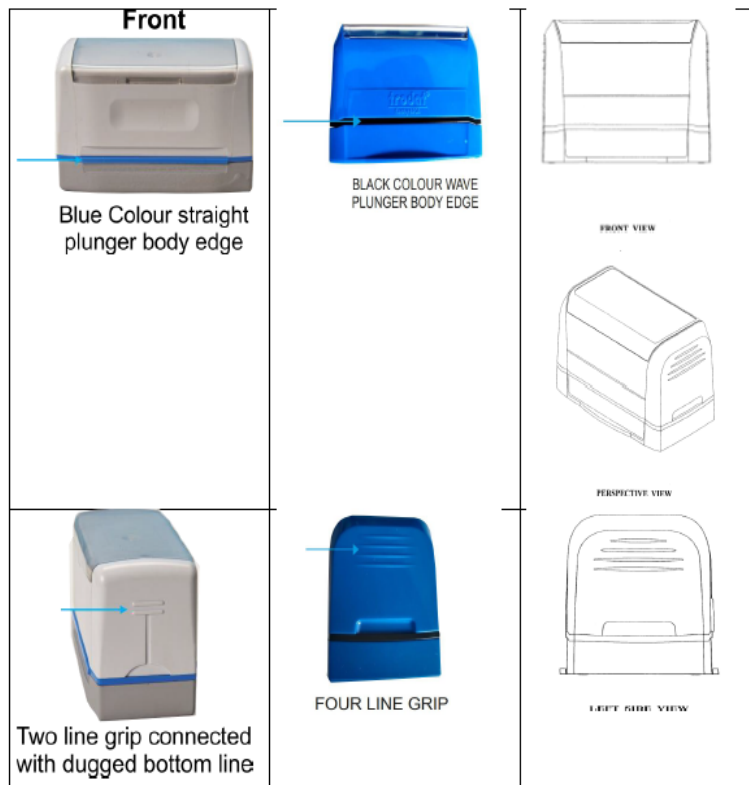


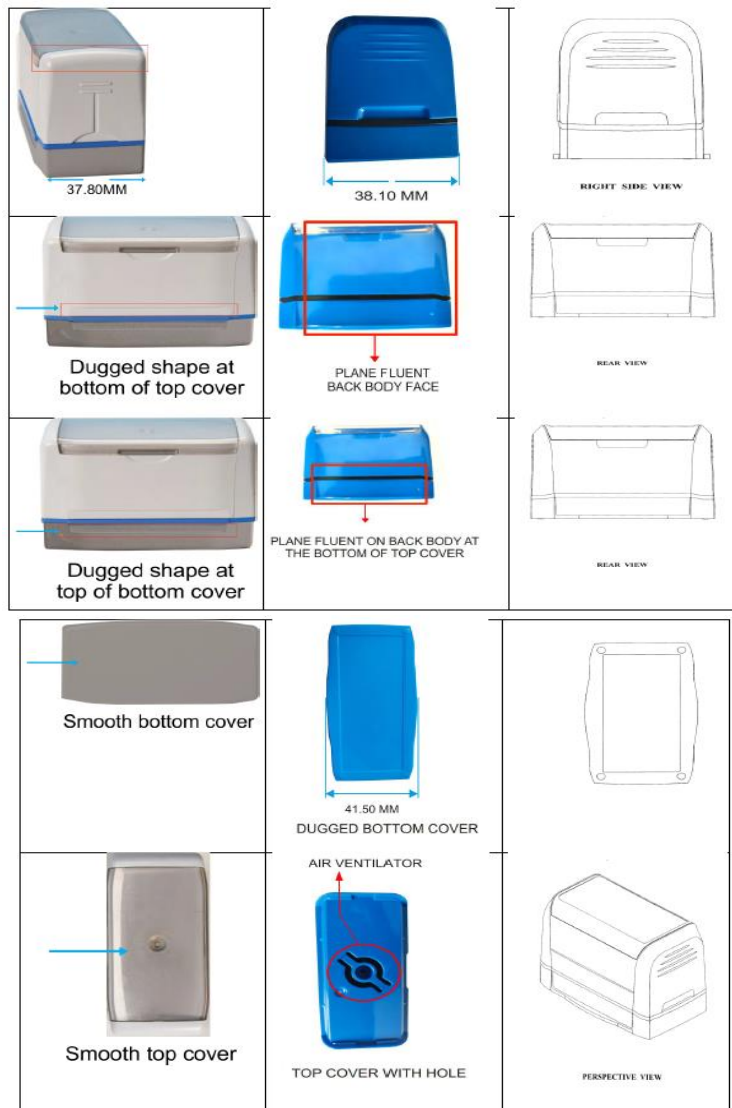
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Defendants' newly proposed alternate product	Plaintiffs' FLASHY Design	Plaintiffs' design registration representation's views (Design no. 272349)
Front  Smoky Top Cover with curved shape	TRODAT FLASHY 6904  Crystal Clear Top Cover	 FRONT VIEW
Front  Half square bigger front for top cover lock	TRODAT FLASHY 6904  Front opening with small lock	 FRONT VIEW
Front  Dugged ovel shape on center of top cover	TRODAT FLASHY 6904  BRAND NAME ON EMBOSSED SURFACE ON BOTTOM OF TOP COVER	 FRONT VIEW

Front  Dugged shape at bottom of top cover	 EMBOSSED SHAPE AT BOTTOM OF TOP COVER	 PERSPECTIVE VIEW
 Dugged Shaped At Top of Bottom Cover	 EMBOSSED SHAPE AT BOTTOM OF TOP COVER	 FRONT VIEW
 Dugged rectangle in middle of front of top cover of stamp	 EMBOSSED SHAPE AT BOTTOM OF TOP COVER	 FRONT VIEW





18. Thus, it is manifest that there are various distinguishing features in the defendant's alternate product, i.e., when looked at from the 'top view', a smoky glass is seen in comparison to the clear glass in the plaintiffs' product. Whereas, when looked at from the 'side view', a plunger shaped aberration on the sides attached to the grips, which are embossed with two lines can be seen, which is distinctive from the four lines embossed in the plaintiffs' product. Furthermore, when looked at from the 'bottom view', the surface is completely smooth in contrast to the plaintiffs' product, which has a dugged bottom along with four round embossed edges. When viewed from the front, there is dugged rectangle in middle of front of the top cover of stamp of the defendant, in comparison to the embossed shape at bottom of top cover, in the plaintiffs' product. Therefore, the proposed alternate product of the defendant looks visually different and has dissimilar visual effect, from the design of the plaintiffs. The overall getup, look and layout of the



defendant's proposed design, is substantively different, from the plaintiffs' registered suit designs. Thus, the defendant's proposed design does not appear to infringe upon the plaintiffs' registered design.

19. The court at this stage is not considering the novelty of the designs of the plaintiffs, or the defendant's plea of invalidity of the plaintiffs' suit design registrations. Further, the defendant has categorically stated during the course of hearing, that the plea of invalidity of the plaintiffs' registered designs is not pressed, for adjudication in the present application.

20. Considering the aforesaid comparison and finding, this Court is of the *prima facie* opinion that the proposed alternate design of the defendant, as noted hereinabove, falls outside the purview of the injunction order dated 28th October, 2022. Accordingly, the defendant is granted permission to proceed with the manufacturing and marketing of the proposed product of the defendant's design. However, the defendant shall scrupulously follow and abide by the specifications of the proposed alternate product design, and shall not vary or modify the same.

21. The defendant is also directed to maintain an account of its production and sales of the proposed alternate product design, which shall be filed before this Court, on quarterly basis."

6. Mr. Mehta, learned Senior Counsel, arguing for the appellants, submits that the tests adopted by the learned Single Judge, in arriving at the finding that the design of the new self-inking stamp, proposed to be manufactured by the respondent, does not infringe the design numbers 272348 and 272349 registered in favour of the appellants, are erroneous. He has placed reliance, in this context, on the well-known judgment of Ruma Pal J., as she then was, sitting singly in the High Court of Calcutta in ***Castrol India Ltd v Tide Water Oil Co. (I) Ltd***² which is generally regarded as laying down authoritative tests in the matter of design infringement. He has drawn our attention to the following paragraphs from the said decision:

²1994 SCC OnLine Cal 303



“22. The next question is whether there is sufficient resemblance between the allegedly infringing copy and the petitioner's registered design to found an action for infringement under section 53 of the Act. It is not every resemblance in respect of the same article which would be actionable at the instance of the registered proprietor of the design. The copy must be a fraudulent or obvious imitation. The word ‘imitation’ does not mean ‘duplication’ in the sense that the copy complained of need not be an exact replica. The word has been judicially considered but not defined with any degree of certainty. In **Best Product Ltd.** it was said in deciding the issue of infringement, it was necessary to break the article down into integers for descriptive purposes but in the ultimate result it is the article as a totality that must be compared and contrasted with the features of a shape and configuration shown in the totality observable from the representation of the design as registered. It was said that the Court must address its mind as to whether the design adopted by the defendants was substantially different from the design which was registered.

23. Apart from such overall resemblance in the design, the authorities have held that the Court is required to see in particular as to whether the essential part or the bases of the petitioner's claim for novelty forms part of the allegedly infringing copy. In **Best Products Ltd. v F.W. Woolworth & Company Ltd.**³ the essential part of the registered design of a whistling kettle was found by the Court to be the shape of the spout and the cap applied to it. The Court said that the very form of the registration emphasised that it was in respect of the audible alarm characteristic that the application of the plaintiff's registered design found its intended exploitation. The audible alarm, according to the learned Judge necessarily assumed a primary significance. The difference between the audible alarm of the plaintiff's kettle and that of the defendant's kettle as being marked, the action for infringement was dismissed (see: also in the context **Phillips v Harbro Rubber Company**⁴, and **Dunlop Rubber Co. Ltd. v Golf Ball Developments Ltd.**⁵).

24. The next task of the Court is to judge the similarity or difference through the eye alone and where the article in respect of which the design is applied is itself the object of purchase, through the eye of the purchaser. Thus in the case of **Benchairs Ltd. v Chair Center Ltd.**⁶, where the article to which registered design was applied was a chair. Russel L.J. said:

³ (1964) IX RPC 215

⁴ (1920) 34 RPC 233

⁵ (1931) 48 RPC 268, 281

⁶ 1974 RPC 429



“As we see it, our task is to look at these two chairs, to observe their similarities and differences, to see them together and separately, and to bear in mind that in the end the question whether or not the design of the defendant's chair is substantially different from that of the plaintiff is to be answered by consideration of the respective design as a whole: and apparently, though we do not think it affects our present decision, viewed as though through the eyes of a consumer or customer.”

25. In judging the articles solely by the eye the Court must see whether the defendant's version is an obvious or a fraudulent imitation.

26. In ***Dunlop Rubber Co. Ltd. v Golf Ball Developments Ltd.***, the meaning of the word ‘obvious’ and ‘fraudulent’ have been stated

“... ‘obvious’ means something which, as soon as you look at it, strikes one at once as being so like the original design, the registered design, as to be almost unmistakable. I think an obvious imitation is something which is very close to the original design, the resemblance to the original design being immediately apparent to the eye looking at the two.”

27. In a later portion of the judgment it was said:

“...fraudulent imitation seems to me to be an imitation which is based upon, and deliberately based upon, the registered design and is an imitation which may be less apparent than an obvious imitation; that is to say, you may have a more subtle distinction between the registered design and a fraudulent imitation and yet the fraudulent imitation, although it is different in some respects from the original, and in respects which render it not obviously an imitation may yet be an imitation, imitation perceptible when the two designs are closely scanned and accordingly an infringement.”

28. Applying these principles to the facts of the case before me I am prima facie of the view that the respondents are guilty of infringement of the petitioner's registered design.”

7. Having examined the order in the light of the law that applies, we do not find that a case for interference is made out.



8. Mr. Mehta contends that the learned Single Judge could not have broken up the features of design of the new proposed self-inking stamp of the respondent while effecting a comparison with the registered designs of the appellant. He submits that the article has to be seen as a whole *vis-a-vis* the registered design.

9. While we are aware of the principle regarding comparison of rival marks as a whole in trade mark law, there is no such inflexible principle in design law. No doubt, the Court is required to compare the allegedly infringing article of the respondent as a whole with the registered design of the appellant, and is not to undertake an article-to-article comparison.

10. Even so, the registration in respect of the design is granted of its shape and configuration. The certificate of registration of the Design certification certifies that novelty resides in the shape and configuration of the stamp of the plaintiff-appellant.

11. While “configuration” does not find definition in the Designs Act, it is etymologically understood as the manner in which the individual elements of a design are arranged together. One of us (C. Hari Shankar J), sitting singly, has also so opined, in *Bulgari SPA v Notandas GEMS Pvt Ltd*⁷.

12. Thus, when the configuration of the article constitutes one of the main elements of a design registration, we cannot fault the learned Single Judge for comparing the individual elements of the design of

⁷ (2022) 90 PTC 171



the new self-inking stamp of the respondent with the elements of the appellant's design.

13. In fact, we find that the impugned order of the learned Single Judge is an extremely well-reasoned decision, which even takes into account the difference in perception between the person of average intelligence and imperfect recollection from whose eyes trade mark infringement is to be examined, *vis-à-vis* the instructed eye, from whose perception design piracy is to be dealt with.

14. While examining a charge of design piracy, the Court is not to proceed from the point of view of a person of average intelligence and imperfect recollection, but has to examine the article *vis-à-vis* the registered design as it would appear to an instructed eye, which is aware of the features of the registered design. As such, the learned Single Judge, in our view, was justified in examining the individual features of the new self-inking stamp of the respondent *vis-à-vis* the registered design of the appellant and to come to a finding that it was not infringing in nature.

15. Moreover, we are sitting in appeal against an interlocutory order passed by the learned Single Judge and are bound by the discipline of the following paragraphs from the judgment of the Supreme Court in ***Wander Ltd v Antox India P Ltd***⁸:

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of

⁸ 1990 Supp SCC 727



the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in ***Printers (Mysore) Private Ltd. v Pothan Joseph***⁹

“... These principles are well established, but as has been observed by Viscount Simon in ***Charles Osenton & Co. v Jhanaton***¹⁰ ‘...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”

16. Even if we were to compare the design of the new self-inking stamp of the respondent *vis-à-vis* the appellant's registered design and to arrive at a *prima facie* view different from that of the learned Single Judge, that could not, therefore, constitute a basis for us to interfere.

17. Appeals in intellectual property matters, from interlocutory orders passed by the Commercial Court, are appeals on principle, not appeals on facts. So long as the learned Single Judge has applied the correct principles, this Court would not interfere, merely because, on applying the same principles to the facts before it, the Court may feel

⁹ AIR 1960 SC 1156

¹⁰ 1942 AC 130



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that an alternate, and perhaps, even more satisfactory conclusion can be drawn.

18. Within the limited scope of appellate jurisdiction vested in us, we are of the opinion that no case for interference with the impugned order of the learned Single Judge exists.

19. The appeal is accordingly dismissed in *limine*.

20. Needless to say, the observations contained in this judgment are only intended to dispose of the present appeal and would not affect the court while dealing with the suit or any other application that may be filed therein.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MAY 20, 2025

gs/dsn

[Click here to check corrigendum, if any](#)