

Bombay High Court Dietrich Engineering Consultant ... vs Campbell Engg.
Co on 25 September, 2009 Bench: S.C. Dharmadhikari 1

USJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2279 OF 2009

IN
SUIT (L) NO.1220 OF 2009

1.Dietrich Engineering Consultant Holdings
Z I Lages, Pieces A, Chemin du Devent
P O Box 9, CH-1024, Ecublens,
Switzerland

2.Dietrich Engineering Consultant
India Pvt. Ltd. a company
Incorporated under the companies
Act, 1956, having its office at

Churchgate House, 4th Floor,
32-34, Veer Nariman Road,
Fort, Mumbai

400 001

V/s.

.. Plaintiffs

1.Schist India & Ors.
having office at C-103, Shanti,
Unit No.G-15A, Top Class Enclave,
Bhoidapada, Sativali Road,
Vasai-East, Thane District 406 208

2.Shreepad Hegde

F1/31, Noopur Society,
Sector-22, Kopar Khairane,
Navi Mumbai 400 709

3.Nanda Kumar

residing at B-301, Hidden Treasure
Apartments, Ayappa Swamy Road,
6-3-1194, Somajiguda,
Hyderabad 500 082. (AP)
having office at Plot No.25,

Margadarshini Colony, Rasooloura,
Secundarabad.

4.Pankaj Mehta
Carrying on business in the name
and style of Metal Craft Industries
at 7, Pushpa Sadan, 2nd Carpenter
Street, Near Null Bazar, Mumbai

.. Defendants

::: Downloaded on - 09/06/2013 15:07:18 :::

.....

Mr. Janak Dwarkadas, Sr. Counsel a/w. Amit Jamsandekar i/by
Udwadia & Udeshi for the plaintiffs
Mr. Phiroze Palkhiwala, Sr. Counsel a/w. Xerxes Ranina &
Rajmani Varma i/by Navdeep Vora & Associates for defendant

Nos.1 to 3.

Mr. Madhukar Kalzunkar and Suhas Patil i/by Shreeram

Shirsat for defendant No.4.

.....

CORAM : S.C. DHARMADHIKARI, J.

RESERVED ON : 4th AUGUST, 2009

PRONOUNCED ON : 25th SEPTEMBER, 2009

ORAL JUDGMENT :

1. Considering the
ig bulk of the pleadings, papers and

documents produced, the number of Authorities cited and the oral arguments made for days together with Written Notes that this lengthy judgment is delivered at this Interlocutory stage. Suffice it to observe that the findings and conclusions are tentative and prima facie and shall not influence the Court while delivering the final Judgment. This is a Notice of Motion by the plaintiffs for interim reliefs in a suit which is filed for permanent injunction. 2. The prayers in the suit in so far as relevant for the present purpose reads as under :- (a) That the defendants, their agents, servants, employees, directors and any other person claiming thorough or under them be restrained by a permanent order and injunction of this Hon ble Court from in any manner, directly or indirectly,

using, imparting, disclosing the same, copying, storing on any medium, using it for manufacturing, marketing and / or selling Mobile Power Transfer System/s, Drum Contentment System, Powder Transfer System- Mobile, Lump Breaker Suction Lance, Micro-Powder Transfer System, Transbatch Feeder System, Batchmixers and Single Charge container or any variants or accessories thereof or otherwise dealing with the said confidential information particulars of which are given in para 7 of the plaint AND be restrained from selling and / or offering for to sale the Mobile Power Transfer System/s, Drum Contentment System, Powder Transfer System-Mobile, Lump breaker Suction Lance, Micro- Powder Transfer System, Transbatch Feeder System and Single charge container or any variants or accessories thereof manufactured by the defendants by using the said confidential information, particulars of which are given in para 7 of the plaint;

(b) That the defendants, their agents, servants employees or any other persons claiming through or under them be restrained by a permanent order and injunction of this Hon ble Court from in any manner, directly or indirectly, from using, making copies of the drawings, details of which are given in Exhibit C hereto, in respect of Mobile Power Transfer System/s, Drum contentment System, Powder Transfer System-Mobile, Lump Breaker Suction Lance, Micro-Powder Transfer System, Transbatch Feeder System, Batchmixers and Single charge Container or any variants or accessories thereof, or storing the same in any medium, making, manufacturing or cause to make or manufacture the Mobile Power Transfer System/s, Drum Contentment System, Powder Transfer System-Mobile, Lump Breaker Suction Lance, Micro- Powder Transfer System, Transbatch Feeder System, Batchmixers and Single Charge Container or any variants or accessories thereof or making or cause to make three dimensional depiction or two dimensional depiction of the three dimensional depiction or in any manner using the same so as to infringe the plaintiffs Copyright in the drawings, details of which are given in Exhibit C hereto;

3. It is the case of the plaintiffs that the 1 st plaintiff is a Company incorporated under the Companies Act and registered under the laws of Switzerland. The 2nd plaintiff is a Company incorporated under the provisions of Companies Act, 1956 having its registered office at the address mentioned in the title. The plaintiffs are, inter alia, engaged in the business of development, manufacturing and marketing of POWDER HANDLING EQUIPMENTS AND SYSTEM . It is their case that the unique technology developed by 1 st plaintiff offered an almost unlimited number of possible applications. The applications range from conveying raw materials, introducing intermediate products during various phases of production process, handling the final product etc. The machine manufactured in India by the 2nd plaintiff by using the know how and confidential information of 1 st plaintiffs, is used in several pharmaceutical and chemical companies by India and Overseas. The technology of the 1st plaintiff offers significant benefits in the prevention of explosions and guarantees Hygiene and complete containment of the product whenever necessary. It is the case of the plaintiffs that the 1st plaintiff has only authorized and allowed the use of know-how / confidential information to the 2nd plaintiff in India and no one else. 4. So far as the 2nd plaintiff is concerned, it is a joint venture of 1st plaintiff and one Patel Group, each holding 50% of the Issued and

paid-up share capital of the 2nd plaintiff. The 1st plaintiff and the Patel Group have entered into a share subscription and share holders agreement dated 9th February, 2005 setting out their respective roles and responsibilities, the area of co- operation with regard to the management and administration of the 2nd plaintiff. 5. The plaintiffs are not aware of the exact constitution of the 1st defendant but it is alleged that the 1st defendant is a Company formed by the 2nd defendant who is an ex-employee of 2nd plaintiff. The 3rd defendant is an agent of the 1st defendant and was also an ex-employee of one GMM Pfaudler Ltd. (hereinafter referred to as the said Pfaudler) in which Patel Group has substantial share holding. The 3rd defendant was an employee of the said Pfaudler and was incharge of Sales and Marketing of their products in Andra Pradesh and Karnataka. The said Pfaudler Ltd. and 2nd plaintiff are part of the Patel Group and have common customers in the pharmaceutical and chemical industries. The 4th defendant was a supplier / fabricator of 2nd plaintiff of some components of the PTS machines sold by the plaintiff and only for that purpose 2nd plaintiff has given drawings and other proprietary information to the 4th defendant. 6. The allegations are that the defendants are carrying on business of manufacturing machinery identical to that of the plaintiffs by unauthorizedly, illegally and in breach of their contractual obligations of Trust which are Express and / or implied using the confidential information and know-how and by infringement of the 1st plaintiffs Copyrights. The plaintiffs are not aware of the exact constitution of the 4th defendant. 7. It is stated that the suit is filed to prevent unauthorized and illegal use of the plaintiffs confidential information and infringement of the 1st plaintiffs Copyright in the drawings committed and / or likely to be committed by the defendant. 8. The plaintiff states that pursuant to agreement dated 9th February, 2005 between the 1st plaintiff and the Patel Group, the 1st plaintiff executed in favour of the 2nd plaintiff an agreement dated 9th February, 2005 granting the 2nd plaintiff right to use certain know-how / confidential information and to manufacture, produce, process, Sale and distribution of the products produced by the 2nd plaintiff. 9. Annexure B is a copy of the said agreement. 10. It is alleged that the 1st plaintiff has over the years by spending tremendous amount of money, labour and skill has developed the know-how / confidential information in manufacturing and marketing the POWDER HANDLING EQUIPMENTS AND SYSTEM . The description of the machines manufactured and marked is set out in para 6 of the plaint. 11. Paragraphs 7 to 9 of the plaint are relevant for the purposes of the present proceedings and read thus :- 7. The Know-how / confidential information developed and owned by the 1st plaintiff includes manufacturing process, operating procedure, specification, models diagrams, logic diagrams, PI Diagrams process and Instrumentation Diagrams, control panel specifications, drawings of various parts of machines and various components thereof including details of which are given in Exhibit hereto, patented or unpatented inventions which suits the various components and drawings, specifications of various parts, drawings/ designs of double entry PTS, customer list, cost of production, price strategy of the products, list of suppliers etc. in respect of Mobile Powder Transfer System, Drum Contentment System, Powder Transfer

System-Mobile, Lump Breaker Suction Lance, Micro- Powder Transfer System, Transbatch Feeder System and Single Change Container and also various accessories in respect of these machines and the same is herein after referred to as the said confidential information . 8. The said confidential information of the 1st plaintiff is not available in the public domain and the same is developed by the 1st plaintiff. The said confidential information is very valuable intellectual property of the 1st plaintiff. The said confidential information is disclosed by the 1st plaintiff to its employees and associated companies under a very strict obligation to maintain secrecy of the same. The 1st plaintiff is the owner of the said confidential information. Under the Agreement dated 9th February, 2005, the said confidential information is disclosed by the 1st plaintiff to the 2nd plaintiff and allowed to use the same on the terms more particularly mentioned in the Agreement. 9. The plaintiffs state that the said confidential information is highly confidential and trade secret of the plaintiffs and not available in the public domain and therefore the same is not annexed to the plaint. If the same is annexed to the plaint then it wil cease to be confidential information and shall be misused in future and the whole purpose of the present suit shall be frustrated. However, the plaintiffs are ready and willing to file the said confidential information in a sealed envelope in this Hon ble Court if so desired or considered necessary. 12. It is then alleged that the 1st plaintiff is also owner of the Copyright in the industrial drawings which are part of the confidential information. The components which are more particularly referred in para 10 of the plaint are stated to be manufactured on the basis of these drawings. These drawings are prepared to suit the over all functions of the machine and the confidential information. The drawings are prepared at Switzerland by the 1st plaintiff and they are the owners thereof. These drawings are original and the plaintiffs have a Copyright in the same. Therefore, the plaintiffs are entitled to claim protection in respect thereof in India. 13. The 1st plaintiff is also the owner of various inventions which are patented in Switzerland and other parts of Europe in respect of various components of machineries manufactured by the 1st plaintiff. 14. It is stated that the 2nd defendant joined the services of 2nd plaintiff on 3rd January, 2005 as Manager-System. The appointment letter is dated 3rd January, 2005 and terms and conditions are set out in the same. The 2 nd defendant was initially appointed on probation for a period of six months and thereafter he was confirmed in the employment, as his work was found to be satisfactory. Copies of these letters are enclosed to the plaint as Annexures E and F 15. It is stated that the 2nd defendant was in a key position in the employment. It was necessary to disclose confidential information to him. The same was disclosed to him in confidence and trust. He was under an obligation to maintain secrecy and use it only for the benefit of the plaintiffs. The said confidential information was disclosed so that he could have discharged his duties effectively. The 2nd defendant is under an obligation of trust, express and / implied to maintain secrecy and use this information during the course of his employment with 2nd plaintiff and not otherwise. It is stated that the said confidential information was disclosed to the 2nd defendant in trust by 2nd plaintiff. The information was under the control and supervision of the 2nd

defendant and / or he always had access to the same. 16. It is stated that 2nd defendant continued to be in employment of 2nd plaintiff for a period of 3 years, 2 months and 21 days. During this period, the 2nd defendant was trained by 2nd plaintiff with regard to all aspects of the products that were manufactured by the plaintiffs. The training included engineering, operations, manufacturing, maintenance, marketing and all other aspects in relation to the products of the plaintiffs. The plaintiffs further state that the training received by defendant No.2 including his visits to the 1st plaintiff at Switzerland on various occasions, for total time period of 43 days was at the cost of 2nd plaintiff. The plaintiff states that Mr. Fredric Dietrich, the Managing Director of the plaintiff has personally trained 2nd defendant in Switzerland and during his several visits to India. The plaintiffs incurred tremendous expenses in his training and also during this training the confidential information was disclosed from time to time. 17. The 2nd defendant is after completion of his training

underwent	Knowledge	Assessment	Test	with	regard	to	the
engineering	operations,	manufacturing,					
marketing and all other aspects of the plaintiffs							products

manufactured by using the said confidential information. The test would prove that the plaintiff was specifically trained with regard to Powder Transfer Solution which is being manufactured by the plaintiffs by using the said confidential information. The said knowledge assessment also had confidential clauses to which the 2nd defendant had agreed to and accepted. Thus, it is stated that the 2nd defendant had extensive knowledge of the confidential information and it was intended that he uses the same for the purposes of business of the plaintiffs. These allegations are repeated throughout the plaint and it is alleged that the 2nd defendant prior to joining the 2nd plaintiff was employed with Companies, whose name are listed in para 18 of the plaint for a total period of 12 years. However, none of these companies had nothing to offer even remotely in the area of Powder Transfer and / or Powder Transfer Equipment or other machines of the plaintiffs. 18. It is alleged that the 3rd defendant was an employee of Pfaudler Ltd. and he was heading the sales and marketing activities for Karnataka region. He joined Pfaudler Ltd. as a Branch Manager on June 18th 2005 and was in their employment till February, 18th 2008, the details of his employment with that Company are set out in para 19 and similar allegations are made as against him. 19. So far as 4th defendant is concerned, it is stated that he was a supplier of a few components viz. PTS Body, PTS Cover, Suction Lance, Suction pot, Delumper of Mobile Powder Transfer System to the plaintiffs. These components were manufactured by the 4th defendant for the plaintiffs. To manufacture these components as per their requirement, the 2nd plaintiff has given the copies of the drawings to the 4th defendant. These drawings are still in possession of the 4th defendant. Even he is therefore entitled to maintain secrecy of the same and use them only for the purposes of

the plaintiffs and none else. 20. It is stated that 2nd defendant resigned from the 2nd plaintiffs employment w.e.f. 22nd February, 2008. By letter addressed to the 2nd plaintiff, it was stated by 2nd defendant that he would resign and would also handover complete charge to Mr. Rajesh Vyas, Vikram Rajput, D. Joshi of the 2nd plaintiff. He also obtained the list of materials / documents which he handed over to the 2 nd plaintiffs. He also requested the 2nd plaintiff for relieving letter recording that he had left the employment w.e.f. 22nd February, 2008. It is stated that these documents are set out in e-mail dated 15th February, 2008. It is further stated that the 2nd plaintiff accepted the resignation letter of the 2nd defendant and relieved him from the services on 23rd February, 2008. It is then alleged that by letter dated 10th March, 2008, the 2nd plaintiff expressly informed and called upon the 2nd defendant to return all papers, documents and products belonging to plaintiffs. He was also warned against disclosing and divulging any information about the affairs of the business of the plaintiffs and its data which was known to defendant No.2 as the same were proprietary in nature. He was also paid his legal dues. 21. It is alleged that the 2nd defendant during the course of his employment with the 2nd plaintiff was in over all control of the 2nd plaintiff s business. He used to represent the plaintiffs in various exhibitions, clients meetings, negotiations etc. on the basis of the confidential information and on instructions of the plaintiff. The price negotiations, clients meetings, correspondence with the customers, purchase orders, quotations of specific products etc. was under the control of the 2nd defendant. 22. It is stated that even the 3rd defendant resigned from the services of the said Pfaudler Ltd. around the same time as of the 2nd defendant. It is alleged that 3rd defendant is now working as an Agent of the 1st and 2nd defendants and marketing and selling the machines manufactured by them. It appears that the plaintiffs are not getting manufactured components of their machines from the 4th defendant but the drawings given to the 4th defendant by the plaintiffs, listed at Annexure C to the plaint are still in possession of the 4th defendant. 23. In para 26 and 27 it is alleged that ; - 26. The plaintiffs state that the plaintiffs were shocked to learn that defendant No.2 incorporated the 1st defendant and started manufacturing the marketing identical Mobile Powder Transfer System like the plaintiffs by using the said confidential information. The use of the said confidential information by the 2nd defendant is in breach of trust and obligation to maintain the secrecy of the same. The plaintiffs state that to manufacture the Mobile Powder Transfer System like the plaintiffs it is necessary to have the said confidential information and the 2nd defendant has the same in his possession. The plaintiffs have disclosed and given copies of the confidential information in respect of the Mobile Powder Transfer System to the 2nd defendant during the course of his employment with the 2nd plaintiff and the same includes manufacturing process, operating procedure, specification, models diagrams, logic diagrams, control panel specifications, PI diagrams drawings of various parts of machines and various components thereof, patented or unpatented inventions which suit the various components and drawings, specifications of various parts, drawings/designs of double entry PTS, customer list, cost of production, price strategy, list of sup-

pliers etc. The Mobile Powder Transfer System has various components such as body, butterfly valve, actuators, control panels pressure regulators, camlok and fittings, triclover and ferrules, filter frames, delumer blades, wooden box, halar coating, PTFE gasket, termocol chips and other components and miscellaneous hardware. These components are manufactured and assembled as per the drawings/specifications, diagrams and assembled as per the operating procedure. During the employment of the 2nd defendant with the 2nd plaintiff, the 2nd defendant use to personally interact with various suppliers of the components of Mobile Powder Transfer System to the 2nd plaintiff and use to instruct them on the manufacturing process on the basis of the said confidential information. The 2nd defendant in breach of trust and obligation to maintain the secrecy and use the said confidential information for the benefit of the plaintiffs has disclosed the same to the 1st defendant and / or its employees and the suppliers. The 1st and the 2nd defendants are manufacturing, marketing and selling Mobile Powder Transfer System and other equipment, identical as of the plaintiffs by using the said confidential information. Defendant No.3 represents defendant No.1 and defendant No.2 in South India and promotes their products to the same customers that he interacted with while in the products of the plaintiffs.

27. The plaintiffs state that the components of Mobile Powder Transfer System such as filter cartridge and PTS body can only be manufactured on the basis of the drawings of the same which are listed in Exhibit C hereto. The filter cartridge and pTS body, Delumper, Suction Lance, of the Mobile Powder Transfer System manufactured by the 1st and 2nd defendant is identical / substantially similar to the plaintiffs filter cartridge and PTS body. The 1st and 2nd defendants have used the drawings of the plaintiffs which were given to the 2nd defendant during the course of the employment with the 2 nd plaintiff and have depicted in three dimensions and manufactured the components and / or the 1st and the 2nd defendants have dismantled the filter cartridge of the plaintiffs and prepared the drawings and then manufactured the same. The plaintiff states that such activities of copying drawings and making another drawing of the same and manufacturing components amounts to infringement of the plaintiffs artistic work of drawings.

24. Thereafter, it is alleged that 4th defendant has been supplying identical components of Mobile Powder Transfer System to 1st and 2nd defendant. This is all done on the basis of drawings which are in his possession. It is alleged that defendant ig Nos.1 and 2 has approached and booked orders with several parties (listed in para 29) by using the confidential information. These companies / entities are the clients of the plaintiffs. There are several orders which have been finalized by the defendants are various entities with regard to the said PTS and this is adversely affecting the business of the plaintiffs and resulting in plaintiffs incurring huge losses. The 3rd defendant is representing 1st and 2nd defendants. The details of how the orders were obtained from some of the clients are set out in para 30 to 33. In para 34 and 35 the plaintiffs allege thus ; -

34. The plaintiffs state that after realizing that the defendants are misusing and abusing the plaintiffs confidential information and the Copyright the plaintiffs further investigated the matter internally and the plaintiffs realized that the 2nd defendant was dishonestly acting contrary to the

interest of the plaintiffs even during the course of his employment with the 2nd plaintiff. The plaintiffs recovered computer used by the 2nd defendant during the course of his employment with the 2nd defendant and found that the 2nd defendant was copying and preparing for his illegal activities when he was in the employment. The plaintiffs found the catalogue prepared by the 2nd defendant for the 1st defendant which is again copied from the catalogue of the plaintiffs. Hereto annexed and marked as Exhibit R is a copy of the printout taken from the computer which was used by the 2nd defendant. 35. The 2nd defendant for his personal gain and for the benefit of the 1st defendant is negotiating, quoting and planning their pricing and marketing strategy by using the said confidential information. The 2nd defendant during his employment with the 2nd plaintiff was trained and disclosed to negotiations, quotations and pricing and marketing strategy of the plaintiffs and the same is being used by the 2nd defendant to commit the acts of unfair trading by the 2nd defendant and to cause injury, loss and damage to the plaintiffs. 25. In these circumstances and making further allegations in paragraphs 36 and 38, the plaintiffs have claimed the aforementioned reliefs. 26. In para 48 of the plaint, this is what is alleged to support the request for grant of ex-parte ad-interim reliefs :- 48. The plaintiffs submit that the said confidential information is a very valuable property of the plaintiffs and the same is in possession of the defendants. The defendants are misusing the same is in possession of the defendants. The defendants are misusing the same for their personal gain. The plaintiffs apprehend that if the notice of application for the ad- interim reliefs is given to the defendants then the defendants shall make further copies, shall disclose the same to third parties or part possession of the same, destroy the same, make the said confidential information public and in such case the present suit shall become infructuous and the plaintiffs will lose its proprietary rights and will not be in a position to prevent the misuse of the said confidential information. Therefore, the plaintiffs submit that the ad interim reliefs as prayed for be granted to the plaintiffs without requiring to give notice of the application to the defendants. 27. To claim the reliefs in terms of the aforementioned final prayers, the Notice of Motion was moved and on the basis of the affidavits filed in support and the plaint allegations, the application was made for ex-parte ad- interim reliefs. After hearing the plaintiffs, this Court on 8th May, 2009 granted ad-interim reliefs in terms of prayer clause (a),(i),(ii),(iii). These prayers read as under:- (a) That pending the hearing and final disposal of the present suit, the defendants, their agents, servants, directors or any other person claiming through or under them be restrained by a permanent order and injunction of this Hon ble Court from: (i) in any manner, directly or indirectly, using, imparting, disclosing the same, copying, storing on any medium, using it for manufacturing, marketing and / or selling Mobile Power Transfer System/s, Drums Contentment System, Powder Transfer System- Mobile, Lump Breaker Suction Lance, Micro-Powder Transfer System, Transbatch Feeder System, Batchmixers and Single Charge Container or any variants or accessories thereof or otherwise dealing with the said confidential information particulars of which are given in para 7 of the plaint AND be restrained from selling and / or offering for to sale the Mobile Power Transfer System/s, Drum Contentment

System, Powder Transfer System-Mobile, Lump Breaker Suction Lance, Micro-Powder Transfer System, Transbatch Feeder System, Batchmixers and Single Charge Container or any variants or accessories thereof manufactured by the defendants by using the said confidential information, particulars of which are given in para 7 of the plaint; (ii) in any manner, directly or indirectly, from using, making copies of the drawings, details of which given in Exhibit C hereto, in respect of Mobile Powder Transfer System/s, Drums Contentment System, Powder Transfer System-Mobile, Lump Breaker Suction Lance, Micro-Powder Transfer System, Transbatch Feeder System, Batchmixers and Single Charge Container or any variants or accessories thereof, or storing the same in any medium, making, manufacturing or cause to make or manufacture the Mobile Powder Transfer System/s, Drum, Drum Contentment System, Powder Transfer System-Mobile, Lump Breaker Suction Lance, Micro-Powder Transfer System, Transbatch Feeder System, Batchmixers and Single Charge Container or any variants or accessories thereof or making or cause to make three dimensional depiction or two dimensional depiction of the three dimensional depiction or in any manner using the same so as to infringe the plaintiffs Copyright in the drawings, details of which are given in Exhibit C hereto; (iii) in any manner, directly or indirectly, representing the members of the public and the traders that the defendants are associated with and / or have any connection with the plaintiffs; 28. After the plaint and proceedings were served on the defendants, the defendants have applied for vacating this ad-interim order and for dismissal of the notice of motion. On behalf of defendant No.2 a detailed reply has been filed by him which is affirmed on 30th June, 2009. His case is that he is an Engineering Graduate and holds Post Graduate Diploma in marketing which is equivalent to M.B.A. with an excellent academic record. He is a partner in Schist India named as 1st defendant in the proceedings. His affidavit is filed on behalf of himself and the 1st defendant. He has highlighted his career achievements. He has stated that he passed his Bachelor of Engineering and Production in First Class and distinction. After completing his Post Graduation Diploma Course, he worked first with a Canadian Company manufacturing Heat Exchanger in Pune, which had just set up their operation in India. After working there for 4 years, he joined Kilburn Engineering Ltd., Mumbai which inter-alia manufactures and sells Powder Handling Equipment including Powder Transfer System. He worked in the Powder Handling Equipment Department of Kilburn Engineering as Senior Engineer (Marketing) for one year. He was thereafter, employed with Koch-Glitsch India Ltd. Which had just set up its operation in India. The Company required experienced marketing personnel having a strong engineering background. This company is a US based Company and a world leader in manufacturing, inter alia, specialised Equipments. He submits that all three companies dealt largely with the pharmaceutical and chemical industries and in the course of his 12 years experience with them, he got wide and in-depth knowledge and experience, developed several and wide contacts as well as reputation for himself among the manufacturers. Since he came in contact with top pharmaceutical and chemical companies in India as also several lesser and relatively unknown companies in the field, he had developed wide ranging

technical knowledge in addition to his academic training. Even when he was employed with Kilburn Engineering Ltd., he had received some training. 29. He, therefore, submits that the suit is entirely mischievous and mala fide. It is filed by the plaintiff only to prevent the defendants from carrying on their bonafide business activities. It is contended that the plaintiffs are avoiding competition. He submits that several false statements are made and the ex-parte ad-interim order prejudices him to a great extent. He has pointed out that the photographs attached at Annexure N to the plaint are equipment manufactured by defendant NO.1 and sold and installed at Dr. Reddy's Laboratory Ltd. and it is alleged that this equipment is identical to that of the plaintiff No.2. However, the photograph annexed to the plaint is not of the defendant No.1's equipments at all. The photographs are mischievously inserted to mislead this Court. 30. It is also stated by defendant Nos. 1 and 2 that the case that as set out in the plaint is that defendant No.1 is manufacturing Mobile Powder Transfer System which is identical to those of the plaintiffs. However, defendant No.1 has not manufactured a single Mobile Powder Transfer System. It is then contended that defendant No.4 in breach of the obligation to maintain secrecy of the drawings given to him is supplying identical components to defendant Nos.1 and 2. The defendant Nos.1 and 2 are getting their fabrication work done by other fabricators. The defendant Nos.1 and 2 have pointed out that it is false to state that none of the three companies wherein defendant No.2 was previously have anything to offer even remotely in the area of Powder Transfer and or Powder Transfer Equipment or other machines of the plaintiffs. In fact, Kilburn Engineering Ltd. was directly engaged in manufacturing Powder Transfer Equipment and the defendant No.2 was employed in the division which manufactures such equipments. The defendant Nos.2 has annexed to his affidavit a copy of catalogue of Kilburn Engineering Ltd. It is alleged that the plaintiffs have set up a false case of the defendant No.2 being sent abroad. On the other hand, trip abroad was for attending the exhibitions as well as conference and for installation of equipments. It is then stated by him that the plaintiffs have falsely stated that the 1st defendant is supplying the products to the plaintiffs clients. In fact, two companies namely Dr. Reddy Laboratory Ltd. and Granuales India Ltd. were the clients of plaintiff No.2 during the employment of defendant No.2. The others are not clients of the plaintiffs. 31. Without prejudice, he has pointed out that the Powder Transfer System can be manufactured easily by having the components fabricated. In any event, the defendant No.1 have not manufactured these systems only on the basis of drawings annexed as Annexure C to the plaint. 32. The principle objection on affidavit is that the so called confidential information referred to in para 7 is wild and vague. It does not disclose what information was particularly confidential and why. The plaintiffs have misled this Court as they are aware that the 2nd defendant has no information with him which could be considered or categorized as confidential or which 2nd defendant can misuse as alleged in the plaint. The information thus stated to be given is not at all confidential information assuming any information as alleged was given. The plaintiffs have, therefore, obtained ex-parte order by making false and misleading statements.

In para 5 of the affidavit in reply the defendant No.2 has pointed out that 1st defendant has developed a wide customer base and has supplied its equipments to about 15 companies, around 60 Powder Handling Systems have already been supplied by defendant No.1 to various parties and production of the client is dependant upon the 1st defendant s equipments. Therefore, all the commitments made to the companies could not be fulfilled by the defendant Nos.1 and 2. 33. After summarizing the allegations against the defendant Nos.1 and 2 in para 6, the defendant No.2 states thus :- None of the above have any basis whatsoever, in fact or in law. Wide, wild and vague statements and allegation have been made by the plaintiffs without any substantiation whatsoever. The fact that the allegation in the plaint are falsely made on oath without any knowledge of the correctness thereof, is apparent from the fact that no basis whatsoever is shown or exists on the basis of which such allegations have been made, and the said allegation have been made wildly and malafide. The basic cause of action in the suit is that the equipment of the defendant No.1 is identical or substantially similar to that of the plaintiffs. However, no photograph of the defendant No.1 s equipment have been annexed to the plaint along with those of the plaintiffs to enable comparison. Nor has it been shown that the defendant No.1 s equipment has in fact been manufactured as per the plaintiffs drawings. In fact, it is obvious that the plaintiffs have never even seen or operated the defendant No.1 s equipment. ig There is no averment in the plaint that they have. It is impossible to know whether or not the defendant No.1 s Powder Transfer System is similar to that of the plaintiffs without operating it. The control panel controls the operation of the equipment, and different manufacturers use different circuitry in the control panel. The circuitry and operation of the defendant No.1 s control panel is entirely different from that of the plaintiffs as stated hereinafter. However, whether the two are sililar or not can be found out only on comparison of the circuit diagram and operating the equipment, which the plaintiff s have obviously not done. Similarly, no basis of comparison has been provided even with respect to the other equipment, being the Delumper, bag filling station and suction lance. The defendant No.1 does not have a catalogue, and there was no basis for the plaintiffs to arrive at their contention of the allegedly identical or substantially similar nature of the equipment on the basis of any catalogue. Further, the photographs at Exhibit N to the plaint are of equipment not manufactured by the defendant No.1 as stated hereafter. It is therefore clear that the allegations in the plaint are made on oath and stated to be to the knowledge of the signatory to the plaint, without actually having any knowledge thereof, and are false. They are made only for the purpose of wrongly seeking relief from this Hon ble Court, and clearly amount to perjury. No material whatsoever has been produced in the plaint to establish or even indicate any infringement of alleged Copyright in drawings or the similarity in the equipment of the plaintiffs and the defendant No.1 Whatever material has been produced only establishes the differences between the said equipment. 34. In para 7.1, the defendant No.2 has stated that the correct position is that, at the time of his joining the plaintiff No.2, he already had vast technical and marketing know how and experience of 12 years in the field. He had also developed

a wide reputation and goodwill in the market for his work. It was not he who approached the plaintiff No.2 for employment ig but it was plaintiff No.2 who approached him through the said Pfduler Ltd. At the time of his joining, the plaintiff No.2 had not even been registered as a Company, under the Companies Act, 1956. He has referred to the meeting with one Mr. Frederic Dietrich of plaintiff No.1 before he joined plaintiff No.2 He states that plaintiff No.2 still to be registered. It was the plaintiff who were looking forward to the services of a person with technical and marketing experience for their Indian operations. He has set out as to how he assisted the plaintiff in manufacturing Powder Transfer System. Thus, on the basis of the statements made in para 7.1 to 7.3 of the affidavit, it is urged that the defendant No.2 is fully knowledgeable about the assembly, marketing of the equipments. He submits that the visit to Switzerland was to familiarize with the manner in which equipment is manufactured by plaintiff No.1 in Switzerland. He has pointed out that there is no question of any training being imparted nor any assessment being taken. In para 7.6, 7.7 and 7.8 of his affidavit in reply, this is what is stated :- 7.6 I had made all arrangements on my own and from my own knowledge and experience for the supply of components from the suppliers known to me, as also for fabrication and assembly, and the first such equipment came to be assembled in or about the last week of April, 2005 under my supervision. All un-fabricated components were bought out from suppliers with whom I had contacts, and were as per the standard components manufactured by them and advertised by their catalogues. As far as fabrication igis concerned, there were two fabricators involved being one M/s. Keshar Automation and the defendant No.4 herein. I had met the defendant No.4 and after negotiations, he had agreed to fabricate the Powder Transfer System body on the basis of the drawings of the plaintiff No.2. The plaintiff No.2 followed the system of having drawings made for all the fabricated components, even though most of the components are manufactured using materials manufactured to standard international specifications and could therefore be easily fabricated even on the basis of mere dimensions, without the necessity of drawings. However, since the drawings were available, I used to handover the same to the fabricators for the purpose fabricating the various parts involved. I was merely to have the components fabricated on the basis of the drawings supplied, which I did. It is important to note that the plaintiff No.2 (and in fact even the plaintiff NO.1) do not manufacture any of the components or parts of the powder handling equipment on their own. All the components are bought out from standard catalogues of various companies, and the fabrication work is also outsourced to various local fabricators. The defendant No.1 only assembles the various parts and components, which is a process requiring even very little technical knowledge or skill, and thereafter supplies the same to their customers. There is therefore, practically no manufacturing process of which any special knowledge is required for the purpose of manufacturing the said equipment by the defendant No.1, as the same consists mainly of simple assembly of various components and parts. All manufacturing expertise of various components and parts lies only with manufacturers and fabricators, and not with defendant No.1 at all. In fact, even the control panel, which is

the nerve centre of the equipment, is not even assembled by the plaintiff No.2, but was manufactured and supplied to the plaintiff N.2 either by Festo Ltd. or SMC Ltd, being two companies in the field. 7.7. I would specifically mention here that I was never given any technical or scientific training with respect to the manner in which the final specifications and designs were arrived at, and the principles or trial procedures involved in arriving at the design and specifications. The general scientific and technical principles involved were already known to me as they would be known to any competent engineer. However, knowledge, expertise, Ingenuity and know-how of the following are vitally important to arrive at the design and specifications of powder transfer systems: The philosophy involved in the control panel. The calculations and trial procedures involved in fixing the PTS body height and diameter. The calculations and trial procedure involved in arriving at the angle of inlet of PTS body. The calculation of the size of the inlet. The calculation and trial procedres involved in arriving at the correct hose pipe diameter. The calculation and trial procedures involved in arriving at the required quantity and pressures / suction of air vacuum. The calculation and trial procedures involved in arriving at the sizes of air and vacuum pipe. The methodology involved in carrying out the trials and arriving at the trial data. The precautions and error correction required on collected data. Understanding, applying and inferring the acquired data. 7.8 The aforesaid and other information which would be required for the purpose of developing the equipment of plaintiff No.1 was never revealed to me, and in fact was not even required to be revealed to me as I was not involved with the same in any manner as I was not engaged in the development of any equipment for the plaintiffs, and in fact merely got the equipment fabricated on the basis of the drawings supplied by the plaintiffs to me. In other words, I was involved in using my expertise to formulate marketing strategies in India using my contacts and knowledge of the sourcing of materials and components, and having fabrication work caried out as per the drawings supplied to me. I say that the said drawings were used only for the purpose of manufacturing the plaintiffs equipment (which is very different in all relevant parameters from the equipment now manufactured by the defendant No.1) and were retruned to the plaintiffs at the time of my leaving the plaintiff No.2 company. I have not directly or indirectly used or relied upon any of the said drawings given to me by the plaintiff, for manufacturing the equipment of the defendant No.1, and the equipment of the defendant No.1 is developed from ground up as stated in details hereinafter. Further, as also stated hereafter, I deny that the said drawings depict any original work of the plaintiff No.1. As stated herein, there are several manufacturers in the market who manufacture similar PTS to that of the plaintiffs, using similar or identical components. Such PTS system are widely available in the market, and operate on the same principle and follow the same general design. They are also usually made using materials available in the market, which are manufactured to internationally standard specifications. Each of these have been developed and refined by the manufacturers to arrive at the final product, as has been done by the manufacturers to arrive at final product, as has been done by the defendant No.1. The mere fact that the

plaintiff has made drawings of their system, which is similar to that of other manufacturers in the market, and also made from components manufactured to internationally standard specifications and freely available in the market, does not mean that the other manufacturers are precluded from manufacturing their systems which are similar in shape, design and operation to that of the plaintiffs, on the basis that such manufacturers will be in breach of the plaintiff No.1's alleged Copyright. As stated above, the basic system design of PTS equipment, i.e. vertical pipe with flange at top and bottom, filter at top covered by a cap for suction and pressure, and an inlet along the height of the pipe, and four valves operated by actuators, is well known and established in the market. Further the equipment of the defendant No.1 is independently designed, and substantially different from that of the plaintiffs as stated hereafter. I have dealt with each of the so called confidential information as alleged by the plaintiffs in paragraph 7 of the plaint while dealing with the said photograph hereinafter, and I repeat what is stated therein to establish the falsity of the plaintiffs' contention that the so called confidential information was at all confidential and / or was supplied to me. 35. Thus, it is his case that the basic design of PTS equipment is well known and established in the market. There is nothing in the manufacture of the same which is unique to the plaintiffs. Therefore, there is no question of any confidential information much less drawings and designs being supplied and, therefore, misused. He submits that other manufacturers apart from plaintiffs are using identical or substantially similar designs because the basic design is identical. He has relied upon catalogues of two other companies. Thus in para 8.4, he has asserted that the principles on which Powder Handling Equipment works are well known both scientifically and in the trade, and have been in existence for a long time and used by several manufacturers. The basic designs being the same, different manufacturers have their own inputs to optimize the efficiency and functionality of the equipment according to each manufacturer's control system. The entire system of defendant No.1 has been researched and developed and manufactured without using or referring to or copying the drawings of the plaintiffs in any manner whatsoever. In para 9.3 onwards the defendant No.2 has given the basic description of the equipment and process involved in Powder Transfer System. He has gone ahead and pointed out as to how the Powder Transfer System is made. The PTS body is of simple pipe structure made by local fabricators, by welding together different components such as pipe, flanges etc. each of such component is manufactured as per internationally standard specifications and is sourced from the Market. The only part of the PTS body which is not made out of parts of internationally standard specifications, is the cap. The PTS bodies of most manufacturers are essentially similar and work on the same lines. The essential differences are pointed out in para 9.6. In para 9.8, the 2nd defendant states that:- 9.8 I have put in enormous amount of time, energy and effort to decide and arrive at each of the specifications of the PTS body. I state here that no dimensions or details in the product are accidental nor they are mere assumptions. They have been arrived after pilot scale study, detail product study, and trial of commercial scale, application study and final validation trial at customer place. After many trials and developmental

modifications, relying on expert books, we have arrived at the present details, dimensions, drawings and design of the equipment. The equipment design is optimized to the present state after various stages of development. On the basis of first principles, scientific formulae and well accepted engineering norms widely used in the engineering industry, I calculated the dimensions and sizes of many component parts such as dimensions and size of hose, vacuum inlet pipe with camlock, compressed air inlet pipe with camlock, pressure regulator, suction lance, inlet and outlet diameter, actuated ball valves, inlet pipe size, inlet bend size, hose diameter, actuated ball valves for compressed air and vacuum etc. The calculations so done by me to arrive at the specifications of PTS body produced by the defendant No.1 are my confidential information, and I do not wish the same to be made public or made known to the plaintiffs, as the confidentiality will be lost if made known. I am however willing to produce the same for the inspection of this Hon ble Court if required. Thereafter, these calculated dimensions and sizes are adapted to the nearest universal international standards (ISI, BIS, ISO, ASME, ANSI, DIN). By this I mean that since the valves, actuators, hoses and kamlock etc. are manufactured to international standard specification, and were required to be bought out, the specifications arrived at by my calculations were required to be modified slightly so that components of international specifications could be purchased for the purpose of production. Sizes and Dimensions of some of the components are directly taken from the above international standard such as all the dimensions of flanges, kamlock, triclover etc. ... 36. In the subsequent paragraphs he has given details of the technical aspects and highlighted the features of the components. He has also highlighted the advantages of defendant No.1 s system in para 9.42 and 9.44 of the affidavit in reply. Thus, while reiterating that there is nothing confidential in the manufacturing activity nor any special technology is involved, he has highlighted the technical aspects of defendant No.1 s product. He has given the list of companies which are manufacturing the identical products using more or less identical technology and are competitors of the plaintiffs. Therefore, he submits that the equipments manufactured and developed for defendant NO.1 are developed totally by the own skill, efforts and expertise of the 2nd defendant and is not based on any drawings and alleged confidential information of the plaintiffs. Thereafter, he has outlined the differences between the systems manufactured and evolved by the plaintiff and defendant No.1. He has given the minute details in that behalf. He has pointed out as to how his company has been doing well and merely because the plaintiffs have the competitors in the market that the instant suit is filed. ig In para 18 of his affidavit in reply, the defendant No.2 has dealt with para 7 of the plaint and has stated thus :- 18. With reference to paragraph 7 of the plaint, the plaintiffs have relied upon the contents of the said paragraph as indicating the alleged confidential information which is purported to be owned by teh plaintiffs. It is submitted that it is clear from a plain reading of the said paragraph, that it does not and cannot relate to confidential information. It is clear that the intention of the plaintiffs is not genuinely to protect any alleged confidential information, but merely to put an end to the defendant No.1 s business, and thereby quell competition by pre-

venting the defendant No.1 from bona fide competing with the plaintiffs. The so called confidential information referred to in the said paragraph is so wide in its scope as to cover all aspects of the designing, manufacturing, operating and sale / marketing of the systems. This is patently impossible. The plaintiffs have failed to mention what particular parts or aspects of the items set out in the said paragraph relate to or arise out of confidential information, or to give any specific particulars of such alleged confidential information, and it is submitted that the suit must fail on this ground alone. From the said paragraph, it is impossible to arrive at or understand what exactly the plaintiffs want the defendant No.1 not to disclose or use. Further, and in any event, it is absolutely clear, and more particularly in view of the facts mentioned above, that what is mentioned in the said paragraph can never be considered as confidential. In this respect, and to indicate the completely mala fide nature of the allegation of confidential information being as per paragraph 7 of the plaint, I will deal briefly with each of the items mentioned in the said paragraph as constituting confidential information. (i)Manufacturing process : There is no question of any manufacturing process being confidential as the plaintiffs do not carry out any manufacturing process at all. As stated above, all the components of the equipments are brought from suppliers. The fabrications of metal bodies are also done by local fabricators. The plaintiff No.2 only assembles the bodies and components at its plant and carries on the process of manufacture only to that extent i.e. of assembly. The manufacturing process itself of the various components is known to each manufacturer of each compartment and / or fabricators thereof, and is not the information of the plaintiffs. Further, the manufacturing process of such fabricated equipment can never be confidential, as such fabrication takes place by standard fabrication practices. Pertinently, the plaintiffs have not pointed out any particular part or process of its manufacturing activity which is known only to the plaintiffs and to nobody else. The entire manufacturing process of all the components cannot possibly be secret. Thus, it is not even clear as to what extent and what respect to what manufacturing process an injunction is sought. Without prejudice and in any event, no information with regard to any manufacturing process of the components was ever indicated or told to me. As stated above the assembly of the components is the simple process of fastening a few nuts and bolts, which can be carried out even by unskilled or semiskilled workers with or without technical supervision. In fact, at the time of my leaving the plaintiff No.2, the assembly process was supervised by Mr. Mahesh Desai, who is in fact a commercial man and not even technically qualified. The actual labour was carried out by the workmen who also did not have any technical knowledge. Without prejudice in any event, the defendant No.1 to 3 are not using any such information of the plaintiffs. (ii)Operation Procedure : It is absurd even to contend that the operating procedure of the equipment can possibly be confidential, as the equipment is finally to be operated by the purchaser, and the operating procedure is necessarily required to be known to each purchaser and to all the operators in the employment of such purchaser. Further, and in any event, there is nothing specialized about the operating procedure which is by and large similar for

equipment manufactured by several powder transfer equipment manufacturers. Without prejudice, if what is meant by operating procedure by the plaintiffs is the setting and fine tuning of the systems with regards to the particular powder required to be transferred, transfer distance, nature of powder etc, then in any event no such information was ever supplied by the plaintiffs to me, and I used to set up the system purely on the basis of my own knowledge expertise and experience. This is also clear from the fact that I set up the first system at M/s. Biocon just three days after I joined the plaintiff and admittedly without any training from the plaintiffs. I further submit that the operating manual which is given to each customer sets out the rough parameters to be maintained during operation. However, the actual settings which are required to be provided at site are on trial and error basis, and on the basis of expertise and knowledge of the person setting up the system. As stated no such training was given to me and could not be given to me as final setting depends upon, and varies completely from site to site. This was always done by me on the basis of my experience and expertise. Without prejudice and in any event, the defendant No.1 to 3 are not using any such information of the plaintiffs. (iii) Specifications : The specifications of the powder transfer system manufactured by the plaintiffs, as with all other manufacturers in the field, are the most widely known, and are required to be communicated to every purchaser prior to purchase. Secondly, the specifications are generally advertised for attracting customers, and can never be considered as confidential information. Every time a quotation is given to a customer, the specifications are clearly and elaborately mentioned. Thirdly, the specifications are also set out in the brochure published by the plaintiffs. Fourthly, and in any event, the specifications of equipment of this nature can never be considered secret or confidential, as the same can be noticed and verified on inspection of the equipment itself. Without prejudice in any event, the defendant No.1 to 3 are not using any such information of the plaintiffs. (iv) It is once again absurd to contend that these (Model Diagrams, Logic diagrams, PI (Process & Instrumentation) diagrams, can possibly constitute confidential information, as these diagrams are in fact included in the operating manual with respect to each equipment and are freely distributed to all the customers of the plaintiffs. These diagrams are not only included in the operating manual, but also made known to employees and technicians of each customers, who is trained in the operation and understanding of each of these diagrams for proper operation and maintenance of the equipment. There is no question therefore of any of these diagrams being confidential to the plaintiffs. (v) Without prejudice in any event, the defendant No.1 to 3 are not using any such information of the plaintiffs. (v) Drawings of various parts of machines and various components thereof, drawings / designs of double entry PTS : These drawings were duly returned to the plaintiffs on my leaving. The defendant No.1 has not manufactured any equipment whatsoever on the basis or by use of these drawings. (vi) Control Panel Specifications : This envelope with the logic diagram referred to above, which logic diagram is necessarily of the control panel. As stated above, the control panel circuitry of the defendant No.1 is entirely and independently developed for the defendant No.1 by third party experts, and is completely dif-

ferent from that of the plaintiffs, and therefore also necessarily not derived from any confidential information of the plaintiffs. Without prejudice in any event, the defendant No. 1 to 34 are not using any such information of the plaintiffs.

(vii) Patented and Unpatented inventions which suit the various components and drawings: It is submitted that this item does not convey anything sensible and is entirely vague and substantially meaningless. To the best of my knowledge, there is no invention of the plaintiffs which is not currently being used by other manufacturers in the field, which is involved in the manufacture of the powder transfer system. In fact, as already stated above, all the items and components except those that are fabricated such as the pump body etc., are bought out from manufacturers on the basis of their catalogues, and there is no question of any such components being invented by the plaintiff No.1. Further, patented items, by their very nature, cannot constitute confidential information, but other parties are prevented by law from manufacturing the same item or by the same process. There is no question of the defendant No.1 using any patented invention of the plaintiff No.1, and that is not even the allegation in the plaint. Pertinently, the patents set out at Exhibit D to the plaint are all the countries other than India except three of the patents referring to DCS, DCS Inverter and Batchmixer. Once again, the plaintiffs have deliberately not given any particulars with regard to which components are being referred to as Patented and Unpatented Inventions. This is because in fact, there is no such information which is confidential or otherwise. In any event, I say no unpatented inventions of the plaintiffs were ever brought to my notice or information provided to me in the course of my employment. Without prejudice in any event, the defendant No.1 to 3 are not using any such information of the plaintiffs.

(viii) Specifications of various parts : As already stated above, most of these specifications are based on worldwide standard specifications and there is nothing confidential about them in any event. It is submitted that in any event, as stated above, the specifications of various parts and components which are bought out are well known in the market and industry, and there is no need for anybody to copy those of the plaintiffs. The specifications of the parts of the equipment manufactured by the defendant No.1 which are not on the basis of universally standard specifications, have in fact been designed and developed independently for the defendant No.1 as stated above, and without recourse to any of the designs and specifications of the plaintiffs. It is for this reason also, that the specifications of the systems manufactured by the defendant No.1 are different from those manufactured by the plaintiffs. The other parts such as actuated ball valves, actuated butterfly valve, hose pipe, fittings nut bolts etc. are manufactured by the components manufacturers to the internationally standard specifications, and are readily available. Without prejudice and in any event, the defendant No.1 to 3 are not using any such information of the plaintiffs.

(ix) Customer List : It is absolutely absurd even to suggest that list of Indian customers of the plaintiffs constitute their secret or confidential information, or were supplied by the plaintiffs to the defendant No.1. In fact, the customers of any manufacturer are generally advertised to promote the equipment of the manufacturers and the plaintiffs themselves have also been doing so. In fact,

as stated above, the plaintiff No.2 was relying upon me and my knowledge and expertise of the customers available in India to market their products. It was I who did so to promote the sales of the plaintiff No.2 from my own knowledge and experience. It was I, and not the plaintiff No.2 which was responsible for creating and contacting the customer list and customers. There is no question therefore of any customer list being any information, much less confidential information of the plaintiffs or either of them, or of the plaintiffs supplying any such list to me in the course of my employment with them. Further, and in any event, I say that this is not a case where the customers are relatively unknown entities or are known only to the manufacturer or are as a result of any personal relations between the manufacturer and the customer. The customers in the field are extremely large and well known companies in the pharmaceutical and chemical industry, and there is no question of any such list being the confidential information of plaintiffs or anyone else. Further, and in any event, as more particularly stated hereinafter, the companies to which the defendant No.1 is selling its products are practically mutually exclusive with those of the plaintiffs. The defendant No.1 is currently selling its equipment to about 15 companies all over India. Out of these, only two companies overlap with the customer list of the plaintiffs, viz. Dr. Reddy's Lab Ltd. and Granules India Ltd. Both these companies are extremely large companies among the top pharmaceutical companies in the world, and there is no question of such companies being part of any confidential list of customers of the plaintiffs. This contention is therefore also entirely baseless, mala fide and false. In any event plaintiff No.1 never has sold any equipment in India directly. Annexed hereto and marked as Exhibit T-1 to T-3 are list of customers of competitors advertised on the web pages of M/s. Cybernetik Technology, M/s. Crystal Automation and Kilburn Engineering respectively. (x) Cost of production and price strategy : I say that neither of these were imparted by the plaintiffs to me. In fact, as stated above I had used my own experience and expertise to arrive at the price strategy, in view of the production cost, which themselves were also arrived at by me on the basis of sourcing of materials, labour involved etc. However, and in any event, the cost of production and price strategy of the plaintiff No.2 is very different from those of defendant No.1, and I necessarily cannot apply the strategies which I introduced to the plaintiff No.2, in the case of defendant No.1. The cost of production and purchase of individual components will vary from manufacturer to manufacturer, and is not any information which can be used by the defendant No.1 in any way. Further plaintiff No.1, were required to import certain components from plaintiff No.1 at higher prices which completely changed the cost of production and price strategy which were required to be adopted by them. The defendant No.1 suffers from no such compulsion and is bound to use a separately different price strategy and have completely different cost of production. The term price strategy is entirely vague, and is also specific to each individual organization and cannot be used by other organizations which which functions on a different basis altogether. No specific information has been mentioned, which the plaintiffs do not want the defendant No.1 to use. In any event, no such information of the plaintiffs is being used by the defendant No. 1 to 3.

(xi) List of suppliers : As stated above, the plaintiffs depended purely up on my knowledge and expertise for the propose of sourcing components from various suppliers and I had my on own knowledge prepared teh list of suppliers with whom I had contacts and who held my confidence. No such information was therefore ever imparted to me or required to be imparted to me by the plaintiffs. It was I who imparted this information to them. It was I who used the information already available with me and my contacts for the purpose of setting up the manufacturing facility including the suppliers list for the plaintiffs. Hence, it is once again absurd to content that the list of suppliers is confidential or secret information of the plaintiffs. Further the suppliers of specific equipment and components required for manufacturing the plaintiffs equipment are known throughout the world and actively advertise their products. The said suppliers are also given by several other manufacturers in the field, and are well known in the trade. There are standad suppliers with regard to different components, and the products of these suppliers are well known in the market. 37. Thus assuming that there are any details and particulars set out in the paragraph 7 of the plaint, they are dealt with by the defendant No.2 as above. 38. He has then stated that he has returned all the documents and materials which were handed over to him during the course of his employment and he has referred to the list prepared in that behalf. He has annexed copies of the 3 lists which were prepared and which have been handed over to the plaintiffs. These lists enlist all the materials and documents. Thus all the papers, documents and property of the plaintiff had been duly returned. It is for the first time on 10th March, 2008 that the plaintiffs called upon the defendant No.2 not to disclose or divulge any information about the plaintiff No.2 and treat the same as confidential. The defendant No.2 denies that there is any information which he has received which can be termed as confidential and related to any trade secret of plaintiff No.2. If at all, some drawings were stated to be confidential according to defendant No.2, they are already returned. Thus, the plaint averments and the case set out in the affidavit in support of the notice of motion has been fully dealt with by the 2nd defendant. 39. There is a rejoinder affidavit of the plaintiffs and they have also filed affidavit of their two employees who state that defendant No.2 has set up competitive business and has been providing identical machines to the customers / clients of the plaintiffs. 40. In the rejoinder affidavit of the plaintiffs, apart from reiterating the plaint allegations, it is stated that 2nd defendant is under an obligation to maintain secrecy of the confidential information. In fact, confidential information was given or else the defendant No.2 would not have dealt with the contents of the Annexures to the plaint in details. If he was not copying the designs or manufacturing identical products, then, there was no need for him to explain the entire manufacturing process and in such great details. In any event, the confidential information is not about the basic principles and basic designs. The confidential information is known to the 2nd defendant or else the calculations arrived at by him about all PTS bodies produced by defendant No.1 would not have matched with that of the plaintiffs. This itself shows that the 2nd defendant had access to all researched information which is used to make finished products when he was in the em-

ployment of the plaintiffs. The plaintiffs have also relied upon the report of a expert to demonstrate that the design, specification and capacity of equipment manufactured by plaintiff and defendant No.1 are one and the same and not substantially different. The alleged differences are mere cosmetic changes. The exhibits to the plaint would show that the alleged differences are due to the Transfer Capacity requirement of the customer. Thus, it is clear that identical system is used by the defendant and is based on confidential information. It is denied that 2nd defendant returned the drawings / designs of double entry PTS. It is also denied that no confidential information was supplied. Thereafter, there is a affidavit filed in the sur-rejoinder and both sides filed their further affidavits. 41. It is on the basis of these materials that I heard the rival contentions. 42. Mr. Dwarkadas, learned Senior Counsel appearing for the plaintiffs contended that the plaintiffs have made out a case for grant of interim relief or in any event, continuation of ad-interim order. He submits that this is a case of blatant misuse of the plaintiffs confidential information. He submits that this Court should not accept the 2nd defendant's case which he has set out for the first time on Affidavit. Mr. Dwarkadas submits that the plaintiffs have made out a prima-facie case. He submits that necessary averments are made in the plaint. There is nothing vague or wild about the same. He has invited my attention to Annexure A to the plaint which is a photograph and relevant literature with regard to the PTS System (Mobile). He submits that the technical Know-How agreement dated 9th February, 2005 between Dietrich Engineering Consultant which is a company based in Switzerland and the plaintiff No.2 is clear. That agreement has a Section with regard to confidentiality. Clause 10.1 states that during the continuance of the agreement between the foreign collaborator and the 2nd plaintiff, all Know-How would be treated as proprietary information of the 2nd plaintiff and it shall not divulge such Know-How to any person or use any such Know-how for any purpose other than as said forth in the agreement. Mr. Dwarkadas submits that it would not be proper to state that the plaint averments and allegations are vague or ambiguous. It is clear that the Exh. C to the plaint sets out drawings and details in which the plaintiffs have a Copyright. It is in that context and referring thereto that the allegations in the plaint must be seen. Further in the letter of appointment copy of which is at Annexure E, it is agreed vide clause 14 that the 2nd defendant must treat the property of the company and everything that comes in his possession during the course of company's business as if it is held in trust for the company and shall deliver the same to the company on demand without claiming any lien or right of whatsoever nature thereon. Therefore, it is not as if there is no confidentiality agreement. The contract between the plaintiff and defendant No.2 is a service contract with the clear stipulation of acting in trust and holding position of confidence. Further, the plaintiff has himself stated that he will respect the confidentiality clause and will not divulge the contents of document, copy of which is enclosed to the plaint as Annexure H. This is a knowledge assessment which assesses the 2nd defendant's knowledge with regard to Powder Transfer System and the manner in which the said system works and operates. If this entire assessment is based on the confidentiality and Trust attached to the 2nd

defendant's position, then, it would not be proper to hold that there is no agreement or contract to this effect. 43. Mr. Dwarkadas next contended that the plaintiffs have pointed out all details, designs, know-how and the information which could be termed as confidential. He submits that if any further details with regard to the same are necessary, then, the plaintiffs are prepared to place the confidential information and the other materials that were handed over to the 2nd defendant while he was in the service of the plaintiffs, in a sealed cover in this Court. He submits that the list of the plaintiffs' clients is apparent from some of the invoices that have been annexed to the plaint. He submits that the machine which is peculiar to the plaintiffs has been demanded and supplied to the clients. This machine and the technology for manufacturing and making it operative is peculiar to that of the plaintiffs and associated with the plaintiffs. From the voluminous record that is placed before this Court, it is apparent that the plaintiffs have placed the 2nd defendant in a position of trust. The duties performed and power exercised by him when he was in the plaintiff's services are such that he is a privy to all the confidential information including technology and list of client etc. The plaintiffs have taken efforts to train the defendant No.2 and for that purpose he was sent abroad. The 2nd defendant knew that the machine and technology is exclusive and it is apparent from the further annexures to the plaint that the 2nd defendant is manufacturing the same machine as that of the plaintiffs with identical technology. There is absolutely no difference in the same. It is for this Court to thereafter satisfy itself and the plaintiffs are prepared to incur the costs of a Commissioner who can be appointed by this Court to place on record the report as to whether the 2nd defendant is manufacturing an identical machine or not and by using the same technology as that of the plaintiffs. He submits that from the quotations that are being forwarded to some of the Pharmaceutical Companies, it is apparent that the Powder Transfer System is identical, the designs and the technology is the same as that of the plaintiffs and the peculiar features which the 2nd defendant referred to in his quotation makes it apparent that he has on the basis of knowledge of the plaintiffs' technology, produced it. In these circumstances, this is a fit case where this Court should grant interlocutory reliefs as prayed. In any event confirm the ad-interim order granted earlier should be continued till the disposal of the Suit. 44. Mr. Dwarkadas has pointed out that if the 2nd defendant was not manufacturing identical product with similar technology and providing it to majority of the clients of the plaintiffs, then, it was not necessary for him to file such a detailed affidavit and point out the alleged differences between machines. This clearly means that the 2nd defendant accepts that the product is identical so also the technology. Mr. Dwarkadas has invited my attention to the affidavit in rejoinder which has been filed by the plaintiffs and more particularly para 26 at page 14 of the plaint. He submits that it is not true that the basic designs are same. In any event, even the inputs to optimize efficiency and functionality of equipment which are the result of the plaintiffs' trial system, research and development is the confidential information which was given to the defendant No.2 while in the plaintiffs' service. In these circumstances, it is untrue and false to suggest that the entire system of defendant No.1 has

been researched, developed and manufactured by the 2nd defendant without using or referring to or copying the drawings of the plaintiffs in any manner whatsoever. It is only on the dimensions or details provided as confidential information and the drawings that the 2nd defendants product is based. There is no independent effort as alleged or at all. From the affidavit in reply and the contents thereof it is apparent according to Mr. Dwarkadas that the PTS body and material used for the components, standards thickness, specifications, angles, diameter, drawings, modifications required, length, coating material etc. is highly confidential information and that is utilized by the plaintiffs for their machine. It is suitable for their technology and functioning of the machines. All these minute details or details of the defendants product are completely based on the confidential information of the plaintiffs drawings. Thus, there is no effort or innovation of the 2nd defendant but only because the 2nd defendant has access to all the research information that the Finished Product of the 2nd defendant is identical to that of the plaintiffs. The information provided by 2nd defendant to the fabricator is identical to the plaintiffs and the 1st and 2nd defendant have made cosmetic changes on the basis of the said confidential information and the drawings. Mr. Dwarkadas submits that the published and printed material including the books such as Hand book Powder Transfer Technology etc. has been referred to by the 2nd defendant only to mislead this Court into believing that designs and drawings of the concerned machine is in public knowledge and common to all manufacturers. 45. Mr. Dwarkadas has invited my attention to para 63 of the affidavit in rejoinder and has emphasized that the 1st plaintiff is getting the control panel manufactured from Bostch Rexroth Switzerland. Even the 2nd plaintiff wanted to procure the control panels of its specification from Indian counter part of Bostch. The 2nd defendant was instructed to contact the same M/s. Bostch for procurement of the control panel. Therefore, 2nd defendant was well aware of the procurement process and the information which is needed to get the control panel manufactured. During the course of the employment of the 2nd defendant, the 2nd plaintiff decided not to procure the control panel from Bostch Rexroth, India for commercial reasons. Mr. Dwarkadas submits that the 2nd defendant's training in Switzerland was intended to make him aware of the dis-assembly and re-assembly of the control panel manufactured by M/s. Bostch for 1st plaintiff. In these circumstances, the control panels manufactured by the defendants from Bostch would go to show that the said panel is identical to that of the plaintiffs. Even Bostch Rexroth, Switzerland has confirmed the same. In these circumstances, it is proved that the defendants had occupied all the crucial aspects of the plaintiffs PTS and they have used the confidential information and the drawings. Thus, they have made false statements on oath. Mr. Dwarkadas has also invited my attention to the opinion of the expert with regard to the Big Bag filling station designed and manufactured by plaintiffs and 2nd defendants. There are no differences but cosmetic changes. The alleged differences listed by the defendants are due to the transfer capacity requirement of the customer. Therefore, Annexures O and P to the plaint would show that identical system is used by the defendants. The entire activities of the defendants are based on the confidential information pro-

vided to the 2nd defendant. The 2nd defendant was in over all control of the 2nd plaintiff and due to the fact that all the confidential information and drawings were given to him that he misused them and has now proclaimed that he has supplied this machine to 15 customers. It is false to suggest that the plaintiffs turnover has gone down because of the 2nd defendant leaving its employment. It is false to suggest that the entire materials and inputs so also documents have been returned by the 2nd defendant after his resignation. In fact, the 2nd defendant has made and kept copies of the same with him which are misused by him now for his personal gain. For these reasons, the reliefs prayed for be granted. 46. Mr. Dwarkadas has relied upon the following decisions in support of the above contentions. 1. 1963(3) ALL England Law Reports, 413 Saltman Eng. Co. Vs. Campbell Engg. Co. 2. Reports of Patent, Design & Trade Mark cases 1967 (No. 15) 375 Terrapin Ltd. Vs. Builders Supply Co. (Hayes) Ltd. & Ors. 3. 1960 (No.5) 125 Reports of Patent, Design & Trade Mark cases Terrapin Ltd. Vs. Builders Supply Co.(Hayes), Taylor Woodrow Ltd. & Swift Plan Ltd. 4. 1964 (3) All E.L.R. 289 Cranleigh Engineering Vs. Bryant. 5. 1967 (No.14) 349, Reports of Patent, Design & Trade Mark Cases Seager Vs. Copydex Ltd. 6. 1968 (No.16) 498 Under Water Welder & Repairers Ltd. Vs. Street & Longthorne. 7. In the High Court of Bombay (2003) Zee Telefilms Ltd. & Film & Shot & Anr. Vs. Sundial Communications Pvt. Ltd. & Ors. 8. In the High Court of Bombay (2007) Ms. Urmi Juvekar Chiang Vs. Global Broadcast News Ltd. 9. In the High Court of Bombay (2008) The Bombay Dyeing & Mfg. Co. Ltd. Vs. Mehar Karan Singh. 10. In the High Court of Bombay (1987) John Richard Brady & Ors. Vs. Chemical Process Equipments Pvt.Ltd. 11.AIR 1967 SC 1098 (V.54 C 230) N.S. Golikari Vs. Century Spinning and Mfg. Co.Ltd. 12.AIR 1962 Cal.61 (V 49 C 16) Gopal Paper Mills Vs. S.K.G. Malhotra. 13.In Rejoinder (In Delhi High Court) Burlington Home Shopping Pvt. Ltd. Vs. Rajnish Chbber. 47. On the other hand Mr. Palkhiwala, learned Counsel appearing for defendant Nos.1 and 2 contended that the entire suit is false, frivolous and vexatious. The attempt on the part of the plaintiffs is to have a monopoly for them so far as the PTS is concerned. The attempt is to kill all competitors in the market. Once, by resorting to such proceedings the competitor is destroyed, then, the plaintiffs can achieve the monopoly status. However, the law does not encourage this act. Far from protecting such monopolistic tendencies, Article 19(1)(g) of the Constitution of India guarantees to the citizens a fundamental right to carry on business, trade, occupation and profession of their choice. Such freedom is subject to the reasonable restrictions specified in Article 19(6). He submits that the reasonable restriction can only be in public interest and not to encourage and protect the monopolies. Open market also does not permit curbing of Enterprise and creation of monopoly. There must be a level playing field within which everybody is free to work and perform so also achieve results. The intent of the plaintiffs is to some how or other finish the 2nd defendant and his company / firm. Therefore, they have resorted to making false, wild and baseless allegations against the 2nd defendant on oath. ig The plaint is full of false and

misleading statements. The plaintiff is full
contradictions and inconsistencies. The version of the
plaintiffs is not supported by any material.

requirement of pleadings in order VI of the Civil Procedure Code are not satisfied and the accusations must be rejected outright. 48. Mr. Palkhiwala then invited my attention to some specific paragraphs and statements / averments in the plaint to buttress his submission that the plaint is replete with misleading and false statement. According to Mr. Palkhiwala the plaint proceeds to state that the said Pfaudler had common clients with plaintiff No.1. However, GMM Pfaudler manufacture Glass Lined Reactors which is completely different equipment. The plaint does not state as to what GMM Pfaudler actually manufactures. The allegations are made on the basis that GMM Pfaudler is in Powder Transfer Business and even defendant No.3 being its employee is aware of the said machine and the technology. However, if the plaintiffs do not set out as to what products or goods are manufactured by the said GMM Pfaudler, then, this statement and allegations has no basis and must be disbelieved. Similarly, Mr. Palkhiwala points out that the equipment manufactured by the 2nd defendant is not identical. The 1st defendant is not even manufacturing the equipment with respect to which the alleged confidential information has been supplied. ig The plaintiffs

have attached only 1 photograph at Annexure

N to the

plaint page 213 to 218 and it is alleged that this product of the defendants is identical to that of the plaintiffs. However, this equipment (Annexure N) is not manufactured by the plaintiffs. They have now admitted that it was not the product of the defendant but that of the Kill-Envino System. 49. Mr. Palkhiwala submits that there was never any attempt nor was the 2nd defendant ever told that any information given to him was to be kept secret. This is because the plaintiffs also did not believe that they are giving any confidential information or imparting any training in confidence. Therefore, they did not include any confidentiality in the letter of appointment of the defendant No.2. Therefore, the attempt now made to state that the information was supplied not just during the course of the duties but while undergoing training is nothing but an attempt to improve upon the case originally pleaded. Thus, either the information was supplied during the course of the performance of duties, manufacturing and marketing of the subject product or when the technology was made known during the course of the so called training is something which is deliberately not clarified by the plaintiffs. This is vital to their case. This was the very basis and foundation of the relief in the plaint. Thus, when the plaintiffs themselves are not sure about the nature of the information and whether it was imparting

in confidence so also at what stage, then, the necessary ingredients for the relief are not satisfied. There is no prima-facie case and therefore the Motion be dismissed. The so called training also was not of 42 days, as alleged. The period of 42 days includes flying time, departure, holidays etc. on which dates there was no training. Similarly, the entries (Annexure G) relate to two exhibitions where the 2nd defendant was sent to showcase the plaintiffs equipment and not for training. The 4th entry relates to a Sales Conference held in Switzerland where 2 nd defendant represented the plaintiffs. The last entry at Annexure G relates to a Trip of 2nd defendant to a client s premises in South Africa for the purpose for installing the system. Lastly, the 1st entry relating to induction course pertains to the alleged Knowledge Assessments submitted on 21st January, 2005. This is within 5 days of reaching Switzerland. Therefore, it is absurd to contend that 42 days of training was given. Similarly, the induction course is also not something which could be the basis of the plaintiffs case much less the Knowledge Assessment Test. As has been pointed out in the affidavit, the 2nd defendant was highly experienced, qualified and competent and it is he who by his efficiency and utility enabled the plaintiff to supply their machines in the market within a short time of the establishment of the 2nd plaintiff. 50. The 2nd defendant has worked in the Powder Transfer Equipment Department of Kilburn Engineering Ltd. As the Senior Engineer (Marketing) to the knowledge of the plaintiffs and there is a letter from Kilburn in this behalf. Yet, a false statement is made. Further defendant No.3 was not even an employee of the plaintiffs of GMM Pfaudler which was in distinct business. Therefore, the 3 rd defendant did not acquire any confidential information of the plaintiffs. Merely because he had access to information of GMM Pfaudler does not mean that he had in his possession confidential information of the plaintiffs. There is absolutely nothing on record to substantiate these allegations. In any event, all allegations have been specifically dealt with and denied. The denials and assertions are also supported by producing relevant documents. Mr. Palkhiwala has pointed out that the information was never considered confidential even by the plaintiffs. He further submits that the alleged confidential information has not been specified and no particulars in that behalf have been set out. The plaint itself must set out the confidential information with precision. The vague allegations in the plaint derive no support merely because subsequently affidavits are filed by the plaintiffs. 51. Mr. Palkhiwala was at pains to point out that there is no comparison made between plaintiffs drawings / alleged confidential information and the 1st defendants equipment. No effort has been made for producing the material before this Court or for comparison of this Court even during arguments. Thus, most essential and basic requirements for a suit of this nature are not satisfied. There is no prima-facie case and, therefore, the motion be dismissed. 52. Lastly, Mr. Palkhiwala has taken me through the pleadings and pointed out that in order to show his bonafides, the 2nd defendant has given specific response to each item of alleged confidential information mentioned in para 7 of the plaint. Although the 1st and 2nd defendants were not obliged to do so but it is in their sincere desire and intent to show their bonafides and clean conscience that they have stated before the Court on oath the manner

in which the 1st defendant and 2nd defendant manufacture their product. The distinctive feature, the peculiarities, the nature of clientele, the volume of business and the skill and expertise of these defendants has been demonstrated by setting out all details in the affidavit in reply. This would demonstrate that defendants never used plaintiffs drawings and / or information to manufacture their product. Their equipment is independently developed and Mr. Palkhiwalal has invited my attention to the fact that no contrary statements are made by the defendant in their affidavits. ig The attempt is not to merely rely upon the case that the know-how was in public domain. However, they do not rest their case merely on this basis but have without prejudice and alternatively urged that what is in public domain is the PTS technology and the basic principles and designs of PTS. However, each manufacturer in the Course of his research and development is required to and does fine tuning. The attempt is to have an independent equipment to maximise the effectiveness. Hence, the 2nd defendant has used his skill, resources and knowledge independently to develop the equipment for defendant No.1 and while doing so he has made use of the knowlede which is already in public domain. The 2nd defendant is not a layman. He is highly skilled, qualified and motivated person. He is qualified both in engineering and marketing field with an excellent academic career. He is fully capable of carrying out the development work. One who is conversant with the Powder Transfer Equipment Technology and Marketing can easily set up his unit and that is precisely what the 2nd defendant has done. In fact, it is the 2nd defendant s efforts which augmented the business of the 2nd plaintiff in India and not other way round. Within days of joining, 2nd defendant set up the PTS equipment at the factory of M/s. Biocon Pharmaceutical. He visited M/s. Cipla Ltd., and M/s. Astra Zenca where he made presentation. He entered into negotiations with M/s. Ranbaxy and all these details are set out by him. In these circumstances, it is false to allege that the 2nd defendant has the business drawings of the plaintiffs and brought out an identical product and is misleading the general public so also the market. Mr. Palkhiwala has taken me through the Annexures to the affidavits filed by the defendants and pointed out in details the steps taken, the research and development in the manufacture of the equipment by defendant No.1. 53. So far as the opinion given by Mr. Martin Glor is concerned, Mr. Palkhiwala has invited my attention to the fact that this gentleman is associated with the plaintiffs. He is not an independent expert. His bio-data would reveal that he was a consultant with the plaintiffs. That apart, his opinion cannot be held to be conclusive as it suffers from several basic errors and infirmities. The opinion cannot be said to be based upon the available research material but is rather sweeping and full of incorrect assertions. The opinion therefore cannot be held to be binding. The competitor of the 2nd defendant has addressed a letter to the plaintiffs and has pointed out that the equipments are allegedly identical but this letter is also not accurate in as much as there is difference between M/s. Cybenetick s products and that of the defendants. Even the e-mail by killburn Engineering Ltd. admits that the 2nd defendant worked in the Marketing Department. Unless one is familiar with the technical aspects of the product, one cannot be appointed as Marketing

Engineer and therefore reliance placed upon this letter by the plaintiffs far from supporting the plaintiffs case fortifies the 2nd defendants stand in the matter.

54. Mr. Palkhiwala has concluded by contending that the defendants equipment is not identical but is substantially different from that of the plaintiffs and in that behalf he has invited my attention to page 294 (plaintiffs rejoinder) and the parameters of the defendants PTS systems which are highlighted in the affidavit in reply and sur-rejoinder of the defendants. He has also contended that the Interim application of the plaintiffs is barred by delay and laches. The 2nd defendant has ceased to be in the plaintiffs employment since long time. They knew that the 1st defendant was carrying on business of manufacturing PTS at least from July, 2008. Therefore, and when plaintiffs contacted some of the clients of the 2nd defendant in October, 2008, there was no urgency and in any event no ex- parte ad-interim order could have been passed. All this has seriously prejudiced the 2nd defendant. Therefore, neither a prima facie case is made out nor the balance of convenience is in favour of the plaintiffs. Instead, the defendants pending orders and contracts so also commitments could not have been full-filled. There is an ad- interim ex-parte injunction in widest term running against him since 8th May, 2009. He has to fulfil the commitments and unless the motion is dismissed, ad-interim order is vacated, he will be at tremendous loss and would suffer mental agony and legal claims from the clients and suppliers. For all these reasons, he submits that the Motion be dismissed.

55. Mr. Palkhiwala relied upon the following decisions in support of the above contention :- (i) 1999 PTC (19) 408, BRY. Air India (P) Ltd. Vs. Western Engineering Co. (ii) Fleet street Report (1999) 235, CMI-Centres for Medical Innovation GMBH & Anr. Vs. Phytopharm PLC. (iii) Fleet Street Reports (1999) 505, FSS Travel & Leisure System Ltd. Vs. Johnson & Anr. (iv) Fleet street Reports (1989) 87, Lawrence David Ltd. Vs. Ashton.

56. With the assistance of the learned Counsel appearing for both the sides, I have perused the plaint and the annexures so also the affidavit filed in reply, rejoinder and further affidavits. I have also perused annexures thereto. I have also perused the decisions brought to my notice.

57. At the outset, it must be observed that the present suit is filed by the plaintiffs against the defendants for permanent order and injunction in the form more particularly set out in prayers (a) and (b) of the notice of the plaint.

58. The interim injunction is to restrain the defendants from in any manner directly or indirectly using, imparting, disclosing the confidential information particulars of which are given in para 7 of the plaint. A perusal of the motion would indicate that prayer clause (a) of the plaint and prayer clause (a) of the motion are identical. Although, the prayer clause (a)(ii) is on the basis of infringement of copyright of the plaintiffs with regard to the drawings details of which are given in Exhibit Annexure C to the plaint, it must be observed that the plaintiffs have not addressed any arguments in this behalf. The plaintiffs have not pointed out as to how the Copyright in the drawings is allegedly infringed. The plaintiffs have only emphasised that the confidential information is being used by the defendants. Thus, the plaintiffs have treated the drawings as part of the confidential information disclosed to the defendants.

59. I have already reproduced para 7 of the plaint. A perusal of the same would

disclose that the statements therein are general and on the own showing of the plaintiffs the details are not set out. 60. In such circumstances, I do not see any reason to consider the request made in the later part of prayer (a) (ii) of the Notice of Motion. 61. So far as the reliefs claimed in prayer clause (a) are concerned, it is pertinent to note that the suit is filed by plaintiff Nos.1 and 2 jointly. Admittedly, the defendant No.2 was not an employee of the 1st plaintiff. It is claimed that the 2nd plaintiff is a joint venture of the 1st plaintiff and one Patel Group each holding 50% of the issued and paid up share capital of the 2nd plaintiff. That may be the arrangement between the plaintiffs and Patel Group but the fact remains that the 2nd defendant was not an employee of either the Patel Group or the 1st plaintiff. It is claimed that the 2nd plaintiff employed the defendant No. 2. So far as impleadment of 3rd defendant is concerned, it is rather surprising as to how the plaintiffs are seeking an injunction against him. It is stated in paragraph 3 of the plaint that the 3rd defendant is an agent of the 1st defendant and ex-employee of GMM Pfudler in which the Patel Group has substantial share holding. However, 3rd defendant was an employee of M/s. GMM Pfudler and 2nd plaintiff are part of the Patel Group and have common customers in the pharmaceutical and chemical industries. This is how, the plaintiff have sued the 3rd defendant. Barring this averment and reiterating it in para 19 of the plaint, in the entire plaint no acts are attributed to the 3rd defendant by which it could be said that the confidential information is misused and there is an apprehension that it will be disclosed, imparted, copied as alleged. There is absolutely no basis for this apprehension and save and except stating that the 3rd defendant is now representing the 1st and 2nd defendant and that is why the injunction must operate against him. However, on affidavit, it is pointed out by the 3rd defendant that he has no role to play in installation of the equipment at Dr. Reddy's Laboratory Ltd. The equipment is not even installed. In his earlier affidavit which is filed on 1st July, 2009, the 3rd defendant has pointed out that the ex-parte order has been obtained on the basis of false statement that he is an Agent of the defendant No.1. In fact, he is a partner of defendant No. 1. The said GMM Pfudler is carrying on distinct business and this is what is stated in para 4 of his affidavit. 4. With reference to paragraph 19 of the plaint, the same misleading insinuation as above is also sought to be repeated therein, without ever mentioning in the plaint what the said GMM Pfudler actually manufacture. It was shocking and entirely illogical that the plaintiffs contends that because I was aware of the customer list, quotation and marketing and prices strategy and negotiation information of GMM Pfudler, I thereby had access to the confidential information of the plaintiffs. It is obvious, that even though the said GMM Pfudler was a Patel Group company, I was merely an employee thereof, and was therefore involved in the marketing of its products being glass lined reactors. It is absolutely absurd and far fetched to say, therefore, that I was also aware of the confidential information of the plaintiffs. Further, and without prejudice, I submit that if that was so, that would mean that the plaintiffs were freely parting with their so called confidential information even to companies like GMM Pfudler with whom they had no arrangement or confidentiality obligations, and that the information referred

to in the said paragraph was not at all confidential in the first place. I submit that the entire alleged cause of action against me is far fetched, concocted and baseless, and I have been impleaded as a party defendant to pressurize me and the defendant No.1 and to stall the business of defendant No.1 so that the defendant No.1 does not provide competition in the market to the plaintiffs. It is false to the knowledge of the plaintiffs to state that none of the companies in which I had worked carried on the business related to chemical process equipment and powder transfer systems / equipment or that the entire knowledge base about chemical process equipment and their users were acquired by me during my employment with GMM Pfaudler. In fact, I did not acquire any knowledge whatsoever with regard to powder transfer equipment from GMM Pfaudler as the said company was not in that business. In fact, I had previously work with IPA Limited, Bangalore which was a company specifically involved in the field of powder handling equipments. I was the engineer marketing in that company. The said company, inter alia, carried on the activity of manufacturing equipment such as filling the powder into the batch and drum, metering the powders, weighing and dispensing of powders, bag filling application, big bag filling and emptying stations. Further, and in any event, I have been educating in the engineering field, and therefore obviously have knowledge thereof. I am Bachelor of Mechanical Engineering from one of the India's premier engineering colleges being the Regional Engineering College, Allahabad. It is inconceivable as to why it was necessary to disclose the plaintiffs marketing strategy and pricing strategy, client list, quotations, or negotiation information of the plaintiffs to me to effectively discharge my duties to GMM Pfaudler which was manufacturing an entirely different product. I deny that any such marketing strategy or pricing strategy or client list or negotiation information of the plaintiffs was disclosed to me. There was absolutely no reason for doing so, though I had come across some of the quotations of the plaintiffs. It is denied that any such client list etc. was disclosed to me in confidence or trust or under an obligation to maintain secrecy or not to use the same except for the benefit of the plaintiffs or at all as alleged or at all. It is absurd even to state that I was required to use such alleged information for the benefit of the plaintiffs, even though I was not employed by the plaintiffs or by GMM Pfaudler. It is denied that I was under any obligation to maintain secrecy or not to use any alleged confidential information or that any such alleged information was in fact disclosed to me by the plaintiffs. Even assuming that I have knowledge of the customers of the plaintiffs, by virtue of my employment with GMM Pfaudler, that does not mean that I have knowledge of any of the other alleged confidential information of the plaintiffs as mentioned in the said paragraph. I say that in fact, the customers of GMM Pfaudler and the plaintiff No.1 were not identical and could not be identical as the two companies were on different businesses. Further, and in any event, both the companies supply their product to very well known and reputed companies, and such customers can never constitute the confidential or secret information of the plaintiffs or GMM Pfaudler. I would further mention that in any event, I have not received any confidential information with regard to the items mentioned in the said paragraph from GMM Pfaudler. I merely gained

experience in the field which any person would ordinarily gain in my position, and the same is mischievously sought to be termed as confidential information by the plaintiffs. 62. In the light of these statements which are not even dealt with leave alone denied by the plaintiffs, I do not see as to how any injunction can be granted against defendant No.3. The ad-interim order deserves to be vacated on account of the statements made by defendant No.3 and reproduced hereinabove. 63. Similarly, so far as defendant No.4 is concerned, even he has pointed out that he has never been approached to fabricate and has never fabricated any equipment or material for defendant No.1 or any other equipment manufactured for defendant No.1. He states that statements in the plaint are false. In fact, in para 6 of his affidavit which is filed in this Court on 1st July, 2009, he states that certain drawings of the plaintiffs are lying with him on the basis of which he used to fabricate components for the plaintiffs. Further, after plaintiffs placing the orders on him, he has not disclosed any drawings to 3rd parties or made use of them for manufacturing any components at all, much less for defendant No.1. In fact, he is not even aware that the plaintiffs placed the orders upon him and became aware of the same only on perusal of the plaint. He has stated in para 6 of the affidavit that he is ready and willing to return all drawings of the plaintiffs if called upon to do so. They have, however, never called upon him to do so in the past and even now no such relief is claimed in the plaint. He has stated that at the same time he has clarified that the manufacturing of the components fabricated by him for plaintiff does not require any secret or confidential technology or process at all. The process required for said manufacturing is well known in the market and to all fabricators carrying on fabrication work. He has categorically stated that he has not manufactured any components for the plaintiffs on the basis of any information submitted by them with regard to the fabrication process but has used his own fabrication experience, expertise and process to manufacture the components on the basis of the dimensions provided by the plaintiffs in their drawings. ig He has stated that he is not an individual but partner of the firm of M/s. Metal Craft Industries. He is not carrying on any business or manufacturing identical machinery to that of the plaintiffs. He has stated that the drawings handed over to him are xerox copies and not original and they were never given to him under any confidence or trust with any obligation to maintain secrecy as alleged or at all. However, he has not divulged the same to any third parties. 64. Even these statements of the defendant No.4 made on oath are not dealt with or denied by the plaintiffs. 65. In the aforesaid circumstances, the injunction as prayed cannot be granted as against defendant No.4. The ex-parte order dated 8th May, 2009 deserves to be, therefore, vacated even against defendant No.4. 66. The principal allegation and relief is against defendant No.2. The plaintiffs are not even aware of constitution of defendant No.1. Be that as it may, there whole case of breach of trust and of the agreement of secrecy is against defendant No.2. 67. It would be interesting to see the plaint allegations against defendant No.2. It is stated that defendant No.2 joined the 2nd plaintiffs services on 3rd January, 2005 as Manager-Systems. ig He was initially appointed on probation of a period of 6 months and thereafter confirmed in employment. A copy of

the appointment letter is enclosed as Annexure E and in clause 14 thereof it is stated that the 2nd defendant undertakes and agrees that all property including all correspondence addressed to or by him, specifications, vouchers, literatures, books, circulars, articles, goods etc. or property of any nature whatsoever belonging to the company or relating to the company's business which shall come into his possession in the course of his employment will be returned on demand without claiming any lien or right thereon. It is stated that these terms and conditions are accepted by him and implicit in these terms and more particularly clause 14 is a Trust and hence the position of the 2nd defendant is that of a trustee for the 2nd plaintiff. A bare perusal of the same would indicate that there is no Negative covenant or any obligation by which one could assume that the 2nd defendant has signed an Agreement of Secrecy or any confidentiality. In these circumstances, it can be safely assumed that the plaintiffs case is not based on any Negative stipulation or covenant in the contract. Their case is based on the fact that the 2nd defendant was in a Key position in the employment of the 2nd plaintiff. It was necessary for 2nd plaintiff to disclose confidential information to the 2nd defendant. It was disclosed to the 2nd defendant in confidence and trust and under an obligation to maintain secrecy of the same and use the same only for the benefit of the plaintiffs. The confidential information was disclosed to the 2nd defendant so that he could have discharged his duties while in employment. The 2nd defendant is under an obligation or trust, express and / or implied to maintain the secrecy and use the said confidential information during the course of his employment and not otherwise. 68. The plaintiffs case will have to be decided on the touch stone of certain settled principles. In the case of M/s. Gujarat Bottling Co. Ltd. & Ors. V/s. Coca Cola Company and Ors. AIR-1995 SC 2372, the Hon ble Supreme Court held as under :- 21. Under the common law in England a man is entitled to exercise any lawful trade or calling as and where he wills. The law has been always regarded (guarded) jealously and interference with trade, even at the risk of interference with freedom of contract, as it is public policy to oppose all restraints upon liberty to individual action which are injurious to the interests of the State. A person may be restrained from carrying on his trade by reason of an agreement voluntarily entered into by him with that object and in such a case the general principle of freedom of trade must be applied with due regard to the principles that public policy requires for persons of full age and understanding the utmost freedom to contract. Traditionally the doctrine of restraint of trade applied to covenants whereby an employee undertakes not to compete with his employer after leaving employer's service and covenants by which a trader who has sold his business agrees not thereafter to compete with the purchaser of the business. The doctrine is, however, not confined in its application to these two categories but covenants falling in these two categories are always subject to the test of reasonableness. Since the doctrine of restraint of trade is based on public policy its application has been influenced by changing views of what is desirable in the public interest. The decisions of public policy are subject to change and development with the change and development of trade and the means of communications and the evolution of economic thought. The general

principle once applicable to agreements in restraint of trade has consequently been considerably modified by later decisions in England. In the earliest times all contracts in restraint of trade, whether general or partial, were void. The severity of this principle was gradually relaxed, and it became the rule that a partial restraint might be good if reasonable, although a general restraint was of necessity void. The distinction between general and partial restraint was subsequently repudiated and the rule now is that the restraints, whether general or partial, may be good if they are reasonable and any restraint on the freedom of contract must be shown to be reasonably necessary for the purpose of freedom of trade. A covenant in restraint of trade must be reasonable with reference to the public policy and it must also be reasonably necessary for the protection of the interest of the covenantee and regard must be had to the interests of the covenantor. Contracts in restraint of trade are prima facie void and the onus of proof is on the party supporting the contract to show that the restraint goes no further than is reasonably necessary to protect the interest of the covenantee and if this onus is discharged the onus of showing that the restraint is nevertheless injurious to the public is on the party attacking the contract. The Court has to decide, as a matter of law, (i) whether a contract is or is not in restraint of trade, and (ii) whether, if in restraint of trade, it is reasonable. The Court takes a far stricter and less favourable view of covenants entered into between employer and employee than it does of similar covenants between vendor and purchaser or in partnership agreements, and accordingly a restraint may be unreasonable as between employer and employee which would be reasonable as between the vendor and purchaser of a business (See: *Halsbury's Laws of England*, 4th Edn. Vol.47, Paragraphs 9 to 26; *N.S. Golikari V. Century Spinning Co.* (1967) 2 SCR 378 at Pp. 384-85: (AIR 1967 SC 1098 at Pp.1101-02). Instead of segregating two questions, (i) whether the contract is in restraint of trade, (ii) whether, if so, it is reasonable, the Courts have often fused the two by asking whether the contract is in undue restraint of trade or by a compound finding that it is not satisfied at this contract is really in restraint of trade at all but, if it is, it is reasonable. (See : *Esso Petroleum Co. Ltd. V. Harper's Garage (Stourport) Ltd.* 1968 AC 269 at P. 331 Lord Wilberforce. 22. In India agreements in restraint of trade are governed by Section 27 of the Indian Contract Act which provide as follows : Section 27, Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. Exception 1. - One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein; Provided that such limits appear to the Court reasonable, regard being had to the nature of the business. 23. The said provision was lifted from Hon. David D. Field's Draft Code for New York which was based upon the old English doctrine of restraint of trade, as prevailing in ancient times. The said provision was, however, never applied in New York. The adoption of this provision has been severely criticised by Sir Frederick Pollock who has observed that the law of India is tied down by the language of the section to the principle, now exploded in England, of a

hard and fast rule qualified by strictly limited exceptions. While construing the provisions of Section 27 the High Courts in India have held that neither the test of reasonableness nor the principle that the restraint being partial or reasonable are applicable to a case governed by Section 27, of the Contract Act, unless it falls within the exception. The Law Commission in its Thirteenth Report has recommended that the provision should be suitably amended to allow such restrictions and all contracts in restraint of trade, general or partial, as were reasonable, in the interest of the parties as well as of the public. No action has, however, been taken by Parliament on the said recommendation. (See : *Superintendence Company of India (P) Ltd. V. Krishan Murgai*, (1980) 3 SCR 1278, at Pp. 1291. 1296-98: (AIR 1980 SC 1717 at Pp. 1724, 1726-28) per A.P. Sen J.J. 34. If the negative stipulation contained in paragraph 14 of the 1993 Agreement is considered in the light of the observations in *Esso Petroleum Co. Ltd.* (1968 AC 269) (Supra), it will be found that the 1993 Agreement is an agreement for grant of franchise by Coca Cola to GBC to manufacture, bottle, sell and distribute the various beverage for which the trade marks were acquired by Coca Cola. The 1993 Agreement is thus a commercial agreement whereunder both the parties have undertaken obligations for promoting the trade in beverages for their mutual benefit. The purpose underlying paragraph 14 of the said agreement is to promote the trade and the negative stipulation under challenge seeks to achieve the said purpose by requiring GBC to wholeheartedly apply to promoting the sale of the products of Coca Cola. In that context, it is also relevant to mention that the said negative stipulation operates only during the period of agreement is in operation because of the express use of the words during the subsistence of this agreement including the period of one year as contemplated in paragraph 21. in paragraph 14. Except in cases where the contract is wholly one sided, normally the doctrine of restraint of trade is not attracted in cases where the restriction is to operate during the period the contract is subsisting and it applies in respect of a restriction which operates after the termination of the contract. It has been so held by this Court in *N.S. Golikari* (1967 (2) SCR 378: AIR 1967 SC 1098 (supra) wherein it has been said: The result of the above discussion is that considerations against restrictive covenants are different in cases where the restriction is to apply during the period after the termination of the contract than those in cases where it is to operate during the period of the contract. Negative covenants operative during the period of the contract of employment when the employee is bound to serve his employer exclusively are generally not regarded as restraint of trade, and therefore, do not fall under Section 27 of the Contract Act. A negative covenant that the employee would not get himself employed by any other master for whom he would perform similar or substantially similar duties is not, therefore, a restraint of trade unless the contract as aforesaid is unconscionable or excessively harsh or unreasonable or one sided as in the case of *W.H.Milsted and Son Ltd.* (1927 WN 233) (P.389) (of SCR) : (at Pp.1104-05 of AIR). 35. Similarly, in *Superintendence Company* (1980 (3) SCR 1278 : AIR 1980 SC 1717 (supra) A. P. Sen J., in his concurring judgment, has said that the doctrine of restraint of trade never applies during the continuance of a contract of

employment; it applies only when the contract comes to an end. (P.1289) (of SCR): (at Pp.1722-23 of AIR). 45. In the matter of grant of injunction, the practice in England is that where a contract is negative in nature, or contains an express negative stipulation, breach of it may be restrained by injunction and injunction is normally granted as a matter of course, even though the remedy is equitable and thus in principle a discretionary one and a defendant cannot resist an injunction simply on the ground that observance of the contract is burdensome to him and its breach would cause little or no prejudice to the plaintiff and that breach of an express negative stipulation can be restrained even though the plaintiff cannot show that the breach will cause him any loss. (See : Chitty on Contracts, 27th Edn. Vol.I, General Principles, Para 27-040 at P.1310; Halsbury's laws of England, 4th edn. Vol.24, para 992). In India Section 42 of the Specific Relief Act, 1963 prescribes that notwithstanding anything contained in clause (e) of Section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement. This is subject to the proviso that the plaintiff has not failed to perform the contract so far as it is binding on him. The Court is, however, not bound to grant an injunction in every case and an injunction to enforce a negative covenant would be refused if it would indirectly compel the employee either to idleness or to serve the employer. (See: *Ehrman V. Bartholomew* (1898) 2 Ch.451) : (1927) WN 233: N.S. Golikari (1967) (2) SCR 378 (supra) at p.389): (AIR 1967 SC 1098 at p. 1104. 46. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the Court. While exercising the discretion the Court applies the following tests (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need to the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the balance of convenience lies. (See : *Wander Ltd. V. Antox India P. Ltd.* 1990 (Supp) SCC 727 at Pp. 731-32). In order to protect the defendant while granting an interlocutory injunction in his favour the Court can require the plaintiff to furnish an undertaking so that

the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial. 69. These principles are attracted to cases of Negative covenants. In matters such as the one before me a cautious approach is necessary. The plaintiffs have claimed damages vide prayer clause (d) and the quantum is ascertainable and quantified. There are certain basic and fundamental referred to considerations in such cases. The Hon ble Supreme Court has certain other decisions including in *Niranjan Golikari s case*. In *Niranjan Golikari s case*, a decision of Gujarat High Court is referred, which I find is more apposite. The decision of the Gujarat High Court is certainly the guiding force. 70. In AIR 1966 Gujarat, 189 (V 53 C 34) M/s. Lalbhai Dalpatbhai & Co. Vs. Chittaranjan Chandulal Pandya, a Division Bench of the Gujarat High Court has observed thus :- 2. The main question which arises in this appeal is whether the negative stipulation contained in Clauses 7 and 9 of the contract is valid and enforceable and the Court should issue an injunction restraining the defendant from committing a breach of the negative stipulation. On this question various contentions have been advanced before us on behalf of the parties and we shall presently refer to those contentions but before we do so, it would be desirable to clear the ground by observing that negative stipulations such as this in contracts of personal service cannot be regarded as stipulations in restraint of trade so as to be liable to be invalidated under S.27 of the Contract Act. It is now well settled that restrictions that are to operate only while the employee is contractually bound to serve his employer are never regarded as in restraint of trade either at common law. (See *Gaumont British Picture Corporation Ltd. Vs. Alexander*. (1936) 2 All ER 1686. and *Warner Bros V. Mrs. Nelson*. (1937) 1 KB 209 and *Marco Productions Ltd. V. Pagola*. (1945) 1 All ER 155 or *In India Charlesworth V. MacDonald* (1899) ILR 23 Bom 103 and *V.D. Deshpande V. Arvind Mills Ltd.* (1946) 48 Bom LR 90 (AIR 1946 Bom 423) In (1899) ILR 23 Bom 103 the negative stipulation was contained in a contract under which the defendant agreed to practise as an Assistant of the Plaintiff a medical practitioner in Zanzibar for a period of three years and the contract contained a negative stipulation which was construed by the Court to be that the defendant shall not practise on his own account in Zanzibar during the period of the contract. The question arose whether this negative stipulation was void under the Contract Act as being an agreement in restraint of trade. Farran C.J., answered the question in the negative observing in words which have since then been often quoted in various subsequent decisions: . . . is it an agreement which restrains the defendant from exercising his lawful profession? Is it an agreement in restraint of trade? I think not. I do not think that an agreement of this class falls within the section. If it did, all agreements for personal service for a fixed period would be void. An agreement to serve exclusively for a week, a day, or even for an hour, necessarily prevents the person so agreeing to serve from exercising his calling during that period for any one else than the person with whom he so agrees. It can hardly be contended that such an agreement is void. In truth, a man who agrees to exercise his calling for a particular wage and for a certain period agrees to exercise his calling for a particular wage and for a certain period agrees to exercise his calling, and such

an agreement does not restrain him from doing so. To hold otherwise would, I think, be a contradiction in terms. . . . There is also the dictum of Candy, J., in *Callianji V. Narsi Tricum*. (1894) ILR 23 Bom 103 and illustration (d) to S.57 of the Specific Relief Act is what I may call a legislative decision to the same effect. This decision is binding upon us, but we may point out that even if it were not so, we should still have been inclined to reach the same decision and we wish to express our respectful concurrence with these observations. The negative stipulation in the contract in the present case cannot, therefore, be said to be void as being in restraint of trade. There was no other ground suggested on behalf of the defendant which would invalidate the negative stipulation and we must, therefore, proceed to decide this case on the basis that the negative stipulation was a valid stipulation. 3. Mr. C.T. Daru on behalf of the defendant agreed that the negative stipulation in the present contract being a valid stipulation if any injury resulted to the plaintiffs as a result of the breach of the negative stipulation, the plaintiffs would be entitled to recover damages for such injury from the defendant. His only dispute was that the plaintiffs were not entitled to obtain an injunction against the defendant to restrain the breach of the negative stipulation. He urged various arguments in support of this plea and we shall presently examine these arguments but before we do so we must refer to an objection raised by him which sought to give an answer in limine to the claim for an injunction. That objection was based on the provisions of the Specific Relief Act, 1963, which was admittedly the statute governing the determination of the present question and the argument was that the negative stipulation in the contract imposed a continuous duty on the defendant not to serve anyone other than the plaintiffs and the Court could not supervise the performance of this continuous duty and, therefore, having regard to the rule enacted in S.14(1)(d) which was applicable to a case of an injunction by reason of S.38(2), the Court was precluded from granting an injunction to the plaintiffs. Now Mr. C.T. Daru is certainly right in his contention that by reason of S.38(2), the rule enacted in S.14(1)(d) must apply even where an injunction is sought to prevent the breach of an obligation arising from a contract but obviously the rule can apply in any given case only when it is applicable on the facts of the case. The Rule says that a contract, the performance of which involves the performance of a continuous duty which the Court cannot supervise cannot be specifically enforced and it is clear from the language and the intendment of the rule that the duty which is referred to there is a positive duty to do something and not a negative duty to abstain from doing something. Where under the contract the defendant is under a continuous duty to do something the performance of which the Court cannot supervise, the rule says that such a contract shall not be specifically enforced since it would not be possible for the Court in such a case to ensure performance of the continuous duty. But where the duty under the contract is merely to abstain from doing something, there would be no question of the Court being called upon to supervise the performance of the duty. The enforcement of a negative stipulation such as the one we have in the present case can, therefore, never be within the inhibition of this rule and we cannot refuse to grant injunction in limine on such ground. 5. Now what is the

position when an employer does not seek specific performance of a contract of personal service but asks for an injunction to restrain the breach of a negative stipulation contained in the contract of personal service? The relief by way of injunction depends in India upon statute and is governed by the provisions of the Specific Relief Act, 1963. Section 36 of that Act places the grant of an injunction in the discretion of the Court a discretion to be exercised of course as the discretion of courts always is. The discretion is not arbitrary but sound and reasonable governed by Judicial principles and capable of correction by a Court of appeal. Section 38 sub-section (1) provides that subject to the other provisions contained in or referred to by Chapter VIII, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication and sub-sec. (2) of that section declares that when any such obligation arises from contract, the Court shall be guided by the rules and provisions contained in chapter II. Section 41, Clause (e) enacts that an injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced but S.42 breaks in on that provision and provides that: 6. What then are the rules which should guide the Court in the exercise of his discretion? Now in the matter of exercise of the discretion in such cases there is one rule which has always been recognized by Courts of Equity in England and which has also found favour with Courts in India. The rule is that the Court will not grant an injunction to restrain the breach of a negative stipulation in a contract of personal service where the effect of doing so would be to compel the defendant to specifically perform the contract. This rule is based upon the principle that the Court will not do indirectly that which it cannot do directly. The Court cannot for reasons which we have pointed out above grant a decree for specific performance of a contract of personal service. But the Court cannot escape that inhibition by granting instead an injunction contained in the contract if the effect of the injunction would be to compel specific performance of the contract by the defendant. As observed by Lindley, L.J., in *Whitwood's case*, 1891-2 Ch.416 (supra) the Court, looking at the matter broadly, will generally do much more harm by attempting to decree specific performance in cases of personal service than by leaving them alone; and whether it is attempted to enforce these contracts directly by a decree of specific performance, or indirectly by an injunction, appears to me to be immaterial. What the law denounces is compelling an employee to work against his will for a particular employer and whether it is sound to be achieved by a decree for specific performance or by an injunction does not make any difference; the mischief remains the same and the law insists that the mischief shall be avoided. Even in the case of (1852) 1 De G.M. & G. 604 which the Courts in England have always regarded as an anomaly not to be extended. Lord St. Leonards while issuing an injunction to prevent the breach of a negative stipulation disclaimed doing indirectly what he could not do directly. The learned Law Lord recognized that he could not issue an injunction if by doing so he would in effect be granting specific performance of the contract of personal service but since in his view the injunction issued by him would not have that effect, he granted the injunction. Of course in

determining whether the effect of granting the injunction would be to compel the defendant to specifically perform the contract of personal service, regard would have to be paid to the practical realities of the situation and it would have to be seen whether in the circumstances of a particular case the practical effect would be that the defendant would be rendered virtually idle and would have to starve as an alternative to going back to his employer. If that is the effect of granting the injunction, the Court will not exercise its discretion in favour of granting the injunction, for the Court will not allow its process to be utilised as an instrument for compelling the employee to specifically perform the contract of personal service. This was the rule on which the Court refused to grant injunction in 1898-1 Ch.671 (supra) and 1926 Ch.609 (Supra) and gave an injunction in a limited form in 1937-1 KB 209 (Supra). This rule is in our opinion equally applicable in India. This rule being merely a corollary of the main rule that the Court would not specifically enforce a contract of personal service must be held applicable in India when we find that the main rule has received statutory recognition in India in S.21, Clause (b) of the Specific Relief Act, 1877 and Section 14(1)(b) of the Specific Relief Act, 1963, Section 38(2) read with S.14(1)(b) of the Specific Relief Act, 1963 also supports the applicability of this rule. As a matter of fact there are decided cases in India where this rule has been applied to guide the Court in the exercise of its discretion. Candy.J., affirmed this rule in (1899) ILR 23 Bom.103 (supra) and observed that the case before him did not come within the mischief of the rule since it was not a case in which the Court was asked to indirectly decree specific performance of the contract of personal service. A Division Bench of the Bombay High Court in (1894) ILR 18 Bom. 702 (supra) also recognized the validity of this rule and we find that in a recent decision given by Shelat, J., as he then was a Sunilchand V. Aryodaya Mills Co. Ltd., (1963) 4 Guj.LR 795 (AIR 1964 Guj.115) the correctness of this rule has been accepted in its application to India. It is, therefore, clear both on principle and authority that even where a negative stipulation in a contract of personal service is sought to be enforced, the Court has a discretion in the matter and one of the principles which must guide the discretion of the Court is that if the effect of granting the injunction would be to indirectly compel the defendant to specifically perform the contract of personal service, the Court would not grant such injunction. 7. If this rule is applied, it is clear that an injunction cannot be granted to restrain the defendant from committing a breach of the negative stipulation contained in Clauses 7 and 9 of the contract. The negative stipulation contained in these clauses is in the widest terms and prevents the defendant from serving any one else other than the plaintiffs in any capacity whatever. If an injunction were granted in terms of this negative stipulation, the result would be that the defendant would be either reduced to idleness and starvation or be compelled to go back in the employment of the plaintiffs. This would be in substance and effect amount to decreeing specific performance of the contract of personal service which the Court cannot do. We cannot, therefore, grant an injunction in the wide terms in which it is claimed by the plaintiffs. 8. If this principle is to be applied, it is clear that two conditions must be fulfilled before a restraint imposed by a

negative covenant can be held enforceable by an injunction. In the first place, it must be reasonable in reference to the interest of the contracting parties and secondly it must be reasonable in reference to the interest of the public. In the case of each condition the test of reasonableness must be satisfied. To be reasonable in reference to the interest of the contracting parties, the restraint must afford no more than adequate protection to the party in whose favour it is imposed. To be reasonable in reference to the interest of the public, it must be in no way injurious to the public. 9. If the negative stipulation which imposes a restraint is reasonably necessary for the adequate protection of the interests of the employer, it must be enforced by issue of an injunction. But if the negative stipulation goes beyond what is reasonably necessary to protect the legitimate interests of the employer there is no reason why a Court should interpose to enforce the negative stipulation. The employer in the latter case would not need an injunction for protection of his interest nor would his interests be protected by issue of such injunction. The only object which he could possibly hope to achieve by obtaining an injunction would be to spite or punish the employee for having broken the contract or perhaps to induce the employee to come back to his employment. Now it is clear from what we have said above while discussing the true basis of the rule against specific enforcement of a contract of personal service that the law does not favour compulsion of an employee to work against his will for any employer. The object to get back the employee in service is, therefore, not an object which the law countenances and it cannot be a legitimate object for enforcement of a negative stipulation that the employee would, even if not compelled, be at least induced or to use the words of Branson, J., in 1937-1 KB 209 (*supra*) tempted to come back. The law cannot regard such a consideration as a relevant consideration for if such a consideration were relevant, the Court would in effect be doing indirectly what it cannot do directly, because the Court would be issuing an injunction in order to induce the employee to go back to his employer, a thing which the Court should not think of doing. An injunction if otherwise properly granted may have the effect of inducing or tempting the employee to go back to the service of his employer but that is not the object for which injunction can be granted by the Court. It must, therefore, be seen whether the enforcement of the negative stipulation is reasonably necessary for the protection of the legitimate interest of the employer. If it is not going to benefit the employer in any legitimate manner, the Court would not injunct the employee from exercising his skill, training and knowledge merely because the employee has agreed to it. Of course when we say this we do not for a moment wish to suggest that in such cases sanctity of contract may not be respected or may be violated with impunity. The question is only one of remedy. The employee having agreed to the negative stipulation, the negative stipulation must be held binding on him and if there is breach of the negative stipulation, the employer would have his remedy in damages, if any, but the Court would not grant the extraordinary remedy by way of an injunction because by doing so, beyond a mere enforcement of a contractual obligation, legitimate object or purpose would be advanced. The Court would not interfere with the freedom of occupation of the employee unless it is neces-

sary to do so for the protection of the interests of the employer. To that extent, freedom of contract must yield to freedom of occupation in public interest. We are, therefore, of the view that the principle laid down by Lord Macnaghten in Nordenfelt case, 1894 AC 535 must be imported in order to guide the discretion of the Court in regard to the question as to when an injunction should be issued for breach of a negative stipulation in a contract of personal service, for that principle effect a happy reconciliation and adjustment of freedom of contract and freedom of occupation and subserves public interest. 10. If we adopt this principle it would be possible for the Courts to permit themselves a freedom of action which would enable them to bring the law completely in line with social and economic conditions of the country and to administer the law in a manner which would satisfy the needs of the community in these conditions. It was strongly pressed upon us that by accepting this principles we would be importing an extraneous consideration not permitted by the language of the statute but we must remember that the law must adapt itself to the changing needs of society and wherever it is possible we must not hesitate to adopt new principles for otherwise law will become antiquated straight jacket and then dead letter and the judicial hand would stiffen in mortmain if it had not part in the work of creation . We have, therefore, no hesitation in accepting this principle and applying it to guide the exercise of discretion of the Court in issuing injunction to restrain breach of a negative covenant in a contract of personal service. 13. Before we apply this principle to the facts of the present case we must refer to one other contention of Mr. C.T. Daru on behalf of the defendant. He urged that S.42 in so far as and to the extent to which it empowers the Court to restrain a person from practising any trade or profession or occupation of his choice is violative of the freedom guaranteed under Article 19(1)(g) of the Constitution and the Court cannot issue an injunction imposing such a restraint resting on the authority purported to be conferred by that section. Now it is a little difficult to appreciate the force of this contention. Section 42 is no doubt wide in its terms but it leaves a discretion to the Court whether or not to enforce a negative stipulation in a contract of personal service by issue of an injunction. It does not provide that the Court shall issue an injunction in every case where there is a negative stipulation in a contract of personal service. If such had been the case, it might have plausibly been argued that the section imposes an unreasonable restriction on the fundamental right of a person to follow the occupation of his choice and is, therefore, in conflict with Art.19(1)(g). It is now established by the majority view of a person to follow the occupation of his choice and is, therefore, in conflict with Art.19(1)(g). It is now established by the majority view of N.H.Bhagwati and Subba Rao JJ., (S.K. Das, J., not expressing any opinion on the point) in *Bheshar Nath V. Commr. Of I-T*, AIR 1959 SC 149, that the fundamental right under Article 19(1)(g) cannot be waived and it is constitutionally impermissible to any one to contract out of it. Notwithstanding the negative stipulation to the contrary, the fundamental right of the employee to follow the occupation of his choice would, therefore, remain and if the law provided that every negative stipulation, whatever be its scope or content, must be enforced by an injunction and the employee must be restrained

from following the occupation of his choice in breach of the negative stipulation regardless of the consideration whether the imposition of such restraint was reasonable or not in the interest of the general public, the law might be liable to be regarded as being in conflict with the fundamental right of the employee to follow the occupation of his choice. But where the law merely confers authority on a Civil Court which is a Judicial Tribunal to decide in the exercise of its discretion whether to grant injunction or not, it is difficult to see how the law can be regarded as constituting an unreasonable restriction on the freedom to follow the occupation of his choice which belongs to the employee. The matter being left to a judicial Tribunal to be determined would be decided after giving both parties full opportunity of presenting their case and after considering whether in the circumstances of a particular case, the restriction which would be imposed by the injunction is a reasonable restriction or not. The Judicial Tribunal in exercising its discretion would go into the reasonableness of the matter and grant an injunction only if it comes to the conclusion that the restriction imposed by the injunction would be a reasonable restriction: if it comes to the conclusion that the injunction would result in the imposition of unreasonable restriction, it would not grant the injunction. Therefore, the decision whether in a particular case the grant of injunction would be a reasonable restriction or an unreasonable one is left by S.42 involves any contravention of the fundamental right of the employee to follow the occupation of his choice. This view which we are taking is completely in accord with the decision of the Supreme Court in *Godavari Sugar Mills Vs. K.T.S. Kambar Sabha*, AIR 1961 SC 1016. There are questions arose in regard to the Bombay Industrial Relations Act and the contention was that inasmuch as on a reading of S. 3(18) which defined an industrial matter, power was conferred on the Industrial Court to adjudicate on the mode of employment and this interfered with the right of the employer to carry on his trade as he liked subject to reasonable restrictions Section 3(18) in so far as it defined an Industrial matter to include the mode of employment contravened the fundamental right guaranteed under Article 19(1)(g). This contention was repelled by the Supreme Court in the following words which apply wholly and completely to the situation before us: Now assuming that the mode of employment used in S.3(18) includes such questions as abolition of contract labour, the question would still be whether a provision which enables an Industrial Court to adjudicate on the question whether contract labour should or should not be abolished is an unreasonable restriction on the employer's right to carry on his trade. The matter being entrusted to a quasi-judicial tribunal would be decided after giving both parties full opportunity of presenting their case and after considering whether in the circumstances of a particular case the restriction on the mode of employment is a reasonable restriction or not. The tribunal would always go into the reasonableness of the matter and if it comes to the conclusion that the mode of employment desired by labour is not reasonable it will not allow it; it is only when it comes to the conclusion that the mode of employment desired by labour in a particular case is a reasonable restriction that it will insist on that particular mode of employment being used. Take, for example, the case of contract labour itself. The tribunal will have to go into the facts of each case. It

it comes to the conclusion that on the facts the employment of contract labour is reasonable and thus doing away with it would be an unreasonable restriction on the right of the employer to carry on trade, it will permit contract labour to be carried on. On the other hand, if it comes to the conclusion that employment of contract labour is unreasonable in the circumstances of the case before it, it will hold that it should be abolished, the reason being that its abolition would be a reasonable restriction whether the mode of employment is a particular case is a reasonable restriction or unreasonable one is in the hands of a quasi-judicial tribunal. In the circumstances, it cannot be said that by providing in S.3(18) that an industrial matter includes also the mode of employment, there is any contravention of the fundamental right of the employer to carry on trade. If the argument on behalf of the appellant were to be accepted it would mean that judicial and quasi-judicial decisions could be unreasonable restrictions on fundamental rights and this the Constitution does not envisage at all. These last observations also answer the second contention of Mr. C.T. Daru that even if S.42 cannot be struck down as offending Article 19(1) (g), the Court in issuing an injunction restraining an employee from following the occupation of his choice would be violating the protection of Article 19(1)(g) and the injunction issued by the Court would be ineffective to prevent the exercise of the fundamental right by the employee. This contention is clearly unsustainable for it is well settled that a decision of a judicial tribunal cannot be an unreasonable restriction on fundamental rights. To quote the words of Shah, J. in *Ratilal V. State of Bombay*, AIR 1953 Bom.242 at p.253: A decision of regularly constituted Court cannot however be challenged as an interference with fundamental rights in the abstract. The Court in the very nature of things adjudicates upon conflicting claims and declares rights and does not by the operation of its own order seek to infringe any fundamental rights. The Court when it issues the injunction does so because it reaches the conclusion that the negative stipulation to the extent it is enforced by injunction would not impose an unreasonable restriction on the fundamental right of the employee to follow the occupation of his choice. If the decision is wrong the aggrieved party may prefer an appeal to a superior tribunal and the superior tribunal will apply the same test of reasonableness and see whether the conclusion reached by the inferior tribunal is correct or must be reversed. But the decision cannot be challenged as violative of the fundamental right of the employee to follow the occupation of his choice, for implicit in the decision is an adjudication of the reasonableness of the injunction and so long as the decision stands unreserved, it binds the parties. We cannot, therefore, assent to the argument that a decision of a Court of law can be violative of the fundamental rights guaranteed under Part II of the Constitution and that if an injunction is issued by the Court, its validity can be challenged on the ground that it conflicts with any of the fundamental rights. It must accordingly be held that the following observations of Raju, J., in *Maganlal V. Ambica Mills Ltd.* AIR 1964 Guj.215 do not represent the correct law. Acts of Courts and acts of Judicial Officers would come within the purview of the expression Act of the State. If a Court or a Judicial Officer imposes restrictions on the right given by Article 19 of the Constitution, that would offend the provisions

of Art.19 of the Constitution. But we must point out that Raju, J. is right to this extent that though the discretion conferred on the Court by S.42 is an unfettered discretion, the Court in exercising that discretion must go into the reasonableness of the matter and examine whether the grant of the injunction would impose a reasonable restriction or an unreasonable restriction on the right of the employee to follow the occupation of his choice. That this inquiry is not only a relevant but also an obligatory inquiry is clearly laid down in the decision of the Supreme Court in AIR 1961 SC 1016 (supra) and if this requirement is borne in mind it is clear that the principle to which we have referred earlier, namely, that a negative stipulation in a contract of personal service should be enforced by an injunction only if it is necessary to do so for the protection of the legitimate interests of the employer and is otherwise also in public interest, must necessarily be imported. That principle does not no more than give effect to the requirement that in granting the injunction the Court should not impose an unreasonable restriction and that the restriction imposed must be reasonable restriction in the interest of the general public. If that principle is adopted by the Court as a guide to exercise its discretion in the matter of grant of an injunction, the constitutional requirement would be satisfied and that is all the greater reason why that principle should be imported in the consideration of the question as to whether and how far an injunction should be granted. 71. It is on the basis of the aforesaid principles that I will have to consider the controversy in the present suit at this prima-facie stage. Although, it is urged that these observations must be seen in the backdrop of Negative Covenants not to serve any other employer, yet, to my mind that will not be a proper approach. More so, considering the Supreme Court decision in M/s. Gujarat Bottling (Supra). However, since the plaintiffs are alleging breach of express and or implied trust on the basis that the 2 nd defendant was their employee, it would be necessary to scrutinize the case on that basis. Agreement or contract of employment and the general principles of Master and Servant according to the plaintiffs contemplate reposing of trust and acting in confidence and, therefore, the reciprocal obligation to maintain the secrecy according to the plaintiffs, if breached so as to adversely affect the underlying object and purpose, then, that would enable them to seek the permanent injunction. Since it is alleged that 2nd defendant was in a Key position and had access to know- how / confidential information that I am assuming that the plaintiffs can seek the reliefs against him. However, before they can claim any such relief, they must make out a strong prima-facie case. 72. In the instant case, the plaintiffs have stated that there is an agreement dated 9th February, 2005 between 1st plaintiff and the Patel Group, the 1st defendant and 2nd plaintiff under which the 2nd plaintiff had a right to use certain know-how / confidential information and to manufacture, produce, process, sale and distribute products of the 2nd plaintiff. Reliance is placed upon this know-how agreement. Therefore, what is disclosed is a know-how or confidential information of the nature set out in para 7 of the plaint is not clear to me at all. More so, as the plaintiffs themselves are not sure about it. They have used both terms, know-how / confidential information. Thus, what is disclosed in confidence is either the know-how or the information. If such words

and expressions are used one cannot assume without anything more, that they convey the same meaning and are inter-changeable. Know-how means any and all confidential data and technical information according to plaintiffs. However, barring a definition of the Term in the Agreement, nothing is produced to show that the parties understood it in this manner. 73. It is on the basis of the above quoted principles, that the plaintiffs allegations have to be scrutinized. As enumerated above, para 6 and 7 of the plaint, does not make any distinction between know-how and confidential information. Now, when it is stated that the 2nd plaintiff is a joint venture of the 1st plaintiff and one Patel Group, each hold 50% of the issued and paid up share capital of the 2nd plaintiff and when the company itself is recently come in the market, then, it is not clear as to how its know-how belongs to it exclusively. The 2nd plaintiff being a joint venture of the 1st plaintiff and one Patel Group, then, minimal expectation is that each one of them is a party to the proceedings / suit or confirms the arrangement otherwise. Further, the plaint should indicate as to who supplied the know-how / confidential information. It should have been specified clearly as to who is the owner of the information and know-how. More so, when the owner of copyright in the industrial drawings is stated to be the 1st plaintiff and admittedly the 2nd defendant was not an employee of this company. If there is a group obligation with regard to the secrecy of know-how or confidential information, then, that group should have been clearly identified. If it was the group which had imparted and handed over the information in confidence and trust, then, that should have been spelt out clearly. It will not be proper to proceed on the basis that the 2nd plaintiff has absolute authority over the know-how / confidential information. Thus, apart from being vague and unclear the plaint allegations also fail to pin point this vital aspect. Therefore, from paras 5 to 7, it is apparent that the plaintiffs have merely made some statements and averments but did not produce any supporting material including the share holding pattern and the ownership of the confidential information / know-how. When the plaint is alleging that know-how / confidential information is developed and owned by the 1st plaintiff but at the same time seeking to proceed against the 2nd defendant who is not an employee of the 1st plaintiff, then, that itself would go to show that so far as the confidential information / know-how is concerned, the plaintiff No.2 has no authority much less title thereto. If that is developed and owned exclusively by the 1st plaintiff, then, on what basis the plaintiffs are claiming an injunction on behalf of the 2nd plaintiff is not clear to me at all. That is why in an indirect and oblique manner, it is stated that 1st plaintiff and 2nd plaintiff are joint and have a common grievance. However, the plaint assertions themselves falsify this position because it is not the 1st and 2nd plaintiff alone who share the alleged information / know-how but there is a 3rd entity namely Patel Group. It holds 50% of the issued and paid up share capital of the 2nd plaintiff. In para 2 of the plaint, it is stated that 1st plaintiff and Patel Group have entered into share subscription and share holders agreement dated 9th February, 2005 setting out their respective roles and responsibilities, the area of co-operation with regard to management and administration of the 2nd plaintiff. Thus, this 3rd entity namely the Patel Group also has a stake

but it is not before the Court. The plaint allegations themselves would go to show that the 2nd defendant who was an ex-employee of the 2nd plaintiff cannot be enjoined by the plaintiffs 1 and 2 unless it is averred and prima-facie proved that there is a privity of contract between the 1st plaintiff and the 2nd defendant and there is a relationship in the nature of trust and confidence even between the 1st plaintiff and the 2nd defendant. From the plaint averments the said privity is not established and proved. The nexus or connection between the plaintiffs jointly and the 2nd defendant so far as the confidential information is concerned, is prima facie not established. It is attempted to be proved by circuitous method and when the 1st plaintiff is aware that it cannot sue the 2nd defendant to protect its technology and drawings or designs, then, by joining the 2nd plaintiff it cannot get any relief. What is not permitted directly cannot be achieved indirectly or in an oblique manner is the settled principle. Therefore, when it is the 1st plaintiff who has the exclusive right and ownership to the confidential information and there being no averments in the plaint that the confidential information is supplied to the 2nd plaintiff during the course of its business, then, no Interim relief can be granted. In para 5 and 8 of the plaint, reliance is placed on the agreement dated 9th February, 2005. However, a careful perusal of the averments would demonstrate that what is referred to in para 5 is the know-how agreement. In para 8, however, the reference is made to the share subscription and shareholders agreement dated 9th February, 2009 which is admittedly not produced, leave alone annexed to the plaint. If the know-how agreement is perused, all that is stated therein is that the foreign collaborator and the Patel Group have entered into a share subscription and shareholders agreement dated 9th February, 2005. It further states that foreign collaborator has agreed to execute in favour of the 2nd plaintiff an agreement granting it the right to use certain know-how which is defined in relation to the manufacture, production, processing, sale and distribution of the products but subject to the terms and conditions of the agreement. 74. The term know-how is defined in clause 1.3 which reads thus :- 1.3 Know-How means any and all confidential data and technical information relating to and which is used by, the Foreign Collaborator in the manufacture and / or sale of the products, including, without limitation, all knowledge (whether patented or not), un-patented inventions, manufacturing procedures, models, formulae, methods, processes, components, techniques, standards, specifications, skills and ideas and all confidential data and technical information relating to, and which is used by, the Foreign Collaborator in, the manufacture, processing, production and/or sale of the products. 75. Section II deals with the grant of the rights and clause 2.1 to 2.3 are relevant. According to these clauses, within 7 days from the effective date and from time to time thereafter during the term of this agreement, the foreign collaborator shall transfer, impart, disclose and supply to company know-how pertaining to the manufacturing, production, processing, sale and distribution of the products upon and subject to the terms and conditions contained in this agreement. The effective date as defined means the date on which a copy of this agreement has been filed with Reserve Bank of India (See clause 1.2). The plaint does not state as to when this confidential information was transferred, imparted, dis-

closed and supplied to the 2nd plaintiff by the 1st plaintiff. What is the effective date is not disclosed in the pleadings at all. This aspect assumes significance because the 2nd defendant in his affidavit in reply has made categorical statement that it is not disputed that the 2nd defendant joined the 2nd plaintiff's service on 3rd January, 2005. He was appointed on this date. However, he was confirmed on 4th August, 2005. He has stated that he has on his own installed the Powder Transfer System which was imported from the plaintiff No.1 company in a dis-assembled condition by GMM Pfaudler Ltd. and assembled by the plaintiff No.2 in January, 2005. On 5th January, 2005 he installed the first such equipment at the site of M/s. Biocon Pharmaceutical, Bangalore. He has stated that the equipment arrived at the factory and he assembled it on the basis of his own knowledge without having any training whatsoever for the purpose and using the labour supplied by M/s. Biocon Pharmaceutical Ltd. In para 7.1 he has categorically stated that he received a telephone call from Mr. A. Pillai, CEO of the said GMM Pfaudler requesting him to contact Mr. Fredric Dietrich of plaintiff No.1 who was in Mumbai at that time. The said Fredric Dietrich informed the 2nd defendant that plaintiff No.1 wanted to set up a company in India in collaboration with the Patel Group to manufacture Powder Handling Equipment and that they required a person in both marketing and engineering experience to help in developing the said company in India. The 2nd defendant has stated in this paragraph that when these discussions took place the 2nd plaintiff was still to be registered. In these circumstances, as to when the technical know-how / confidential information was passed on by the 1st plaintiff to the 2nd plaintiff and as to when the 2nd plaintiff disclosed this information / know-how to the 2nd defendant has not been clarified at all. From para 7.1. to 7.4 of the affidavit in reply, it is clear that when the 2nd defendant joined the 2nd plaintiff, the 2nd plaintiff had not become functional completely. He has stated that the plant of 2nd plaintiff was to be set up and that he made some attempts to do so only after he returned from Switzerland. Till about October, 2005, the 2nd defendant had no proper plant and premises where the work of assembling, marketing and installation operations could be undertaken. It is the 2nd defendant who made efforts for such installation. 76. Pertinently, these paragraphs of the affidavit in reply have not been controverted in the rejoinder. Para 19 onwards purport to deal with these statements in reply. It is pertinent to note that the plaintiffs have further stated in para 19 that prior to the 2nd defendant joining the plaintiffs, the plaintiffs were marketing the PTS machines through the said GMM Pfaudler. The said GMM Pfaudler started marketing of PTS machine since 2004, which is before the 2nd defendant joining the plaintiffs. It is worthwhile to note that the 2nd defendant joined the 2nd plaintiff and not the said GMM Pfaudler. Therefore, denial of the statements in the paragraph under reference of the reply by stating that the said GMM Pfaudler had installed PTS machines and the plaintiffs have done the said installation through said GMM Pfaudler cannot be construed to mean that the 2nd plaintiff was functional prior to the joining of the 2nd defendant. It also does not disclose that the confidential information and technical know-how was supplied by the 1st plaintiff to the 2nd plaintiff even when the installation at

M/s. Ranbaxy or M/s. Biocon Pharmaceutical Ltd. had taken place. 77. The following statements in para 19 of the affidavit in rejoinder are important. 19. I am not aware and therefore do not admit that the 2nd defendant had successfully completed the setting up of Vicrab and Koch-Giltsch with a team of just a couple of employees to start with and therefore he took the invitation of plaintiff No.1 as a new challenge and agreed to help in setting up the company. I deny that the 2nd defendant set up the company single handedly, using his technical and marketing experience. I say that the plaintiffs disclosed to the 2 defendant the said confidential information and the drawings and also there was complete support from the 1st plaintiffs on technical aspects and support from M/s. GMM Pfaudler Ltd. on marketing aspects. I deny that the first imported machine was installed by the 2nd defendant. I say that the first imported machine was assembled by the 2nd defendant on the detailed instructions of the plaintiff. I say that during the assembly, installations and trials the 2nd defendant was constantly instructed by plaintiff No. 1. I say that since the M/s. GMM Pfaudler Ltd. was marketing the 1st plaintiff's machine in India the 1st plaintiffs had given necessary confidential information to M/s. GMM Pfaudler Ltd. and its employees including Mr. Shirish Dhamnekar including in respect of assembly and installation. I say that when the first machine was installed at Biocon the 2nd defendant was present along with Mr. Shirish Dhamnekar and learnt and was exposed to the necessary, essential and crucial aspects of the PTS including the assembly and installation. I deny that the equipment arrived at the factory and the 2nd defendant assembled the entire equipment on the basis of his own knowledge, without having any training whatsoever for the purpose, using the labour supplied by the client. I say that the 2nd defendant was well informed and guided and the necessary, essential and crucial information was disclosed in confidence to the 2nd defendant by Mr. Shirish Dhamnekar who knew all the information in respect of the PTS of the 1st plaintiff. 78. If paragraphs 20 and 22 of the rejoinder are perused, it is clear that even the assertions therein are of no assistance to the plaintiffs. The statements are that the said GMM Pfaudler is a well established company in India since 1962. It has a very good relationship with pharmaceutical and chemical companies. The said GMM Pfaudler is manufacturing the product on the basis of know-how given to it by the 1st plaintiff. Thus, the vital link so far as the confidential information is concerned, is not established at all. The relationship of GMM Pfaudler with the pharmaceutical companies is not of any assistance to the plaintiffs in proceeding against the 2nd defendant. More importantly because neither the said GMM Pfaudler is a party to the suit or proceedings nor the affidavit of one Mr. Shirish Dhamnekar who is stated to be an employee of the said GMM Pfaudler has been filed. Thus, there is substance in the contentions of Mr. Palkhiwala that the instant suit is nothing but a shot in the dark by the plaintiff and aimed to prevent the 2nd defendant from carrying on his business. 79. Having carefully perused the plaintiff's averments and the relevant paragraphs of the affidavit in reply and rejoinder, I am of the opinion that prima facie it is not established that during the course of employment of the 2nd defendant the information made available to the 2nd plaintiff by the 1st plaintiff or the

said GMM Pfaudler was passed on to the 2nd defendant and it is that confidential information / know-how which has been utilized by the 2nd defendant for manufacturing the products / PTS machines for the 1st defendant. 80. It is well settled that in such cases, the plaintiff's averments have to be precise, specific and clear. In the absence of a clear and unambiguous assertion with regard to know-how / confidential information and the disclosure thereof to the concerned employee, no relief much less interlocutory relief of the nature claimed can be granted. In fact, if the rejoinder is perused carefully in this behalf, it would be clear that the plaintiffs themselves are not sure as to who was the Author of the know-how / confidential information, to whom it was supplied and who passed it on to the 2nd defendant. If it is the case of the plaintiffs that employees of the said GMM Pfaudler passed on the essential and crucial aspects of the PTS including assembly and installation, then, the confidential information has not been passed on to the 2nd plaintiff at all. Further, if the said GMM Pfaudler was marketing 1st plaintiff's machines in India and the 1st plaintiff has given the necessary confidential information to the said GMM Pfaudler and its employees, then, unless there is some arrangement pleaded between the 1st plaintiff, the said GMM Pfaudler and the 2nd plaintiff as far as the know-how or confidential information, it cannot be said that a prima facie case has been made out by the plaintiffs. Far from being clear and unambiguous the plaintiff's averments are ambiguous, vague and contradictory to say the least. 81. When such are the state of the pleadings, then, I am afraid that a drastic interim order as claimed by the plaintiffs, cannot be granted in their favour. The plaintiff's averments are not sufficient and do not make out even a prima facie case of the confidential information being passed on to the 2nd defendant by the plaintiffs during the course of his employment. In these circumstances, on this ground alone, an interim order and injunction deserves to be vacated. 82. However, since it is argued that the information was indeed passed on in confidence and even the 2nd defendant has given an explanation on merits that I am constrained to deal with the submissions in that behalf. Before dealing with them in detail, it would be proper to note at this stage itself that the plaintiff's averments are further unclear and vague in this behalf. It is not clear as to what was passed on, was it a mere information or know-how, the words in the plaint are know-how / confidential information. Para 7 itself being vague, it will not be fair to assume that information passed on and disclosed was both know-how and confidential information. The know-how may be pertaining to the manufacturing activities and the information may be on the general aspects or marketing activities. However, designs and drawings are the words used interchangeably. Therefore, what was passed on are the drawings or designs or specifications of parts or the entire machine is not clear at all. The plaintiffs themselves did not rest their case on Annexure C but allege that whole host of things set out in para 7 constitutes the Confidential Information. Therefore, on the own showing of the plaintiffs, it is not possible to segregate the disclosure. If it is not possible to separate know-how and confidential information, then, to my mind, assuming that there was some disclosure, its nature being unspecified and unclear, the plaintiffs cannot get any interlocutory relief against the defendant. More so,

when it is stated that all the defendants are privy to the disclosure. Now, which information was passed on in confidence to the 2nd defendant while he was in 2nd plaintiffs service having not been spelt out, it is not possible to proceed that the 2nd defendant was under any obligation to maintain any secrecy or that he was acting as a trustee of any confidential information. Merely alleging that he was holding a Key position and therefore had access to all confidential information is no good and does not suffice. While saying so and further alleging that confidential information was under the control and supervision of the 2nd defendant means that the plaintiffs are contradicting themselves. This is additional reason for denial of any interim reliefs. 83. Once, this view is taken, then, it is not necessary to deal with the other aspects but since my attention is invited to a decision of this Court reported in 2003 (5) Bom. CR 404 Zee Telefilms Ltd. and Films and Shot and Anr. Vs. Sundial Communications Pvt. Ltd. & Ors. and it has been heavily relied upon by Mr. Dwarkadas, it would be necessary to deal with the submission. 84. In this decision of the Division Bench, the issue was whether the order of ad-interim injunction of the learned single Judge restraining the defendants from infringing the copyright of the plaintiffs original work and proceeding further with the broadcasting of their television serial is illegal and erroneous. The suit was filed by plaintiffs against defendants for breach of copyright and misuse of copyright information. The facts are set out and it is alleged that the employees of plaintiff No.1 presented the concept under the title Kanhaiya to the then Director of defendant No.1 and other employees. The presentation was made with the clear understanding that it was confidential and will not be used, exploited in any manner other than through the plaintiffs. It was the plaintiffs case that the idea and concept was plaintiffs original and therefore the copyright of the Artistic work vested in them. It is stated that when the plaintiffs specifically asked whether non-disclosure agreement should be entered into, it was stated by defendant No.1 that as a policy they do not enter into such agreement and their reputation is such that they would not take away anybody's concept. They would never cheat or exploit anybody. However, it was alleged that contrary to this understanding, the plaintiffs learnt that the defendants were exhibiting the show based on the concept of Kanhaiya and despite the attempts to contact them they did not respond favourably. That is how the suit was filed and the plaintiffs urged that there is a breach of confidentiality agreement. It was set out in the plaint as to how the concept was disclosed to defendant No.1 in confidence on the understanding that defendant No.1 would not use it in any way except through the plaintiffs. The plaintiffs employees and Vice Chairman and Managing Director of another company filed affidavits. That is why the notice of motion was moved and that is how the learned Judge granted ad-interim reliefs. The Division Bench also viewed the video film of the plaintiffs pilot project and the defendant's first episode in the presence of the parties and their counsel. It is thereafter that the matter was heard and after relying upon the settled principles in the English decisions, the Division Bench in para 13 observed thus :- 13. Our attention was also drawn to the case of CMI Centers for Medical Innovation GMBH an Anr. V. Phytopharm PLC, (1999) Fleet Street Reports 235 where the Court held that for a plaintiff to succeed in

a breach of confidence action he had to address at least four matters; i.e. (i) he had to identify clearly what was the information he was relying on; (ii) he had to show that it was handed over in the circumstance of confidence; (iii) he had to show that it was information of the type which could be treated as confidential; and (iv) he had to show that it was used without his licence or there must be threat to use it. It was added that at interlocutory stage, the plaintiff does not have to prove (ii) and (iv) as he will at the trial. But he must address them and show that he has at least a seriously arguable case in relation to each of them. 85. After referring to the factual material in paras 18 and 20, the observations of the Division Bench are as follows : 18. In the present case the allegations made in the plaint have practically gone unchallenged. There is no denial to the allegation that the plaintiffs conceived the programme Kanhaiyya which was later on renamed as Krish Kanhaiyya . The elaborate concept notes prepared for the purpose of developing the concept of Krish Kanhaiyya have been annexed at Exhs. A , B and C to the plaint and have been duly registered. The plaintiffs have stated on oath that they presented this concept under that title Kanhaiyya through the Director of the defendant No.1 and two other employees alongwith brand extension possibility. They made this presentation in confidence with understanding that it could be used by the defendant No.1 only on being produced by the plaintiffs. The plaintiffs then piloted the film sometime in September, 2000 and then produced the final pilot on 7th October, 2002. Then pilot of Krish Kanhaiyya was sent to defendant No.1 alongwith the covering note to the defendant No.1. Apart from the pleadings, meetings and correspondence as claimed by the plaintiffs have not been denied by the defendants. It was also not denied that in the meeting of 11th November, 2002 there were discussions of airing and broadcasting of Krish Kanhaiyya conceptualized by the plaintiffs, by Zee Telefilms Ltd. were present. Shri Sunil Mehta has filed an affidavit which is not controverted by the defendants. Shri Mehta's affidavit is quite revealing and the relevant portion thereof is reproduced below:- Whilst there, per chance met with Mr. Chandra Goyal, the Chairman of Zee Telefilms Ltd. - the 1st defendant, with whom during a half-hour discussion about several issues, Krish Kanhaiyya was also discussed. Mr.Goyal has apparently seen and loved the pilot episode submitted and chose to discuss with me the financial aspects of the broadcasting of the program, and highway offered a sum of Rs.2,00,000/- for an episode for broadcast on prima-time. His interpretation for offering such a price was that Zee as a channel had primarily undertaken a policy-decision not to commission shows costing more than Rs.2 to 2.5 lakhs per episode. During the course of discussions, he indicated that it was an in-house concept developed by Zee Telefilms Ltd., through an employee of his i.e. one M.S. Vinta Nanda while she was working for his company. In reply, I specifically pointed out to Mr. Subhash Goyal that the concept of Krish Kanhaiyya was originally that of Sundial Communication Pvt. Ltd. i.e. the plaintiff, and had in fact been discussed by Sundial with Ms. Vinta Nanda when she worked for the 1st defendant. Since Mr. Goyal appeared surprised by this information, I told him that I would obtain from Sundial Communications Ltd. the requisite material. 20. The concept developed by the plaintiffs is indeed novel, in the

sense that Bal Krishna Starts residing the family whose life is disturbed and solves their troubles. The theme is set out in great detail in Exhs. B and C of the plaint. Thus the idea is developed into an expression, in the sense that concepts are prepared i.e. Exhs. and C and a pilot was also prepared which was admittedly submitted to the defendant No.1. The defendant No.1 in obvious attempt to wriggle out of this sought to contend that at about the same time, the defendant Nos.2 and 3 approached the defendant No.1 with the concept of Kanhaiyya and their serial is based on the concept and script prepared by Suresh Valmiki and Abhay Krishna. Keeping in view numerous striking similarities in two works and in the light of the material produced on record, it is impossible to accept that the similarities in two works were mere coincidence. The inference of unlawful exploitation of plaintiffs original concept in defendant TV serial is more in consonance with the materials placed on record and all probabilities of the situation therein disclosed. In our opinion, the plaintiffs business prospect and their goodwill would seriously suffer if the confidential information of this kind was allowed to be used against them in competition with them by the defendants or pense. Therefore, we feel that the plaintiffs would certainly be entitled to have injunction for breaching confidentiality. 86. Therefore, the Division Bench overruled the objections of the defendants and after noticing the similarities between the original work and the defendant No.1 s pilot project, the Division Bench dismissed the Appeal and made the notice of motion before learned Single Judge absolute. In para 32, the Division Bench concluded its decision thus:- 32. Having considered two works involved in this case not hypercritically and with meticulous scrutiny but by the observations and impressions of the average viewer, we find that striking similarities in two works cannot in the light of the material placed on record be said to constitute mere chance. We feel that the only inference that can be drawn from the material available on record is unlawful copying of the plaintiffs original work. The learned counsel for the plaintiffs submitted and not without sufficient force that if the concept of Lord Krishna in child form is removed from the serial of the defendants, their programmes would become meaningless. In order to find out similarity in the two concepts, what is to be seen is the substance, the foundation, the kernel and the test as to whether the reproduction is substantial is to see if the rest can stand without it. If it cannot, then even if many dissimilarities exist in the rest, it would nonetheless be a substantial reproduction liable to be restrained. In view of the foregoing discussion, we have no hesitation in holding that the plaintiffs have established that there has been infringement of their copyright. 87. The other decisions relied upon by both sides are rendered by the Courts in England and elsewhere. However, they are already referred by the Division Bench. Before me the claim of copyright although pleaded has not been elaborated as held above. Further, the plaintiffs proceeded merely on the basis of paragraphs 7 to 9 of the plaint and the drawings at Annexure C thereto. The plaintiffs did not file any affidavits of the said GMM Pfaudler with regard to disclosure and imparting of the confidential information or with regard to handing over of the drawings and designs to the 2nd defendants. The affidavits are filed only to state that some similar equipment was noticed at the plaintiffs

clients establishments and the plants. The vital ingredients as summarized by the Division Bench identifying clearly the information stated to be confidential, its handing over in the circumstance of confidence and that the information was of the type which could be treated as confidential are wholly lacking in this case. Assuming some support could be derived from the Division Bench Judgment even though it is in a copyright action, yet it was incumbent upon the plaintiffs to have satisfied the Court prima-facie that specific information was imparted and disclosed in confidence. That such a information is capable of being identified on the basis of other materials produced by the plaintiff and it was handed over in confidence so also it was of a type which could be treated as confidential. On these crucial aspects, the defendant No.2 has raised serious objections. He has pointed out that the alleged confidential information has not been identified clearly. Far from the information being treated as confidential, there are no proper pleadings of the same being handed over in the circumstance of confidence. 88. In this behalf, ig the affidavit in reply of the 2nd

defendant proceeds on the basis that assuming certain

drawings or designs are stated to be handed over during the course of employment, yet, such drawings or designs are common to the trade. These statements have been made after asserting that what the 1st defendant is manufacturing is not an identical machine. It is not a machine based on identical technology as that of the plaintiffs. There are several distinguishing features. The features have been also pointed and highlighted. It has also been stated on oath that the basic design is common to both machines. However, the components are got fabricated as per specific requirements and the features therefore are clearly distinguishable. It is not as if there is something very original about the whole process. The components are assembled and reassembled to suit the requirements of the clients and customers. Besides that certain features which are associated with the 1st defendant have been pointed out and the specific contention is that these features are not found in so far as the plaintiffs machine is concerned. Hence, without prejudice and alternate submissions have been made and with great emphasis, it has been pointed out by the 2nd defendant that he has not copied anything nor can it be said even prima facie that his manufacturing and marketing activities are based on the alleged confidential information imparted or disclosed to him so also the drawings / designs of the plaintiffs. I have reproduced the relevant paragraphs of the reply affidavit merely to reiterate the fact that the 2nd defendant has disclosed the particulars relevant for making a distinction between his product and the plaintiffs machine (see paras 9.51 to 9.53 and 10.1 so also para 41). There is no necessity of reproducing them as minute details of the products are referred to. The comparison made cannot be brushed aside at this prima facie stage on the spacious plea of lack of bonafides. The plaintiffs themselves are not disclosing the relevant details. Across the bar, it is stated that the confidential information can be handed over

in a sealed cover. The plaintiffs assertions are uncertain and raise a doubt or else they would not seek appointment of a Commissioner at this prima facie stage so as to undertake a comparative study of the product of both i.e. plaintiffs and defendant Nos.1 and 2. 89. In this case, it must be observed that the 2nd defendant has stated on oath that he is a qualified, skilled and experienced in the field. He has worked in companies which are manufacturing identical products. He has pointed out as to how when looking after the marketing operations of M/s. Kilburn Engineering he had to acclimatise and familiarise himself with the working of the PTS machines. He has also pointed out that he had gained experience while working in two other companies. Therefore, he joined the services of the 2nd plaintiffs with a experience of about 10 to 12 years. Further, he is

qualified academically and capable of inventing and
creating ideas so also implementing them. He had necessary

technical knowledge and it is not as if the plaintiffs disclosed to him or imparted him some know-how or information which could be said to be misused and mis-utilized by him. According to him, he was always acquainted with the manufacturing and marketing of the machines in question. He also knew as to how the machines are assembled and reassembled. He knew that the components are easily available and accessible. Therefore, it is not as if the plaintiffs had engaged the services of the 2nd defendants and equipped him. 90. As against this case of the 2nd defendant while not denying that the 2nd defendant was academically qualified and skilled what is urged by the plaintiffs is that he had no experience and he had been engaged in stray jobs and that too in the marketing department. He was never familiar with nor experienced so far as making and marketing of the PTS machines. The plaintiffs have however, not produced any material as to how after the 2nd defendant joined the services of 2nd plaintiff, he was put under a senior qualified and experienced official who trained him and during the course of such training gave information about the technical aspects including the operations and marketing strategies. Nothing of this has been stated save and except alleging that the 2nd defendant was trained by 2nd plaintiff in respect of the products that were manufactured. It is stated that the training included engineering, operations, manufacturing, maintenance, marketing and all other aspects in relation to the products of the plaintiffs. However, this has not been substantiated by producing relevant documents. Annexure G is nothing but an itinerary and from the same it is not established even prima facie that the 2nd defendant had been imparted training abroad. The knowledge assessment, copy of which is produced may be carrying a foot note that it is confidential and the contents should not be divulged to third party, but no inference can be drawn therefrom that any information or know-how was supplied to the 2nd defendant. It is a general questioning and assessment. That must be to test the basic knowledge of the defendant No.2

but from the same I cannot conclude that any information in confidence was handed over leave alone know- how. Forwarding all the details of designs / drawings under an Index and annexing some photographs of the machines by itself is not conclusive and rather of no assistance in holding that that know-how / confidential information was disclosed. In fact, para 18 of the plaint would show that plaintiffs are aware that the 2nd defendant was employed with several companies for total period of 12 years. Thus, he was an experienced hand and, therefore, could not be said to be unfamiliar with the product or its manufacturing and marketing. 91. In the result, the notice of motion fails and it is accordingly dismissed. 92. At this stage Mr. Dwarkadas, learned Senior Counsel appearing on behalf of the plaintiffs prays that ad-interim order be continued or else, this suit will become infructuous. The request is opposed by defendant Nos.1 and 2. 93. Considering that an Ex-parte ad-interim order was passed and a case is made out for vacating the same, so also having concluded that the plaintiffs have failed to make out a prima-facie case, the application is dismissed. More so, as prima-facie the defendant No.2 has been adversely affected by the Ex-parte order. (S.C.DHARMADHIKARI, J.)