

Purshottam Vishandas Raheja & Ors vs Shrichand Vishandas ... on 6 May, 2011

Equivalent citations: AIR 2011 SUPREME COURT 2151, 2011 (6) SCC 73, 2011 AIR SCW 2992, 2011 AIR CC 1858 (SC), 2011 (4) AIR BOM R 153, 2011 (4) AIR JHAR R 221, (2011) 3 CIVILCOURTC 213, (2011) 3 CIVILCOURTC 553, (2012) 1 LANDLR 235, (2011) 5 MAH LJ 181, (2011) 2 WLC(SC)CVL 293, (2011) 2 ALL RENTCAS 552, (2011) 5 CAL HN 132, (2011) 3 ICC 563, (2011) 1 CLR 1060 (SC), (2011) 87 ALL LR 236, (2011) 4 CIVLJ 400, (2011) 2 CURCC 198, (2011) 113 REVDEC 694, (2011) 5 SCALE 391, (2011) 103 ALLINDCAS 65 (SC), (2012) 113 CUT LT 299, (2011) 3 KER LJ 4, AIR 2011 SC (CIV) 1408, 2011 (2) KLT SN 109 (SC), 2011 (4) KCCR SN 357 (SC), (2012) 1 BOM CR 274

Bench: H.L. Gokhale, P.Sathasivam

REPORTA

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4005 OF 2011

(Arising out of Special Leave Petition (C) No. 26974 of 2010)

Purshottam Vishandas Raheja and another

...Appellants

Versus

Shrichand Vishandas Raheja (D) through Lrs. and others

...Respondents

J U D G M E N T

Gokhale J.

Leave granted.

2. This appeal by special leave by original Defendants Nos. 1 and 2 seeks to challenge the Judgment

and Order dated 12.8.2010 passed by a Division Bench of the Bombay High Court allowing the Appeal No. 550/2009 against the order of a Single Judge dated 9.9.2009 in Notice of Motion No. 1787/2009 in Suit No. 1266/2009 filed by Respondent No. 1 (since deceased). The learned Single Judge had granted a limited relief to Respondent No. 1 (original plaintiff) whereas by the Order passed by the Division Bench the Notice of Motion taken up by the original Plaintiff had been made absolute in terms of prayers (a), (b) and (c), and thereby granting full interim relief which was sought by Respondent No. 1 herein.

3. In view of the demise of Respondent No. 1, the heirs of Respondent No. 1 have come on record of the appeal. Their case is that the interim relief as was sought, though in the nature of mandatory relief, was necessary in the facts and circumstances of the case. As against that, the submission on behalf of the Appellants is that the learned Single Judge had exercised his discretion appropriately and there was no reason for the Division Bench to interfere therein. The Appellants also contend that the prayers in the Notice of Motion are the principal prayers in the plaint and, therefore, it amounts to granting a decree at the interlocutory stage which was not justified in the present case.

4. The question for determination, therefore, is as to whether, in the facts and circumstances of the case, the mandatory order as passed by the Division Bench was justified, or whether the learned Single Judge having exercised his discretion appropriately, the Division Bench erred in interfering therein?

5. The facts leading to this appeal are as follows:

Respondent No.1 (the original Plaintiff) is the elder brother of Petitioner No.1 (Defendant No.1 in the Suit). Petitioner No.2 is the son of Petitioner No.1. The dispute between them is about the rights to a property which is being developed and is situated at Cadastral Survey No. 764, Mazgaon Division in Mumbai. The case of Respondent No.1 is that he is the exclusive owner of that property whereas the Appellants very much dispute the same. It is the case of Respondent No.1 that by Conveyance Deed dated 27.3.1981 as rectified by Rectification Deed dated 11.9.1986, he had purchased the property from the original owners and necessary property entries are in his name. It is his case that he has taken steps to develop that property under the Development Control Rules by removing one old bungalow and several chawls situated thereon. Two buildings have already been put up on that property and the third one now named as 'Siddhagiri' is under construction.

6. It is his further case that since 1999, he has not been keeping well, and therefore, he executed three Powers of Attorney from time to time. The first one was executed on 8.8.2000 in favour of his wife and Appellant No.1 which was for performing various acts and deeds on his behalf as his Constituted Attorneys in furtherance of this project. He executed second Power of Attorney on 21.9.2005 again in favour of his wife and Appellant No.1 as well as Appellant No.2 which is also in the similar fashion as the first one. The third Power of Attorney was executed on 24.10.2000 which is a specific power in favour of Appellant No.1 for giving evidence on behalf of the Respondent No.1. It was his further case that though there was one Joint Account with Appellant No.1 in Indian Bank

since 1993, one more Joint Account was opened on 10.10.2001, this time in HSBC Bank which was particularly for carrying the transactions relating to the property and developments thereon. It was his case that all amounts deposited in that account belong to him. He opened one more Joint Account on 1.2.2008 in the State Bank of India with the Appellant which was stated to be opened for payment of taxes etc. relating to the property.

7. It is the case of Respondent No.1 that from time to time Appellant No. 1 surreptitiously withdrew amounts that were lying with the HSBC bank totalling to One Crore Forty Lakhs and invested in Birla Sun Life Mutual Funds. The Appellant No. 1 had suggested this investment to him which he had declined, and thereafter unilaterally this account was shifted. On Respondent No.1's protest, the investments in mutual funds were redeemed and substantial amount came back into the account. However, an amount of about Rs. 6.9 lakhs was lost as it could not be redeemed. In view of this development, he lost confidence in his brother and therefore served a notice dated on 2.3.2009 on the Appellants, revoking all the three Powers of Attorney. He called upon both the Appellants to desist from acting on the basis of these Powers of Attorney. He called upon them further to return the title deeds of the property, and render the accounts, and informed them that he had appointed one Yogesh Jadhav as the Project Manager and asked the Appellants to acquaint him with various contractors as also the position of work and balance of payment to be made. He lastly called upon the Appellants not to operate the account with Indian Bank as well as with the HSBC bank and return all the bank papers.

8. Appellant No.1 thereafter wrote to the Manager of the Indian Bank on 24.4.2009 pointing out that the account with their bank was initially in the joint names of his father and himself and subsequently on the demise of his father; the first Respondent had been joined into that account. According to the first Appellant, he alone was entitled to operate the account and removal of an amount of Rs. 65,500/- from that account by the first Respondent was illegal. He asked the bankers to ignore first Respondent's earlier letter dated 9.3.2009 addressed to the bank. This was followed by a detailed reply by the first Appellant to the first Respondent dated 12.5.2009 wherein it was specifically pleaded that the Powers of Attorney were executed for valid consideration and the same were coupled with interest in the concerned property. Thereafter, he pointed out that although the property stood in the name of first Respondent, as per the family settlement which took place on 30.1.1992, two flats on the 15th floor of "Arihant Tower" (first building developed) together with terrace, one shop, one room and six chawls together with land appurtenant thereto and interest therein were allotted to him and his father. He specifically pleaded that the Powers of Attorney were executed to enable him and his son to develop those properties. He pointed out that Respondent No.1 was the legal heir to the extent of only one fifth share of his father's fifty percent (50%) share at the time of his demise, i.e. ten percent (10%) only.

9. Thereafter, it was specifically pleaded that after the demise of their father in the year 1994, the first Appellant started work on the property to get the No-Objection Certificate from the government authorities, spent good amount and time on the construction, provided initially temporary accommodation, and thereafter permanent accommodation to the occupants of the shops and chawls, developed the property by spending crores of rupees. He, inter alia, coordinated with the architects, took steps to obtain permissions and No-Objection Certificates (NOCs) from the Housing

Board and the Municipal authorities and attended court matters. He further pointed out that since Respondent No.1 had failed to effect the necessary transfers of various properties, discussions took place with the assistance of lawyers for an understanding, and in spite of that he was making a dishonest claim on the property knowing fully well what had come to his share, viz. only ten percent (10%) of the property. He further pointed out that he had a larger counter-claim running into crores of rupees against Respondent No.1, and that the entire property was in his exclusive possession for several years and there was no question of appointing anyone else as Project Manager. With respect to the bank account, he specifically pointed out that the bank account was being operated by him in his own independent right and the Respondent could not order him to refrain from operating the said account.

10. This led to the first Respondent to file the above mentioned suit against the appellants. The Indian Bank, Hong Kong & Shanghai Banking Corporation (HSBC Bank) and the State Bank of India were joined as defendants No.3 to 5 respectively. The three principal prayers in the suit were as follows:

"[a] Defendant Nos. 1 and 2 and their servants and agents be restrained by a permanent order and injunction of this Hon'ble Court from in any manner directly or indirectly acting or holding themselves out as Attorneys or Agents of the Plaintiff or dealing with any of the properties or businesses of the Plaintiff, including property bearing Cadastral Survey No.764 of Mazgaon Division situate at 119, Chinchpokali Cross Lane, Byculla, Mumbai 400 027 described in Exhibit - A-3 hereto or any premises thereon or under construction thereon or any part thereof;

[b] Defendant Nos. 1 and 2 and their servants and agents be restrained by a permanent order and injunction of this Hon'ble Court from in any manner directly or indirectly entering upon property bearing Cadastral Survey No.764 of Mazgaon Division situate at 119, Chinchpokali Cross Lane, Byculla, Mumbai 400 027 described in Exhibit - A-3 hereto or any premises thereon or under construction thereon or any part thereof;

[c] Defendant Nos. 1 and 2 and their servants and agents be ordered and decreed to deliver to the Plaintiff documents listed in Exhibit - U hereto and all other documents, correspondence and records belonging to the Plaintiff in the possession or power of Defendant No.1 or Defendant No.2."

The Notice of Motion taken out in the Suit had the following prayers:

"(a) that pending the hearing and final disposal of the Suit, Defendant Nos. 1 and 2 and their servants and agents be restrained by interim orders and injunctions of this Hon'ble Court from in any manner, directly or indirectly.

(i) Acting or holding themselves out as Attorneys or Agents of the Appellant or dealing with any of the properties or businesses of the Plaintiff, including property bearing

Cadastral Survey No.764 of Mazgaon Division situate at 119, Chinchpokali Cross Lane, Byculla, Mumbai 400 027 described in Exhibit "A-3" to the Plaint or any premises thereon or under construction thereon or any part thereof;

(ii) entering upon property bearing Cadastral Survey No.764 of Mazgaon Division situate at 119, Chinchpokali Cross Lane, Byculla, Mumbai 400 027 described in Exhibit "A-3" to the Plaint or any premises thereon or under construction thereon or any part thereof;

(iii) operating or signing any Cheques on or giving any instructions relating to or withdrawing any amounts form Account No. 417627508 in the joint names of the Plaintiff and Defendant No.1 with Defendant No. 3.

(iv) operating or signing any Cheques on or giving any instructions relating to or withdrawing any amounts from Account No. 002-236586-006 in the joint names of the Plaintiff and Defendant No.1 with Defendant No. 4.

(v) operating or signing any Cheques on or giving any instructions relating to or withdrawing any amounts from Account No. 20006421901 in the joint names of the Plaintiff and Defendant No.1 with Defendant No. 5.

(b) that pending the hearing and final disposal of the Suit, Defendant Nos.1 and 2 and their servants and agents be directed by an interim order and injunction of this Hon'ble Court to deliver to the Plaintiff documents listed in Exhibit "U" to the Plaint and all other documents, correspondence and records belonging to the Plaintiff in the possession or power of Defendant No.1 or Defendant No.2

(c) that pending admission, hearing and final disposal of the Suit;

(i) Defendant No.3 and their servants and agents be restrained by an order and injunction of this Hon'ble Court from honouring any Cheques signed by Defendant No.1 on or acting on any instructions given by Defendant No.1 relating to Account No.417627508 with Respondent No. 3 permitting any withdrawal of amounts by Defendant No.1 from Account No.417627508 with Defendant No. 3;

(ii) Defendant No.4 and their servants and agents be restrained by an order and injunction of this Hon'ble Court from honouring any Cheques signed by Defendant No.1 on or acting on any instructions given by Defendant No.1 relating to Account No.002-236586-006 with Defendant No. 4 permitting any withdrawal of amounts by Defendant No.1 from Account No. 002-236586-006 with Defendant No. 4;

(iii) Defendant No.5 and their servants and agents be restrained by an order and injunction of this Hon'ble Court from honouring any Cheques signed by Defendant No.1 on or acting on any instructions given by Defendant No.1 relating to Account

No.20006421901 with Defendant No. 5 permitting any withdrawal of amounts by Respondent No.1 from Account No. 20006421901 with Defendant No. 5;"

11. Respondent No.1 filed affidavit in support containing the same submissions as above whereas the Appellant filed a reply based on the letters which have been pointed out above. Thereafter, further affidavits from both the parties were filed. Two sisters of the two brothers have filed their joint affidavit in this Motion supporting the contention raised by Appellants herein that there was a family settlement on 30.01.1992 and as per the terms of the settlement, the Byculla property came to Appellant No.1 and their father, and some other properties were given to Respondent No.1. They also supported the submission of the Appellants that only on the demise of their father, the Respondent No.1 can claim ten percent (10%) share in that property and nothing more.

12. In view of these pleadings when this matter was heard before the learned Single Judge, he formed an opinion that it was not possible to hold at that stage whether the documents of powers of attorney were merely powers simpliciter given by the owner of the property, or whether they contained agency coupled with interest as contended by the Appellants herein. The Appellants had pointed out that although the property was purchased in the name of Respondent No.1, almost ninety percent of the amount for the purchase was contributed by Appellant No. 1. Besides this, the joint account in Indian Bank was opened way back in the year 1993 and the amount realized from the sale of the flats was being deposited therein. He was the person on the spot dealing with that property and only on the basis of the fact that the document of title stood in the name of the first Respondent the interim order as sought could not have been granted. The plea of the Appellants had to be examined particularly when their sisters were supporting the Appellants with respect to family settlement which was allegedly arrived at when their father was alive. Granting of the interim order as prayed would have meant that the Appellants will be required to withdraw themselves from the concerned property. They will be restrained from entering into that property or holding out as the attorneys of Respondent No.1 concerning that property. The Order by the learned Single Judge also records that with respect to the stage of the construction it was the counsel for the Appellants who placed the facts before the Court on instructions that the construction was nearly complete, payments to various agencies had been made by the first Appellant and at this belated stage if any interim order was passed it would not only be inconvenient to Appellants, but also to the purchasers of the flats and other third parties.

13. The grant of interim order would mean discontinuance of the scenario on the spot as it existed at that point of time. Hence, the prayers restraining the Appellants as attorneys or agents of first Respondent or restraining them from entering into the property could not be granted. As far as the prayer for the return of the documents in possession of the Appellants was concerned, the learned Judge noted that it was not possible to issue final orders with regard to them. He, however, recorded that appellants had agreed to forward photocopies of those documents to Respondent No.1. The learned judge held that no prima facie case for a mandatory injunction was made out, yet in paragraph 22 of his order, he granted a limited interim order which reads as follows:

"22. For the aforesaid reasons, it is held that no prima facie case is made out by the plaintiff and considering that the development and construction work has progressed

to a substantial extent and only some finishing works are remaining so also 23 flats have been already sold, interest of justice would be sub-served if it is directed that the development and construction work can be completed at site. The flats can be sold on the basis of the documents executed but all sale proceeds must be deposited in the concerned joint bank account alone. The joint bank account would be allowed to be operated only to the extent of paying off the liabilities insofar as the suit property and its development, which shall include payment to contractors and other agents. However, such payment shall be made only on production of necessary proof and it is only thereafter the first defendant can release the sums from this joint account in favour of the contractors/agents/third parties. Needless to state that the payment for the works which have been carried out through any contractors, sub-contractors, agents would be made only upon the Architect of the project certifying the said works and issuing the necessary and relevant certificates to certify the completion thereof. Apart from paying off these monies, the bank account shall not be utilized by the first defendant for any other purposes. The monies received from the sale of 23 flats are stated to be deposited in the said joint account by the Plaintiff.

The documents are signed in favour of third parties by either the plaintiff or plaintiff's daughter. As far as balance 27 flats are concerned, it would be open to both sides to negotiate with prospective buyers with necessary intimation to each of them. It would also be open for the first defendant to forward the offers for consideration to the plaintiff and vice versa. All documents in favour of such purchasers shall be signed by the plaintiff and/or his daughters Laxmi and Sangita. However, this entire arrangement is without prejudice to the rights and contentions of both sides. The plaintiff should furnish details of all the offers received and agreements which are entered into by him to the first defendant so as to enable first defendant to verify the particulars thereof. It is only after the offers are intimated in writing that the plaintiff can conclude the transactions and not otherwise."

14. Being aggrieved by that limited order and seeking full interim relief, Respondent No. 1 filed an appeal to the Division Bench. The learned Judges of the Division Bench were impressed by the fact that the conveyance of the property was in the name of the Respondent and the flats were being sold in his name. Though the learned Judges noted that the explanation given by the Respondent No.1 about opening of the joint account in the year 1993 was not satisfactory, they emphasized the fact that in the Powers of Attorney there was no reference to the family arrangement. They also posed the question that if the Appellants had developed the property why there was no reference to those dealings in their tax returns. They, however, noted the fact that Respondent No.1 had not enough money to purchase the property in the year 1991 (though he contends that he had taken the money as loan from Appellant No.1). In view of these factors, they were persuaded by the fact that the Powers of Attorney had been revoked and in fact two flats which were supposed to be given to Appellant No. 1 were sold by the first Respondent in the year 1993. The Division Bench, therefore, was of the view that a strong prima facie case was made out and an interim order will have to be granted. Being aggrieved by this order, the present appeal has been filed.

15. The submission on behalf of the Appellant is that the totality of circumstances have got to be seen and the factum of family settlement along with the contribution to the purchase of the property by Appellant No.1 has to be given due weightage. It was also submitted on their behalf that the Appellants are the persons on the spot and they are developing the property and none of the Respondents are available there. The flats are undoubtedly sold in the name of the first Respondent because the property stands in his name. In any case, it is submitted that the nature of powers under documents have got to be examined on evidence with respect to the family settlement and the Appellants cannot be non-suited at the Motion stage when it was a family dispute and particularly when the sisters who were parties to the family settlement were supporting the submission of the Appellant. The Respondent, on the other hand, submitted that this was a fit case to grant the interim mandatory order as was granted by the Division Bench. The property belonged to the Respondent and it is only because he was not well that the Appellants carried out the development thereon. Now, they are taking advantage of the situation.

16. We have noted the submissions of both parties. The question which comes up for our consideration is whether the learned Single Judge exercised his discretion in such an arbitrary or perverse manner that the Appellate Court ought to have interfered with it? The Learned Single Judge has passed a detailed order explaining as to why he was constrained to grant only the limited interim relief. It was in the interest of both the parties as well as the flat purchasers. The Order passed by the learned Single Judge is also on the basis that anything beyond the limited protection given at that stage would deny the opportunity to the Appellants to establish their case at the trial when it is not in dispute that Appellant No.1 contributed ninety percent of the purchase money to the property and he took steps all throughout to develop the property. Undoubtedly, there are many inconsistencies in the stories that are put up by both the parties, and an interlocutory stage is not the one where one can reach at a definite conclusion one way or the other, particularly where the fact situation is as above and it would result into non-suiting one party.

17. As stated above, the question comes up as to whether the order passed by the Division Bench was necessary. Mr. Nariman, learned counsel appearing for the Respondents, relied upon the Judgment of this Court in *Dorab Cawasji Warden v. Coomi Warden* [(1990) 2 SCC 117] in support.

18. As far as this judgment is concerned, it must be noted that it was a suit by one joint owner of an undivided family house to restrain the other joint owners/their heirs from transferring their share of the house and from parting with possession to a third party/purchaser and restraining the purchaser from entering into and or remaining into possession of the suit property. This was on the basis of the mandate of Section 44 of the Transfer of Property Act and particularly its proviso. This Court went into the question as to whether interlocutory injunction of a mandatory character as against the prohibitory injunction could be granted? The counsel for the Respondents pointed out that the mandatory injunctions were essential to avoid greater risk of injustice being caused as held in *Films Rover International Ltd. v. Cannon Film Sales Ltd.* [(1986) 3 All ER 87]. There is no difficulty in accepting that this Court did accept that test. It, however, laid down the law in that behalf in paragraphs 16 and 17 as follows:

"16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitably relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

19. In *Metro Marins and another v. Bonus Watch Co. (P) Ltd. and others* [reported in (2004) 7 SCC 478], the Respondent had filed a suit for possession contending that the license of the Appellant to the suit property had expired. The Respondent had prayed for a judgment on admission and alternatively an injunction directing the Appellant to immediately hand over vacant and peaceful possession of the suit property. The learned Single Judge of the Calcutta High Court who heard the interlocutory application, came to the conclusion that he did not find any reason to pass such an order in view of the fact that the suit was still pending and granting of such relief would tantamount to a decree before trial. The Appellate Bench, however, re-examined the facts and observed that the litigation to be a luxury litigation directed the Receiver to put the Respondent/Plaintiff in possession. In the appeal to this Court, the learned counsel for the Appellants pointed out that the Appellants were very much in possession of the premises and the order passed by the Division Bench was contrary to the law laid down in *Dorab Cawasji Warden (Supra)*. The counsel for the Respondents, on the other hand, defended the order of the Division Bench by contending that the period of license having come to an end, mandatory injunction passed by the Division Bench was justified. A Bench of Three Judges of this Court allowed the appeal and explained the proposition in *Dorab Cawasji Warden (Supra)* as follows in paragraph 9:

"9. Having considered the arguments of the learned counsel for the parties and having perused the documents produced, we are satisfied that the impugned order of the appellate court cannot be sustained either on facts or in law. As noticed by this Court, in the case of *Dorab Cawasji Warden v. Coomi Sorab Warden* it has held that an interim mandatory injunction can be granted only in exceptional cases coming within the exceptions noticed in the said judgment. In our opinion, the case of the respondent herein does not come under any one of those exceptions and even on facts it is not such a case which calls for the issuance of an interim mandatory injunction directing the possession being handed over to the respondent."

20. In *Kishore Kumar Khaitan and another vs. Praveen Kumar Singh* [reported in (2006) 3 SCC 312], this Court once again reiterated the principles with respect to the interim mandatory injunction in paragraph 6 in the following words:

"6. An interim mandatory injunction is not a remedy that is easily granted. It is an order that is passed only in circumstances which are clear and the prima facie materials clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demanded that the status quo ante be restored by way of an interim mandatory injunction."

21. In our view, the learned Single Judge has considered all the relevant aspects of the matter and thereafter passed the limited interim order whereby documents for sale of the flats will continue to be signed by the Respondents, though, the monies coming into the bank account thereafter will be utilized only for the purposes that are necessary, as stated in paragraph 22 extracted above. The appellants have not been directed to be removed from the property inasmuch as they were the people on the spot carrying on the development prior to filing of the suit. The order sought by the respondents, if granted, would mean granting all the reliefs and a sort of pre-trial decree without the opportunity to the Appellants to have their plea examined with respect to the family arrangement, which plea is supported by their sisters.

22. The test to be applied to assess the correctness of the order of the learned Single Judge would be whether the order is so arbitrary, capricious or perverse that it should be interfered at an interlocutory stage in an intra-Court appeal. In *Wander Ltd. and another vs. Antox India P.Ltd.* [reported in 1990 (Supp) SCC 727], a bench of Three Judges of this Court has laid down the law in this respect which has been consistently followed. In that matter, Appellant No.1 being the registered proprietor of a Trade Mark had entered into an agreement with the Respondent permitting it to manufacture certain pharmaceutical product. On the basis of that arrangement, the respondent applied for the requisite license from the authorities concerned. In view the dispute between the parties, the Appellant called upon the Respondent to stop manufacturing the particular product, and entered into an arrangement with another company. The Respondent filed a suit and sought a temporary injunction to restrain the Appellant and its new nominee-company from manufacturing the products concerned. This was on the basis of continued user in respect of the Trade Mark of the product by the Respondent. It was contended that user was in his own right. A learned Single Judge of the High Court declined to grant the interim injunction which was granted

in appeal by the Appellate Bench of Madras High Court. This Court, in its judgment, held that the Appellate Bench had erred firstly, in misdirecting with respect to the nature of its powers in appeal and secondly, in basing its judgment on the alleged user of the Trade Mark. A bench of Three Judge of this Court laid down the law in this behalf in paragraph 14 of the judgment which is as follows:

"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph.* (1960) 3 SCR 713These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. v. Jhanaton'*... the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'.

The appellate judgment does not seem to defer to this principle."

It is to be noted that the proposition laid down has been consistently followed thereafter.

23. For the reasons stated above, in our view, the present case, is not one where mandatory interim injunction, as sought by the Respondents was justified. The learned Single Judge had passed a reasoned order, and, in no way, it could be said that he had exercised the discretion in an arbitrary, capricious or perverse manner, or had ignored the settled principles of law regarding grant or refusal of interlocutory injunction. There was no reason for the Appellate Bench to interfere and set aside that order.

24. This appeal is, therefore, allowed. The order passed by the Division Bench is set aside and that of the learned Single Judge is restored. We make it clear that we have not made any observations on the merits of the rival claims of the Appellants as well as the Respondents. We have confined ourselves only with respect to the question as to what should be the interlocutory arrangement in the facts and circumstances of the present case. In our view, the order passed by the learned Single Judge was well reasoned and justified in that context.

In the facts of the case, the parties will bear their own costs.

.....J. [P.Sathasivam]J. [H.L. Gokhale] New Delhi May
6, 2011.