

Copyright Infringement Dispute in Education

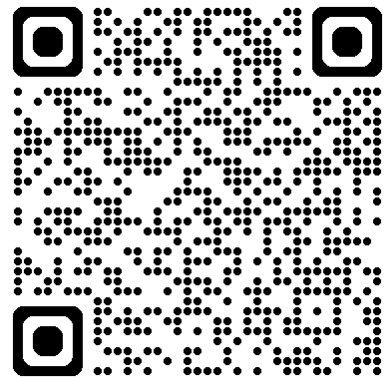
Case Name: Ranjan Vasudeo Kolambe v. Appa Alias
Hanmant Maroti Hatnure

Citation: 2024:BHC-AS:42759

Act: Copyright Act, 1957

Case Brief & MCQs on this case is
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["Bombay High Court Cases in
October 2024"](#)



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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**COMMERCIAL APPEAL FROM ORDER NO. 14 OF 2024
WITH
INTERIM APPLICATION NO. 11266 OF 2024
IN
COMMERCIAL APPEAL FROM ORDER NO. 14 OF 2024**

RANJAN VASUDEO KOLAMBE

..APPELLANT

VS

APPA ALIAS HANMANT MAROTI

HATNURE AND ANOTHER

..RESPONDENTS

Mr. Yateen Kochare a/w. Mr. M. V. Thorat, Mr. Atmaram Patade for the Appellant/Applicant.

Mr. Abhijeet A. Desai a/w. Mr. Vijay Singh, Mr. Karan Gajra, Smt. Daksha Punghera, Ms. Mohini Rehpade, Mr. Digvijay Kachare, Ms. Sanchita Sontakke i/b. Desai Legal for the Respondents.

Coram : A. S. Chandurkar & Rajesh S. Patil, JJ.

Date on which the arguments were heard : 3rd October 2024.

Date on which the judgment is pronounced : 25th October 2024.

JUDGMENT (PER : Rajesh S. Patil, J.)

1. This Commercial Appeal From Order is filed under Section 13 of the Commercial Courts Act, 2015 (for short 'the said Act') by the appellant (original plaintiff), challenging the impugned judgment and order dated 15th June 2024 passed by the District Judge, Pune on application (Exhibit 5) in Commercial Suit No.13 of 2024, thereby dismissing the application (Exhibit 5).

FACTS

2. The parties are hereinafter referred for convenience as per their nomenclature before the District Court in Commercial Suit.

3. The plaintiff filed Civil Suit for a declaration and injunction for infringement of copyrights under Section 55 of the Copyrights Act and under Section 38 of the Specific Relief Act, against the defendant no.1 and 2, who according to the plaintiffs have copied the entire material of plaintiff's two books viz. "भारतीय अर्थव्यवस्था" and "भारतीय राज्यघटना प्रशासन" written in Marathi language (for short "the said two books").

4. It is plaintiff's case in plaint that the set two books were written by the plaintiffs and these books are published by Bhagyarathi Prakashan owned by Mrs. Poonam Ranjan Kolambe who is the wife of the plaintiff. It is also the plaintiff's case that he is into the business of coaching classes, preparing students for competitive examinations and he is running the tuition classes in the name and style of "Bhagyarathi Spardha Pariksha Kendra" and "Bhagyarathi IAS Academy". It is case of the plaintiff that last 20 years he has extensively studied and researched various subjects like Indian Economy, Indian Polity, Environmental Studies, Indian History, Science and Technology and others along with current affairs related to them, for which he is well known personality in this field across the state of Maharashtra. On

the basis of this extensive work, the plaintiff has prepared his own books regarding the subject which are used by thousands of students across Maharashtra. And after the study, the plaintiff himself is preparing syllabus book either in his own handwriting and typing in his own computer and the contents of the said syllabus are not available in the market. It is also not available on public domain. According to the plaintiff, the defendant nos.1 and 2 were the students of the plaintiff's institution around the year 2012. However, the defendant nos.1 and 2 failed in the preliminary examination consequently for many years. The defendant nos. 1 and 2 used to visit the office of the plaintiff from time to time seeking guidance. The defendant nos. 1 and 2 acquired the faith of the plaintiff and they also took parts in some of the functions and educational programs of the plaintiff's institution. During the said period the defendant nos.1 and 2 got information about the business transaction and strategies of the plaintiff. They were also in possession of various notes/articles prepared by the plaintiff. The defendant nos. 1 and 2 being the ex-student of the plaintiff institution also participated in the various programs and lectures arranged by the plaintiff, and they were aware about all the notes/articles and the said two books written by the plaintiff.

5. In the first week of November 2023, the plaintiff through some students realised that the defendant no. 1 has written books in the name of “Class Notes Bhartiya Arthvyavastha” and “Class Notes Rajyaghatna”. The plaintiff also realized that the said two books were published by the defendant no.2 through “Lokseva Publication”. The plaintiff, hence purchased the said two books from defendant no.2 and after perusal of the said two books, the plaintiff got knowledge that the defendant nos. 1 and 2 in collusion with each other have almost copied the contents of the said two books written by the plaintiff and by making some minor changes, have prepared the said books by using the words “Class Notes” as suffix. Moreover, these books of the defendant nos. 1 and 2 have also been sold online through application in the name of “Lokseva Academy”. Hence, the plaintiff, through Power of Attorney has filed a criminal case against the defendants. Pursuant to which the First Information Report (FIR) was lodged against the defendants. However, the defendants succeeded in seeking an anticipatory bail from Sessions Court, Pune.

6. Thereafter, the plaintiff has filed the suit for infringement of copyright against the defendants on 20th February 2024 before the District Judge, Pune. So also, the plaintiff lodged an Interim Application (Exhibit 5) seeking temporary injunction against the

defendants from selling, publishing the said duplicate books of the defendants.

7. Initially the plaintiff moved the application (Exhibit 5) before the District Court and by an ex parte order dated 13th March 2024 interim injunction was granted against the defendants restraining them from selling, publishing the said duplicate books i.e. “Class Notes Bhartiya Arthvyavastha” and “Class Notes Rajyaghatna” till further orders. The notices were issued to the defendants as to why the ad-interim injunction should not be made absolute.

8. The defendants, thereafter appeared before the District Court through their advocates and filed their reply to the interim application and also filed their written statement. After pleadings were completed, the District Court heard both the advocates appearing for the parties and by its order dated 15th June 2024, rejected application (Exhibit 5) of the plaintiff. The present Commercial Appeal From Order has been filed by the plaintiff being aggrieved by the order passed by the District Court, Pune.

SUBMISSIONS

9. Mr. Yatin Kochare appeared on behalf of the Appellant/Original Plaintiff, and made his submissions.

(i) He submitted that the plaintiff original literary work viz.,

“Bhartiya Rajyaghatana and Prashasan” and “Bhartiya Arthavyavashta” were copied by the defendants under the book titled as “Class note Rajyaghatana” and “Class note Bhartiya Arthavyavashta”.

(ii) He submitted that the plaintiff as original author-cum-owner who has created his literally work in the book title “Bhartiya Arthavyavashta” and the same was published in the year 2005 and the second book “Bhartiya Rajyaghatana ani Prashasan” which was first published on 2013. Admittedly much subsequently the alleged first publication claim in made by the defendants in the book titled “Class note Rajyaghatana” and “Class note Bhartiya Arthavyavashta” viz. 2021 and 2022.

(iii) He submitted that the plaintiff’s works were original works within the meaning of Section 13 of the Copyrights Act, thus the burden lied on the defendants to show that their impugned works are gathered from the public domain or information available in the public domain.

(iv) He submitted the plaintiff is the author and owner of the Original Literary work and has penned the same by investing and exercising abundant skill, judgment and labour. An 'original' must be a "product of an exercise of skill and judgment", where 'skill' is "the use

of one's knowledge, developed aptitude or practised ability in producing the work" and 'judgment' is "the use of one's capacity for discernment or ability to form an opinion or evaluation by comparing different possible options in producing the work".

(v) He submitted that the defendants were students of the petitioner's academy and thus they had prior knowledge and were well conversant with the plaintiff original literary work along with the editions. It is apparent from the comparison that there is a deliberate attempt to copy as the Petitioner has also copied the tables and examples "as it is" without any changes.

(vi) He submitted that emphasize has to be given on originality and substantial part and it is crucial to understand that if there is substantial similarity between two works, the later work of defendants cannot be considered original. The defendants registered copyrights are an imitative work of the plaintiff and lacks originality.

(vii) He submitted that the impugned copyrights of the defendants was applied for registration on 14th December 2023 in respect of "Class notes Rajyaghatana", whereas the plaintiff is using the original work "Bharatiya Rajyaghatana ani Prashashan" since 2013 and applied for the registration on 25th November 2019 and therefore, the plaintiff's registration and use of the said work precede the

defendants' registered copyright's alleged adoption and alleged use.

(viii) He submitted that at the time of the alleged adoption and alleged first use of the impugned copyrights by the defendants, the said original work of the plaintiff had already become famous, well known, and renowned and had already acquired further distinctiveness including by virtue of their extensive and continuous use and goodwill generated thereto.

(ix) He submitted that the defendants' alleged Copyrights proceeded for registration despite the existence of the plaintiff's prior use and application. The defendants have obtained the registration in bad faith with the intention of riding upon the goodwill and reputation that accrues to the plaintiff herein.

(x) He submitted that alleged copyrights are a blatant imitation of the plaintiff well-known and popular work. The defendants' alleged copyrights are devoid of a distinctive character. Accordingly, the registration of the defendants' copyrights are prohibited from registration under Section 13, 17 and 51 of the Act.

(xi) He submitted that the defendants's alleged Copyrights are slavish imitation and lacks originality and as per Section 50 of Copyrights Act r/w Rule 71 of the Copyrights Rules, hence, ought to be expunged from the Register of the Copyrights.

(xii) In support of his submissions, he relied upon the following judgments:

- (a) *Sanjay Soya Private Limited Versus Narayani Trading Company*¹;
- (b) *Asian Paints (I) Ltd. vs. M/s. Jaikishan Paints & Allied Produces*²;
- (c) *Shyam Lal Paharia and another Versus Gaya Prasad Gupta 'Rasal'*³;
- (d) *V. Govindan Versus E. M. Gopalakrishna Kone and another*⁴;
- (e) *University of London Press, Limited v. University Tutorial Press, Limited*⁵;
- (f) *Bengal Waterproof Limited versus Bombay Waterproof Manufacturing Company and another*⁶;
- (g) *Midas Hygiene Industries (P) Ltd. and another versus Sudhir Bhatia and others*⁷;
- (h) *Hugo Boss Trademark Management GMBH and Co. KG vs. Sandeep Arora Trading As Arras The Boss & Ors.*⁸;
- (i) *R. G. Anand versus M/s. Delux Films and others*⁹;
- (j) *Ratna Sagar Pvt. Ltd. Versus Trisea Publications & Ors.*¹⁰;

(xiii) He submitted that the impugned judgment and order passed by the District Court is against the well settled principles of law, hence the same requires to be quashed and set aside and the application (Exhibit 5) filed by the original plaintiff requires to be allowed.

10. Mr. Abhijeet Desai appeared on behalf of the respondent/original defendant, and made his submissions :-

1 2021 SCC OnLine Bom 407.

2 2002(4) Mh.L.J. 536.

3 1970 SCC OnLine ALL 260.

4 1954 SCC OnLine Mad 368

5 -----

6 (1997) 1 SCC 99

7 (2004) 3 SCC 90

8 C.O.(Comm.IPD-CR)6/2023 judgment dtd. 8th December 2023.

9 (1978) 4 SCC 118

10 1996 SCC OnLine Del 387.

(i) He submitted that on purported grounds, the plaintiff filed a suit for infringement on 26th February 2024, and without serving the defendant while the matter appeared eight times before the District Court, the plaintiff on 13th March 2024 obtained an *ex-parte* order of interim injunction against the defendant.

(ii) He submitted that the defendant's publication of books started on 17th December 2017 and the defendant academy started on 16th November 2022. The defendant academy as on 25th March 2024 has Online presence on YouTube channel with 1,71,047 subscribers and 58,211 subscribers on Telegram channel.

(iii) He submitted that the defendants have independently created their work using publicly available sources, exercising their humbly own skill, judgment, and labor. The content in their "Class Notes" books primarily consists of facts, data, and information from publicly available sources such as state board books, NCERT textbooks, university reference materials, government reports, and official websites. The defendants have merely compiled and presented these facts, data, and public information in a comprehensive and instructionally tailored manner for the benefit of students preparing for competitive examinations.

(iv) He submitted that the findings arrived at by the District Court

are based on the averments in their plaint, specifically mentioned in paragraph nos.5 and 6, and the rejoinder filed by the plaintiff on page no. 3, para no. 4. These averments were made to show that the plaintiff's work is original and therefore has copyright protection. It is pertinent to note that even before the District Court, the plaintiffs have miserably failed to show that their work is original and they merely relied on the Copyright Certificate. The defendants pointed out that the claim of plaintiff is baseless, and in fact, as per the plaintiff's own admission, one of their books' copyright certificate is still awaited, while the defendant holds a valid copyright certificate.

(v) He further submitted that the second argument advanced by the plaintiff before the District Court is that the defendants had copied word-for-word from the plaintiffs' books. To substantiate this, plaintiff submitted a comparative analysis placed on record from page no. 246 to page no. 411, which led to obtaining an *ex-parte* injunction. The District Judge has recorded the plaintiff's submission and further observed that he doesn't find a word-for-word copy.

(vi) The plaintiff had earlier filed a police complaint dated 3rd November 2023, alleging copyright violation, which was disposed of on 27th November 2023 after the police found no merit in the allegations. Nonetheless, the appellant has persisted with these

baseless allegations.

(vii) On the plaintiff's insistence, an FIR was lodged against the defendant. The said FIR was challenged by the defendant in this Court by filing a petition under Section 482 of Code of Criminal Procedure. By an order dated 23rd February 2024, the Division Bench of this Court directed that the chargesheet should not be filed with respect to the said FIR, in view of Section 51 of the Copyright Act.

(viii) He further submitted that the concerned books are on subjects of Indian Economics and Indian Constitution that are basic, factual, and non-debatable, and the basic concepts of these subjects cannot be changed.

(ix) He submitted that the plaintiff has acted with malafide intentions by filing a frivolous case against defendants, posting negative posts on various platforms regarding the offense lodged against them and publishing news about the same, issuing unauthorized letters to book vendors in Maharashtra stating that the sale and possession of the defendants' books are banned and illegal. The timing of filing of the case coincides with the release of defendants new book available since 15th February 2024 as well as the tentative schedule of MPSC examinations.

(x) The plaintiff has miserably failed to prove that his work is

original and deserving of copyright protection. The contents of his books appear to be factual information and data available in the public domain, which cannot be copyrighted.

(xi) The plaintiff's books comprises approximately 450 pages, while the class notes of the defendants consist of only around 200 pages. The plaintiff has introduced the concept of class notes in their new edition, which was never a part of their book previously, after observing the superior performance of the defendants' students.

(xii) It is a well-settled position under law that if any book is written on the basis of information, data or material available in the public domain, then it will not come under the purview of infringement of copyright. The defendants have obtained valid copyright certificates for their "Class Notes" books, and therefore, their products get protection under Section 51 of the Copyright Act.

(xiii) The Gujarat High Court, in the case of *Maheshbhai @ Kanbhai Haribhai Sojitra vs State of Gujarat in Criminal Misc. Application No. 8581 of 2022*, has held that if a person holds a valid copyright certificate, the ingredients of copyright infringement are not satisfied, and therefore the respondent are protected by Section 51 of the Copy Right Act.

(xiv) To buttress his submissions, Mr. Desai relied upon the

following judgments :-

- (i) *The judgment of Delhi High Court in case of Eastern Book Co. & Ors. vs. Navin J. Desai & Anr*¹¹;
- (ii) *The judgment of Delhi High Court in case of Manju Singal Proprietor Singla Food Products vs. Deepak Kumar & Anr*¹²;
- (iii) *The judgment of Supreme Court in case of Wander Ltd. & Anr. vs. Antox India P. Ltd.*¹³,

ANALYSIS AND CONCLUSION:-

11. The District Judge while deciding the Plaintiff's application (Exhibit 5) which was filed under the provisions of Order XXXIX Rules 1 and 2 of the Code of Civil Procedure has held that at a glance of the photocopy of certain pages from the books of the plaintiff as well as the class notes of the defendant no.1 *prima facie* he does not find it just a word to word copy of the plaintiff's book. Further, the District Judge held that if any book is written on the basis of the information data or material available in public domain, then it will not come under the purview of infringement of copyright. It was also held that plaintiff had published two books namely "भारतीय अर्थव्यवस्था" (Indian Economy) and "भारतीय राज्यघटना प्रशासन" (Indian Constitution), whereas defendant no.1 has written two books and defendant no.2 has published them namely "Class Notes of Indian Economics" and "Class

¹¹ 2001 SCC OnLine Del 45.

¹² 2023 SCC OnLine Del 5503

¹³ 1990 Supp. SCC 727

Notes of Constitution”. It was also further held that out of the two books plaintiff has received registration certificate from Copyright Registry for his first book and for the second book the copyright certificate is awaited, whereas the defendant had already received Copyright Certificate from the Registry for his two books. In such a situation the District Judge held that plaintiff has not made out a *prima facie* case, nor the balance of convenience is in favour of the plaintiff and further there will not be any irreparable injury if temporary injunction is refused to the plaintiff. On this reasoning the District Judge has dismissed the plaintiff’s application for temporary injunction.

12. The plaintiff has filed his suit for infringement of copyright through a power of attorney holder. The plaintiff has got Copyright Certificate for one of his book and for the second book the Copyright Certificate is awaited. As against this the defendant’s both the books have already received Copyright Certificate. It is pertinent to note that the plaintiff’s first book on Economics is around 432 pages while the defendant’s first book “अर्थव्यवस्था (Economics)” is of 228 pages. The plaintiff’s second book on “Constitution” is around 427 pages while defendant’s book on on “Constitution” is around 205 pages. However the plaintiff’s and defendant’s books size as far as length and breadth

is almost the same. Hence, it can be seen that the defendant's books are almost half the size to that of the plaintiff. The first book of the plaintiff "Bhartiya Arthvyavstha" (Economics) sold at a price of Rs. 470/- whereas the defendant's book is sold at a price of Rs.300. The second book of the plaintiff "Bhartiya Rajyaghatna" (Constitution) is being sold at a price of Rs.450/- whereas the defendant's book is being sold at Rs.260/-.

13. According to the plaintiff's own case, the plaintiff's book was first published in the year 2005. However, the plaintiff applied for registration of copyright with the Registry only in the year 2019 for the first book and for the second book in the year 2021, whereas defendant has published his book in the year 2017, and he applied for registration and got registration on 9th November 2020.

14. It is the plaintiff's case that he is running coaching classes for various competitive examinations including the examination of IAS from the year 2007. The plaintiff case is that he has great reputation amongst the students who appeared for competitive. According to us, *prima facie* it is natural that the plaintiff's book would be sold on the reputation which the plaintiff must have gathered due to long running of his academy, and hence, his books would be sold on his name.

15. It is also the case of the defendant that the plaintiff has at the

most prepared what is called as notes on the subject which are of “Public Domain”. So also, it is the case of the defendant that in fact the plaintiff has not developed any kind of literature work, before the plaintiff there were already authors who had published their notes and that the plaintiff, in fact, has copied their work. At a *prima facie* stage, we don’t find that notes prepared on a subject which is a public domain could be a part of Copyright Infringement.

16. In *Sanjay Soya Private Limited* (supra), the learned Single Judge of this Court was dealing with an issue pertaining to interim application in I.P. Suit for Trademark and Copyright Infringement. The trademark in the said suit was a ‘Label’ mark.

17. In *Asian Paints (I) Ltd.* (supra) the learned Single Judge of this Court was dealing with the registration of a copyright. The Court held that the registration of the copyright merely raises a *prima facie* presumption in respect of particulars entered in a register of copyright. The presumption is, however, not conclusive. In the facts of the case, the Court dealt with label of the product. However, in the present proceedings, it is not applicable.

18. The plaintiff and defendants have prepared notes on the topic “Constitution” and “Indian Economy”. According to us, any person who prepares notes on the topic “Constitution” and on the topic

“Indian Economics”, would have no right to change anything on the basic will be putting up the Constitution in the simple form without changing the content of the subject. The notes on these subjects would be keeping in mind that the same would be meant for the students appearing for competitive exams in the State of Maharashtra.

We have our own doubts that any notes prepared on these two topics which does not allow a writer of the notes to change contents of the topic, whether there can be any kind of violation of copyright. Hence, at this stage of granting interim relief, pending the hearing of the suit, we don't find it appropriate to go into the question whether there can be any kind of infringement of a copyright right in the notes prepared on the subject, where the contents can't be changed. This is not a case where an author has written some kind of a book where original work is involved. This is a case where only notes on the topic of “Constitution” and “Indian Economics” have been prepared both by the plaintiff and the defendants.

19. In *Sanjay Soya Private Limited* (supra), the learned Single Judge of this Court was dealing with an issue relating to a suit filed the infringement of trademark and copyright. The trademark in questioned was a label mark and the plaintiff also claimed copyright in the artistic work comprised in the label. The plaintiff claimed that it

has copyright in the artistic work which have been used on the packet of plaintiff's goods. Hence, in *Sanjay Soya Private Limited* (supra), the Court was not dealing with literary. Hence, the findings recorded in *Sanjay Soya Private Limited* (supra) will not be applicable in the present case.

20. In *Asian Paints (I) Ltd.* (supra), the learned Single Judge of this Court was dealing with application filed by the defendant for dismissal of suit on the ground that the Court has no territorial jurisdiction, and hence, the plaint be returned under the provisions Order VII, Rule 10 of the CPC. So also, an application for revoking the leave, granted under the provisions of Clause XIV of Letters of Patent.

21. The plaintiff had filed a suit to restrain the defendants by an injunction by using the label "Utkarsh" and/or any other label containing artistic work design, layout, colour scheme, systematic arrangement and get up contained in the plaintiff's label so as to infringe plaintiff's copyright contained in the label. "Utsav" registered under the Copyright Act. The plaintiff was engaged in the business of manufacturing and/or marketing paints and colour material. The plaintiff adapted and commenced the use of trademark of the word "Utsav". The plaintiff also prepared from an artist a label containing

original artistic work and published the same.

22. The defendant had obtained a certificate of registration of copyright in respect of its work, hence the defendant's case was that since its work was registered, he was not liable for infringement of Petitioner's copyright. The Court held that registration under the Copyright Act raises a *prima facie* presumption in respect of his particulars entered in the register of copyright. Once the plaintiff establishes that it had created its work prior to the defendant, mere registration by the defendant of its work cannot defeat the petitioner's claim hence the petitioner succeeded and the application preferred by the plaintiff for interim relief was made absolute.

23. Taking into consideration the fact that in *Asian Paints (I) Ltd.* (supra), the facts are related to an artistic work of a label, and in present proceeding, it is pertaining to "literary" the finding recorded in *Asian Paints (I) Ltd.* (supra) does not apply to present proceedings.

24. *Shyam Lal Paharia* (supra) is a judgment of Allahabad High Court, Single Judge, where the plaintiff had filed a suit for injunction as the plaintiff claimed to be an author of the book "Hisabi Machinery". It was published in the year 1941 and the second edition was brought in the year 1944 in order to bring out new editions.

25. The plaintiff thought to bring out cheaper edition of the book with the title “Hisabi Darpan” but in the meanwhile the defendant published its “Hisabi Machinery” in the year 1954. According to the plaintiff, defendant’s book was slavish copy of the various charts from the plaintiff’s book.

26. The District Court dismissed the plaintiff’s suit. Aggrieved from the dismissal of the suit, the plaintiff filed an appeal before this Court. The appeal was filed in the year 1960 and was decided in the year 1970. The Court held that whether an impugned work is a colourable imitation of person’s work is always a question of fact and has to be determined from the circumstances in each case. The Court compared with the book of defendant and concluded that the defendant had copied the tables has been given by in his book 49 pages. There were certain mistakes in the figures given in the defendant’s book. This was also common in plaintiff’s book. It was strange coincidence that the mistakes in plaintiff’s book and defendant’s book was common. Hence, the appeal of the plaintiff was allowed and the suit was decreed.

27. In *Shyam Lal Paharia* (supra), the Court was dealing with the final hearing of the appeal which arised out of decree passed in the suit. In the present proceedings, the District Court was dealing with

the application (Exhibit 5) filed in the suit and the Court was at a *prima facie* view that the interim injunction could not be passed. We are dealing with an appeal from order pending the suit. The District Court arrived at a finding that *prima facie* comparing the two notes the defendants had not copied. Hence, finding recorded in the *Shyam Lal Paharia* (supra) would not be applicable to the present proceedings.

28. The Madras High Court in the case of *V. Govindan* (supra), the learned Single Judge was dealing with an appeal filed by original defendant. The suit filed by the plaintiff for infringement of plaintiff's right and for injunction, since according to the plaintiff, the defendant had copied word to word the dictionary published by the plaintiff. After recording the evidence, the District Court come to a conclusion that it is found that the defendant had page after page, word after word, slavishly copied, including the errors, the meanings, the arrangements and everything else practically the same. Hence, the suit was decreed. The Madras High Court after the appeal was admitted in the year 1951 while hearing the appeal in 1954 after considering the entire evidence, confirmed the trial Court's decree and dismissed the appeal.

29. In *V. Govindan* (supra), the suit was finally heard and decided the appeal after being admitted at the stage of final hearing, the Court came to the conclusion that there was word to word copy including the errors. In the present proceedings, we are dealing with an appeal from an order passed in an interim application. The suit is still to be decided and the evidence is yet to be led. Hence, the judgment of the learned Single Judge of the Madras High Court would not help the plaintiff in the present proceedings.

30. The judgment of *University of London Press, Limited* (supra) is a English judgment which dealt with Paper set by examiners for matriculation examination of University of London. Examiner were appointed for a matriculation examination of the University of London on a condition of appointment being that any copyright in the examination papers should belong to the University. The University by a deed entered with the plaintiff company assigned the copyright. After the examination, the defendant company issued a publication containing a number of examination papers including three which had been set by two examiners who were co-plaintiffs, with criticism on the papers and answers to questions in an action for infringement of copyright the plaintiff succeeded under the provisions of Copyright Act, 1911. The plaintiff has cited this English Judgment of the year

1916, however, the plaintiff has not brought before this court the definition of the words “copyright” in the England’s Copyright Act, 1911. Therefore, the findings of the judgment of *University of London Press, Limited* (supra) will not be binding on this Court.

31. The judgment of *Bengal Waterproof Limited* (supra) dealt with the issue of infringement of trademark and passing off. The said judgment was cited only for the purpose of urging the point of continuous and recurring cause of action.

32. The present proceeding deals with an application for temporary injunction being decided at interim stage pending the hearing of the suit. The findings recorded in *Bengal Waterproof Limited* (supra) does not in real sense have bearing in deciding the present Appeal From Order.

33. In *Midas Hygiene Industries (P) Ltd.* (supra), the Supreme Court dealing with an issue where the plaintiff had filed a suit for infringement, trademark and copyright. The plaintiff asserted the ownership of copyright in the packaging containing the words “**Laxman Rekha**”. The defendant who was working with the plaintiff did not give any reply why he adopted “Magic Laxman Rekha”. The defendant’s only contention was since 1992 it was using the word

“Magic Laxman Rekha”, hence, according to them, the plaintiff's suit filed in the year 1996 suffered from delay and laches. The learned Single Judge granted interim injunction, however, the Division Bench vacated the injunction relying on the ground that there was delay and laches in filing the suit. The Supreme Court held that the defendant has not given any explanation. The defendant's carton looked almost identical to that of the plaintiff. The Supreme Court held that this *prima facie* indicates the dishonest intention to pass off the product of the defendant as his goods as that of the plaintiff.

34. The finding recorded in *Midas Hygiene Industries (P) Ltd.* (supra) are completely different fact, hence, the same will not be applicable to the present proceedings.

35. In *Hugo Boss Trademark Management GMBH and Co. KG* (supra), the learned Single Judge of Delhi High Court was dealing with the petition seeking rectification from the register filed under Section 50 of the Copyright Act being removed from the copyright register titled “Araas the Boss”.

36. The case of the petitioner was that it was a registered proprietor of trademark “Hugo Boss” and “Boss”, which were first adopted in the year 1923. According to the petitioner, respondents started trading as

“Araas the Boss”, engaged in the same business as of the petitioner that is selling of perfumes. Hence, the petitioner filed the petition for rectification under Section 50 of the Copyright Act. The respondent though served did not appear in the proceedings. The Court held that the record shows that the respondent no.1 was indulged in habitual copying of various well known marks. The Court came to the conclusion that the artistic works of respondent “Araas the Boss” is an imitative mark and not an original artistic work. Accordingly, the petition was allowed.

37. In the judgment of the learned Single Judge of Delhi High Court, facts were quite different, hence, the ratio is not applicable in the present proceedings.

38. In the case of *R. G. Anand* (supra), the Supreme Court was dealing with a case where a play written in Hindi in the year 1953 and a motion picture produced in the year 1956 was involved.

39. Hence, the facts in *R. G. Anand* (supra) were quite different and would not be applicable in the present proceedings as it falls under literary works.

40. In the case of *Ratna Sagar Pvt. Ltd.* (supra), the learned Single Judge of Delhi High Court was dealing with the case of the plaintiff

where the defendant photo copied the plaintiff's book and was using the same as if it is his own book and by changing the books title. The learned Single Judge of Delhi High Court held that considering the material produced by the party he had seen the books of plaintiff and that of defendant and on a close examination on the books he got an impression that the defendants had copied the work of the plaintiff. The learned Single Judge of Delhi High Court further held that it was admitted that plaintiff had published the work earlier and its rights must be protected. Hence, a *prima facie* case was made out to grant injunction.

41. The learned Single Judge was dealing with a matter where he compared books of the plaintiff and defendant and hence, the prima facie findings recorded on the facts of that case would not be applicable. Hence, the learned Single Judge of Delhi High Court which was dealing in that facts would not be binding upon us.

42. The Supreme Court in the judgment of *Wander Ltd.* (supra) has held that 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 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.

43. According to us, the law laid down in the judgment *Wander Ltd.* (supra) squarely applies to this case.

44. The learned Single Judge of Delhi High Court in *Eastern Book Co.* (supra) was dealing with a case where the plaintiff company was engaged in the business of printing and publishing various books in the field of law. The plaintiff claimed that it had developed the software known as “SCC OnLine Supreme Court Case Finder” and the plaintiff had developed its own headnotes. The plaintiff claimed that the defendant also developed a software wherein the defendant copied the headnotes of Supreme Court judgments of plaintiffs.

Hence, the plaintiff filed the suit against the defendant. The learned Single Judge held that reproduction of a part of the judgment in the headnote is not an abridgment of the judgment and no copyright can be claimed therein.

45. According to us, the conclusion arrived at in this judgment would be squarely applicable to the present proceedings.

46. In any case, it is the trial Court who in its discretionary powers has refused to grant temporary injunction to the plaintiff. All relevant aspects have been taken into consideration and a possible view of the matter has been taken. Hence, we find *prima facie* there is no merit in the case of the plaintiff. Accordingly, we pass the following order.

ORDER

(i) The Commercial Appeal From Order stands dismissed. So also, the Interim Application is dismissed.

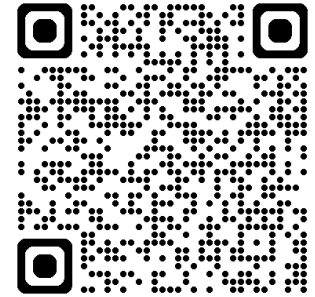
(ii) The hearing of the Commercial Suit No.13 of 2024 pending before the District Court, Pune, is expedited. It is clarified that observations made in this judgment are only in the context of considering the prayer for interim relief. The trial Court shall not be influenced by the same and shall decide the suit on its own merits.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]

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