

# **Puneet Industrial Controls Pvt. Ltd. vs Classic Electronics on 20 May, 1996**

**Author: K. Ramamoorthy**

**Bench: K. Ramamoorthy**

## **JUDGMENT**

K. Ramamoorthy, J.

1. IA 11853/94 has been filed by the plaintiffs under Order 39, Rules 1 and 2 for injunction. Ad interim injunction was granted by this Court on 19-12-1994. IA 1563/95 had been filed by the defendants under Order 39, Rule 4 CPC for vacating ad interim injunction. The plaintiffs have filed the suit claiming for injunction on the basis of the Copyright held by the plaintiffs in the electronic relays manufactured by the plaintiffs. The reliefs prayed for by the plaintiffs are as follows :

"(a) For permanent injunction restraining the Defendants, their servants, agents and all other persons on their behalf from manufacturing and selling the infringing materials and infringing the copyright of the plaintiffs in the aforesaid "artistic works" and "literary works".

(b) For permanent injunction restraining the Defendants, their servants, agents and all other persons on their behalf from passing on to any other person in any form or material the confidential proprietary information regarding electronic circuits encompassed in the EPOXY sealing."

The parties have indulged in prolixity in pleading though the point ultimately lies in a very narrow compass. Because I am dealing with the Interlocutory application, it is not necessary to refer to the pleadings in detail. The case of the plaintiffs very briefly stated in a condensed form is as follows :

2. In on about 1975 the plaintiff No. 1 (and/or its predecessor in interest) started manufacturing and selling broad range of electronic relays used for the protection and automation of electrical installations used by major Chemical plants, thermal power stations and defense electronic installations. The plaintiffs are also manufacturing electronic relays for Diesel generating set panels. The plaintiffs are also manufacturing reverse power relays, engine relay, alternator voltage monitory relay, mains voltage monitor relay, over voltage relay for load protection, D. C. Timer, A. C. Timer, over frequency relay for engine speed protection, earth-fault relay, over load relay, auto booster controller, self priming timer and electronic timer. The products of the plaintiffs are highly superior in its working to other products available in the market and enjoyed very high reputation in the market. The plaintiffs have been improving upon the products and the design, lay out and the unique electrical/electronic circuits and drawings/photographs depicting the same constitute

"artistic work" within the meaning of Section 2(c)(i) of the Copyright Act, 1957. The electronic/electrical circuits are encompassed within the component call 'EPOXY' and this is a "trade secret" and "confidential proprietary information" of the plaintiffs.

3. The second plaintiff Mr. Prem Dua is the Managing Director of the first plaintiff Company claimed to be qualified Electrical and Electronics Engineer from IIT Delhi, and he is well versed in this field. Further development was made and the second plaintiff has been maintaining high degree of quality. The products of the plaintiffs are sold under the trade mark "PIC", which was duly registered vide No. 525234 B dated 26-2-1990, under the Trade Mark Act, 1958.

4. In para 11 of the plaint the plaintiffs would state that the second defendant Mr. Sanjay Chanana is the first cousin of the second plaintiff. He had passed only a Diploma in (Mechanical Engineering). He was doing some business and he could not do well in the business and the parents of the second defendant requested the second plaintiff to help him and the second plaintiff made him set up an industry for the manufacturing of voltage regulators and shock protectors, under the trade name of Hi-Tech Controls. As is said earlier the second defendant could not run effectively and again the sought the help of the second plaintiff. With a view to helping the second defendant during the period from April, 1991 to April, 1992 the manufacture of electronics relays was divided approximately equally between Hi-Tech controls (of the defendant No. 2) and a new firm set up by the second plaintiff with the trade name "Dua Power Controls". The two concerns under the control of the second plaintiff manufactured the electronics relays from the factory of the second plaintiff under the Trade mark "PIC".

5. In April, 1992 Puneet Industrial Control Pvt. Ltd. the first plaintiff was incorporated under the Companies Act, 1956, as Private Limited Company, taking over the manufacturing operations of Dua Power Control which was shut down. The resultant position in April, 1992 was that the manufacturing operations of the plaintiffs were segregated or divided for the sake of business in the name of Hi-Tech Controls and Puneet Industrial Control Pvt. Ltd. It is significant to mention that the entire manufacturing was done at the factory of the second plaintiff and all the products were sold under the trade name PIC and the products manufactured under Hi-Tech Controls were also billed only under the Company Puneet Industrial Pvt. Ltd. with the trade name PIC.

6. The second defendant a close relation was trusted by the second plaintiff and he was fully trained in the business and the second plaintiff sent the second defendant to attend the product exhibitions which were held in other cities like Bangalore. During such business relationship the second defendant, acquired knowledge of the confidential nature of the electrical/electronics circuits particularly that encompassed in EPOXY scaling and the second defendant was clearly instructed that the said information should not only be disclosed but also ought not to be misused.

7. In or about May 1994, the second plaintiff came to know the attitude of the second defendant by letter dated 20-5-1994 by one Shri R. Sarvana of Bangalore and 23-5-1994 by one Shri A. S. Rangnathan from Bangalore. The second plaintiff came to know in mid November, 1994 that the second defendant has set up a concern in the name of Classic Electronics (defendant No. 1 father of defendant No. 1 being Proprietor). The Classic Electronics started manufacturing the products

which are exact copy or replica of the plaintiff's products.

8. On 15-11-1994, there was a letter from M/s. Inditex India, New Delhi, to the plaintiffs. In para 17 of the plaint the case of the plaintiffs is put thus :

That it is respectfully submitted that the Plaintiffs have carefully studied in details the products made by the Defendants and have come to the firm conclusion that :-

(a) the internal electrical/electronic circuit on the printed circuit board used by the Defendants is exactly identical and/or substantially and materially similar to that used by the plaintiffs;

(b) the electronic circuit encompassed in the EPOXY sealing is identical to that used by the plaintiff;

(c) the external features and design of the product are identical and/or substantially, materially and deceptively similar to that of the plaintiffs.

9. According to the plaintiffs the defendants are guilty of infringement of the plaintiffs Copyright under Section 51 of the Copyright Act, 1957.

The plaintiffs for the purpose of explaining the products have issued a descriptive literature and that is also copied by the defendants. According to the plaintiffs the descriptive literature constituted literary work within the meaning of Section 2(o) of the Copyright Act, 1957. Section 2(o) of the Copyright Act, 1957 reads as follows;

Section 2(o) "literary works" includes tables, compilations and computer programmes ..."

10. The plaintiffs would also state that the second defendant is not really equipped to deal with the electronics/electrical products and taking advantage of his acquaintance the second defendant is now trying to pass off the products of the plaintiffs by committing infringement of the artistic and literary works of the plaintiffs.

11. The defendants have filed a very detailed written statement stating, inter alia, that the second defendant is an Engineer Group, taking the help of Mr. Vivek Channana who is an Electronics Engineer from IIT Delhi is doing the business and the defendants are well equipped to do the business. As a matter of fact, the case of the defendants is, it is the second plaintiff who is trying to take advantage of the goods products of the defendants. It is admitted by the defendants that "said Integrated Circuit being the Central Component, is encompassed in the epoxy sealing and the said sealing is put to protect the said IC and to keep it away from the eyes of the competitors." Therefore, this aspect of the matter being of a confidential nature is admitted by the defendants. It is also stated by the defendants that the designs claimed by the plaintiffs were capable of Registration under the Designs Act, 1911 and the same have not been registered, and therefore, they cannot claim any right. It is also stated that thousands of such pieces have already been manufactured and even if

the plaintiffs had any right in such designs the same does not survive any more.

12. About parting company with the plaintiffs in May, 1994 the defendants would give a different version. The second Plaintiff according to the second defendant did not pay him for the products manufactured by him and there are larger amounts due from the second plaintiff to the second Defendant. Under those circumstances the second defendant thought the best way to survive in the field was to serve all connections with the plaintiffs. It is asserted by the defendants that there is no infringement of artistic or literary works of the plaintiffs. The whole case of the plaintiffs is misconceived and the plaintiffs are not entitled to any reliefs.

13. The plaintiffs have filed replication repudiating the allegations made in the written statement.

14. A Local Commissioner was appointed by this Court and on 20th January, 1995, he has submitted his report.

15. Along with the replication annexures were filed by the plaintiffs showing that the plaintiffs are giving guarantee to their products to the customers. The plaintiffs along with, the plaint filed Annexures A to I. In Annexures A the following documents are shown :

Annexure-A (I) Four photographs (in original) of the Engine relay (with overall view, front face, bottom view, and inside view) produced by the plaintiffs and the defendants respectively.

(II) Four photographs (in original) of the Electronic Timer (with overall view, front face bottom view and inside view) produced by the Plaintiffs and the Defendants respectively.

(III) Four photographs (in original) of the Frequency Relay (with overall view front face, bottom view and inside view) produced by the plaintiffs and the Respondents respectively.

(IV) Four photographs (in original) of the Volt Relay (with overall view, front face, bottom view and inside view) produced by the plaintiff and the defendants respectively.

Annexure-B Copy of the Certificate of Registration of the plaintiff by the Directorate of Industries, Delhi Administration C.P.O. Building, Kashmere Gate, Delhi, recognizing the second plaintiff's unit as Small Scale Industries Unit.

Annexure-C Copy of the letter dated 16-8-1980 issued by DESU to the M/s Puneet Industrial Controls that is the predecessor in interest of the plaintiff had manufactured/ repaired and supplied as per the specifications laid down in the respective purchase orders referred to in the letter.

Annexure-D Copy of the advertisement of the plaintiff trade mark registration in the Trade marks journal dated 16-10-1994.

Annexure-E (sic) of Incorporation of the first plaintiff's Company.

Annexure-F Letters dated 20-5-1994 and 23-5-1994 from Bangalore. These letters show that the second defendant was getting orders to the plaintiffs factory asking for the details about the products.

Annexure-G Copy of letter dated 15-11-1994 to the first plaintiff's Company from Inditex India (a customer of the plaintiffs) to the plaintiffs mentioning about the Classic Electronics.

Annexure-H Comparative chart/statement detailing the identical/similar feature between the products of the plaintiff and the defendant.

Annexure-I The literature issued by the plaintiffs and the defendants for their respective products.

16. On 9-5-1995, the plaintiffs filed three documents as additional documents which are as follows :

(I) Copy of the letter dated 25-3-1995 by Teffo Coat Systems (India) Ahmedabad to Defendant No. 2 at the plaintiffs address. In this letter it is stated that the second plaintiff met with the partner to Tecosy at Delhi in the Exhibition held on 9-2-1994. It had placed an order and a sum of Rs. 500/- was paid as an advance and it is also sending zerox copy of the visiting card duly endorsed with the signature of the 2nd defendant representing the plaintiff's Company.

(II) The visiting card is given by the second defendant and the visiting card is in the following terms :

"Sanjay Chanana 480443 2/7 Roopal Mark Ahmedabad Puneet Industrial Controls Pvt. Ltd.

Advance paid Rs. 500/-

Charge 2250 - 500 = 1750 45, Community Centre, East of Kailash New Delhi - 110065  
Tel 6419479, 6423328 Sd/-

9-2-1994 the best for Automation & Protection Charge installation from them."

(III) The third document is the note written by second defendant on 9-2-1994 to Mrs. S. Madan of plaintiffs Ahmedabad office in the following manner :

"9-2-1994 Pragati Maidan Mrs. Sudha Mandan Please deliver two pieces of Auto Groster to Mrs. Dalip Ghosh. I am offering him a discount of 10% on Unit Price of

1250/- . So take Rs. 2250/- (Two thousand two hundred fifty)."

17. On 2-11-1995 the plaintiffs filed another additional list of documents and the description of the documents are as follows :

1. Photocopy of handwritten "kacha" accounts given by defendant No. 2 Sanjay Chanana to Plaintiff No. 2 stating the details (quantity, rate, amount, including labour charges) of components used for making each type of relay in the total production of the stated items during the period of 15-2-1994 to 28-2-1994.
2. Photocopy of hand written "kacha" accounts given by defendant No. 2 Sanjay Chanana to plaintiff No. 2 stating the details (quantity, rate, amount, including labour charges) of components used for making each type of relay in the total production of the stated items for the period of December 1993.
3. Photocopy of handwritten "kacha" accounts given by defendant No. 2 Sanjay Chanana to Plaintiff No. 2 stating the details (quantity, rate, amount, including labour charges) of components used for making each type of relay in the total production of the started items for the period of January, 1994.
4. Photocopy of handwritten "kacha" accounts given by defendant No. 2 Sanjay Chanana to Plaintiff No. 2 stating the details (quantity, rate, amount, including labour charges) of components used for making each type of relay in the total production of the started items for the period of 15th to 31st March, 1994.
5. One set of mechanical Drawings (Original) of some of the Plaintiffs products viz. Timer, volt relay, engine relay, and frequently relay.
6. Photocopy of one set of Mechanical Drawings, of the various Components (viz. channel Base, Housing, cover plate label stud, PCB) used by plaintiff in making his product (relays).

18. The defendants filed a set of documents. The details of which are as follows :

1. Certified copy of Application for release of goods filed in the Court of Shri K. S. Pal, M.M. New Delhi.
2. Certified copy of the reply affidavit filed by the plaintiff (herein) in the Court of Shri K. S. Pal, M.M. New Delhi.
3. Photographs of the products made by M/s. Puneet Industrial Control still 1990.
4. Magazine cutting from "Electronics For You" May 1993.

19. On 16-3-1995, the plaintiffs alongwith reply to the application under Order 39, Rule 4 CPC filed documents the details of which are as follows :

Annexure-A (Colly.) Affidavits of Suppliers viz. Mr. Kailash Rohatagi and Mr. Naval Khera.

Annexure-B Advertisements of the Plaintiffs new model electronic relays in Trade Journals.

Annexure-C (Colly.) Affidavits of Suppliers viz. Mr. Shantanu Kumar and Mr. R. C. Gupta In voices for first supply of custom made PCB, cover name plate and channel base mould and pieces.

Annexure-D (Colly.) Affidavits of Ramesh Khosla, Harvinder Jit Singh and Vishwajeet Sharma.

Annexure-E Copies of plaintiff's challans for outgoing materials duly signed by defendant No. 2 (Sanjay Chanana) during the period 1991-94.

Annexure-F Copy of a Government of India (Ministry of defense) publication showing Plaintiff as supplier of Thermister Relay.

Annexure-G Copy of plaintiff's Application dated 26-2-1990 for Design Registration and letter dated 21-6-1990 received from the Patent Office.

20. Learned Counsel for the plaintiffs Mr. Parveen Anand relied upon the following decisions :

John Richard Brady & Ors. v. Chemical Process Equipment (P) Ltd., Fleet Street Reports 221 (House of Lords), 1985 Fleet Street Reports 173 and 1977 RPC 551 (House of Lords). On the basis of these authorities the learned Counsel for the plaintiffs Mr. Anand submitted that the plaintiffs have Copyright in the drawing and also an artistic work in the literature. The articles were produced by the plaintiffs on the basis of the drawing. The defendants have produced articles which are copy of the articles of the plaintiffs.

The learned Counsel further submitted that the Copyright made by the defendants is substantial. According to the learned Counsel the case of the plaintiffs is unanswerable and the defendants have no defense at all.

21. Learned Counsel for the plaintiff Mr. Anand submitted that the defendants have taken three position defense :

(1) Section 15 of the Copyright Act, 1957 create a bar;

(2) Copyright is not shown to exist in the products manufactured by the plaintiffs;

(3) Drawings have not been filed.

22. Learned Counsel for the plaintiffs also submitted that the plaintiffs applied for the Registration under the Design Act, 1911 and that was refused by the authority in the Act. Learned Counsel referred to the judgment of the House of Lords in *AMP v. Utilux* (1972 RPC 103), wherein according to the learned Counsel it has been held under similar circumstances the House of Lords took the view that the Design Act would not apply and therefore, according to learned Counsel, the matter does not come within the purview of the Designs Act, 1911 and it is covered by the Copyright Act, 1957.

23. Mr. K. G. Bansal learned Counsel for the defendant vehemently contended that when the plaintiffs are claiming Copyright in the drawings they must first of all show the drawings and establish that they are the author of the artistic or literary works, the defendants have been manufacturing the products and the plaintiffs cannot complain of any infringement. He relied upon Section 15 of the Copyright Act, 1957. There is no question of any confidential information and the facts narrated by the plaintiffs about the second defendant and the business started and carried on by the second defendant are not at all correct. Learned Counsel relied upon the judgment of the Bombay High Court in *M/s. Eagle Potteries (P) Ltd. v. M/s. Eagle Flask Industries Pvt. Ltd.*, and the decision of the Supreme Court in *R. G. Anand v. M/s. Delux Films and Ors.*. The sum and substances of the arguments of Mr. K. G. Bansal, learned Counsel for the defendants is that the plaintiffs have not proved their copyright in the products and the literature and, therefore, the plaintiffs have not made out a prima facie strong case and the balance of convenience is in favour of the defendants. Mr. Anand, learned Counsel for the plaintiffs in answer to the arguments of Mr. K. G. Bansal, learned Counsel for the defendants submitted that necessary drawings of the plaintiffs have been filed and he also relied upon Section 2(5) of the Design Act, 1911. He also brought to my notice the decision of the Court of Appeal in *AMP Incorporated v. Utilux Pty. Ltd.* (1970 RPC 397) and *Dorling v. Honor* (1964 page 160 and 1963 RPC 205), judgment in appeal.

24. He also relied upon in *Lakhbir Singh's* (ILR (XVII) Punjab 659) Mr. K. G. Bansal, learned Counsel for the defendants again has made a few submissions stating that the distinction made by the learned Counsel for the plaintiffs between Design and Copyright have not been really set out in the pleadings and the pleading are vague in this behalf.

25. Mr. Anand, learned Counsel for the plaintiffs submitted a note on 23-1-1996 submitting (4) propositions. Under Proposition No. 1 - it is stated that Section 15 of the Copyright Act, 1957 is not attracted as the plaintiffs electronic relays are not registrable under the Designs Act, 1911. He has referred to the decision of the House of Lords in *AMP v. Utilux*, (supra) where it was held that an electrical terminal was not registrable under this Act.

26. Under Proposition No. II, he would submit that Section 15 of the Copyright Act, 1957 extinguished a copyright in design and not copyright in drawings. Drawings are an artistic work and as was held in *Lakhbir Singh's* case (supra) wherein it is held that drawing on paper is not



registrable under the Designs Act, 1911. The distinction between the copyright and a design and copyright in drawing is drawn in the case of *Dorling v. Honor*, (supra)

27. In proposition No. III, it is stated that :

- (a) the degree of similarity between the products and between the price lists,
- (b) the relationship between the parties so access to the confidential information of the plaintiffs;
- (c) the second defendant was not qualified in electronics and therefore, he could not have independently developed the technology as required for manufacturing such delicate electronics engine.

28. In proposition No. IV, it is stated :

- (a) there are engineering drawings.
- (b) those are original drawings;
- (c) the drawings have been filed in the court;
- (d) the dissolution deed dated 13th day of January, 1984 between Prem Kumar Dua and Ganpat Rai Satija would show that Prem Kumar Dua the second plaintiff became the owner of the copyright and subsequently the plaintiff became the owner of the copyright.

29. The only point to be decided is whether the plaintiffs have made out a prima facie strong case for the grant of injunction. If that is decided in favour of the plaintiffs then the question of deciding the balance of convenience would pose no difficulty. The documents filed by the plaintiffs and the drawings and the photographs showing the products of the plaintiffs and the defendants would show on a comparative study that they are identical. The case of the second defendant is it was he who discovered and fabricated these products and selling them to the plaintiffs and therefore, the plaintiffs cannot claim any right against the defendants. Prima facie having regard to the qualification of the second defendant and the business that is being done by the predecessor in interest of the plaintiffs and the plaintiffs since 1975, the case of the second defendant that it was he who was responsible for the manufacturing of the products appears to me to be wholly imaginary. The theory trotted out by the second defendant that he had the assistance of Vivek Channana is also not probable because it is only in 1994 the second defendant had to leave the plaintiffs because of his department not being proper and satisfactory. The second defendant has not given the details, of his business anterior to May, 1994.

30. In reply to the petition under Order 39, Rule 4 as I have mentioned earlier the plaintiffs have filed documents. Annexure A to G. In Annexure A the plaintiffs have filed two affidavits from the

customers. At page 23 I find affidavit of Mr. Naval Khera. He states that he is a partner of M/s. Kaybee Electrical, D-2 Vishnu Garden, New Delhi. According to him, he has been purchasing various kinds of electronic relays made by Mr. Prem Dua and sold under the brand name "PIC" belonging to him. These relays have been supplied by him under various business names like Puneet Industrial Controls, Uma Engineers & Plastics, Hi-Tech Controls and Puneet Industrial Controls Pvt. Ltd. but the brand name of the relays has always been "PIC".

31. In para 4 he states about the second defendants in the following terms :

"That I further state that I have known Mr. Sanjay Chanana who to the best of my knowledge & belief worked as production incharge at Mr. Prem Dua's factory between 1991 and May 1994. During this period, I have spoken to Mr. Chanana during the absence of Mr. Prem Dua & left messages with him regarding technical problems with the request to communicate the same to Mr. Prem Dua. Subsequently Mr. Prem Dua got back to me with the answer to my technical problems."

32. In para 6 of the same affidavit he would disclose that the second defendant had contacted him for business. Para 6 reads as follows :

"That I further state recently Mr. Sanjay Chanana contacted me and left the price list of Classic Electronics alongwith some samples of the product made by him/his firm Classic Electronics. These products and price list are similar to that of Mr. Prem Dua's products and price list. A copy of the Price list given to me by Shri Sanjay Chanana is being annexed herewith."

33. The second affidavit is found at page 26. This is by Mr. Kailash Rohtagi. He states that he is qualified Electrical Engineer (B.E.) and is engaged in the business of manufacturing electrical Control Panels under the name M/s. Inditex. In para 2 of the said affidavit he states in the following manner :

"That since about 1988 I have been purchasing various kinds of Electronic Relays made by Mr. Prem Dua and sold under the brand name "PIC". These relays have been supplied under various company names like Puneet Industrial Controls, Uma Engineers & Plastics, Hi-Tech Controls and Puneet Industrial Controls Pvt. Ltd., but the brand name of the relays has always been "PIC".

34. In para 3 of the said affidavit he refers to the advice he was seeking from Mr. Prem Dua. The contents of para 3 is as follows :

"That I have known Mr. Prem Dua since about 1988 and he is a qualified engineer with experience and expertise in the making of Electronic Relays. I state this from personal knowledge because from time to time I have been specifying my product requirements and needs to him and he has always provided with satisfactory answers to my product requirements and his products are unique and matching to only those

of multinational companies. As such since 1988 I have been exclusively dealing with Mr. Prem Dua and to the best of my knowledge & belief, no other engineer has been involved in Mr. Dua's work."

35. About the role of the second defendant in the plaintiffs business in para 4 he would state thus :

"That I further state that I have known Mr. Sanjay Chanana who to the best of my knowledge & belief worked as production incharge at Mr. Prem Dua's factory between 1991 and May 1994. On many occasions, I have spoken to Mr. Chanana during the absence of Mr. Prem Dua & left messages with him regarding technical problems with the request to communicate the same to Mr. Prem Dua. Subsequently Mr. Prem Dua got back to me with the answer to my technical problems."

36. In para 6 he mentioned about the second defendant in the following terms :

"That recently Mr. Sanjay Chanana contacted me and left the price list of Classic Electronics, alongwith some samples of the product made by him/his firm Classic Electronics, looking similar to that of Mr. Prem Dua's products. A copy of the price list given to me by Shri Sanjay Chanana is being enclosed herewith."

Thus it is clear that the second defendant had been trying to contract the plaintiffs customers.

37. Annexure B are the advertisements made by the plaintiffs in the trade journal showing the new model of electronics relays manufactured by the plaintiffs.

38. Annexure C the plaintiffs have filed affidavit from supplier at page 31. I find from the affidavit of Shri Shantanu Kumar where he says that he is the Proprietor of M/s Hi-Print Corporation. The plaintiffs and their predecessors in interest, have his customers since 1976. He is in the business of manufacturing printed circuit boards (PCB). He has also referred to second defendant as being the manager of the Plaintiffs Company and, therefore used to receive materials for the plaintiffs. He states that the second defendant has started his independent unit after May, 1994 and he had approached him through his representative to supply PCBs similar to that of the plaintiffs and that he refused to do so. The deponent of the affidavit has also enclosed the invoices sent to the plaintiffs.

39. At page 44 the affidavit of Mr. Ramesh Chand Gupta has been filed. He states that his firm manufactures name plates and product cover plates as per the design and specifications provided by the client. He states that he is personally aware that the second defendant used to manage the production in the factory premises of Mr. Prem Dua from 1991 to May 1994. He further states that the second defendant in June/July 1994 requested him to supply the cover plates exactly as per Mr. Dua's design but bearing his Company's name and the deponent refused to comply with that request. He also filed invoices.

40. At page 53, Annexure-D, I find the affidavit of Shri Vishwajeet Sharma who is working as supervisor in the first plaintiff's Company. According to him, he joined the second defendant in 1986

as helper on the recommendation of Shri H. B. Channana father of the second defendant. He would state that the second defendant was in charge of the production and no employee was given an access to know the details of PCB circuits. The second defendant alone had full access. The PCB workshop was at the second plaintiff's residence. In 1991 the job of PCBs assembly and testing were shifted to the second defendant's residence in charge of production work at the factory C-29, DDA Shed Okhla Phase-I, New Delhi. He would further state that since he joined the second defendant in 1986 all the developments design jobs are being done only by Mr. Prem Dua.

41. At page 55, Annexure-D, I find an affidavit of Shri Harvinderjit Singh Neighbour of the industrial area of the plaintiffs. He is having his business at C-32, close to the plaintiffs. He would state that the second defendant was managing the production of the plaintiffs Company from April 1991 to May 1994. From May 1994, the second defendant had not been coming. At page 56, I find an affidavit of Shri Ramesh Khosla. He is a partner of M/s. Cybex C-29, DDA Shed, Okhla Industrial Area, Phase-1, New Delhi. He is the tenant of the ground floor of the premises owned by the plaintiffs. He would state that the second defendant was managing the production of the first plaintiffs company till May 1994 and, thereafter, he stopped coming and had started his independent unit at his own industrial shed No. C-86, DDA Shed Okhla Phase-1, New Delhi which was lying vacant and locked.

42. Annexure-E, the plaintiffs have filed signed by second defendant during the period from 1991 to 1994. Annexure F, is a copy of the publication made by Government of India, Ministry of defense, showing the plaintiffs as supplier of Thermister Relay.

43. Annexure-G, is a copy of the plaintiffs application dated 26-2-1990 for registration of Designs and letter dated 21-6-1990 received from the Patent Office Declining to register.

44. At this stage I again want to refer to the literatures issued by the plaintiffs and the defendants. They have been filed as Annexure A filed alongwith the plaintiff. A study of two literatures would show how the second defendant had copied the literature of the plaintiffs. Section 2(c) of the Copyright Act, 1957 defines artistic work and Section 2(o) defines literary work in the following terms :

Section 2(c) "artistic work" means :-

(i) a painting, a sculpture, a drawing (including a diagram, map chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;

(ii) an architectural work or art; and

(iii) any other work of artistic craftsmanship.

"Section 2(o) "Literary work" includes computer programmes, tables and compilations including computer data basis."

45. Section 2(m) of the Copyright Act, 1957 defines "infringing copy". Section 2(m) reads as under :

"Section 2(m) "infringing copy" means -

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii) in relation to a cinematographic film, a copy of the film made on any medium by any means.

(iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film to such programme or performance, if such reproduction, copy or sound recording is made or imposed in contravention of the provisions of this Act".

46. From the facts and circumstance of the case, it is clear that the plaintiffs are the owner of the copyright in the artistic and literary, work and the products of the defendants are guilty of infringement. Section 51 of the Copyright Act, 1957 reads as under :

Section 51 - When Copyright infringed Copyright in a work shall be deemed to be infringed.

(a) When any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act.

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) Permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had not reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person -

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports (xxx) into India, any infringing copies of the work."

47. Even though the contention of the defendant is that the plaintiffs have not proved that they are the original owners, the defendants have not been able to produce any drawings or material to show that they are the original owners. The second defendant taking advantage of his association with the plaintiffs is now trying to carry on the manufacture of the products manufactured by the plaintiffs and obviously he has imitating the plaintiffs products. The plaintiffs have established a prima facie strong case on the merits for the grant of injunction. I do not want to deal with each of the authorities mentioned above because the facts and the products involved are different and, therefore, narrating the facts of each of the case and noting ratio in each of the stage. The principle emerging from those cases is well settled. The plaintiffs are able to show by producing relevant materials that they have got copyright in the drawings and also in the literature and, thus, the plaintiffs have become entitled to the grant of injunction. I am convinced that the plaintiffs have more than established their case, therefore, they are entitled to the grant of injunction.

48. The question of balance of convenience is to be considered in the light of the case established by the plaintiffs. The plaintiffs having been in the business since 1965 and that is not very much in dispute except the assertion of the defendants that the plaintiffs have not shown to the original authors. The second defendant had to leave the plaintiffs owing to the act of omission and commission on his part and prior to May, 1994 he had not been able to do anything of his own and it can be easily inferred the after coming out of the plaintiffs, he has started the business of manufacturing the products of the plaintiffs and imitating the plaintiffs products. The literature issued by the second defendant also shows that he cannot even think of preparing literature of his own. He has started the business only in the middle of 1994 and immediately the plaintiffs had approached this court for relief. Therefore, the defendants cannot say that they would be put to any inconvenience. It is clear from the facts that the second defendant has used the confidential information which he had obtained during his association with the plaintiffs.

49. In para 4 of the plaint in sub-para (c) the plaintiffs would state that they are not seeking to restrain the defendants from manufacturing and selling electronic relays etc. but only seeking to restrain them from doing so by unauthorisedly and unlawfully copying the plaintiffs electrical/electronic circuits network and design in which the plaintiffs have the exclusive copyright.

50. For all these reasons, ad interim granted in IA No. 11853/94 is made absolute and IA No. 1563/95 (under Order 39, Rule 4 CPC) is dismissed.

51. IA. No. 1564/95 filed by the defendants under Order 26, Rule 10 CPC for striking out the proceedings of the Local Commissioner and for release of properties seized by the Local Commissioner in excess of her powers is dismissed as it is not necessary at this stage and it is open

to the defendants to file similar application if the plaintiffs want to rely upon the Local Commissioner report at the time of trial of the case.

52. IA No. 12043/95 filed by the plaintiffs under Order 26, Rule 9 CPC for appointment of a Local Commissioner to visit the premises of the defendants and carry out an inventory recheck, with a view to ascertain that the goods which form a part of the above referred inventory List dated 21-12-1994 have not been misused by the defendants is dismissed as it is not necessary.

There shall be no order as to costs.

Post the matter for admission/denial of documents before the Joint Registrar on 22-8-1996. The parties are at liberty to file their original documents, if any, within six weeks.

Post the matter for framing of issues on 26-9-1996.