

Polymer Papers Ltd. vs Mr. Gurmit Singh And Ors. on 31 May, 2002

Equivalent citations: AIR2002DELHI530, AIR 2002 DELHI 530

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Bench: Sharda Aggarwal

JUDGMENT

Sharda Aggarwal, J.

1. M/s. Polymer Papers Limited has filed the present suit for permanent and mandatory injunction through Plaintiff No. 2. Sh. Dhruv Puri against the Defendants. Along with the plaint the Plaintiffs have also moved an application under Order XXXIX Rules 1 & 2 CPC for interim injunction. By this order I propose to dispose of the said application.

2. Before discussing the rival contentions of the Parties, it would be important to give a brief summary of facts. Plaintiff No. 1 is a company engaged in the manufacture of wide range of filter papers, Chemicals and filters used for various purposes such as locomotives, defense equipment, automotive and industrial applications. The Plaintiff company has various divisions including an engineering division. Defendant No. 1, Sh. Gurmit Singh has been working in the capacity of Managing Director of the Plaintiff company since its inception. Defendants No. 2 and 3, Sh. Digvijay Singh and Sh. Anoop Singh are the sons of Defendant No. 1 Defendant No. 2 has been working in the capacity of Vice-President (Operations) and also in charge of engineering and component division, whereas Defendant No. 3 has been working as Manager (Sales). Defendant No. 4 to 10 are the employees of the company and have been working in various capacities in the engineering division of the Plaintiff company. The engineering division has been manufacturing its own designed filter manufacturing and testing machines. The Plaintiff company has invested substantial amounts in the development and know-how of skill, knowledge, technique and mechanism. On the basis of its know-how, its engineering division has launched its own concepts and drawings of he various filter manufacturing and testing machines. It is claimed that the industrial drawings and manufacturing process, names of suppliers and certain parts used in the machinery constitute the trade secretes of the Plaintiff company. The Plaintiff company also claims to be the exclusive owner of the artistic works consisting of the industrial drawings, shape and get up of the machines and thereby claim he exclusive right to reproduce or depict in two and three dimensions, the machinery and the key components.

3. The Plaintiffs' allegations are that Defendants No. 1 to 3 have conspired with Defendants No. 4 to 10, to hijack the business of the engineering division and in order to take away the know-how of the

Plaintiff company photocopied the drawings and designs and the customers and suppliers lists etc. Defendants No. 2,4,5,6,8, & 10 submitted their letters of resignation before Defendant No. 1, who unilaterally and without consultation with the other Directors accepted their resignation letters and paid them dues in full and final settlement. The Plaintiff's further case is that by accepting the resignation of the aforesaid Defendants and taking away the copies of the industrial drawings and lists of Plaintiff's customers and suppliers, etc. they have practically closed the engineering division of the company. The paralysing of the engineering division has caused tremendous set back to the functioning of the other divisions of the company as they all are dependent on the engineering division. The company is alleged to have suffered heavy losses on account of the paralysing of the engineering division as the company is unable to meet its commitments. The further allegations are that apart from the industrial drawings, etc. the Defendants have also removed other technical material and have established independent business, on parallel lines in Delhi and Gurgaon. It is alleged that the aforesaid industrial/engineering drawings or designs, etc. are exclusive property of the Plaintiff company and the Defendants with a view to unauthorizedly, illegally and commercially exploit the works and property of the Plaintiff company have made photocopies and in certain cases taken the original designs and drawings from the premises of the Plaintiff company.

4. On these allegations the Plaintiffs have sought the following reliefs:-

I. directions restraining the Defendants from exploiting, divulging, transferring any of the records, plans, drawings, information, know-how and trade secrets of the Plaintiff company.

II. restraint against Defendants from manufacturing selling, offering for sale or in any way dealing in the machines similar to those manufactured by the Plaintiff company.

III. restraint against Defendants from infringing upon the Plaintiffs copyright or exploiting the Plaintiffs trade secrets relating to Plaintiff products, suppliers, customers and dealers, etc. IV. directions for restraining the Defendants from approaching, contacting or soliciting any orders from the Plaintiffs customers for products as manufactured by Plaintiff company.

V. directions to the Defendants to return to the Plaintiff company all documents and records, information and know-how in the form of drawings, designs, manuals, software, etc. VI. restrain against the Defendants from entering the Plaintiff premises.

VII. directions to the Defendants to deliver back to the Plaintiff and its record relating to the fully automatic CNC controlled pleating machine, which was developed by the Plaintiff company.

5. On summons of the suit and notice of the application being served, Defendants No. 1 to 3 appeared on 30th May, 2002. At the request of the Plaintiff, the matter was adjourned to 31st May,

2002 as the Plaintiff wanted to file additional affidavit in support of its application under Order XXXIX Rules 1 & 2 CPC. The Plaintiff filed an application being IA.5351/2002 for placing on record the additional affidavit in support of its injunction application.

6. The Plaintiff alleged that since the suit was filed in a great haste they by way of additional affidavit wanted to place on record some additional facts and information in support of the injunction application. In the affidavit the Plaintiff has given some particulars of the engineering drawings and designs, photocopies of which have been allegedly removed by the Defendants by filing a list titled as "Proven Design List". In the affidavit the Plaintiff have claimed to be the owners of the drawings and designs being the intellectual property of the company. The plaintiffs state that in order to protect the confidentiality of the said drawings and designs they are not placing them on record, and have stated that the same could be produced for the perusal of the Court if required. It is contended that the business intended by the defendants is based on drawings, technical know-how, assembly manuals and instruction manuals developed and owned by the Plaintiff company in which Plaintiff has a copyright. The use of industrial drawings etc. by the defendants would amount to infringement of their copyright and as such the Defendants are liable to be enjoined from using the same. In the affidavit the Plaintiffs have given details about the development of a new machine called CNC controlled automatic pleating machine by their engineering division.

7. Defendant No. 1 has strongly opposed the injunction application by filing a reply. Defendants No. 2 and 3 though have not filed a written reply but have vehemently opposed the application by addressing arguments.

8. Learned counsel for the Plaintiff has in nut-shell contented that Plaintiff No. 1, M/s. Polymer Papers Limited had commenced their business some time in the year 1978 and being involved in the manufacture of wide range of filter papers and Chemicals etc., had developed industrial drawings in manufacturing process, which constitute the trade secrets of the company. It is contented that the Plaintiff being the exclusive owner of the artistic work of the industrial drawings, shape and get up of the machines and the Defendants by stealthily removing the same from the engineering division of he company intending to use them for manufacturing products similar to that of the Plaintiff has infringed their copyright. It is also contented that Defendants No. 1 to 3 in conspiracy with Defendants No. 4 to 10 being the employees of the engineering division removed the engineering drawings and designs and even some parts of the machinery and by accepting their resignations have virtually closed the engineering division causing heavy losses to the Plaintiff company. The alleged engineering drawings and designs photocopies of which have allegedly been copied and taken away by the Defendants have not been placed on record apprehending that Defendants would now take the copies of the engineering drawings, etc. if not taken already. It is contended that since Plaintiff No. 1 company is the exclusive owner of the engineering drawings/designs, etc. the Defendants have no right to use the same for manufacturing purposes as it would amount to infringement of Plaintiff's copyright in the same.

9. Mr. Sandeep Sethi, learned counsel for Defendant No. 1 has vehemently opposed the Plaintiffs application. He opposed the Plaintiffs prayer on a number of counts.

10. The first contention raised by Mr. Sandeep Sethi, is that the Plaintiffs are guilty of suppression and concealment of material facts and as such the suit itself is liable to be dismissed, what to talk of giving the discretionary relief of injunction. Mr. Sethi points out that Defendant No. 1 was not new to the business when he joined the present company as Managing Director. In fact, it is Defendant No. 1 who had worked with various filtration companies in England and Germany, namely, Vokes Ltd., Mann and Hummel. Defendant No. 1 had headed the Indian unit of Vokes Ltd. in 1958. In 1962, Defendant No. 1 floated a company in the name of Fritz and Singh Ltd., which was engaged in the business of manufacture/sale of filters and related work through out India. Fritz and Singh Pvt. Ltd. was importing filter paper from abroad and Defendant No. 1 decided to set up an indigenous project for processing filter paper. They imported German plan for their manufacturing site at Faridabad. Defendant No. 1 procured the technology from Germany. In order to expand the business, Defendant No. 1 and Fritz and Singh Pvt. Ltd. on the one hand and Mr. Sunil Puri father of Plaintiff No. 2 on the other entered into a 'Memorandum of Understanding' dated 18th October, 1974. It was under this 'Memorandum of Understanding' that Plaintiff No. 1 company was floated. The two groups were to maintain the proportion of 50:50 both in share capital and in the voting power. Equal number of Managing Directors were to be nominated by both the groups. The memorandum also contained an arbitration clause which provided for reference of any dispute arising between the parties to arbitration of three arbitrators. A copy of this 'Memorandum of Understanding' has been placed on record by the Defendants. It is further pointed out that Defendants No. 2 and 3 and Plaintiff No. 2 had also entered into a partnership vide partnership deed dated 10th May, 1996 for carrying on the manufacture and trading and sale of various filtration related materials under the name and style of M/s. Filtration Services. A copy of this partnership deed has also been placed on record and this partnership is still in operation. It is submitted that the partnership firm is carrying on the same business which the Plaintiff company is carrying on. It is also pointed out that partnership firm is not only doing the same business as that of the company but is also having business with the company. The partners of the firm are also employed with the company. In view of these facts how can the Plaintiffs claim any exclusive ownership rights in the industrial drawings and know-how. The submission is that no exclusivity can be claimed by the Plaintiffs in these circumstances. The 'Memorandum of Understanding' of 1974 is in fact the fountain head which created Plaintiff No. 1 company. The Plaintiffs have misrepresented and have suppressed the relationship which existed between the two groups. The contention is that these facts have been deliberately suppressed and concealed from the Court with a view to injunct the Defendants from doing any business relating to filtration papers and Chemicals etc. The Plaintiffs do not have any exclusive right to the alleged industrial drawings, manufacturing process, relating to the development of wide range of filter manufacturing and testing equipment. It has been strongly contended that when the partnership firm M/s. Filtration Services is carrying on the business as that of the Plaintiff company, the assertion of the Plaintiffs that they are having exclusive rights in the engineering drawings is misconceived. It is contended that the Plaintiffs have suppressed and concealed these facts in order to gain an undue advantage over the Defendants.

11. It is further contended that the Plaintiffs have further failed to disclose that the alleged minutes of the meeting of the Board of Directors of the company dated 13th May, 2002 on which the Plaintiff has placed reliance are not the approved minutes and are manipulated. It is contended that the Plaintiffs have not come to the Court with clean hands and in view of suppression and concealment

of material facts the suit itself is liable to be dismissed. The contention is that the Plaintiffs by suppressing and concealing these facts have played a fraud upon the Court and the Defendants are not entitled to any discretionary relief of injunction.

12. In support of the above proposition, a reference is made to Seemax Construction (P) Ltd., v. State Bank of India and Anr. , AIR 1992 Delhi 197 , where on account of suppression of material facts the Plaintiff was refused the discretionary relief of injunction.

13. Reference is also made to S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and Ors. , . In this case, Jagannath had obtained preliminary decree for partition by suppressing and not disclosing all the material facts and by mis-representing the facts obtained a preliminary decree of partition. An application for final decree was opposed on the ground that the preliminary decree was obtained by playing fraud upon the Court. The trial Court had dismissed the application but High Court reversed the findings of the trial Court. The Apex Court in appeal set aside the judgment of the High Court and restored that of the trial Court. The Apex Court held as under:-

"A litigant, who approaches the court, is bound to produce all documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

14. It is submitted that in the instant case the Plaintiffs suppressed the material facts and withheld the 'Memorandum of Understanding' dated 18th October, 1974, which was executed between M/s. Fritz and Singh Pvt. Ltd. represented by Gurmit Singh, Defendant No. 1 and Sh. Sunil Puri Group represented by Sh. Sunil Puri father of Plaintiff No. 2, to gain undue advantage and obtain injunction orders against the Defendants.

15. Reference is also made to a Division Bench judgment of this Court reported as Satish Khosla v. M/s. ELI Lilly Ranbaxy Ltd. and Anr. . In this case, the Plaintiff in a suit for injunction had failed to disclose that in an earlier suit filed by the Plaintiff similar relief was claimed which was not granted. He also failed to place on record the earlier plaint and the copy of the application in the earlier suit. A Division Bench of this High Court after considering the facts observed that by withholding the plaint and application of the earlier suit from the Court and by not disclosing to the Court about the proceedings in the earlier suit and the fact of stay having not been granted, the Plaintiff had tried to gain advantage and was therefore guilty of playing fraud upon the Court as well as on the Respondent. The Division Bench was also of the view that the Plaintiff had not come to the Court with clean hands and had suppressed material facts from the Court with a view to gain advantage in the second suit and the Plaintiff tried to over reach the Court. In that case the suit itself was dismissed on account of suppression of material facts.

16. Reliance is also made on Holy Health and Educational Society (Regd.) v. DDA , , wherein, in a similar situation relying upon Satish Khosla's case (supra) a learned Judge of this Court had dismissed the Plaintiffs suit and injunction application.

17. The fact that Defendant No. 1 was connected with the business of manufacturing of filtration related machines, prior to the incorporation of the plaintiff No. 1 company is not disputed. It is also not disputed that the "Memorandum of Understanding" dated 18.10.1974 was executed and the present plaintiff No. 1 company was incorporated as a result thereof. The existence of the partnership firm in which defendants No. 2 and 3 and plaintiff No. 2 are the partners and which is carrying on the same business as that of the company, is also not denied. The facts brought to the notice of the Court by the defendants about the relationship of the aforesaid two groups have not been refuted. *prima facie* I accept the submissions of the learned counsel for the defendants that the plaintiffs have suppressed and concealed the material facts and relationship of the two groups and failed to place on record the MOU and the partnership deed in order to gain an advantage over the defendants by obtaining injunction orders in their favor. In view of the suppression of material facts and the law laid down as discussed above, I find that the plaintiffs have played a fraud upon this court and *prima facie* the plaintiffs are not entitled to any discretionary relief of injunction in their favor.

18. The second contention raised by Mr. Sandeep Sethi is that the plaint and the injunction application in so far, it refers to the records, drawings, information, know-how, secrets and designs of the plaintiff No. 1 company in claiming restraint against defendants in using, exploiting or dealing therein are completely lacking in material particulars. It is contended that the allegations in the plaint are vague as no details, numbers or marks of identification are disclosed as to what drawings, information, know-how or secrets belonged to the company any which of them were allegedly removed by the defendants. The submission is that the alleged intellectual properties are not identifiable. In the plaint it is generally referred that the industrial drawings, manufacturing process, names of the suppliers of certain parts, used in the machinery constitute the trade secrets of the plaintiff company. Without specifying any particular industrial drawings or machines, the plaintiffs have claimed to be the exclusive owner of their artistic work and design and it is claimed that the concept in the design developed by the plaintiffs is new and original and different from the machines manufactured by other companies. It is further pointed out that the plaint also does not disclose as to in what particular drawings and machines etc., protection is being sought. It is also not pointed out as to under which statute the alleged intellectual property rights of the plaintiff are protected. Learned counsel for the defendant No. 1 further contends that the plaintiffs have filed an additional affidavit giving some additional facts in support of their application under Order XXXIX Rules 1 and 2 CPC and these facts do not form part of the plaint and cannot be considered by placing them on record by way of additional affidavit. The allegations in the plaint are that the defendants conspired with each other maliciously and fraudulently to hijack the plaintiff No. 1 companies' profitable business and to steal the entire business of its engineering and components division. The plaintiffs have also alleged that the defendants who had been working with the engineering division of the company knew the technical know-how and were engaged in developing the new and original industrial drawings and machine and they committed breach of trust by fraudulently and illegally copying the drawings, designs, customers lists, supplies lists etc. with an intention of setting up a business of their own on parallel lines by using the technical know-how and knowledge and information of the plaintiff company. There are also allegations in the plaint that defendants No. 1, 2 and 3 had misappropriated the companies fund. The contention is that all these allegations in the plaint are general and vague in the nature and the detailed particulars as to what are the specific

drawings which were prepared and designed by the plaintiff company, which of them were allegedly taken away by the defendants have not been given. It is submitted that in view of Order VI Rule 4 of Code of Civil Procedure, when there are allegations of fraud or breach of trust the detailed particulars thereof must be specifically mentioned in the plaint. The Plaintiffs have alleged that the Defendants No. 1 to 3 have conspired with Defendants No. 4 to 10 and have committed breach of trust. It is submitted that the detailed allegations about fraud or breach of trust must be stated in the plaint and the subsequent attempt by filing an affidavit or making oral submissions to explain the particulars cannot be entertained. Learned counsel, therefore, contends that any details or particulars given in the additional affidavit cannot be looked into at this stage and the plaintiff is not entitled to grant of injunction, as on the given facts in the plaint it would not be possible to prove the fraud. For this proposition of law reference is made to a judgment of this Court *Exportos Apparel Group Ltd. v. Vedvel Sizing and weaving Mills Pvt. Ltd.*, wherein Court had refused to grant injunction as the particulars of detailed allegations of fraud were not given in the plaint. In the instant case the plaint lacks in material particulars, in that it does not give the drawings and designs of which copy right is claimed and which have allegedly been taken away/stolen by the defendants. It is submitted that the additional particular given in the additional affidavit cannot be considered as the affidavit cannot be treated as a substitute for the plaint.

19. Reference is also made to *Anant Construction Pvt. Ltd. v. Ram Niwas*, wherein while discussing the implications of law of pleadings it has been observed that subsequent pleadings are not substitute for amendment in original pleadings. I find force in the submissions of learned counsel for the Defendants.

20. The third plea raised by learned counsel for the defendants is that there cannot be any restraint against a person from carrying on a lawful trade, business or profession. It is contended that the plaintiffs have failed to place anything on record to show that they have any right of exclusivity or protection under any of the statutes for intellectual property rights and in the absence of that they have no right to restrain the defendants from doing business similar to that of the plaintiffs. Such a restraint against the defendants from manufacturing, selling or otherwise dealing in machines similar to those manufactured by the plaintiffs is clearly barred under Section 27 of the Indian Contract Act. No person can be restrained from carrying any lawful trade, business or profession. It is submitted that even otherwise there is no contract between the plaintiffs and the defendants imposing any terms or conditions for doing any business similar to that of the plaintiffs. It is submitted that even a service contract in restraint of trade or business would not have been enforceable in law being barred under Section 27 of the Contract Act. Reference in this respect is made to a celebrated decision in *Superintendence Company of India Pvt. Ltd. v. Krishan Murgai*, where the Apex Court relying on the celebrated judgment in *Madhub Chunder v. Rajcoomer Doss*, (1874) 14 Beng LR 76 held as under:-

"The question whether an agreement is void under Section 27 must be decided upon the wording of that section. There is nothing in the wording of Section 27 to suggest that the principle stated therein does not apply when the restraint is for a limited period only or is confined to a particular area. Such matters of partial restriction have effect only when the facts fall within the exception to the section.

A contract, which has for its object a restraint of trade, is prima facie, void. Section 27 of the Contract act is general in terms and unless a particular contract can be distinctly brought within Exception 1 there is no escape from the prohibition. We have nothing to do with the policy of such a law. All we have to do is to take the words of the Contract Act and put upon them the meaning which they appear plainly to bear. Sir Richard Couch C.J., in the celebrated judgment in *Madhub Chunder v. Rajcoomar Doss* (1874) 14 Beng LR 76 at pp. 85-86, laying down that whether the restraint was general or partial, unqualified or qualified, if it was in the nature of a restraint of trade, it was void."

21 Reliance is also placed on *Sandhya Organic Chemicals Pvt. Ltd. and Ors. v. United Phosphorous Ltd. and Ors.* . In the said case both plaintiff and defendant were companies manufacturing the same industrial Chemical. One of the defendants' employee was earlier employed in plaintiffs' factory as a Plant Manager. Certain terms and conditions were imposed on the said employee by his letter of appointment. One of the terms was that without the written permission of the management, the employee would not disclose, divulge or publish during he tenure of his employment with the plaintiff, or subsequently, any confidential or secret information including secret process and formulae acquired during the course of the employment with the company and upon termination of the employment or resignation, he would return all papers and documents of the Company which may at the time be in his possession relating to the business affairs of the plaintiff company. It was also part of the terms and conditions of his employment that he would not retained copies or extracts there from. After termination of his services he joined the defendant company. The plaintiff claimed that they had invented a new process of manufacturing of AIP and ZNP by using white/yellow phosphorus instead of red phosphorus. The plaintiff alleged that the Plant Manager on joining the defendant company started the building of a similar plant for them as was built by the plaintiffs, in breach of the terms and conditions of the secrecy agreement. It was alleged that the Plant Manager in breach of the terms of the contract had passed on all the documents, drawings, specifications, designs, knowledge, know-how to defendants' company which were entrusted to him during the course of his employment with the plaintiff. The plaintiff filed a suit for declaration and also for permanent injunction against the defendant company and Plant Manager restraining them from adopting, using and resorting to, in any manner whatsoever, the new process as invented by the plaintiff. Gujarat High Court held that under Section 27 of the Contract Act service covenant extended beyond the termination of service was void. It was also held that it was not open to the plaintiff to seek injunction against the defendants especially when Plant Manager was not in service with the plaintiff. It was held that he could not have been restrained for all times to come from using his knowledge and know-how which he gained during the course of his employment either with the plaintiff or for that matter with any other employer. It was held that the agreement between the plaintiff and the third defendant was void having regard to the provision of Section 27 of the Contract Act. It was also observed that the plaintiffs had otherwise failed to establish any proprietary interest in the nature of registered trade mark which could enable them to sue and obtain injunction against the defendants. It was also observed that in view of the provisions of Patents and Designs Act unless a patent or a design is registered in respect of an invention, there is no proprietary right of which plaintiff could complain of and ask for relief in the nature of injunction. With these observations the injunction was refused.

22. Mr. Sandeep Sethi contends that the in the above judgments service contract putting some restrain on trade or business was held void in view of Section 27 of the Contract Act. It was submitted that in the present case the defendants are on a better footing as they had no service contract with the plaintiffs.

23. In the instant case, admittedly there was no agreement or service contract between the plaintiff company and defendants No. 2 to 10. Defendant No. 1 is in any case not an employee. He is one of the Managing Directors of plaintiff No. 1 company holding substantial shares therein. The absence of such an agreement or service contract renders the plaintiffs' case even worst. In the absence of showing any exclusive right protected under any of the Intellectual Property Laws the plaintiffs cannot even claim a restraint against the defendants from carrying on any trade or business similar to that of the plaintiffs. It is submitted that the plaintiffs having failed to show any exclusive proprietary rights in the industrial drawings, designs, etc. are not entitled to any restraint orders against the defendants injuncting them from carrying out any trade or business similar to that of the plaintiffs.

24. I find substance in the submissions of the learned counsel. The plaintiffs have prima facie failed to show that they have any exclusive proprietary right in the industrial drawings, designs etc. protected under any of the Intellectual Property Laws. In the absence of the same and in view of the Apex Court's observations in Krishan Murgai's case (Supra), followed by the Gujarat High Court in Sandhya Organic Chemical Ltd case (Supra), prima facie the plaintiffs are not entitled to have any restraint order against the defendants on carrying on any trade or business similar to that of the plaintiffs. Balance of convenience is also in favor of the defendants and against the plaintiffs.

25. The fourth contention raised by defendant No. 1 is that the works of which protection is sought are not the original works of the plaintiffs. The plaintiffs' claim for copyright as per para 11 of the plaint being the exclusive owners of the artistic work in the industrial drawings, shape and get up of the machines and the key components. The defendants have denied that the plaintiffs are the originators of the designs and drawings. Ms. pratibha M.Singh, learned counsel for defendant No. 3 has demonstrated from the catalogues A-3 and A-6 (placed on record by the plaintiffs) that some machines are fully manufactured outside and only a name plate is affixed by the plaintiffs which enables them to inspect the machines to find out if the same is in working order and some machines are only assembled by the plaintiffs by purchasing components and parts thereof from third parties. The defendants in their reply has specified with reference to the catalogues placed on record by the plaintiffs as to which machines are assembled by the plaintiffs and which have been manufactured by others and bought by the plaintiffs. Learned counsel points out that the drawings of which the plaintiffs are claiming copyright are the drawings which are products of Reverse Engineering and are not their original drawings. It is contended that some machines are imported and after dismantling the same, drawings are made of each component and on the basis of those drawings components are got manufactured from third parties and from those components the machines are assembled by the plaintiffs. The submission is that the drawings made by this process cannot be treated as original artistic works of the plaintiffs. In short, the defendants contention is that there is no novelty in the alleged designs and drawings and the machines are either bought by the plaintiffs or assembled by purchasing components. It is further contended that even otherwise to have a

copyright in a design or drawing the same has to be registered under the Designs Act. In order to appreciate the contention of learned counsel for the defendants it would be appropriate to refer and reproduce the relevant Provisions of the Designs Act, 2000. Section 2(d) defines "design" as under:-

"design" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or Chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in Clause (v) of Sub-section (1) of Section 2 of the Trade and Merchandise Marks Act, 1958 (43 of 1958) or property mark as defined in Section 479 of the Indian Penal Code (45 of 1860) or any artistic work as defined in Clause (c) of Section 2 of the Copyright Act, 1957 (14 of 1957).

Copyright is defined in Section 2(c) as under:-

"copyright" means the exclusive right to apply a design to any article in any class in which the design is registered.

26. It would also be relevant to refer to Section 11 of the Designs Act which provides as to when a registered proprietor of a design shall have copyright therein. The section runs as under:-

"Copyright on registration. -(1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during ten years from the date of registration.

(2)....."

27. According to Section 11 of this Act a registered proprietor of a design shall subject to the provisions of the Act have copyright in the design during 10 years from the date of its registration and shall also have an exclusive right to apply a design to an article in any class in which the design is registered. Section 22 of the Act (Section 53 of the Design Act 1911) makes it unlawful for any person to apply the design or its fraudulent or obvious imitation or cause it to be applied to an article in any class of goods in which the design is registered except with the license or written consent of a registered proprietor. This provision shows that once a design is registered, registered proprietor having a copyright therein can insist that anyone committing piracy should be restrained from doing so for the purpose of Designs Act is to protect a novelty or originality in the design to be applied to a particular article marketed commercially.

28. Learned counsel for the defendants submit that industrial drawings and designs in which the plaintiffs claim copyright are for the purposes of manufacturing of filter related machines or components and as such clearly fall within the meaning of "design" as defined in the Designs Act and since the alleged designs have not been registered under the designs Act the plaintiffs cannot claim

copyright therein. In support of above proposition of law Ms. Pratibha M.Singh has aptly placed reliance on Samsonite Corporation v. Vijay Sales 1998 PTC (18) , Hello Mineral Water Pvt. Ltd. v. Thermoking California Pure 2000 PTC 177 , Jg Vacuum Flask Ltd. v. Eagle Flask Pvt. Ltd. 1996 PTC (16) and Deepak Printery, Ahmedabad v. The Forward Stationary Mart and Ors. 1981 PTC 186 .

29. Learned counsel for the plaintiffs contends that in order to have copyright in the artistic works the drawings were not required to be registered under the Designs Act. Reference is made to Nav Sahitya Prakash and Ors. v. Anand Kumar . The said case related to the copyright of a author in his literally works "SAPANA KHAND KAVYA" which was inherited by his sons. In that connection, it was held that in legal parlance right of property in literal or intellectual production existed independently of a statute. There cannot be any quarrel with this proposition of law. This judgment has no relevance to the facts of the instant case. In the instant case the plaintiffs are claiming copyright alleging to be the exclusive owners of the industrial drawings and design which they are using for manufacturing purposes. The Plaintiffs also claim to be the originators of the said drawing and designs. As discussed above, in view of the provisions of the Designs Act, 2000 and the Copyright Act, 1957 the plaintiffs could have claimed copyright therein only if the designs were registered under the Designs Act.

30. Plaintiffs do not dispute that the alleged designs or drawings are being used by them for manufacturing purposes. It is also not disputed that the drawings and designs are not registered under the Designs Act. If that is so, I am persuaded to accept the submissions of the learned counsel for the defendants. On the facts and circumstances, I have no hesitation in coming to the conclusion that the plaintiffs have prima facie failed to establish their right. The plaintiffs have failed to make out a prima facie case for grant of injunction prayed for. The balance of convenience is also in favor of the defendants and against the plaintiffs. The application is accordingly, dismissed. It is, however, made clear that my any observations made by me in this order shall have no reflection on the merits of the case.