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IN THE HIGH COURT OF DELHI

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CS (OS) No. 1480/2002

Judgment Reserved on : 29.09.2005

Date of decision : 13.01.2006

Microfibres, IncPlaintiff
through : Mr. C.A. Sundram, Senior Advocate
with Ms. Ekta Kapil, Ms. Rohini &
Ms. Soni Singh, Advocates.

- V E R S U S -

Girdhar & Co. & Ors.Defendants
through : Mr. Vivek Dholakia, Advocate
for Defendant No. 1.
Mr. Rajendra Kumar with
Ms. Rajeshwari, Advocates
for Defendant No. 2.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

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|---|-----|
| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be
reported in the Digest? | Yes |

SANJAY KISHAN KAUL, J.

(1)The plaintiff's grievance of violation of its copyright in the artistic works applied to upholstery fabrics and the allegation of an attempt to pass off the goods of the defendants as that of the plaintiff has given rise to the present litigation.

(2)The plaintiff is a company incorporated under the laws of the USA and is stated to be engaged worldwide in the business relating to manufacturing, marketing, selling and exporting of

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upholstery fabrics directly or through its subsidiaries and affiliates. The brand name of the plaintiff is stated to be Microfibres. The business of the plaintiff is stated to have commenced in the year 1926 and the plaint states that on the upholstery fabrics are printed, unique and original artistic works which are conceptualized and drawn/printed by either its employees or other persons who have assigned the copyright in the works to the plaintiff. More than 1000 people are stated to be employed by the plaintiff and a global annual turnover is stated to be more than \$ 200 million. The plaintiff's product under the brand name Microfibres is stated to be sold in more than hundred countries including India and has wide presence in the manufacture and sale of synthetic nylon flox fabric and velvet upholstery fabric.

(3)The plaintiff claims to have extensive international reputation with manufacturing bases and operations in several countries of the world and there are more than 250 brands of microfibres which are apparently sold in India. The plaintiff claims to have obtained registration of copyright of most of its original artistic works in the drawings applied by it on upholstery fabric and the details of such registration are set out in para 7 of the plaint. However during the course of arguments, the plaintiff concentrated the claim in respect of some of these artistic works in respect of which it was alleged that the defendants had violated the copyright. The details of the same are as under:

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S.NO.	TITLE	REGISTRATION NO.	DATE OF REGN.
15.	HALLMARK	V Au-366-558	20.06.1996
21.	JUNE	V Au-432-374	19.05.1998
23.	LEIPZIG	V Au-380-615	24.01.1997
31.	MEISSEN	V Au 391-653	20.05.1997
33.	PALMETTO	V Au-356-331	21.11.1995
38.	PRESTIGE	V Au-406-109	17.12.1997
42.	TARSUS	V Au-458-207	12.11.1999
46.	BLACK POOL*		
56.	REGIA*	V Au-498-306	06.12.2000

(4) It may be noticed that in the said para 7 of the plaint itself, it has been stated that copyrights in these works were being filed except the artistic works which are marked with an asterisk for which the registered copyrights are not readily available. In respect of some of the artistic works, there is stated to be no registration of the copyright. It is, however, claimed that whether such a copyright is registered or not, in view of the provisions of the Copyright Act, 1957 (hereinafter referred to as the Copyright Act) the copyright in the artistic works subsists and gives an exclusive right to the owner thereof.

(5) The plaintiff has claimed that the artistic work constitutes original artistic work as defined within the meaning of Section 2 (c) of the Copyright Act. The plaintiff also claims that it enjoys copyright protection in India as a consequence of the provisions of Section 40 of the Copyright Act and the Berne Convention,

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- Universal Copyright Convention read with Indian International Copyright Order, 1999.

(6) In May, 2002, the plaintiff discovered that defendant no.2 was manufacturing and marketing upholstery fabric through defendant no.1 as the distributor which infringed the copyright of the plaintiff. Such sale is also alleged to amount to passing off the goods of the defendant as if they were the goods of the plaintiff. The defendant's goods are alleged to be inferior and the use of the artistic work of the plaintiff on upholstery fabric is unauthorized and dishonest. No consent of the plaintiff was taken.

(7) The plaintiff claims exclusive rights in respect of the copyright work in view of provisions of Section 14(c) of the Copyright Act and the infringement of the defendants is stated to be covered under the provisions of Section 51 of the Copyright Act.

(8) The upholstery fabric manufactured and sold by the defendants is stated to bear the artistic works which are identical copies or colourable imitations of the artistic work in which the plaintiff has a copyright and all the distinctive features of the plaintiff's artistic work is alleged to have been copied. The defendants' conduct is thus stated to be dishonest as the defendants are stated to have strained every nerve to come as close to plaintiff's product as possible. It is thus alleged to be a slavish copying of the artistic work of the plaintiff. The object is stated to be to encash on the reputation and goodwill earned by the



plaintiff in respect of its goods.

(9) A composite action has been brought both for infringement of copyright and for passing off. The plaintiff has also claimed damages.

(10) The suit has been contested by the defendants and the principal defence raised is that the plaintiff is not entitled to protection under the Copyright Act. This plea is based on the fact that the artistic works are actually designs relating to textile products and come within the scope of the Designs Act, 2000 (hereinafter referred to as the Designs Act, 2000). The plaintiff has failed to apply for registration of designs in India under the provisions of the said Act or the predecessor Act being the Designs Act, 1911 (hereinafter referred to as the Designs Act, 1911). The plaintiff having failed to complete the requisite formalities under either of the two designs acts, is alleged to be now seeking to claim protection under the Copyright Act, which is not permissible. It is claimed that in textile trade, the designs in use are built around permutations and combinations of a limited number of motifs/imitations drawn from various sources and requiring very little by way of distinguishing variations to claim originality. Thus the three fold submission of the defendants is:

- i) The plaintiff was itself conscious of the fact that registration was required under the Designs Act and had applied for designs to be registered in U.K. under the local designs act;

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- ii) The certificate relied upon and issued by the United States Copyright Office refers to the subject as fabric designs and not artistic works;
 - iii) The Indian Patent and Designs Office has confirmed vide its letter dated 19.07.2002 that the subject designs being textile designs are registrable under the Designs Act, 2000.
- (11) The defendants have also alleged that the plaintiff is guilty of *suppressio veri and suggestio falsi*. This plea is based on the allegation that the plaintiff has failed to disclose the prior litigation including criminal proceedings where investigation officer has submitted a report to the court clearly stating that no case under the copyright law had been made out.
- (12) The stand of the defendants is that the designs in respect of which the plaintiff claims proprietary right and protection under the Copyright Act, are all textile designs which are aesthetic, ornamental and visual in nature with an appeal to the eyes only. It is thus the submission of the defendants that such features cannot be subject matter of copyright as they do not constitute artistic work and are not capable of protection within the meaning of Section 14(c) of the Copyright Act. In case novelty existed in the same, the statutory protection in such features could only be under the provisions of Designs Act, 2000 by obtaining necessary registration thereunder. The textile fabrics are registrable subject matter of design and artistic work is specifically excluded from the definition of design. Such



exclusion is specifically directed to paintings, drawing, pictures, etc. which are not industrially applied to articles. The alternative plea raised is that in view of provisions of Section 15(2) of the Copyright Act, the copyright in any design which is capable of being registered but has not been so registered, ceases as soon as any article to which the design has been applied has been reproduced more than 50 times by an industrial process by the copyright owner or his licensee.

(13) A further aspect emphasized is that there can be no deception as the plaintiff admittedly sells its products under the brand name 'Microfibres' while the defendants sell under the brand name 'Velveleen'.

(14) Defendant No. 2, the manufacturer, has specifically pleaded that it is only by making use of the motifs/imitations drawn from various sources and use of the elements of the public domain and combining the same with its own creative ingenuity, a wide variety of flox fabrics has been produced. The plaintiff's right to claim exclusivity in the design as a proprietor is denied.

(15) The provisions of Section 15 of the Copyright Act have been strongly relied upon for the plea that no copyright subsists in any design which is registered under the Designs Act, 1911. Further, copyright under Section 15(2) of Copyright Act in any design which is capable of being registered, but has not so been registered, ceases as soon as the article to which the design has been applied has been re-produced more than 50 times. In view

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of there already being a vast number of re-productions, the copyright, if any, is stated to have ceased. The Designs Act, 1911 has been referred to show that two separate classes for registration of textile designs are provided in Class 13 & 14 of the Fourth Schedule dealing with classification of goods. The defendant No. 2 has claimed that its designs were created through its own attempts, independent of the plaintiff. However, no details of the same have been given.

(16) In the replication, the plaintiff has specifically pointed out that in view of new Designs Act, 2000, the definition of design as contained in Section 2(d) specifically excludes any artistic work as defined in Class 2(c) of the Copyright Act.

(17) The aspect of registration in UK under the local Designs Act is sought to be explained by reason of the definition of design in the said Act where by once the artistic work was applied industrially, the protection could have been enjoyed only with respect to industrial obligation under that Act and not under the Copyright Act. The UK Designs act does not exclude artistic works.

(18) In view of the aforesaid pleas raised, the matter in issue, in my considered view, is more of a legal issue rather than a factual one. The legal issue arises from the interplay and the rights and obligations under the Copyright Act, the Designs Act of 1911 and the Designs Act, 2000. In order to fully appreciate the controversy, it will be necessary to have a brief overview of the

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provisions of the three Acts in question which are relevant to the present matter.

(19)Section 2(c) of the Copyright Act defines artistic work as under:

“‘artistic work’ means, -

- i) a painting, a sculpture, a drawing (including a diagram, map, chart or plain), an engraving or a photograph, whether or not any such work possesses artistic quality;
- ii) an (Work of architecture); and
- iii)any other work of artistic craftsmanship;”

(20)An author in relation to an artistic work is defined in Section 2 (d)(iii) of the Copyright Act as under:

“in relation to an artistic work other than a photograph, the artist;”

(21)The section 13 of the Copyright Act stipulates the works in which copyright subsists and an original artistic work is included in Section 13(1)(a). The Section 14 defines the meaning of a copyright and the relevant portion is as under:

“14. Meaning of copyright - For the purposes of this Act, 'copyright' means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely”-

(a)

(b).....

(c) in case of an artistic work, -

- i) to reproduce the work in any material form including depiction in three

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dimensions of a two dimensional work or in two dimensions of a three dimensional work;

- ii) to communicate the work to the public;
- iii) to issue copies of the work to the public not being copies already in circulation;
- iv) to include the work in any cinematograph film;
- v) to make any adaption of the work;
- vi) to do in relation to an adaption of the work any of the acts specified in relation to the work in subclauses (i) to (iv);..."

(22) Section 15 deals with the special provisions regarding copyright in designs registered and capable of being registered under the Designs Act, 1911 and reads as under:

"15. Special provision regarding copyright in designs registered or capable of being registered under the Designs Act, 1911. -

1) Copyright shall not subsist under this Act in any design which is registered under the Designs Act, 1911 (2 of 1911)

2) Copyright in any design, which is capable of being registered under the Designs Act, 1911 (2 of 1911), but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright, or, with his licence, by any other person."

(23) A reading of the aforesaid sections thus makes it clear that there cannot be a subsisting copyright in any design which is registered under the Designs Act, 1911 or which is capable of

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being registered, but not registered, under the Designs Act, 1911 once the article has been reproduced more than 50 times.

(24)Section 17 provides that the first owner of a copyright in case of an artistic work shall be the author. A copyright can be assigned under section 18 and Section 19 provides for the mode of assignment. Such assignment in terms of Section 19 can be valid only if it is in writing, signed by the assignor, or, his duly authorised agent. The term for which a copyright exists is provided in Section 22 as under:

“22. Term of copyright in published literary, dramatic, musical and artistic works. - Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author until (sixty years) from the beginning of the calendar year next following the year in which the author dies.

Explanation. - In this Section the reference to the author shall, in the case of an work of joint authorship, be construed as a reference to the author dies last.”

(25)Chapter XI provides for infringement and Section 51 stipulates when a copyright is infringed and reads as under:

“51. When copyright is 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

(v)

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 no 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 into India,

any infringing copies of the work :

Provided that nothing in sub clause (iv) shall apply to the import of one copy of any work, for the private and domestic use of the importer.

Explanation - For the purpose of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an 'infringing copy'

(26) In exercise of the power conferred by Section 40 of the Copyright Act, the International Copyright Order 1999 was published in the Gazette of India dated 06.04.1999. Para 3 of the said order postulates that subject to the provisions of Para 4, 5 & 6, all provisions of the Copyright Act, except those in Chapter VIII and those other provisions which apply exclusively to the Indian works, shall apply to any work, first made or published in a country mentioned in Part I, II, III, IV or VI of the Schedule in like manner as if it was first published in India. The

United States of America is mentioned at serial no. 56 of Part III.

(27)The Designs Act, 1911 defines a design under Section 2(5) as under:

"2. (5) 'design' means only the features of shape, configuration, pattern or ornament applied to any article 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, or property mark as defined in section 479 of the Indian Penal Code;

(28)Part II deals with the registration of designs and Section 47 stipulates that when a design is registered, the registered proprietor of the design shall have copyright in the design during five years from the date of registration.

(29)Section 77 empowers the Central Government to make rules, and in exercise of said powers, the Design Rules, 1933 were notified. The Fourth Schedule give the classification of goods and the relevant schedule is as under:

"THE FOURTH SCHEDULE

Classification of goods

Class 13 - Printed or woven designs on textile goods (other than checks or stripes)

Class 14 - Printed or woven designs on textile goods being checks or stripes."

(30)The Designs Act, 2000 was enacted to provide a more effective protection to the registered designs. In terms of Section 48 of

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this Act, the Designs Act, 1911 was repealed. However any notification, rule, etc. under the old Act was to continue to be in force. Section 2(d) defines the design and was made more comprehensive and it reads as under:

"2. Definitions.-

... ..

(d) "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 devise, 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)."

(31)A reading of the aforesaid definition would show that as compared to the earlier definition inter alia any artistic work as defined in Clause 2(c) of Copyright Act, 1957 was specifically excluded.

(32)A copyright in a registered design was provided in Section 11 under Chapter III and reads as under:

"11. 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) If, before the expiration of the said ten years, application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller shall, on

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payment of the prescribed fee, extend the period of copyright for a second period of five years from the expiration of the original period of ten years."

(33) A statutory monopoly thus is provided for a period of ten years extendable by another five years totalling to 15 years.

(34) Section 22 stipulates the rights conferred on a registered design and reads as under:

"22. Piracy of registered design.- (1) During the existence of copyright in any design it shall not be lawful for any person -

a) for the purpose of sale to apply or cause to be applied to any article in any class of articles in which the design is registered, the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or

b) to import for the purposes of sale, without the consent of the registered proprietor, any article belonging to the class in which the design has been registered, and having applied to it the design or any fraudulent or obvious imitation thereof; or

c) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article in any class of articles in which the design is registered without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

2) If any person acts in contravention of this section, he shall be liable for every contravention -

a) to pay to the registered proprietor of the design a sum not exceeding twenty-five thousand rupees recoverable as a contract debt, or

b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly;

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Provided that the total sum recoverable in respect of any one design under clause (a) shall not exceed fifty thousand rupees:

Provided further that no suit or any other proceeding for relief under this subsection shall be instituted in any court below the court of District Judge.

3) In any suit or any other proceeding for relief under sub section (2), every ground on which the registration of a design may be cancelled u/s 19 shall be available as a ground of defence.

4) Notwithstanding anything contained in the second proviso to sub section (2), where any ground on which the registration of a design may be cancelled u/s 19 has been availed of as a ground of defence and sub section (3) in any suit or other proceeding by the court, in which the suit or such other proceeding is pending, to be High Court for decision.

5) When the court makes a decree in a suit under sub section (2), it shall send a copy of the decree to the Controller, who shall cause an entry thereof to be made in the register of designs."

(35) In terms of Section 47, the Central Government is authorized to make rules and thus Design Rules, 2001 were promulgated and Class 5 Entry 05-05 of the Rules reads as under:

"CLASS 05

... ..

05-05 Textile fabrics

Note.- (a) Including textile fabrics, woven, knitted or otherwise manufactured, tarpaulins, felt and loden."

(36) In the conspectus of the aforesaid position, the following issues were framed:

"1. Whether there is any Copyright in the stated artistic work of the plaintiff? OPP.

2. Whether any Copyright subsists in favour of the plaintiff in view of the provisions of Section 15 of the Copyright Act? OPP.

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3. Whether the plaintiff was required to register the artistic work under the Designs Act, 2000? OPP.

4. Whether the Designs Act, 1911 would have any application to the stated artistic works of the plaintiff? If so, to what effect? OPD.

5. Whether the defendant is passing off its goods as those of the plaintiff? OPP.

6. Whether the plaintiff is entitled to rendition of accounts from the defendant? If so, for what period? OPP.

7. Whether the plaintiff is guilty of suppressing any material fact? OPD.

8. Relief."

(37)The parties on the said date of 26.09.2005, when the issues were framed, agreed that the suit can be decided on the basis of documents filed and no oral evidence was necessary. Learned counsel for the parties further agreed that the documents may be read in evidence without formal proof and the matter be heard finally on that basis.

ISSUE NO. 1 :

(38)The plaintiff claims to be the owner of the copyright in the artistic works which are applied on upholstery fabrics. The certificates of registration issued by the United State Copyright Office have been filed. The registration is stated to have been done under the 1976 Copyright Act of United States. However for a number of artistic works, including a number of those in question, the registered copyrights are stated not to be readily available. For some of the artistic works, the plaintiff has not even registered the copyrights. The protection is however

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sought on the basis that the copyright in the artistic works subsists and gives an exclusive right to the plaintiff.

(39)The plaintiff has placed strong reliance upon the Berne Convention for protection of literary and artistic works. Article 16 (a) of the Convention is relied upon to substantiate the plea that the protection exists automatically and there is no registration required in India in view of India being a signatory to Berne Convention, the Universal Copyright Convention, 1971 and the International Copyright Order 1999 being promulgated.

(40)Learned counsel for the plaintiff referred to the judgment of the Supreme Court in Gramophone Company of India Ltd v. Birendra Bahadur Pandey and Others; 1984 2 SCC 534 where the international conventions were discussed and it was emphasized that:

“The next step for us to consider is whether there is any general Convention on Copyright. An artistic, literary or musical work is the brain-child of its author, the fruit of his labour, and, so, considered to be his property. So highly is it prized by all civilized nations that it is thought worthy of protection by national laws and international conventions relating to copyright. The International Convention for the protection of literary or artistic works first signed at Berne on September 9, 1886, was revised at Berlin in 1908, at Rome in 1928, at Brussels, in 1948, at Stockholm in 1967 and finally at Paris in 1971. Article 1 of the Convention, as revised, constitutes the countries to which the Convention applies into a Union for the protection of the rights of authors in their literary and artistic works. The expression ' literary and artistic works' is defined to include every production in the literary, scientific and artistic domain whatever may be the mode or formation of its expression. It is provided that the work shall enjoy protection in all countries of the Union. Various detailed provisions are made in the Convention for the protection of the works.

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Article 9 provides that authors of literary and artistic works protected by the Convention shall enjoy the exclusive right of authorising the reproduction of these works in any manner of form. It is also expressly stipulated that any sound or visual recording shall be considered as a reproduction for the purposes of the Convention. We are not really concerned with the several details of the Convention. But we may refer to Article 16 which provides:

1. Infringing copies of a work shall be liable to seizure in any country of the Union where the work enjoys legal protection'
2. The provisions of the preceding paragraphs shall also apply to reproductions coming from a country where the work is not protected, or has ceased to be protected;
3. The seizure shall take place in accordance with the legislation of each country.

India, we may mention is a party to the Berne Convention."

(41)The Full Bench of Madhya Pradesh High Court in K.C. Bokadia and Anr. v. Dinesh Chandra Dubey, 1999 (1) MP LJ 33 has observed that there is no legislative intent to make registration of a copyright mandatory. Para 8 reads as under:

"8. A careful analysis of the Scheme and the provisions of the Act does not disclose any legislative intention to make registration of copyright mandatory or to take away civil or criminal remedies in the event of non-registration of copyright. On the other hand, some of the provisions point a contrary conclusion. Copyright is the exclusive right, subject to the provisions of the Act, to do and authorise the doing of any of the acts enumerated in Section 14 in respect of a work or substantial part thereof. The first owner of the copyright shall be the author of the work. In other words, the ownership of the copyright is a logical consequence of the authorship. Copyright does not arise from registration of copyright. Provision regarding registration and maintenance of register is basically a provision to enable entries to be made in respect of relevant particulars including the names of owners of copyright. Unless there is an existing copyright and a person is the owner of a copyright, the question of applying for or making

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entries in the register of copyrights does not arise. Registration follows the copyright and not vice versa. Certified copies entries in the register are only prima facie evidence without further proof and they are not conclusive. A copyright when it is propounded or challenged has to be duly established in a competent court. There is no specific provision as in the trade and Merchandise Marks Act or Indian Partnership Act barring institution of legal proceedings in the absence of registration. Having regard to all these circumstances it has to be held that registration is not mandatory and for breach of copyright, civil or criminal remedy can be resorted to without registration."

(42)The Division Bench of Kerala High Court in R.Madhavan v.

S.K.Nayar; AIR 1988 Kerala 39 has taken the same view that Section 44 & 45 of the Copyright Act are only enabling provisions and do not effect the common law right to sue for infringement of copyright. In view of the aforesaid position, the plaintiff contended that the words in Section 2(c) of the Copyright are wide and inclusive and the definition is not narrowed on account of any intent behind making of such work or the intent with respect to any of such work. Thus, the plaintiff claims that an artistic work would subsist in the works in question of the plaintiff. It is thus the submission of the plaintiff that even if known and existing material in public domain are re-arranged and compiled in a particular way, so long as the re-arrangement of the compilation is original, it would be an artistic work for purposes of Copyright Act. This originality is an essential ingredient and the purpose of copyright law is to provide the owner of a copyright with specific exclusive economic rights. This is the reason that author/creator of the

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work not made in course of employment is usually the first owner and has the exclusive right to reproduce, publish, publicly perform, broadcast and adapt the work.

(43) Learned counsel for the plaintiff relied upon the judgment of the Privy Council in Macmillan and Company Limited v. K. and J. Cooper, A.I.R. 1924 Privy Council 75. In the said judgment, the observations of Lord Halsbury in the case of Walter v. Lane, (1990) A.C. 539 were quoted with approval. Lord Halsbury observed as under:

"I should very much regret if I were compelled to come to a conclusion that the state of the law permitted one man to make a profit and to appropriate to himself what has been produced by the labour, skill and capital of another. And it is not denied that in this case the defendant seeks to appropriate to himself what has been produced by the skill, labour and capital of others. In the view I take of this case the law is strong enough to restrain what to my mind would be a grievous injustice."

(44) A reference has also been made in Macmillan and Company Limited's case (supra) to the observations of Justice Story in Frederick Emerson v. Chas. Davies, Story's United States Reports Vol. 3 p. 768 to the effect that three important aspects have to be kept in mind, which are as under:

"First, that any new and original plan, arrangement or compilation of material will entitle the author to copyright therein whether the materials themselves be old and new. Second, that whosoever by his own skill, labour and judgment writes a new work may have a copyright therein, unless it be directly copied or evasively imitated from another's work. Third, that to constitute piracy of a copyright it must be shown that the original has been either substantially copied or to be so imitated as to be a mere evasion of the copyright."

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(45) In Frederick Emerson's case (supra), Justice Story further observed at page 778 as under:

"The book of the plaintiff is, in my judgment, new and original in the sense in which those words are to be understood in cases of copyright. The question is not whether the materials which are used are entirely new and have never been used before, or even that they have never been used before for the same purpose. The true question is whether the same plan, arrangement and combination of materials have been used before for the same purpose or for any other purpose. If they have not, then the plaintiff is entitled to a copyright, although he may have gathered hints for his plan and arrangement or parts of his plan and arrangement from existing and known sources. He may have borrowed much of his materials from others, but if they are combined in a different manner from what was in use before ... he is entitled to a copy right. ... It is true that he does not thereby acquire the right to appropriate to himself the materials which were common to all persons before, so as to exclude those persons from a future use of such materials; but then they have no right to use such materials with his improvements super-added, whether they consist in plan, arrangement, or illustrations, or combinations for these are strictly his own ... In truth, in literature, in science and in art there are and can be few, if any, things which, in an abstract sense, are strictly new and original throughout."

(46) A reference has also been made in the judgment of Macmillan and Company Limited's case (supra) to the judgment in the case of University of London Press Ltd. v. University Tutorial Press Ltd., (1916) 2 Ch. 601 in which Mr. Justice Peterson dealing with the meaning of the words '*original literary work*' said at page 608:

"The word '*original*' does not in this connection mean that the work must be the expression of original or inventive thought. Copyright Acts are not concerned with the origin of ideas but with the expression of thought; and in the case of '*literary work*', with the expression of thought in print or writing. The originality which is required relates to

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the expression of the thought; but the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work - that it should originate from the author."

(47) Learned counsel for the defendants, on the other hand, emphasized that the crucial question to be considered would be whether the subject work in question is an '*artistic work*' protected under the provisions of the Copyright Act or a '*design*' under the Designs Act, 2000 (or the Designs Act, 1911). The defendants contended that the subject work in dispute are floral designs which are applied upon fabrics used for upholstery through an industrial process. This is the reason why in United Kingdom (for short, 'U.K.'), the plaintiff has registered the subject work as a design. A practical proof of this is stated to be the letter dated 19.07.2002 issued by the Patent Office to the effect that '*textile design fabrics*' are registrable under the Designs Act, 2000. Certain certificates of registration of such fabric patterns have also been placed on record.

(48) Learned counsel for the defendants referred to the definition of '*artistic work*' in Section 2(c) of the Copyright Act to contend that the only category in which the work in question can fall would be '*painting*'. The word '*painting*', it was contended, is meant to refer to works which are created to have independent existence and not to patterns or configurations which are merely created for being applied through an industrial process on another article. In this behalf, a reference has been made to the

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judgment of Gujarat High Court in M/s. Deepak Printery, Ahmedabad v. The Forward Stationary Mart & Ors., (1976) XVII Guj. LR 338 to substantiate the plea that '*artistic work*' is not concerned with the production of commercial articles with the help of ideas borrowed from an artist as the purpose is not to prevent rival manufacturers from using the same idea or to prevent competition between them.

(49) In view of the aforesaid, it was contended that if the definition of '*design*' is seen under Section 2(d) of the Designs Act, 2000 or under Section 2(5) of the Designs Act, 1911, in a '*design*', the features are merely ornamental (i.e., non-functional) and are applied to another article (which would be the textile fabric in the present case) to provide it visual appeal and the features constitute an integral part of the article and has no independent existence. Thus, the subject work is stated not to be a '*painting*' in the sense of a work of M.F. Hussain having independent existence, but is clearly a '*design*' forming an integral part of the fabric.

(50) The economic impact of the aforesaid has also been emphasized. If the subject work is an '*artistic work*', the term of legal protection it will enjoy under Section 22 of the Copyright Act, would be the lifetime of its author + 60 years and it would be enforceable not only through civil proceedings, but also incur criminal liabilities. However, if the subject work is a '*design*', then the protection, it enjoys is for a maximum period of 15

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years under the provisions of Section 11 of the Designs Act, 2000. Needless to say that in terms of the said Section, only if the design is registered, the said period of copyright in the design shall exist. It was emphasized that even in the case of inventions under the Patents Act, the protection is limited to only 20 years.

(51) The plea of the plaintiff is also sought to be negated on the issue of definition of a '*design*' under Section 2(d) of the Designs Act, 2000 whereby an '*artistic work*' as defined in clause (c) of Section 2 of the Copyright Act has been specifically excluded. The submission was, thus, advanced that this would have the effect of rendering the law of designs redundant for the simple reason that each design registered thereunder would be able to trace its origin to a diagram, chart, drawing, etc. and, thus, cease to be governed by the Designs Act. The legislative intent could not have been this because the law of designs is based on the same principle as applicable to other monopolies and to fuel industrial innovativeness by granting limited time-limit to the monopolies and allow others to make use of them after they have passed into the public domain. Thus, the plea of the plaintiff, if accepted, would be anti-competitive and would throttle and stagnate the industry. Learned counsel referred to judgment of the Privy Council in Interlego A.G. v. Tyco Industries Inc., (1988) R.P.C. 343 wherein it has been observed as under:

"The definition of '*design*' in section 1(3) of the Act of 1949 is hardly a model of Parliamentary

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draughtsmanship and this is by no means the first case in which its meaning and application have been called in question. In approaching the question of construction there has to be borne in mind that the purpose of the Act, as appears both from its terms and its legislative history, is to protect novel designs devised to be 'applied to' (or, in other words, to govern the shape and construction of) particular articles to be manufactured and marketed commercially. It is not to protect principles of operation or inventions which, if protected at all, ought to be made the subject-matter of a patent. Nor is it to prevent the copying of the direct product of original artistic effort in producing a drawing. Indeed the whole purpose of a design is that it shall not stand on its own as an artistic work but shall be copied by embodiment in a commercially produced artefact. Thus the primary concern is what the finished article is to look like and not with what it does and the monopoly provided for the proprietor is effected by according not, as in the case of ordinary copyright, a right to prevent direct reproduction of the image registered as the design but the right, over a much more limited period, to prevent the manufacture and sale of articles of a design not substantially different from the registered design. The emphasis therefore is upon the visual image conveyed by the manufactured article."

(52) A reference was also made to the judgment in Premier Hangers

CC v. Polyoak (PTY) Ltd., 1997 (1) SA 416 (Appellate Division).

Both the parties were manufacturers and suppliers of hangers to the clothing industry and were competitors. The litigation arose from a claim by Polyoak that Premier was passing off hangers manufactured by it as being those of Polyoak. Infringement of certain designs registered in terms of the Designs Act were also pleaded. It was observed as under:

" The evidence of Louw shows that trends, fashions, and the hangers of other manufacturers, are routine sources of inspiration in the field. A number of Polyoak's designs were based on what Louw had seen overseas or knew to be designs being used overseas. Louw referred to the imitation of a Marks & Spencer hanger as an example. The Uni

range itself was produced with a particular section (described by Louw as the C section) copied from an overseas hanger. It was also said that hanger design is influenced by the need to adapt a hanger so as to display dresses with, for example, broad straps, or to necessitate further modification when narrow straps are in favour. Another example given by him was that a particular material such as silk may become fashionable. This would require rounded edges to the hangers as sharp edges would be unsuitable for such use. Another feature of the industry testified to by Louw was that changes were made to hangers incrementally and largely in accordance with customer suggestions or demands. So, too, sizes of hangers are determined solely by the standard measurements of dressmakers, and label plates are added, altered or removed in accordance with the customers' wishes. I say this not to denigrate Polyoak's endeavours but to illustrate that in the general sense of justice of the community (quite apart from the question of design registration) copying in this field would not be regarded as improper. In short, copying is very much the order of the day while individual innovations are rare."

(53)The defendants contended that the legislative intent behind the repealed Designs Act, 1911 and coming into force of the new Designs Act, 2000 remained the same and the exclusion of '*artistic work*' in the definition in the new Designs Act, 2000 is only clarificatory and was intended to exclude only artistic work pure and simple such as paintings, sculptures and works of art.

(54)To substantiate the aforesaid plea, a reference was made to the judgment of learned Single Judge of this Court in I.A. Nos. 6597 & 6944 of 1991 in Suit No. 1481 of 1991 titled 'M/s. S.S. Sarna Inc. & Anr. v. M/s. Talwar & Khullar Pvt. Ltd. & Ors.' decided on 08.08.1991. The subject matter of dispute was the allegation of copying by the defendants of the original artistic works owned by the plaintiff in the form of artistic metal

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sculptors such as fire boards, welcome wreaths, decorative hooks, wall hangings / small fire boards and planters, etc. The plaintiff was a company incorporated under the laws of United States of America (for short, 'USA'). Learned Single Judge found that it was really not in dispute that the basic idea of such products produced by the defendants appeared to have emanated from the plaintiff. It was observed as under:

" ... Copyright Act in general protects the artistic work, but the idea behind excluding certain designs from the protection under the Copyright Act, although otherwise the same design might have been so entitled to protection, appears to be to avoid any hindrance being caused to the manufacture and sale of industrial articles which in the absence of a provision similar to Section 15 could not be achieved. The intention of the Legislature appears to be very clear that wherever any artistic work has to be in a commercial exploitation by the owner of the copyright the same should be excluded from the protection under the Copyright Act and should be provided protection under the Designs Act, 1911 only provided the said design is registered under the Designs Act. The reference to the definition of term 'Design' under the Designs Act is wide enough, in my opinion, to cover the artistic work of the nature similar to the ones that we are concerned in the present suit. Plaintiffs have further submitted that the term 'Design' is not defined under the Copyright Act. In my opinion, when a particular term is used in reference to an Act and that term 'design' has been defined under that Act, it can be safely presumed that the Legislature implied that it is the definition of the term under that particular Act (The Designs Act 1911) which can be looked into to decide the present controversy."

(55) Learned counsel for the defendants referred to the judgment of another learned Single Judge of this Court in Samsonite Corporation & Anr. v. Vijay Sales & Ors., (2000) F.S.R. July (c) Sweet & Maxwell 463. The dispute related to a range of

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suitcases known as System 4 range and the plaintiff claimed that the defendants suitcases infringe the copyrights relating to the said range and that the defendants were passing off suitcases for those of the plaintiff. The dispute was similar whether the plaintiff's drawings were artistic work. If they were designs and had not been registered under the Designs Act, they were not subject to copyright protection. It was observed as under:

"60. ... The main thrust of the argument of learned senior counsel of the plaintiffs was that the suitcases manufactured by the plaintiffs would easily attract any person because it has got a powerful and attractive shape which would immediately attract the eye. Learned senior counsel submitted that people travelling by air, rail and other modes of transport would look at the shape of the box and then would make enquiries as to who had manufactured it and that they would like to buy one. Therefore, the whole purpose of the manufacture was to attract the eyes of customers. Therefore, it would follow from the argument on behalf of the plaintiffs that it is clearly a design coming within the meaning of the definition of design, under the Designs Act, 1911, and coming within the meaning of Section 15 of the Copyright Act, 1957. Consequently, the plaintiffs cannot claim any copyright as the same had not been registered. The fact that it is being manufactured industrially is not in dispute. Prima facie, I accept the submission on behalf of learned counsel for the defendants that inasmuch as the plaintiffs had not registered the designs the plaintiffs cannot claim any protection under the Copyright Act, 1957 with reference to the drawings."

(56) Learned counsel for the defendants also pointed out the documents filed on record to show that the textile fabrics had been registered both under the Designs Act, 1911 and the Designs Act, 2000.

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(57) In order to appreciate the object of introduction of the new Designs Act of 2000, various proceedings were referred to by learned counsel for the defendants. The Statement of Objects and Reasons of The Designs Bill, 1999 provided that the intent was to ensure that the law does not unnecessarily extend protection beyond what is necessary to create the required incentive for design activity while removing impediments to the very use of available designs. The definition of '*design*' has been amplified to incorporate therein the composition of line and colours so as to avoid overlapping with the Copyright Act regarding definition of '*design*' in respect of '*artistic work*'. The proceedings from the Parliamentary Debate on the Bill were also referred to to show that the concerned Minister of State had observed that the Act was being amended to '*provide help and protecting the rights of designers*'. The Handbook issued by the Design Office for information to the public was referred to which *inter alia* states as under:

"What can be registered as a Design?

- To qualify for registration as a design, an article should relate to the ornamental or new shape, surface pattern, lines or colour with aesthetic look (Designs of industrial plans, layouts or installation are not registrable).
- It should be applicable to any product reproducible by industrial means (Paintings / Sculptures and 'works of art' excluded).

(58) Learned counsel further referred to the judgment of learned Single Judge of this Court in AGA Medical Corporation v. Faisal Kapadi & Anr., 2003 (26) PTC 349 (Del) where it was observed as

under:

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"13. ... This Court on a consideration of the matter and more particularly the meaning of copyright and the definition of '*design*' in the Designs Act is, *prima facie*, of the view that the plaintiff does not have a subsisting copyright under the Copyright Act, firstly; because it is capable of being registered under the Designs Act though it has not been so registered and secondly; as per the plaintiff's own showing, the devices to which the drawings have been applied, has been reproduced more than 50 times by an industrial process by the plaintiff."

(59)The decision on this particular issue has a material bearing on even the subsequent issues framed in the suit and, thus, had to be examined in-depth. The crucial issue would, in my considered view, which has been rightly put forth in its perspective by the learned counsel for the parties, is whether the work in question can be said to be an '*artistic work*' within the definition of Section 2(c) of the Copyright Act or was it a '*design*' within the meaning of the Designs Act, 2000.

(60)The work in question is no doubt the arrangement of motifs, flowers, leaves and shapes which have been arranged in a particular manner. There is, thus, element of labour and skill applied to have a particular pattern as observed in Walter v. Lane's case (supra). There is also little doubt that the defendants have copied the same. This would be apparent from the comparison of the designs of the fabrics of the plaintiff and the defendants. To illustrate this aspect, some of the original and alleged offending products are being reproduced herein-below:



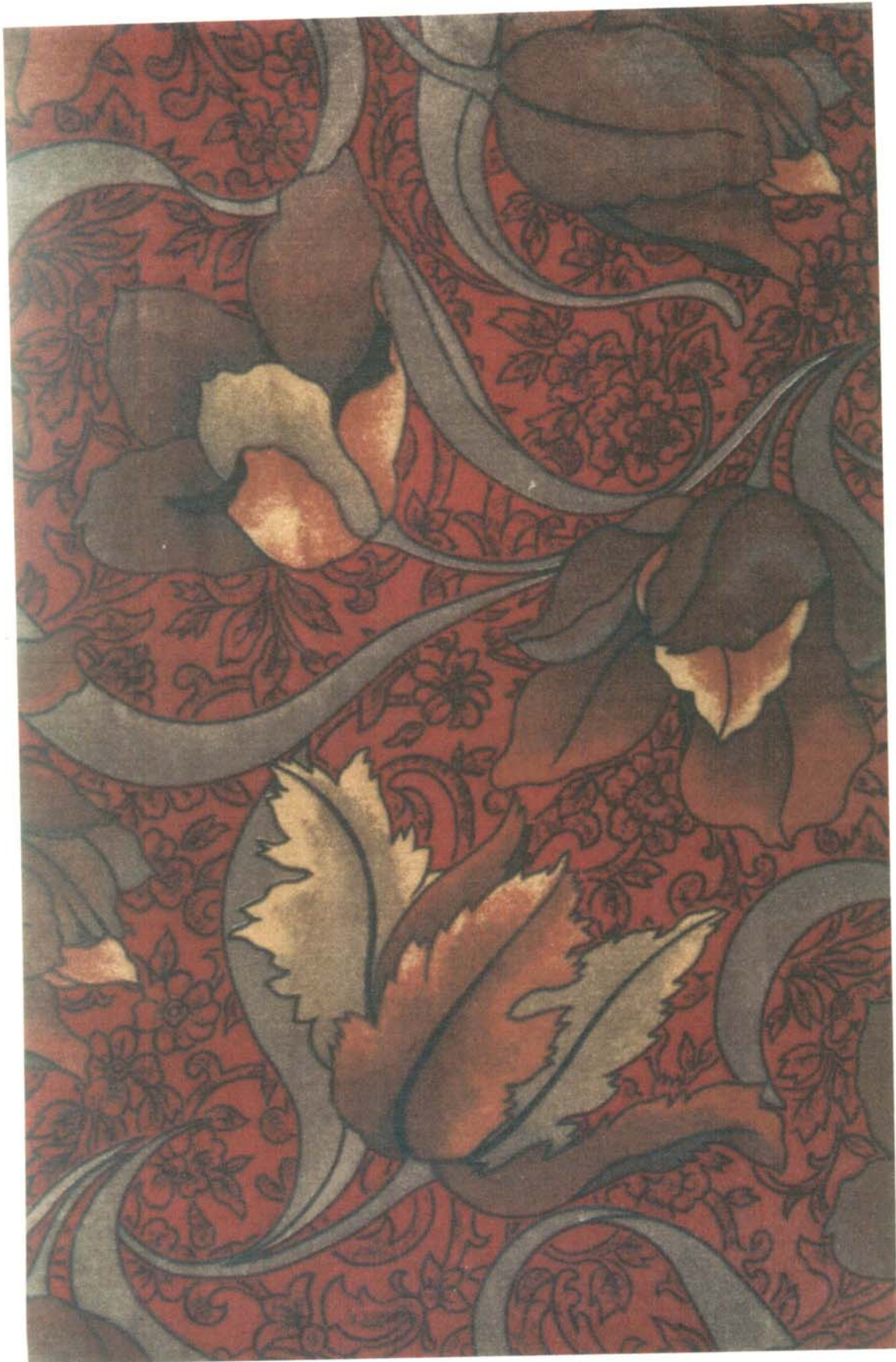


Plaintiff's Product - 'PRESTIGE'

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Defendants' Infringing Product

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(61)The defendants have attempted to throw doubts on the certificates of registration issued by the Copyright Office at USA. However, once the parties have agreed that the documents can be read in evidence, the documents filed do give sufficient proof of such registration in USA. There have been also cases of assignment. It has been set out in the plant that there are large number of staff of the plaintiff doing this very work, while in respect of others, assignment has taken place. However, in respect of some of the works, the documents are stated not to be available. It has been pleaded that, in any case, the defendants are copying.

(62)In order for the work of the plaintiff to qualify as an '*artistic work*', it must fall within the definition of sub-section (c) of Section 2 of the Copyright Act. A reading of the said provision would show that attempt of the plaintiff can only be to bring it within the concept of '*painting*'. The comparison with the painting of M.F. Hussain would be otiose as the work in question, in the present case, is not a piece of art by itself in the form of a painting. There is no doubt that labour has been put and there is some innovativeness applied to put a particular configuration in place. Such configuration is of the motifs and designs which by themselves would not be original. The originality is being claimed on the basis of the arrangement made. What cannot be lost sight of is the very object with which such arrangements or works had been made. The object is to put them to industrial

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use. An industrial process has to be done to apply the work or configuration to the textile. It is not something which has to be framed and put on the wall or would have any utility by itself. The two important aspects are the object with which it is made (which is industrial) and its inability to stand by itself as a piece of art. In fact, it has no independent existence of itself.

(63) In India, we have special legislations governing the protection of different nature of rights. Insofar as the industrial designs are concerned, the protection is provided under the Designs Act, 2000, which came into force from May, 2001 and repealed the earlier Designs Act, 1911. An important and relevant aspect is that both under the old Act and the new Act, fabric designs on textile goods have been classified as proper subject matter of design protection by inclusion as a specific class in the Rules framed under the Acts. In the Designs Act of 1911, class 13 and 14 of the Fourth Schedule of the Rules dealt with printed or woven designs of textile goods other than checks and stripes and checks and stripes respectively. Such protection is now provided under Class 05 of the new Design Rules of 2001.

(64) Furthermore, the legislative intent is also to be kept in mind which is to provide protection for a certain period of time for commercial exploitation. Thus, nature of protection is quite different for an artistic work under the Copyright Act which is for the lifetime of the author / creator + 60 years. This is not so in the case of commercial exploitation as under the Designs Act

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and the Patent Act the period is much lesser. In the present case, the configuration was made only with the object of putting it to industrial / commercial use.

(65) The exclusion of an '*artistic work*' as defined in Section 2(c) of the Copyright Act from the definition of '*design*' under Section 2 (d) of the Designs Act, 2000 is only meant to exclude the nature of artistic works like painting of M.F. Hussain. It is, thus, the paintings, sculptors and such works of art which are sought to be specifically excluded from the new Act.

(66) The observations of the learned Single Judge in M/s. S.S. Sarna Inc.'s case (supra) succinctly set out the concept behind excluding certain designs from protection under the Copyright Act which was to avoid any hindrance being caused to the manufacturer of sale and industrial articles. Thus, the intention of the legislature has been expressed as one to protect any artistic work which has to be commercially exploited by the owner of the copyright by not providing the protection under the Copyright Act, but under the earlier the Designs Act, 1911. A similar view was also expressed by another learned Single Judge of this Court in Samsonite Corporation's case (supra). To this extent, I see no difference between the intent under the old Act and the new Act. A perusal of the Statement of Objects and Reasons for introduction of the new Act, the handouts issued by the Design Office and the registrations made of textile fabrics both under the old Act and the new Act leave little manner of

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doubt that the protection for such configurations, designs or works (by whichever name it may be called) is provided under the Designs Act. It is, thus, apparently clear that in the context of the Indian Law, it is the Design Act of 1911 or 2000, which would give protection to the plaintiff and not the Copyright Act. The application of mind and skill is not being denied nor the fact that the defendants have copied the same, but that would still not amount to the works in question being labeled as '*artistic work*' within the definition of Section 2(c) of the Copyright Act and, thus, the protection is not available under the Copyright Act. Issue No. 1 is answered accordingly.

ISSUES NOS. 2 & 3 :

(67)The second issue arises from the provisions of Section 15 of the Copyright Act. The Section provides that copyright subsists under the Copyright Act in any design, which is registered under the Designs Act, 1911 and in case a design is capable of being registered under the Designs Act, 1911, the copyright shall cease as long as any article to which the design has been applied has been reproduced more than 50 times by an industrial process by the owner of the copyright or his licensee. It is not in dispute that reproduction has occurred more than 50 times. It is not also in dispute that there is no registration which has taken place under the Designs Act, 1911 (or under the Designs Act, 2000).

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(68) An important aspect is that the designs and works have been registered in the years 1998-1999 or even prior to that and put to industrial / commercial use. At the relevant stage of time, it was the Designs Act of 1911 which was in operation since the Designs Act, 2000 came into force only in May, 2001. The works of the plaintiff were capable of registration under the Designs Act of 1911. The plaintiff, however, failed to register the same at that relevant stage of time. It may be taken note of here that the plaintiff itself has set out that it registered the patterns under the Designs Act in England.

(69) Learned counsel for the defendants has also referred to judgment of the House of Lords in King Features Syndicate Incorporated and Frank Cecil Betts, The Personal Representative of Elzie Chrisler Segar, Deceased v. O. & M. Kleeman Ltd., LVIII RPC 207. This judgment is commonly known as Popeye's case. The copyright was claimed in respect of the fictitious character drawing known as '*Popeye the Sailor*' which had originally appeared in a series of cartoons and later in cinematograph films. The allegation of infringement related to reproduction of the character in the form of toys and brooches. The author, when he produced the drawing, had no intention of industrializing the same, but some years later, the character of Popeye had become popular and the author proceeded to licence certain manufacturers to make articles in the form of designs such as toys, brooches, etc. The relevant observations,

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however, relate to the fact that the House of Lords found that the legislature was drawing a distinction between the Copyright Act and what has been called design copyright or copyright and design under the Patent and Designs Act. It was held that the latter is a right distinct from the former, thus, the 'design' means only the feature of shape, configuration, pattern or ornament applied to any other article by an industrial process which in the finished article appeal to and are judged solely by the eye. The design, thus, may be the shape of a coal scuttle, a basin, a motor car, a locomotive engine or any material object and it may be shaped and sculptured to serve as a model for commercial production. It may also be a drawing in the flat of a complex pattern intended to be used for the manufacture of things such as linoleum or wall paper. Designs copyright were, thus, held to be distinguished from artistic copyright. The rights under the Patent and Designs Act were much narrower than those given by the Copyright Act and in respect of such products, it was not intended that they should have cumulative protection both under the Copyright Act and under the Patent and Designs Act.

(70) It may be noticed that learned Single Judge of this Court in Polymer Papers Ltd. v. Gurmit Singh & Ors., 2002 (25) PTC 327 (Del) has considered the effect of Section 2(c) of the Copyright Act and Section 11 of the Designs Act to come to the conclusion that industrial drawings and designs in which copyright was

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claimed were for purposes of manufacturing of filter related machines or components and as such clearly fell within the meaning of '*design*' as defined in the Designs Act of 2000 and since the alleged designs had not been registered under the Designs Act, the plaintiff in the suit could not claim any copyright therein. The submission of the plaintiffs that the copyright in artistic works was not required to be registered under the Designs Act was repealed since copyright was claimed of the industrial drawings and designs which were being used for manufacturing purposes. Once it was found that the designs or drawings were being used for manufacturing purposes and were not registered under the Designs Act, 2000, the plaintiff was not held entitled to the relief.

(71)The linked question to this which, thus, arises is the requirement of registration by the plaintiff under the Designs Act of 2000. It is not in dispute that the plaintiff is not registered proprietor of the designs under the said Act. In terms of Section 11 of the Designs Act of 2000 when a design is registered, the registered proprietor of the design has copyright in the design for 10 years, which could be extended by another 5 years. The legal proceedings under Section 22 of the Designs Act, 2000 would arise during the existence of the copyright in any design.

(72)The conspectus of the aforesaid shows that what the plaintiff was actually required to do was to register the designs which the plaintiff has failed to do. The designs are older and, thus, would

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have been registrable under the Designs Act of 1911. The plaintiff failed to register the designs. Insofar as the Designs Act of 2000 is concerned, the plaintiff has also admittedly not registered the designs under the said Act. It has already been discussed above that these designs were capable of registration under the earlier and the current Designs Acts. In fact, the Registrar of Designs had confirmed vide letter dated 19.07.2002 that the fabric designs continued to be registered under the Designs Act of 2000. The plaintiff had even initiated criminal proceedings where certain reports were filed by the investigative agency saying that the offences were really under the Designs Act and not under the Copyright Act. However, it is not necessary to dwell greater in respect of that matter. It would suffice to say that the patterns and designs of the plaintiff were capable of registration both under the old Act and the new Act and the plaintiff failed to do so with the result that the protection is not available to the plaintiff which would have arisen if they had been so registered. The said issues are answered accordingly.

ISSUE NO. 4 :

(73) Issue No. 4 relates to application of the Designs Act of 1911. It has already been noticed that most of the designs of the plaintiff had originated when the Designs Act of 1911 was in operation. The designs were created with the industrial intent to apply them to fabric or cloth and more than 50 reproductions have

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admittedly been made without registering the designs under the earlier Act. Thus, the earlier Act did apply to the designs of the plaintiff and the issue is answered accordingly.

ISSUES NOS. 5 & 6 :

(74)The whole case of the plaintiff was actually based on infringement of the copyright of the plaintiff and the attempt of the defendants to pass off their goods as that of the plaintiff. In order for the plaintiff to succeed, the plaintiff ought to have proved that it was an '*artistic work*' within the meaning of the Copyright Act. That issue has been answered against the plaintiff. The designs of the plaintiff were liable to be registered under the Designs Act which the plaintiff failed to do. Thus, the protection is not available to the plaintiff under those Acts.

(75)No evidence has been led to show as to what is the nature of sales in India and whether the defendants are passing off their goods as that of the plaintiff. There is no doubt about the identical nature of the designs, but the plaintiff has failed to establish any case of passing off and damages arising therefrom. The goods are being sold under distinct and different trade names. The issues are accordingly answered against the plaintiff.

ISSUE NO. 7 :

(76)This issue arises from the allegation of the defendants of the plaintiff suppressing material. In fact, it is really not a case of

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suppression of fact and what the defendants have sought to contend is that the facts relating to the prior litigations should have been put forth in greater detail and not in an innocuous manner as sought to be put by the plaintiff. I find no basis to come to the conclusion that the plaintiff is guilty of suppression of material facts.

ISSUE NO. 8 : RELIEF.

(77) In view of the findings arrived at on the aforesaid issues, the plaintiff has failed to make out a case of having completed the requisite formalities in law so as to avail the benefit of the exclusive use of the patterns and designs in question.

(78) The suit is accordingly dismissed, but in the given facts and circumstances, the parties are left to bear their own costs.

January 13, 2006
dm / am


SANJAY KISHAN KAUL, J.