IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL APPEAL (L) NO. 16459 OF 2023
WITH
INTERIM APPLICATION (L) NO. 16511 OF 2023

Atomberg Technologies Private Limited]
A company incorporated under the Companies]
Act, 1956 having its registered office at]
Office No. 1205, 12th Floor, Rupa Solitaire,]
Millennium Business Park, Thane-Belapur Road,]
Mahape, Navi Mumbai, Maharashtra-400710]
and Corporate office at Bus Stop, 247 Park,]
Lal Bahadur Shastri Road, Gandhi Nagar,]
13th Floor, Hindustan C, Mumbai,]
Maharashtra- 400 079.]... Appellant

Versus

Luker Electric Technologies Private Limited]
A company incorporated under the]
Companies Act, 2013 having its address at]
1806, Lodha Supremus, Saki Vihar Road,]
Opp. M.T.N.L. Building, Andheri (East),]
Mumbai – 400 072.].... Respondent

****

Dr. Veerendra Tulzapurkar, Senior Advocate a/w. Mr. Hiren Kamod, Mr. Vaibhav Keni, Mr. Prem Khullar, Ms. Neha lyer and Ms. Proutima Ray i/b Legasis Partners for the Appellant.

Mr. Ravi Kadam, Senior Advocate a/w. Mr. Ashish Kamat, Senior Advocate, Rashmin Khandekar, Mr. Ameet Naik, Ms. Megha Chandra, Madhu Gadodia, Anisha Nair i/b Anand and Naik for the Respondent.

****

HIGH COURT OF JUDICATURE AT BOMBAY

CORAM : ALOK ARADHE, CJ &
M.S.KARNIK, J.

RESERVED ON : 13th JUNE 2025
PRONOUNCED ON : 25th JULY 2025

JUDGMENT (PER M.S.KARNIK, J.) :

1. The appellant - Atomberg Technologies Private Limited (Atomberg for short) is the original plaintiff. Atomberg is aggrieved by the order passed by the learned Single Judge of this Court dated 05/06/2023 dismissing the interim application ('IA', short) in Commercial IP Suit filed by Atomberg thereby refusing to grant interim injunction against the respondent (Luker Electric for short) original defendant.

2. The facts pleaded in the plaint and the application for interim reliefs in the context of its registered design of ceiling fan 'Atomberg Renesa Ceiling Fan' need to be briefly stated.

3. The design in respect of the suit fan was registered on 08.09.2018. Atomberg has come out with a case that it was served with caveats filed by the Luker Electric before this Court and District Court at Ernakulam in Kerala, sometime in the last week of September 2022, when it was realised that Luker Electric had

HIGH COURT OF JUDICATURE AT BOMBAY

obtained registration for two ceiling fans : Size Zero Fan 1 and Size Zero Fan 2. It is Atomberg's case that the said registration was obtained on 21.03.2022 by Luker Electric in a fraudulent manner as the impugned designs and ceiling fans of Luker Electric infringe upon the registered design of the ceiling fan of Atomberg. Atomberg says that further enquiry revealed that only the fan with impugned design Size Zero Fan 1 was introduced into the market and ceiling fan as per the impugned design Size Zero Fan 2 was yet to be introduced in the market. It is the case of the Atomberg that Luker Electric had committed the act of infringement as also the tort of passing off.

4. Shri Tulzapurkar, learned Senior Advocate for Atomberg while narrating the facts stated that Atomberg started its production of ceiling fans in the year 2015, selling the same online from the year 2016 and further that in the year 2018 Atomberg entered in retail market all over India. Atomberg has high profile clients and it has been given awards, details of which have been given in paragraph 4 of the plaint. Atomberg claims to have used two house-marks Atomberg and Gorilla. It is further stated that with passage of time, Atomberg gave up the use of its house-mark

HIGH COURT OF JUDICATURE AT BOMBAY

Gorilla. It is also stated in paragraph 8 of the plaint that any reference to Atomberg Renesa Ceiling Fan includes Atomberg Gorilla Renesa Ceiling Fan. In paragraph 9 of the plaint, it is stated that the design of the Atomberg Renesa Ceiling Fan was created in September 2018 by Directors of Atomberg and registration was secured under the Designs Act, 2000 (hereinafter referred to as 'the Designs Act', for short) on 08.09.2018. The Directors gave permission to Atomberg to use the said registered design and subsequently, on 15.02.2021, they executed a deed of assignment in favour of Atomberg. On this basis, Atomberg claims proprietary rights in the said registered design bearing registration no. 309694 in class 23-04. The copy of the registration certificate is placed on record along with the plaint. Then in paragraph 10 of the plaint, Atomberg has stated in detail as to what, according to it, are the unique features of the said registered design. The appellant claims that such features give an aesthetic look to the aforesaid ceiling fan of Atomberg called Atomberg Renesa Ceiling Fan. Atomberg says that it has earned tremendous goodwill. To support this statement, Atomberg relied upon the sales turnover figures for the year 2021-2022 to the tune of

HIGH COURT OF JUDICATURE AT BOMBAY

Rs.1,03,64,53,181.45. It is Atomberg's case that the aforesaid ceiling fan is immensely popular owning to its design and aesthetic look and that Atomberg has been using the said design, openly, continuously and extensively since the year 2018. Atomberg claims that it has been vigilant in protecting its proprietary rights pertaining to the said registered design.

5. Atomberg has provided details of the enquiries made in the context of the Luker Electric. The enquiries revealed that registration was effected of the impugned designs on 21.03.2022 for Size Zero Fan 1 and Size Zero Fan 2 of Luker Electric. Atomberg provided a table of comparison of the rival products, seeking to highlight the similarities in the two, alleging that Luker Electric has slavishly copied the essential and fundamental features of the registered design of Atomberg. On the basis of such pleadings, Atomberg filed an application seeking interim reliefs before the learned Single Judge in the context of infringement and passing off against Luker Electric.

6. Luker Electric filed its detailed reply along with documents in support of its case opposing the interim application. According

HIGH COURT OF JUDICATURE AT BOMBAY

to Luker Electric, it is not a fly-by-night operator and that instead, it is a well-established company in the ceiling fans market and that it has invested crores of rupees for developing its infrastructure as well as research and development. The sales turnover of Luker Electric for the financial year 2021-2022 is Rs.299.42 crores. Luker Electric claims to have designed the two fans after extensive research and development.

7. Luker Electric alleged that Atomberg has indulged in suppression of material facts, particularly the fact that the design of Atomberg in question was already published in public domain by Atomberg itself thereby indicating that the registration of design of Atomberg, at the prima facie stage itself, is unsustainable and cannot be relied upon. Atomberg has placed on record certain posts of Atomberg in the public domain of August 2018 which according to Luker Electric were prior to registration of the design of Atomberg on 08.09.2018. Specific reliance was placed on Exhibits Q, R and S in that regard. To further demonstrate that design of Atomberg was already in public domain, reliance is placed on certain delivery challans and invoices, although the fans based on the said design were called Gorilla Ceiling Fans.

HIGH COURT OF JUDICATURE AT BOMBAY

8. According to Luker Electric, there is nothing novel or unique in the design of Atomberg, thereby contending that registration of the design itself could not have been granted to Atomberg as per the provisions of the Designs Act. It is the case of Luker Electric that the features of Atomberg's design highlighted in paragraph 10 of the plaint, all refer to functional features, thereby indicating that the registration of the design could not have been granted. Luker Electric has pleaded in the reply that the claim of Atomberg is hit by Section 4(c) of the Designs Act, which provides that there is prohibition of registration of a design, which is not significantly distinguishable from a known design or combination of known designs. The case made out by Luker Electric is that at best, the design of the Atomberg is nothing but a trade variant. It is then the case of Luker Electric that there are material differences in the rival designs and a table is placed on record to highlight the same. On the aspect of passing off also, it is submitted that no case is made out as per settled law, for the reasons that mere similarity of shape is not enough, but something more is required to claim the tort of passing off.

9. Learned Single Judge upon hearing learned counsel and

HIGH COURT OF JUDICATURE AT BOMBAY

upon perusing the pleadings and the documents on record, for the reasons mentioned in the order impugned, dismissed the interim application.

10. The interim application was filed for the following reliefs.

> "(a) that pending the hearing and final disposal of the suit, the Defendant by itself, its directors, dealers. stockists, distributors, servants, agents and all person claiming under or through it be restrained by a temporary order of injunction of this Hon'ble Court from infringing/pirating the Plaintiff's design of the said Atomberg Renesa Ceiling Fan bearing registration no.309694 in class 23-04 by the use of the Impugned Size Zero Fan 1 shown at Exhibit "H" and Impugned Size Zero Fan 2 at Exhibit "H-1"or any other fan which is a fraudulent or obvious or slavish imitation or resembling with the Plaintiff's said Atomberg Renesa Ceiling Fan;
> (b) that pending the hearing and final disposal of the suit, the Defendant by itself, its directors, dealers. stockists, distributors, servants, agents and all person claiming under or through it be restrained by a temporary order of injunction of this Hon'ble Court from manufacturing and/or selling and/or marketing and/or retailing and/or exporting and/or distributing and/or trading and/or exhibiting for sale and/or advertising and/or otherwise dealing in fans bearing the shape, configuration, design of the Impugned Size Zero Fan 1 shown at Exhibit "H" and Impugned Size Zero Fan 2 at Exhibit "H-1" or any other fan bearing shape or design which is identical with and/or deceptively similar to the shape, configuration, design of the Plaintiff's said Atomberg Renesa Ceiling Fan / said Atomberg Renesa Ceiling Fan, so as to pass off or enable others to pass off the Defendants' fan/goods as and for the Plaintiff's well-known fan/goods or in any other manner whatsoever,
> (c) that pending the hearing and final disposal of the suit, the Court Receiver, High Court, Bombay be appointed under Order XL Rule 1 of Civil Procedure Code, 1908, as

HIGH COURT OF JUDICATURE AT BOMBAY

the Receiver of the Defendant's impugned fans bearing shape, configuration, design which are a fraudulent or obvious or slavish imitation of and/or identical with and/or deceptively similar to the shape, configuration, design of the Plaintiffs said Atomberg Renesa Ceiling Fan / Atomberg Renesa Ceiling Fan for which the Plaintiff has secured design registration, with all powers to enter in the premises of the Defendant without giving notice to the Defendant and/or its director/s, servants, stockists, distributors and agents and all other persons claiming through and/or under it at any time of the day or night (including on Sundays, Court holidays and vacations) and with the help of the police, if necessary, with no costs to the Plaintiff, to break open the lock/s if deemed necessary, to seize and take charge, possession and control of the impugned fans and also to take control, charge and possession of moulds / dyes used for manufacturing the impugned fans, records, account books showing manufacture, stock and/or sale of the impugned fans bearing the impugned design in possession and control of the Defendant and/or its director/s, servants, stockists, distributors and agents and all other persons claiming through and/or under it:

(d) that pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to order and direct the Defendant, its director/s, servants, stockists, distributors and agents and all other persons claiming through and/or under it from giving and/or making complete disclosure of documents including revealing on oath: (a) the name/s and address/es of the people/parties to whom such goods have been sold, (b) the name/s and address/es of the people/parties who would have with them blocks, moulds, dyes, stencils, rollers, cylinders or other machinery used to manufacture the impugned fans bearing the impugned design as complained off hereinabove, (c) the Defendant's assets; and pursuant to such disclosures being made the Defendant be restrained from disposing of or dealing with its assets in any manner whatsoever including in a manner which may adversely affect the Plaintiff from recovering damages, costs or other pecuniary remedies from the Defendants as this Hon'ble Court may award."

HIGH COURT OF JUDICATURE AT BOMBAY

11. Mr. Tulzapurkar, learned Senior Advocate for Atomberg assailing the impugned order submitted that the learned Single Judge erred in relying upon the documents relied upon on behalf of Luker Electric especially at Exhibits Q, R and S which by no stretch of imagination depict the suit fan of Atomberg but bare perusal of the documents shows them depict different fan from Atomberg's Gorilla Renesa Fan and Atomberg Renesa+ fan. Learned Senior Advocate submitted that the Single Judge erred in relying upon these documents while forming an opinion that these documents create an impression that Atomberg's design was already in public domain and published prior to the date of registration i.e. 08.09.2018. Mr. Tulzapurkar submitted that the Single Judge was in error in appreciating the documents relied upon by Atomberg and the explanation thereto which in fact clearly indicates that the fan relied upon by the Luker to claim that it is in public domain is a distinct and different fan. Learned Senior Advocate submitted that Renesa+ fan was, in fact, produced before the Single Judge by Atomberg during the oral argument to demonstrate that it has a different design and different aesthetic appeal than the suit fan.

HIGH COURT OF JUDICATURE AT BOMBAY

12. Mr. Tulzapurkar was at pains to point out that the differences between the fans which Luker Electric claims to be in public domain and that of the suit fan are substantial and enough to make the design of the appellant's fan novel. It is submitted that Atomberg Renesa+ fan and Atomberg Ceiling fan which was produced during the hearing before the learned Single Judge clearly establishes that the aesthetic appeal of Atomberg Renesa+ fan and Atomberg Ceiling fan is completely different from the suit fan, especially, due to the difference in the size, curvature of the blade and the canopy of the motor of the fans. It is submitted that the learned Single Judge has not properly appreciated the law laid down by this Court in **Frito-Lay North America Inc and Ors. Vs. Balaji Wafers Pvt Ltd**.[1]

13. It is submitted that an important aspect overlooked by the learned Single Judge is that a change made in an already available design may be trivial when considered from the standpoint of some articles, but may, on the other hand, be substantial in case of some others as in the present case. It is, therefore, submitted that the entire approach of the learned Single Judge in holding that

1 2020 SCC OnLine Bom 2375

HIGH COURT OF JUDICATURE AT BOMBAY

publication of Atomberg Renesa+ fan amounts to prior publication of the suit design of the Atomberg Renesa Ceiling fan is contrary to the record. It is further submitted that the findings of learned Single Judge that the design of the suit fan i.e. Atomberg Renesa Ceiling fan is a trade variant is erroneous. It is submitted by learned Senior Advocate that the learned Single Judge has completely overlooked the claim made by the Atomberg in para 10 of the plaint wherein it claimed novelty in the aesthetic appeal i.e. shape and configuration of the suit fan along with the combination of feature and that aesthetic look and design along with feature set out in para 10 has never been combinedly used for any fan prior to the Atomberg's registration of its design on 08.09.2018. Our attention is invited to the decision of this Court in **Videocon Industries Ltd Vs. Whirlpool of India Ltd.**[2] to contend that if the product is designed with the purpose of making it more attractive to the buyer by giving it a particular pleasing shape, then the innovation lies in the aesthetic appeal.

14. An important aspect according to Mr. Tulzapurkar, overlooked by the learned Single Judge is that the design

2 2012 SCC OnLine Bom 1171

HIGH COURT OF JUDICATURE AT BOMBAY

registration dated 08.09.2018 of the suit fan is a single product of Atomberg and is just one of the many different fans sold by Atomberg under the house marks “ATOMBERG” AND “GORILLA” and the mere use of “ATOMBERG” AND “GORILLA” in respect of earlier fans from 08.09.2018 does not amount to prior publication and cannot be a ground to invalidate Atomberg’s design registration. It is submitted that the refusal of the injunction as prayed for by the Atomberg would have the effect of Luker continuing to exploit Atomberg’s exclusive rights and the loss caused to the Atomberg would be irreparable. Relying on Section 4(b) and 19(b) of the Designs Act, 2000, Mr. Tulzapurkar submitted that the learned Single Judge was in error in holding that the Atomberg’s design registration may be hit by the said provisions. It is further submitted that a cursory look at the Luker Electric’s fan compared with the suit fan indicates that the impugned design is fraudulent and obvious imitation of Atomberg’s registration design. Mr. Tulzapurkar further submitted that the test of defence of functionality is wrongly applied by learned Single Judge in the present case. Mr. Tulzapurkar emphasized that the design of the impugned fan has the same

HIGH COURT OF JUDICATURE AT BOMBAY

distinctive shape, configuration and combination features of the Atomberg's registered design and that Luker failed to provide any explanation about this similarity. It is submitted that irrelevant factors such as packaging of boxes containing rival products are taken into consideration by the learned Single Judge for arriving at a conclusion that the Atomberg is not entitled for injunction prayed for.

15. Even on the aspect of passing off, Mr. Tulzapurkar submitted that the vast documentary evidence in support of Atomberg's case has not been taken into consideration and that the learned Single Judge erred in applying the principles laid down in **Kemp & Company Vs. Prima Plastics Ltd.**[3] correctly in the contextual facts of the present case. In the facts of the present case much emphasis has been placed by learned Senior Advocate on the observation of the learned Single Judge that Atomberg has been unable to demonstrate 'something more' for claiming the reliefs in respect of passing off. It is strenuously urged that the learned Single Judge failed to apply the well settled principles governing the consideration and grant of interim reliefs in its correct perspective.

3 (1998) SCC OnLine Bom 437

HIGH COURT OF JUDICATURE AT BOMBAY

16. Shri Tulzapurkar relied upon the following decisions in support of his submissions.

(i) M/s. Kemp & Company & another vs. M/s. Prima Plastics Limited;

(ii) Torrent Pharmaceuticals Ltd vs Wockhardt Ltd;[4]

(iii) Torrent Pharmaceuticals Limited vs Wockhardt Ltd. & Ors. ;[5]

(iv) Wockhardt Ltd. vs Torrent Pharmaceuticals Ltd;[6]

(v) S. Syed Mohideen vs. P. Sulochana Bai[7];

(vi) Colgate Palmolive Company Ltd. vs. Patel & anr.[8];

(vii) Whirlpool of India Ltd. vs. Videocon Industries Ltd.[9];

(viii) Videocon Industries Limited vs. Whirlpool of India Limited[10];

(ix) Faber-Castell Aktiengesellschaft and Ors. vs. Cello Pens Pvt. Ltd. and anr.[11];

(x) Gorbatschow Wodka KG v. John Distilleries Ltd.[12];

(xi) Josco Rubbers vs. Asian Rubber Industries & Ors.[13];

(xii) Asian Rubber Industries & Ors. vs. Josco Rubbers & anr.

4 (2017) 6 AIR Bom R 306
5 2017 SCC OnLine Bom 9666
6 (2018) 18 Supreme Court Cases 346
7 (2016) 2 SCC 683
8 2005 SCC OnLine Del 1439
9 (2014) (60) PTC 155 (Bom)
10 (2012) 6 Bom CR 178
11 2016 (65) PTC 76
12 2011 SCC OnLine Bom 557
13 Order dated 23rd December 2011 in Notice of Motion No. 568 of 2012 in Suit (L) No. 2977 of 2011- Single Judge Bombay High Court

HIGH COURT OF JUDICATURE AT BOMBAY

[14];

(xiii) Faber-Castell Aktiengesellschaft vs. Pikpen Private Limited [15] ;

(xiv) Selvel Industries and Ors. vs. Om Plast (India)[16] ;

(xv) Philips Lighting Holding B.V. vs. Jai Prakash Agarwal and Ors.[17]

17. Mr. Ravi Kadam, learned Senior Advocate for Luker Electric argued in support of the findings of the learned Single Judge. Mr. Kadam submitted that the suit has been instituted to seek the reliefs qua alleged infringement of Atomberg's registered design for a ceiling fan as also for the tort of passing off. According to Mr. Kadam, Atomberg's design is 'prior published' and without prejudice, the suit fan is merely a 'trade variant'. On account of prior publication and trade variant, there is 'no novelty' in the suit fan and hence, it is his submission that learned Single Judge was justified in dismissing the interim application. Reliance is then placed on the relevant provisions of the Designs Act in support of the Luker Electric's case. It is further submitted that the Luker Electric's challenge to the validity of the suit fan's design

14 Order dated 06th March 2012 in Appeal No. 62 of 2012-Division Bench of Bombay High Court
15 (2003) 27 PTC 538
16 (2016) 67 PTC 286
17 2022 SCC OnLine Del 1923

HIGH COURT OF JUDICATURE AT BOMBAY

registration is on account of suppression of the fact that the suit design is hit by 'prior publication' and/or the suit fan is a 'trade variant' and that Atomberg did not disclose in its plaint that the suit fan had in fact been published prior to 08.09.2018 and in any event, is at best, a variant of other 'Renesa' range of fans that were existing in the market prior to 08/09/2018. Shri Kadam invited our attention to the materials on record containing social media posts, delivery challans and invoices to contend that the suit fan has been sold prior to 08/09/2018 and/or fans that are similar to the suit fan have been sold prior to 08/09/2018. Shri Kadam relied upon the following decisions in support of his submissions.

(i) Bhaskar Laxman Jadhav & Ors. Vs. Karamveer Kakasaheb Wagh Education Society & Ors.[18];

(ii) Dalip Singh vs. State of Uttar Pradesh & Ors. [19];

(iii) Kamakshi Builders vs. Ambedkar Educational Society & Ors.[20];

(iv) Gopal Krishnaji Ketkar vs. Mohamed Haji Latif & Ors.[21];

(v) Commissioner of Income Tax, Madras & Anr. Vs. MR. P Firm Muar [22];

(vi) A.C Jose vs. Sivan Pillai and Others [23];

18 (2013) 11 SCC 531
19 (2010) 2 SCC 114
20 (2007) 12 SCC 27
21 (1968) 3 SCR 862
22 (1965) 1 SCR 815 :AIR 1965 SC 1216 : (1965) 56 ITR 67
23 (1984) 2 SCC 656

HIGH COURT OF JUDICATURE AT BOMBAY

(vii) Faber Casetell Aktiengeselleschaft vs. M/s Pikpen Pvt. Ltd [24] ;

(viii) M/s Kemp & Company & Anr. vs. M/s Prima Plastics Ltd.[25];

(ix) Torrent Pharmaceuticals Ltd. vs. Wockhardt Ltd [26];

(x) Laxmikant V. Patel vs. Chetanbhai Shah & Anr.[27];

(xi) Cadila Health Care Limited vs. Cadila Pharmaceuticals Ltd.[28];

(xii) Mohan Lal vs. Sona Paint & Hardware [29];

(xiii) Crocs Inc. USA vs. Aqualite India Limited & Ors.[30];

(ivx) Carlsberg Breweries A.S. vs. Som Distilleries and Breweries Ltd.[31];

(xv) Crocs Inc USA vs. Bata India & Ors.[32] ;

(xvi) Whirlpool of India Ltd. vs. Videocon Industries Ltd.[33];

(xvii) Videocon Industries Limited vs. Whirlpool of India Ltd [34];

(xviii) Selvel Industries & Ors. vs Om Plast (India)[35];

(xix) Jasco Rubbers vs. Asian Rubber Industries and others [36];

(xx) Shyam Sel and Power Limited & Anr. vs. Shyam Steel Industries Limited [37] ;

---

24 2003 SCC OnLine Bom 461
25 1998 SCC OnLine Bom 437
26 2017 SCC OnLIne Bom 318
27 (2002) 3 SCC 65
28 (2001) 5 SCC 73
29 2013 SCC OnLine Del 1980
30 (2019) SCC OnLine Del 7409
31 (2018) SCC OnLine Del 12912
32 (2019) SCC OnLine Del 11956
33 MANU/MH/0639/2014
34 (2012) SCC OnLine Bom 1171
35 (2016) SCC OnLine Bom 6945
36 Decision of Bombay High Court in Suit (L) No. 2977 of 2011 dated 23/12/2011
37 (2023) 1 SCC 634

HIGH COURT OF JUDICATURE AT BOMBAY

(xxi) UTO Nederland B.V. & V/s. Tilak Nagar Industries Ltd.[38];

(xxii) Ramakant Ambalal Choksi v Harish Ambalal Choksi [39];

18. We have heard learned Senior Advocates at length. Before we proceed to deal with the rival contentions, it is important to bear in mind that the law relating to injunction in India has its origin in equity jurisprudence of common law. So far as the scope of appeal against the order of injunction is concerned, the decision of three Judge Bench of the Supreme Court in **Wander Limited Vs. Antox India Pvt. Ltd.**[40] is considered as locus classicus. The Supreme Court, in paragraph 14 has dealt with the scope of appeal against an order granting temporary injunction, which is extracted below for the facility of reference:

> "14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a

38 Appeal No. 66 of 2012
39 (2024) SCC OnLine SC 3538
40 1990 (Supp) SCC 727

HIGH COURT OF JUDICATURE AT BOMBAY

> contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) (P) Ltd. v. Pothan Joseph [Printers (Mysore) (P) Ltd. v. Pothan Joseph, (1960) 3 SCR 713 :
>
> > ' ... These principles are well established, but as has been observed by Viscount Simon in Charles Osention & Co. v. Johnston [Charles Osenton & Co. v. Johnston, 1942 AC 130 (HL)], AC at p. 138 : ….. The law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case".'

19. We may also refer to the decision of two Judge Bench in Supreme Court in **Ramakant Ambalal Choksi** (supra) which dealt with the appellate jurisdiction of the Court dealing with the appeal against the order of injunction and approved the principles laid down in **Wander Ltd.** (supra). In paragraphs 21, 26,30, 32, 35, 36, 37 it was held as under: -

> 21. The law in relation to the scope of an appeal against grant or non-grant of interim injunction was laid down by this Court in Wander Ltd. v. Antox India P. Ltd. reported in 1990 Supp SCC 727. Antox brought an action of passing off against Wander with respect to the mark Cal-De-Ce. The trial court declined Antox's plea for an interim injunction, however, on appeal the High Court reversed the findings of the trial judge. This Court, upon due consideration of the matter, took notice of two egregious errors said to have been committed by the High Court:
>
> > a. First, as regards the scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order; and
> >
> > b. Secondly, the weakness in ratiocination as to the quality of Antox's alleged user of the trademark on which the passing off action is founded.

HIGH COURT OF JUDICATURE AT BOMBAY

26. What flows from a plain reading of the decisions in Evans (supra) and Charles Osenton (supra) is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to:

a. Examine whether the discretion has been properly exercised, i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law; and

b. In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders.

30. This Court in Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd. reported in (2023) 1 SCC 634 observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. It further observed that if the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts.

32. The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well settled principles governing the scope of jurisdiction of appellate court under Order 43 fo the CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in the Wander (supra) case.

35. Any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough reported in (1878) 1 LR 1r 331, the Court observed that a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey in 106 NW 814, the Court defined “perverse” as “turned the wrong way”; not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

36. The expression "perverse" has been defined by various dictionaries in the following manner:

a. Oxford Advanced Learner's Dictionary of Current English, 6th Ed.

Perverse - Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

b. Longman Dictionary of Contemporary English - International Edition

HIGH COURT OF JUDICATURE AT BOMBAY

Perverse - Deliberately departing from what is normal and reasonable.

c. The New Oxford Dictionary of English - 1998 Edition

Perverse - Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

d. New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition)

Perverse - Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

e. Stroud's Judicial Dictionary of Words & Phrases, 4th Ed.

Perverse - A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

37. The wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises. Safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity. (See: Damodar Lal v. Sohan Devi and others reported in (2016) 3 SCC 78)"

20. This Court in **UTO Nederland B. V. & Anr. Vs. Tilaknagar Industries Ltd.** by an order dated 28.04.2025 in Appeal No. 66 of 2012 had an occasion to consider in detail the principles regarding scope of appeal against the order of granting or refusing injunction.

21. We have carefully perused the order passed by the learned Single Judge. As indicated earlier, Atomberg instituted a suit seeking reliefs alleging infringement of Atomberg registered design for the ceiling fan as also for the tort of passing off. The pleaded case in the plaint essentially shows that the 'Atomberg Renesa

HIGH COURT OF JUDICATURE AT BOMBAY

Ceiling Fan' was formally known as ' Atomberg Gorilla Renesa Celling Fan'. The suit fan was created in or around 2018 and registration to the design thereof was granted on 08.09.2018. Novelty of the suit fan's has been described in para 10 of the plaint. The case of Luker Electric is that Atomberg's design is prior published. Luker submitted that suit fan is merely a trade variant. It is the case of Luker that on account of prior publication and being a trade variant, there is no 'novelty' in the suit fan and hence no injunction could be granted in Atomberg's favour.

22. Luker contends that Atomberg did not disclose in its plaint that the suit fan has, in fact, been published prior to 08.09.2018 and in any event, is at best, variant of other 'Renesa' range of fan that existed in market prior to 08.09.2018. The materials such as social media posts, delivery challans and invoices, according to Luker proved beyond any reasonable doubt, that the suit fan has been sold prior to 08.09.2018 and fan similar to the suit fan has been sold prior to 08.09.2018. Luker relied upon the following materials in support of its case. Social media post of the fan, delivery challan dated 04.02.2018 of "Gorilla Renesa the Energy Efficient Premium Ceiling fan"; invoice dated 31.03.2018 of

HIGH COURT OF JUDICATURE AT BOMBAY

"Gorilla Energy Efficient Ceiling Fan; invoice dated 03.05.2018 and Gorilla Energy Efficient Fan; invoice dated 31.05.2018 of Gorilla Energy Efficient Ceiling fan; the plaintiff's catalog of "Rensa range of fan" which according to learned Senior Advocate for Luker demonstrates beyond doubt that all Renesa fans are in fact variants of each other. In our view, Atomberg was required to disclose the aspect of prior publication in the plaint in respect to its own fan which were prior and identical. Without disclosing the materials, Atomberg has tried to contend that the suit fan was entirely distinct and unique. We, therefore, find merit in the contention of learned Senior Advocate Shri Kadam that the suit fan was at best a trade variant of prior existing fan of Atomberg. Atomberg did not produce any of the aforesaid documents; and/or did not disclose that similar range of fans was published prior to 08.09.2018 and/or disclose how the suit fan, when viewed in comparison with the earlier fans of Atomberg, was novel or unique.

23. The provisions of the Designs Act, more particularly Sections 2(d), 4, 19 and 22 if perused would clearly reveal that if the design is not new or original or if it has been disclosed to the public and if it is not significantly distinguishable from

HIGH COURT OF JUDICATURE AT BOMBAY

combination of known designs, the registration itself cannot be granted. The learned Single Judge, in our opinion, was not in error in holding that the value of registration of a design stands diluted, if material is available to indicate that it was published prior to the date of its registration. In our opinion, there is adequate material on record, at least prima facie to infer that it was published prior to the date of its registration. We have already referred to hereinbefore the materials which are demonstrative of the fact that Atomberg's design of the ceiling fan was in public domain prior to the date of registration of design. In this context, we may refer to the observation of the lerned Single Judge in para 25 which reads thus:

> "25. This aspect becomes crucial for the purposes of the present application, when the said documents are read in conjunction with the pleading of the plaintiff in paragraph 8 of the plaint. It is specifically pleaded in paragraph 8 of the plaint that the ceiling fan of the plaintiff in question named Atomberg Renesa Ceiling Fan was formerly known as Atomberg Gorilla Renesa Ceiling Fan. The defendant is justified in contending that when such material is appreciated, it leads to the inference that Atomberg Gorilla Renesa Ceiling Fan and Atomberg Renesa Ceiling Fan are interchangeable. Although the plaintiff has tried in its rejoinder affidavit to explain the said aspect of the matter, inter alia, claiming that Atomberg and Gorilla are house-marks of the plaintiff and that with time, the

HIGH COURT OF JUDICATURE AT BOMBAY

> plaintiff gave up the use of the house-mark Gorilla, at this stage, this Court is of the opinion that such an explanation cannot come to the aid of the plaintiff, while deciding the application for interim reliefs. The stated stand taken in paragraph 8 of the plaint read with Exhibits Q, R and S, as also the delivery challans and invoices placed on record, do create an impression that the plaintiff's design was already in public domain and published prior to the date of registration i.e. 8th September, 2018. A perusal of the designs of the fans shown at Exhibits Q, R and S prima facie shows that they are similar to the registered design of the plaintiff. This indicates that the registration of plaintiff's design may itself be hit by Sections 4(b) and 19(b) of the Designs Act. When this Court is exercising discretion for grant of interim reliefs, the plaintiff not having disclosed the documents at Exhibits Q, R and S alongwith the delivery challans and invoices filed with the reply affidavit, is a crucial aspect of the matter and it indicates that the plaintiff is not entitled for grant of such interim reliefs."

24. So far as the aspect of novelty in originality claimed by Atomberg in the design of the suit fan is concerned, the learned Single Judge found the ceiling fan depicted by Atomberg at Exhibits Q, R and S which was in public domain is, prima facie, found to be almost similar to the registered design. If on the basis of the materials and even as the suit fan was produced before the learned Single Judge, it is held that the difference, if at all, is slight and trivial, we do not find any reason to warrant the conclusion such that it calls for interference having regard to the scope of this

HIGH COURT OF JUDICATURE AT BOMBAY

appeal against the order refusing to grant an injunction.

25. Learned Single Judge referred to the table of comparison between the rival designs, a perusal of which shows that on each aspect of the matter, including the canopy, rod, packing of the boxes containing remote associated with the rival products, prima facie indicates that there are differences in the products.

26. In so far as the passing off is concerned, the learned Single Judge in para 32 has observed thus:

> "32. Applying the said position of law, at this stage, while examining the aspect of prima facie case being made out for grant of interim reliefs, this Court is of the opinion that even if the Court was to proceed on the basis that the defendant has copied the design of the plaintiff, something more than mere similarity would have to be demonstrated by the plaintiff for successfully claiming interim reliefs. The plaintiff would have to show that prima facie, the defendant not only copied the design, but that the defendant was making a false representation. In this context, at this stage, the table of comparison of the rival products placed on behalf of the defendant in the reply affidavit, assumes significance, for the reason that apart from showing certain differences pertaining to the canopy, rod, etc., the defendant has also shown how the boxes and packaging of the rival products is different. Therefore, this Court finds that the plaintiff has not been able to make out that 'something more', as required under law, to successfully claim interim reliefs against the defendants, even on the aspect of passing off."

27. In view of the law enunciated by the Supreme Court in

HIGH COURT OF JUDICATURE AT BOMBAY

Wander Ltd (supra), it is evident that the appellate Court will not interfere with exercise of discretion of Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions.

28. In the facts of the present case, it is not possible for us to come to the conclusion that the discretion exercised by the learned Single Judge is arbitrary, capricious or contrary to the principles of law so as to warrant interference. The appeal is, accordingly, dismissed. No order as to costs.

29. The interim application also stands disposed of.

(M.S.KARNIK, J.) **(CHIEF JUSTICE)**