"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 5TH DAY OF JULY 2023 / 14TH ASHADHA, 1945

F.A.O. NO. 48 OF 2023

AGAINST THE ORDER DATED 20.03.2023 IN I.A.NO.2 OF 2022 IN O.S.NO.42 OF 2022 OF THE VI ADDITIONAL DISTRICT COURT, ERNAKULAM

APPELLANTS/RESPONDENTS/DEFENDANTS:

1 M/S MARIYAS SOAPS AND CHEMICALS
ALUMOOTTIL HOUSE, FATHIMAPURAM, CHANGANACHERRY, KOTTAYAM - 686102. REP. BY ITS AUTHORISED SIGNATORY, SOJI THOMAS.

2 M/S A.S. SOAPS AND CHEMICALS,
403 A, AMARA, THRIKKODITHANAM, CHANGANASSERRY, KOTTAYAM - 686546, REP. BY ITS AUTHORIZED SIGNATORY, SOJI THOMAS.

BY ADVS.
M.GOPIKRISHNAN NAMBIAR
K.JOHN MATHAI
JOSON MANAVALAN
KURYAN THOMAS
PAULOSE C. ABRAHAM
RAJA KANNAN

RESPONDENTS/PETITIONERS/PLAINTIFFS:

1 M/S WIPRO ENTERPRISES LIMITED
680,680-A1, SEAPORT AIRPORT ROAD, IRUMPANAM, ERNAKULAM, PIN – 682309, REP. BY ITS GENERAL COUNSEL, MR. DHYANESH SABINS.

**2 M/S WIPRO CHANDRIKA LIMITED,
WIPRO HOUSE, 6TH FLOOR, #8, 7TH MAIN, 80 FEET ROAD, KORAMANGALA, 1ST BLOCK, BANGALURU, KARNATAKA - 560034, REP. BY ITS AUTHORISED SIGNATORY, MR. DHYANESH SABINS.**

R1 & R2 BY SRI R.SANJITH

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR FINAL HEARING ON 12.06.2023, THE COURT ON 05.07.2023 DELIVERED THE FOLLOWING:

JUDGMENT **"C.R."**

P.G. Ajithkumar, J.

Defendants in O.S.No.42 of 2022 before the VI Additional District Court, Ernakulam are the appellants. They are aggrieved of the order of prohibitory injunction against them dated 20.03.2023 in I.A.No.2 of 2022 in O.S.No.42 of 2022. Assailing that order, they have filed this appeal under Order XLIII, Rule 1(r) of the Code of Civil Procedure, 1908.

2. This appeal was admitted on 30.05.2023. Respondents entered appearance through their learned counsel.

3. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents.

4. The respondents are the owners of the registered trade mark 'Chandrika'. Its original owner started using the said trade mark for his products in 1940. That trade name was registered in 1947. They got all India registration in 1976. Products of the respondents, especially Ayurvedic soap, is the most trusted product in the Country. They could garner

immense goodwill and reputation among the customers. Not only the brand name 'Chandrika', but its labels and packaging also have trade mark registration and all of them occupy a distinct position in the market. While so, the appellants marketed products with a deceptively similar name ‘Chandra’. They are also selling soap and similar other products. They have no right or authority to market their products using such a trade mark, since that would infringe the trade mark of the respondents. Moreover, by continuous use of the trade mark 'Chandrika' by the respondents, marketing of a product with such a similar trade name, would, in all probabilities, create confusion among the public, who are the consumers of the respondents’ products. Such an act of passing off is liable to be restrained. Immediately on noticing the fact that the appellants are marketing such a product, the respondents issued a cease and desist notice to the 2nd appellant on 24.02.2022. The appellants, however, continued marketing of their products and in such circumstances the respondents filed the suit and the application for temporary injunction, I.A.No.2 of 2022.

5. The appellants resisted the said application by filing a counter-affidavit. They would contend that the 1st appellant obtained registration for the trade mark 'Chandra' on 27.08.2020 for products included in Class-3, namely, bleaching preparations and other substances for laundry use, clearing, polishing, scouring and abrasive preparations; soaps, perfumery, essential oil and cosmetics. Their trade name 'Chandra' is phonetically and visually distinct. The meaning of the trade names are also different. The product of the appellants are easily distinguishable by any ordinary prudent man. The 2nd appellant was the proprietor of the firm, but she stopped selling the products using the name 'Chandra'. The 1st appellant is marketing his products using the trade name 'Chandra'. The labels and wrappers used by the appellants have no similarity with those used by the respondents. The respondents are marketing only ayurvedic soap; whereas the appellants are marketing totally different products. Colour scheme, style of writing, etc. used by the appellants to market their products are totally different from those used by the respondents, and there cannot be any confusion in the minds of the customers on seeing these products. Since the

appellants have trade mark registration to their products, the respondents have no right to claim an injunction against them. Accordingly, the appellants sought to dismiss the application for temporary injunction.

6. Exts.A1 to A10 were produced by the respondents and Ext.B1 to B5 were produced by the appellants. After considering the said documents and submissions of both sides, the learned Additional District Judge found that the trade mark ‘Chandra’ is deceptively similar to the trade mark ‘Chandrika’. Further, it was held that the colour combination, writing style and design which are used by the appellants to market their products also have close resemblance and amount to infringement of the respondents’ trade mark. Also, holding that both products are of the same category and class, the appellants' using the said trade mark creates confusion in the minds of ordinary consumers. Accordingly, the learned Additional District Judge allowed I.A.No.2 of 2022. The appellants are restrained from offering products or services using the trade mark ‘Chandra’ or any mark or name similar to the trade mark ‘Chandrika’ as well as packaging, colour scheme and writing style being used to market the products of the respondents.

7. The learned counsel appearing for the appellants, at the outset, would submit that since both the appellants and the respondents have valid registration for their respective trade marks, no injunction should have been ordered by the court below. The learned counsel would submit that in view of the provisions of Section 28 of the Trade Marks Act, 1999 a registrant has exclusive right to use the trademark in relation to the goods or services in respect of his registered trade mark, and therefore the plea that the respondents obtained registration on an earlier point of time is not of avail to them to seek an order of injunction alleging infringement of their trademark. It is further contended that the respondents instituted the suit and filed I.A.No.1 of 2022 with the definite plea of infringement of their registered trade mark, and not passing off and therefore, they are not entitled to get a prohibitory injunction. It is accordingly contended that the impugned order is liable to be set aside.

8. The learned counsel appearing for the respondents, on the other hand, would submit that the respondents have been marketing their products using the name ‘Chandrika’ since 1940 and the reputation and the acceptance they wield

to their products in the market cannot be passed off by the appellants on the strength of the registration of trade mark they recently had obtained, issuance of which itself is illegal. It is their contention that having enjoyed the right to market their products for such a long period and the name 'Chandrika' has become synonymous with their products, the appellants are liable to be restrained from marketing their products using such a deceptively similar name and packaging materials, dehors the registration they have obtained.

9. The fact that the respondents have trade mark registration for the trade name 'Chandrika', label and carton is evident from Exts. A4 to A8. Similarly, Ext.B1 would show that the 1st appellant obtained trade mark registration for 'Chandra' in respect of his products. Both sides obtained registration with respect to the products in clause 3 in the Schedule under the Trade Marks Act. While the respondents are marketing ayurvedic soap using their registered trade mark 'Chandrika' they have obtained in respect of their products, cartons and labels, the appellants are marketing washing soap and detergents using their trade name 'Chandra'. Going by the pleadings in the plaint and the

affidavit in I.A.No.1 of 2022, the products being marketed by the respondents are all ayurvedic bath soaps. Thus, the respondents are marketing bath soap and appellants are marketing washing soap and other products essentially used for washing clothes.

10. Soap is one of the products included in Clause 3 of Schedule IV to the Trade Marks Rules, 2002. The contention of the respondents is that the products marketed by the appellants have close similarities with the products of the respondents and are of the same class, and therefore the appellants cannot be allowed to infringe their trademark. The pertinent question is, whether the respondents have the right to claim a prohibitory injunction since both of them hold valid trade mark registration for their respective products.

11. In **S. Syed Mohideen v. P. Sulochana Bai [(2016) 2 SCC 683]**, the Apex Court considered the scope of an action for infringement by one registrant against another registrant of a trade mark. The procedure for registration of a trade mark contained in Chapter III of the Trade Marks Act are narrated in paragraph Nos. 15 to 17 which are extracted below,-

"15. Procedure for registration of the trade mark is provided from Section 20 to 23 of the Act. As per Section 20, when such an application is accepted for registration, the Registry is supposed to advertise the same in the prescribed manner. The purpose of advertising is to afford the public at large an opportunity to oppose the registration of the mark. After the advertisement, such a right to oppose the registration conferred on every member of the public as 'any person' can file objections under Section 21 of the Act. An opposition is to be made within four months from the date of advertisement/re-advertisement. Once opposition(s) is/are received, the Registrar is to serve a copy of the same to the applicant and within two months thereof the applicant is entitled to file a counter-statement of the grounds on which he relies for his application. In case the applicant does not file such a counter statement, it is deemed that he has abandoned his application. On the other hand, if the counter statement is submitted by the applicant, copy thereof is to be served upon the person giving notice of opposition. Thereafter, both the applicant as well as opponent are given an opportunity to file their respective evidence. After receiving such evidence, the Registrar is duty bound to give an opportunity of hearing to both of them, if they so desire. After hearing the parties and considering the evidence, the Registrar is to take a decision as to whether he would be permitting the registration or rejecting the application. At this stage,

if the Registrar feels that the mark considered as a whole is likely to create confusion, he is empowered to refuse the registration. Once the application is accepted and either there is no opposition thereto within the time permitted to file such objections or objections, if filed, are decided in favour of the applicant, the Registrar shall, unless the Central Government otherwise directs, register the said trade mark and this process is to be completed within 18 months of the filing of the application.

16. Section 23 mandates such a registration and further provides that the trade mark when registered shall be registered as on the date of making of the said application and that date shall, subject to the provisions of Section 154, be deemed to be the date of registration. Section 24 deals with jointly owned trade marks with which are not concerned in the present case. Thereafter, Section 25 provides for duration, renewal, removal and restoration of registration. Duration of the trade mark, as per Section 25(1) of the Act, is 10 years which can be renewed for a period of 10 years from the date of expiration of the original registration. Sub-section (2) thereof permits renewal of registration of the trade mark for a further period of 10 years from the date of expiration of the original registration or of the last renewal of registration, as the case may be, on payment of prescribed fee. If the duration of trade mark has lapsed and the applicant does not take steps to renew thereof, sub-section (3) of Section 25

enables the Registrar to remove the trade mark from the register, after following the procedure contained in the said sub-section.

17. From the aforesaid procedure contained in Chapter III pertaining to registration, two things become apparent which may be recapitulated as under:

(i) When the application for registration is received and accepted, a public notice thereof is given by publishing an advertisement thereby affording an opportunity to public at large to file any opposition to the said application.

(ii) While considering such application for registration of a trade mark, the Registry would, among others, consider as to whether the trade mark as a whole is likely to create confusion. If it is so, he may refuse the registration."

12. The effect of registration of a trade mark is provided for in Chapter IV of the Trade Marks Act. The Apex Court in **S. Syed Mohideen [(2016) 2 SCC 683]** described the effect and consequences of registration of a trade mark in paragraphs No. 20 to 22 as follows,-

"20. Section 28 which is very material for our purpose, as that provision confers certain rights by registration, is reproduced below in its entirety:

"28. Rights conferred by registration. - (1) Subject to the other provisions of this Act, the registration

of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

(2) The exclusive right to the use of a trade mark given under sub-section (1) shall be subject to any conditions and limitations to which the registration is subject.

(3) Where two or more persons are registered proprietors of trade marks, which are identical with or nearly resemble each other, the exclusive right to the use of any of those trade marks shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by any one of those persons as against any other of those persons merely by registration of the trade marks but each of those persons has otherwise the same rights as against other persons (not being registered users using by way of permitted use) as he would have if he were the sole registered proprietor."

21. A bare reading of this provision demonstrates the following rights given to the registered proprietor of the trade mark.

(i) Exclusive right to use the trade mark in relation to the goods or services in respect of which the

trade mark is registered.

(ii) To obtain relief in respect of infringement of trade mark in the manner provided by this Act.

22. Sub-section (3) of Section 28 with which we are directly concerned, contemplates a situation where two or more persons are registered proprietors of the trade marks which are identical with or nearly resemble each other. It, thus, postulates a situation where same or similar trade mark can be registered in favour of more than one person. On a plain stand alone reading of this Section, it is clear that the exclusive right to use of any of those trade marks shall not be deemed to have been acquired by one registrant as against other registered owner of the trade mark (though at the same time they have the same rights as against third person). Thus, between the two persons who are the registered owners of the trade marks, there is no exclusive right to use the said trade mark against each other, which means this provision gives concurrent right to both the persons to use the registered trade mark in their favour. Otherwise also, it is a matter of common sense that the plaintiff cannot say that its registered trade mark is infringed when the defendant is also enjoying registration in the trade mark and such registration gives the defendant as well right to use the same, as provided in S.28(1) of the Act."

(underline supplied)

13. The law laid down in the aforesaid decision that an owner of a registered trademark cannot sue for infringement of his registered trademark if the opposite party also has the trade mark which is registered, certainly disentitles the respondents from claiming a prohibitory injunction restraining the appellants from using their registered trade mark on the ground of infringement. In such a case the person who obtained registration of a trade mark at an earlier point in time is not remediless. He can certainly approach the Registrar or the High Court, as the case may be, for rectification or cancellation of the offending trade mark invoking the provisions contained in Chapter VII of the Trade Marks Act. The question immediately arises is, whether the respondents are entitled to claim relief based on the alleged passing off?

14. Section 27 of the Trade Marks Act provides that no action for infringement will lie in respect of an unregistered trade mark. However, Section 27(2) recognises the common law rights of a trade mark owner to take action against any person for passing off his goods or services as the goods or services of the former. Section 27 reads as under:-

"27. No action for infringement of unregistered trade

> mark.- (1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark.
> (2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods or services as the goods of another person or as services provided by another person, or the remedies in respect thereof."

15. In **S. Syed Mohideen [(2016) 2 SCC 683]** the Apex Court further examined the question, when an action on passing off can be brought by a registered trade mark owner. After considering Section 27(2) vis-a-vis Section 28(3) of the Trade Marks Act it was held as follows,-

> "Having said so, a very important question arises for consideration at this stage, namely, whether such a respondent can bring an action against the appellant for passing off invoking the provisions of S.27(2) of the Act. In other words, what would be the interplay of S.27(2) and S.28(3) of the Act is the issue that arises for consideration in the instant case. As already noticed above, the trial court, as well as High Court, has granted the injunction in favour of the respondent on the basis of prior user as well as on the ground that the trade mark of the appellant, even if it is registered, would cause deception in the mind of public at large and the appellant is trying to encash upon, exploit and ride upon on the goodwill of the

> respondent herein. Therefore, the issue to be determined is as to whether in such a scenario, provisions of S.27(2) would still be available even when the appellant is having registration of the trade mark of which he is using. After considering the entire matter in the light of the various provisions of the act and the scheme, our answer of the aforesaid question would be in the affirmative." (underline supplied)

16. Thus, the Apex Court held that the right of action of a person for passing off his goods or services and remedies thereof are not affected by the provisions of the Trade Marks Act. What emerges therefore is the registration of a mark shall give exclusive rights to the use of the trade mark subject to the other provisions of the Trade Marks Act. The rights granted by the registration in the form of exclusivity are not absolute but are subject to the provisions of the Act. Section 28(3) of the Trade Marks Act provides that the rights of two registered proprietors of identical or nearly resembling trademarks shall not be enforced against each other. However, they shall have the same rights as against the third parties. Further, the rights in passing off are emanating from the common law and not from the provisions of the Act and they are independent of the rights conferred by the Act.

17. In **S. Syed Mohideen [(2016) 2 SCC 683]** the Apex Court discussed about the requirements to be established for initiating an action on passing off and held as follows,-

> "Traditionally, passing off in common law is considered to be a right for protection of goodwill in the business against misrepresentation caused in the course of trade and for prevention of resultant damage on account of the said misrepresentation. The three ingredients of passing off are goodwill, misrepresentation and damage. These ingredients are considered to be classical trinity under the law of passing off as per the speech of Lord Oliver laid down in the case of Reckitt & Colman Products Ltd. v Borden Inc., 1990 (1) All E.R. 873 which is more popularly known as "Jif Lemon" case wherein the Lord Oliver reduced the five guidelines laid out by Lord Diplock in Erven Warnink v. Townend & Sons Ltd., 1979 AC 731, 742 (HL) (the "Advocate Case") to three elements,
>
> (1) Goodwill owned by a trader,
>
> (2) Misrepresentation, and
>
> (3) Damage to goodwill.
>
> Thus, the passing off action is essentially an action in deceit where the common law rule is that no person is entitled to carry on his or her business on the pretext that the said business is of that of another."

18. The respondents ought to prove all the three elements which are considered to be the "classical trinity", goodwill, misrepresentation and damage if to get the appellants restrained from marketing their products. In **Cadila Healthcare Limited v. Cadila Pharmaceuticals Ltd. [(2001) 5 SCC 73]**, the Apex Court held thus,-

> "No doubt, where the evidence in respect of passing off consists merely of the colourable use of a registered trade mark, the essential features of both the actions might coincide in the sense that what would be a colourable imitation of a trade mark in a passing off action would also be such in an action for infringement of the same trade mark. But there the correspondence between the two ceases. In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiffs and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, 'if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different

> from that of the registered proprietor of the mark would be immaterial; whereas in the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff. " (underline supplied)

19. Insofar as 'goodwill' is concerned, there cannot be much dispute. The respondents started using the trade mark 'Chandrika' for their products, Ayurvedic soap, in 1940. They got the trade name registered in 1947. Their claim that they got pan India registration in 1976 and their products could garner immense goodwill and reputation among the customers is *prima facie* evident from the data furnished by them. Not only the brand name 'Chandrika', but its labels and packaging also have trade mark registration and all of them have a distinct appearance and acceptance in the market.

20. The respondents allege that by marketing soap with the trade name, 'Chandra" which has phonetic similarity with the trade name, 'Chandrika' and using labels, colour schemes and designs that have close similarities to the ones being used by the respondents, the appellants committed the mischief of misrepresentation of the respondents' trade mark and products.

21. In **Cadila Healthcare Limited [(2001) 5 SCC 73]**, the Apex Court delineated the difference the courts in India have to have in regard to the misrepresentation on account of marketing a similar product by another. The Apex Court also laid down the principle as to what would amount to damage insofar as non-medicinal products are concerned. It was held as follows,-

> "The decisions of English courts would be relevant in a country where literacy is high and the marks used are in the language which the purchaser can understand. While English cases may be relevant in understanding the essential features of trade mark law but when we are dealing with the sale of consumer items in India, you have to see and bear in mind the difference in situation between England and India. Can English principles apply in their entirety in India with no regard to Indian conditions ? We think not. In a country like India where there is no single common language, a large percentage of population is illiterate and a small fraction of people know English, then to apply the principles of English law regarding dissimilarity of the marks or the customer knowing about the distinguishing characteristics of the plaintiff's goods seems to over look the ground realities in India. While examining such cases in India, what has to be kept in mind is the purchaser of such

goods in India who may have absolutely no knowledge of English language or of the language in which the trade mark is written and to whom different words with slight difference in spellings may sound phonetically the same. While dealing with cases relating to passing off, one of the important tests which has to be applied in each case is whether the misrepresentation made by the defendant is of such a nature as is likely to cause an ordinary consumer to confuse one product for another due to similarity of marks and other surrounding factors. What is likely to cause confusion would vary from case to case. However, the appellants are right in contending that where medicinal products are involved, the test to be applied for adjudging the violation of trade mark law may not be at par with cases involving non medicinal products. A stricter approach should be adopted while applying the test to judge the possibility of confusion of one medicinal product for another by the consumer. While confusion in the case of non medicinal products may **only** cause economic loss to the plaintiff, confusion between the two medicinal products may have disastrous effects on health and in some cases life itself. Stringent measures should be adopted specially where medicines are the medicines of last resort as any confusion in such medicines may be fatal or could have disastrous effects. The confusion as to the identity of the product itself could have dire effects on the public health. (emphasis supplied)

22. The learned Additional District Judge compared the trade name, the label, the colour combination, writing style and design on the labels being used by the appellants with those used by the respondents. After a detailed consideration and juxtaposition, it was held that the label, the colour combination, writing style and design on the labels used by the appellants have resemblance and deceptive similarity with those used by the respondents. The court below concluded that there is every likelihood of creating confusion in the minds of ordinary consumers between the products of the appellants and the respondents. Having had a detailed analysis of the pleadings and the description of the products, labels and colour themes given in the plaint and the objection filed by the appellants, we find no reason to deviate from the aforesaid view of the court below. Therefore, the question as to the appellants' marketing of their products - washing soap and detergents amounts to misrepresentation of the products of the respondents can only be answered in the affirmative and we do so.

23. This takes us to the next question, whether the appellants’ marketing their products using the trade mark

'Chandra' resulted in damage to the goodwill of the respondents. In the light of the observation in **Cadilla** above, the question of damage on account of misrepresentation can be decided only with reference to the economic loss occasioned by the respondents in the market on account of the appellants' selling similar products.

24. Admittedly the appellants started marketing their products in 2020. As pointed out above, the respondents are marketing Ayurvedic bath soap; whereas the appellants are marketing washing soap and bleaching preparations for laundry use. Although both parties are marketing soaps coming in class 3 of the Schedule of products under the Trade Marks Rules, the purpose of those products are totally different. In that background; both law and facts, the details of market share of the products of the respondents in the successive years tabulated in the plaint assumes importance, which is extracted below:

Period	Number of Stores	Market Share
Jan-Mar,2017	96,881	7.3%
Apr-Jun,2017	97,857	7.3%
Jul-Sep,2017	95,226	7.7%
Oct-Dec,2017	98,886	7.1%

Jan-Mar,2018	97,327	7.9%
Apr-Jun,2018	99,997	8.0%
Jul-Sep,2018	96,816	8.1%
Oct-Dec,2018	101,375	8.2%
Jan-Mar,2018	104,779	8.2%
Apr-Jun,2019	104,933	8.4%
Jul-Sep,2019	106,548	7.9%
Oct-Dec,2019	103,618	8.1%
Jul,21-Sep,2021	117,987	7.8%
Oct-Dec,2021	121,971	8.0%
Jan-Mar,2022	121,992	7.9%
Apr-Jun,2022	121,475	8.0%

25. It is a matter of common knowledge that in 2020 and 2021 the market was so hazy and uncertain on account of the spread of COVID-19. The data for the year 2020 are not furnished by the respondents, and the reason is obvious. From the data given in the said table, it can be seen that the market share of the respondents' products did not suffer any notable diminution after 2020, in which year the appellants started to market their products. The maximum market share commanded by their products is 8.4%, which was during the quarter - April to June, 2019. Before and after that, it has been around 8%. Therefore, it cannot be said that as a result of appellants marketing their

products using the trade mark 'Chandra' the respondents had sustained any economic loss or damage. Their market share has not been affected. In that view of the matter, it cannot be said that the third element to attract a passing off action is not established by the respondents. Therefore, the respondents are not entitled to get an order of injunction based on the allegations of passing off. Hence, the impugned order needs interference.

Accordingly, the order dated 20.03.2023 in I.A.No.2 of 2022 in O.S.No.42 of 2022 is set aside and this appeal is allowed.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

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