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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	*21.12.2024*
Pronounced on	*02.01.2025*

CORAM:

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

C.S. No.391 of 2004

1. Thermo Electrics Madras Manufacturing,
   A Partnership concern,
   Rep. by its Partner Mrs.Suman Toshniwal,
   No.267, Kilpauk Garden Road,
   Kilpauk, Chennai – 600 010.

2. Toshniwal Instruments (Madras) Pvt. Ltd.,
   Rep. by its Director Mr.Prabhat Toshniwal,
   No.267, Kilpauk Garden Road,
   Kilpauk,
   Chennai – 600 010. ... Plaintiffs

Vs.

1. P.R.Gopalakrishnan
   Proprietor and trading as
   M/s.Gopal Instruments,
   No.68, Chellappa Mudali Street,
   Kosapet, Perambur Barracks,
   Chennai – 600 012.

2. Ms.V.S.Radha,
   Proprietrix and trading as
   M/s.A.V.Exports,
   No.68, Chellappa Mudali Street,
   Kosapet, Perambur Barracks,
   Chennai – 600 012.

... Defendants

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Civil Suit is filed under Order IV Rule 1 of Original Side Rules r/w. Order VII Rule 1 of Civil Procedure Code read with Sections 22 of the Designs Act, 2000, to pass a judgment and decree for:

a) granting a permanent injunction, restraining the defendants, their men, agents, assignees, dealers and / or retailers from committing acts of piracy by resorting to fraudulent imitation of registered design No.193288 dated 22.09.2003 of the plaintiff for Extraction Mantle;

b) granting a permanent injunction, restraining the defendants, their men, agents, assignees, dealers and / or retailers from committing acts of piracy by resorting to fraudulent imitation of registered design No.193289 dated 22.09.2003 of the plaintiff for Extraction Mantle;

c) granting a permanent injunction, restraining the defendants, their men, agents, assignees, dealers and / or retailers from committing acts of piracy by resorting to fraudulent imitation of registered design No.193290 dated 22.09.2003 of the plaintiff for Heating Mantle;

d) granting a permanent injunction, restraining the defendants, their men, agents, assignees, dealers and / or retailers from committing acts of

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piracy by resorting to fraudulent imitation of registered design No.193291 dated 22.09.2003 of the plaintiff for Heating Mantle;

e) for a preliminary decree directing the defendants to render true accounts of profits made by them and the defendants by unauthorisedly using the registered designs of the first plaintiff;

f) directing the defendant to surrender to the plaintiffs for destruction all the dies, fixtures, diagrams, tools, drawings, blueprints, transparencies and any other materials used for pirating the first plaintiff's registered design No.193288, 193289, 193290, 193291 and stocks of offending laboratory apparatus, inventories, machineries such as heating mantles and extraction mantle manufactured, work in progress or made ready by committing piracy of the aforesaid registered designs of the first plaintiff and offending advertising materials, books of accounts, invoices, purchase orders and other documents containing information's / entries containing the details of piracy of the first plaintiff's aforesaid registered design;

g) directing the defendants to pay jointly and severely pay the plaintiffs a sum of Rs.20,00,000/- towards damages inflicted on the plaintiffs on account of the piracy of the registered designs Nos. 193288, 193289, 193290 & 193291 of the first plaintiff by the defendants together with

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interest from the date of plaint till the date of realisation;

h) to pay costs of the suit.

For Plaintiffs : Mr.Anish Kumar

For Defendants : M/s.S.Rama Subramaniam & Associates

JUDGMENT

This Civil Suit has been filed by the plaintiff seeking the relief of permanent injunction restraining the defendant from committing acts of piracy by resorting to fraudulent imitation of registered design Nos. 193288, 193289, 193290 & 193291 dated 22.09.2003 of the plaintiff for Extraction and Heating Mantle, to direct the defendants to render true account of profits made by them and to surrender to the plaintiffs the dies, fixtures, tools etc., for destruction and to direct the defendants to pay jointly and severely a sum of Rs.20,00,000/- towards damages inflicted on the plaintiffs on account of piracy of the registered design Nos. 193288, 193289, 193290 & 193291 of the first plaintiff by the defendants.

2. **The averments made in the plaint are as follows:**

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The plaintiffs are engaged in the manufacture of Extraction Mantles, Heating Mantles and Heating Elements etc., (hereinafter to as "laboratory apparatus and / or instruments and / or equipments) since the year 1977. The design in respect of these products have undergone some changes, innovation and sophistication since their introduction in the year 1977. The plaintiffs have spent enormous amount and time spanning over three and half decade in developing new designs. The plaintiffs also manufacture and market some of the older models of Heating Mantles and Extraction mantles with their old designs. The preliminary diagrams in respect of the new designs for Heating and Extraction Mantles were prepared sometime in the month of June, 2002.

2.1 The plaintiffs finally introduced two new designs each for its Extraction Mantles and Heating Mantles in the month of September, 2003 and the employees of the plaintiff's had access to information and innovation that were being carried out by the plaintiffs. Thus the first defendant namely P.R.Gopalakrishnan, who was an employee of the second plaintiff from the year 1981 to December, 2002 had access to all the developments that were being carried out by the plaintiffs. The said P.R.Gopalakrishnan, when he

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was an employee of the second plaintiff, was assigned the task of handling the supervision, manufacture and execution of purchase orders for laboratory apparatus manufactured by the plaintiffs. Subsequently, he was promoted on 01.06.1993 as Assistant Administrative Manager wherein his responsibilities *inter alia* included handling and execution of export orders, customer correspondence, visiting foreign customers, safekeeping of design and drawings of heating mantles / extraction mantles and other products of the plaintiffs. As the second plaintiff was the exclusive dealer of the products manufactured by the first plaintiff, the first defendant was in a position to interact with the personnel and staff of the first plaintiff. He had also access to all the documents, designs, trade secrets, technical information, data specifications, blue prints, transparencies, test data, additions, modification and improvement, unpatented invention / innovation, pricing pattern etc. On account of the employment and confidence the first defendant enjoyed with the management of second plaintiff, the first defendant had complete access of the trade secrets as well. Thereafter, the first defendant was relieved from the plaintiff's company on 31.12.2002 in view of the resignation letter submitted by him. After his resignation, the first defendant continued to visit the office of the second plaintiff for a short period in order to assist the new

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employee who took over his place. However, it was clearly agreed with the first defendant that even after he ceased to be an employee, he has to maintain strict confidentiality and not to divulge the know-how, trade secrets, designs, etc., or put the same to authorized use and the first defendant also agreed that all these details and datas were held by him in trust. The first defendant was given free hand and liberty to interact and build relationship with the customers of the second plaintiff.

2.2 It was found by the plaintiffs that the defendants were trading in the similar products as that of the plaintiffs using the same design of the plaintiff's products and it is the said P.R.Gopalakrishnan, the first defendant herein, who has been marketing the products with the plaintiff's customer and was dumping same products in piracy and violation of the first plaintiff's registered designs by fraudulently imitating the registered design at a lower cost. On further examination, it was found that both the defendants are carrying business for the same precincts. The plaintiffs came across the brochure used by the defendants wherein it was found that the defendants were trading in the same products as that of the plaintiffs using the same design of the plaintiffs in the name of “AVLAB”. The defendants were

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trading in the name and style of “Gopal Instruments” and “A.V.Exports”. In fact the brochure of the defendants was a copy from that of the plaintiffs and the product design have been exactly copied from that of the plaintiff's products. Thus the defendants have rendered themselves liable for an action of piracy of designs by fraudulent imitation of the registered designs of the first plaintiff.

2.3 The first defendant was offering the same product as that of the plaintiff's product with lesser price and thereby eroded the plaintiff's customer base. The plaintiff is not aware of this relationship with the second defendant, M/s.V.S.Radha Proprietix of A.V.Exports. The first defendant was procuring the parts / raw materials / components from some of the plaintiff's suppliers and is using the services of the job workers. The second plaintiff had also issued a conduct certificate under a *bona fide* belief that the first defendant would not misuse any of the trade secret and industrial design in prejudice and to the detriment of the plaintiffs.

2.4 The plaintiffs are also entitled for damages on account of loss of business opportunity and breach of trust by the first defendant for weaning

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away customers. The fall in the sale is primarily on account of the fraud perpetrated by the defendants. The defendants have rendered themselves for damages inflicted on the plaintiff. Under these circumstances, the plaintiff is quantifying the damages at Rs.20,00,000/- and prays for payment of appropriate Court fee.

2.5 The first plaintiff put enormous amounts, time and research in creating the designs in building good reputation and goodwill. The first defendant, having been in the services of the plaintiffs and having interacted with the staff and personnel of the first plaintiff is well aware of the efforts and money spent in creating the designs, building up their client reputation and goodwill. Having personally interacted with the clients of the plaintiffs as an employee of the plaintiffs and gaining the trade secrets, the first defendant should not be allowed to make personal gains contrary to the secrecy agreement signed by him and the provisions of the Designs Act, 2000. By his fraudulent and contumacious act in fraudulently imitating the registered design of the first plaintiff, the first defendant has weaned away two of the regular clients of the plaintiffs thereby creating loss to the business of the plaintiffs. Hence, the plaintiffs are also entitled to damages in

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respect of the same.

3. **Denying the averments made in the plaint, the first defendant has filed his written statement and in which it is stated as under:**

The first defendant is employed as a Manager with the second defendant company since January, 2003. There exists no company or firm in the name of M/s.Gopal Instruments and hence it is not known as to how the plaintiffs have chosen to array the first defendant as the proprietor of the said M/s.Gopal Instruments. Moreover, there is no entity in the name and style of the defendant i.e. M/s.Gopal Instruments, either company or partnership which is represented by Mr.Gopalakrshnan. The name M/s.Gopal Instruments has been used only in the name plate and brochures of the products namely Heating mantles and Extraction mantles which are sold by the second defendant company for one particular dealer only. Hence, the plaint is liable to be dismissed on the ground of joinder of wrong parties as no entity exists in the name of the first defendant.

3.1 The second defendant started its business in the month of August, 2001 and is engaged in exports of various laboratory and scientific

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instruments. The second defendant buys goods from various supplies of raw-materials from various states of India and exports the finished products after some fabrication by independent contractors to various countries. From the month of January, 2003, the second defendant had started dealing with heating mantles and extraction mantles on the basis of public available designs and with suitable modifications of their own. The second defendant has no workshop, factory or labour or any tools, fixtures, dies to manufacture heating mantles and does not manufacture heating mantles and farms out all the stages of fabrication to third persons. The heating mantles are manufactured by another person who buys the raw materials for the same and he is being paid labour charges on a piece rate basis by the second defendant. The said person is not a regular employee of the second defendant and there is no contract with him for manufacturing the mantles.

3.2 The plaintiffs have registered the extraction mantles and heating mantles under Clause 24-02 as design No.193288 to 193291 on 22.09.2003. However, the second defendant started dealing with heating mantles from the month of January, 2003 and was in existence from the year 2001 and the same is evident from the Sales Tax Registration of the second defendant.

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Hence, it is absolutely false to allege that after leaving the services of the second plaintiff, the first defendant started manufacturing mantles similar to that of the impugned designs. The second defendant is in the business for the past 6 years and has a good reputation for its products. The designs which have been registered by the plaintiffs have been in vogue for the past 25 years in several parts of India and the World. The said designs are not at all the "invention" of the plaintiff. The impugned designs bearing No.193288, 193289 and 193290 have been actually copied from United Kingdom based companies named M/s. Electro Thermal and Isopad respectively, who are the World Leader in manufacturing Heating Mantles. The said facts are evident from the products catalogue published by the respective companies which relates to past years. The fact that the impugned designs were developed by the plaintiffs in June, 2002 is totally false as the products of identical design was exhibited by the plaintiffs themselves in the International Exhibitions. It is also false to state that the impugned designs are very much generic and are common laboratory items since several firms and companies are manufacturing the said products in India under the same deign or with some slight variation in the design.

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3.3 In the year 1990 the second plaintiff exported some of their mantles manufactured under the impugned designs to a company called 'M/s.Camfotech' in Netherlands who was their Dealer in the said Country. The said Dealer printed its own catalogue for Heating Mantles under the name “Comfotech – Toshniwal”. The photographs of Mantles bearing design Nos.193288 and 193290 were printed in the said Catalogue published by M/s.Camfotech and the same would unequivocally demonstrate that both the designs are one and the same and in the bottom of the said Catalogues the year has been printed as 1991. Hence, it can be proved that the second plaintiff is manufacturing Heating and Extraction Mantles under the aforesaid four designs for the past several years before the alleged registration which took place on 22.09.2003 and the claim for patern registration on the basis of an invention was a fraud on the public authority.

3.4 The plaintiffs were selling the mantles under the Design No.193289 & 193291 for the past several years before Registration to one Malaysian Company. Similarly, the housing and top ring of the hearing

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mantle registered under the Design Nos.193290 and 193288 are commonly used by several other manufacturers in India as stated supra. The impugned Design No.193289 have been published in the year 1991 in Netherlands and more than 8 years back the products manufactured under the impugned designs were displayed in the second plaintiff's stall at the international Exhibitions. Therefore, the impugned design Nos.193288, 193289 and 193290 were actually copied by the plaintiffs from M/s.Electro Thermal and Isopad of United Kingdom. The plaintiffs further misrepresented that the impugned designs are their invention and developed by them in June, 2002. The registration itself is invalid as the same was obtained on the basis of apparently fraudulent misrepresentation and concealment of various intrinsic details. Moreover, the first plaintiff who claims to be the owner of the impugned designs does not have any Research and Development Department at all.

3.5 If the application for registration by the plaintiffs appear to have been given in September, 2003 and granted within 5 months in February, 2004, the plaintiffs have to produce before this Court their application for registration before the Statutory authority and disclose the stage in which the

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same was pushed through to obtain the registration without proper publication and only then this Court would be able to appreciate whether obtaining of the registration by the plaintiffs from the statutory authority has been done in a lawful and *bona fide* manner or by practicing deception and suppression of facts and suggestion of falsehoods before the Authority. In case the registration has been done in such a manner, the same confers no right on the Holder of the registration. Hence, the suit is liable to be dismissed.

4. On the basis of the above pleadings and materials available on record, this Court has framed the following issues:

> *"(i) Whether the plaintiffs can claim to have invented the designs of heating and extraction mantles and whether they can claim exclusive usage of the same?*
>
> *(ii) Whether the first defendant is guilty of violating the plaintiffs trade secrets and technical know-how relating to subject designs ?*
>
> *(iii) Whether the first defendant is justified in*

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dealing with goods in violation of registered designs of the plaintiffs by putting use of trade secrets and technical know-how of the plaintiffs without express authorisation ?

(iv) Whether the plaintiffs can claim relief against the first defendant who is not the proprietor of M/s.Gopal Instruments ?

(v) Whether the plaintiff's are entitled to the relief of permanent injunction as sought for ?

(vi) Whether the defendants are liable to render true accounts as sought for by the plaintiffs and whether the defendants are liable to surrender all the materials used for the alleged pirating of the plaintiffs registered designs ?

(vii) Whether the defendants are liable to pay a sum of Rs.20 lakhs towards the damages inflicted on the plaintiffs ?

(viii) To what other reliefs the plaintiffs are entitled to ?

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5. During the course of the trial, on the side of the plaintiffs, the Manager of the second plaintiff was examined as P.W.1 and Exs.P1 to P38 were marked. On the side of the defendants, the Manager of the second defendant was examined as D.W.1 and Exs.D1 to D21 were marked.

6. Heard the submissions made by the learned counsel for the plaintiffs and the learned counsel for the defendants and perused the materials available on record.

7. The learned counsel for the plaintiffs submitted that the first plaintiff partnership firm is manufacturing laboratory equipment such as extraction mantles, heating mantles, heating elements etc., since the year 1977. The second plaintiff is the exclusive dealer of the products manufactured by the first plaintiff. The plaintiffs manufacture the above said products using the designs developed in-house. The plaintiffs developed a distinct and attractive design through a long and expensive process of development spanning from 1977 to 2002 and to protect these designs, the

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plaintiffs obtained registration under the Designs Act, 2000. The details of the registered designs are as below:

Sl.No.	*Description*	*Classification*	*Design No.*
1	Extraction Mantle	Class 24-02	193288
2	Extraction Mantle	Class 24-02	193289
3	Heating Mantle	Class 24-02	193290
4	Heating Mantle	Class 24-02	193291

7.1 It is submitted by the learned counsel for the plaintiffs that the first defendant was an employee of the second plaintiff from 27.10.1981 to 31.12.2002 and he joined as an Executive and was subsequently promoted as Assistant Administrative Manager. Owing to the nature of responsibilities, the first defendant was given with the access to trade secrets, documents, designs, technical information, data specifications, blue prints, transparencies, test data, additions, modifications, improvement etc., of the second plaintiff as well as suppliers, job workers of the employees of the plaintiffs. As the unauthorized or publication of the sensitive information would be hugely detrimental to the business of the plaintiffs, the first defendant was restrained from disclosing the information of the plaintiffs vide a Secrecy Agreement dated 09.07.1993 which forbids the first defendant from revealing the trade secrets of the second plaintiffs in perpetuity,

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regardless of cessation of employment.

7.2 On 31.12.2002, the first defendant resigned the job with the second plaintiff's company citing personal reasons and he had set up M/s.A.V.Exports and begun trading under the said name. Upon making enquiries, the plaintiffs found that the defendants were dealing in the same products sold by them and selling to customers of the second plaintiff at highly reduced prices. M/s.A.V.Exports was apparently held in the name of the proprietrix of the second defendant who is his mother-in-law. There is no evidence on record that the said proprietrix had any experience in manufacturing laboratory equipment. In his cross-examination the first defendant has conceded that the second defendant had started dealing in extraction mantles and heating mantles only after the first defendant joined the second defendant's company. Hence, in respect of dealing with heating and extraction mantles, M/s.A.V.Exports operated solely as a facade for the first defendant. The act of the first defendant in sharing the said trade secrets with M/s.A.V.Exports and its proprietrix and the subsequent use of the secrets in business constitutes wilful and continued breach of the secrecy agreement, breach of trust of the second plaintiff and also pirated the

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registered designs of the first plaintiff.

7.3 There is no evidence on record to show that the proprietrix of the second defendant had any experience in manufacturing heating and extraction mantles and in the business of export. In fact, it has been conceded in the cross examination of the first defendant that the production and manufacture of the heating and extraction mantles for the defendants were done by job workers in their own homes. The second defendant had no manufacturing facilities, no experience or expertise, no raw materials, no customers and the proprietrix had no knowledge of manufacturing the products. Despite the same, the defendants have created cheap products of the valuable registered designs of the plaintiffs and passed them off as their own products to the erstwhile customers of the plaintiffs. Thereby, they have made unlawful profits and have benefited from the goodwill and technical know-how of the plaintiffs without any authorisation as well as damaging the reputation and value of the plaintiff's intellectual property.

7.4 It is the main contention of the learned counsel for the plaintiffs that it is inconceivable that the second defendant was possessed of the ability

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to manufacture products without piracy of the plaintiff's design, utilization of the confidential customer lists of the plaintiffs, utilization of the knowledge of pending orders placed with the plaintiff and taking advantage of the relationships with clients that were facilitated and maintained by the plaintiff at enormous expense. The designs of the plaintiffs pass the test for originality as required for registration under the Designs Act, 2000. The test for originality under the Designs Act, 2000 is limited to examining whether the registrant is the author of the design and that it has not been published or registered prior to the application for registration. The plaintiff's design being the result of many years of development, are original in nature and are the result of the application of decades of experience in the market and gradual improvements made to the designs based on customer feedback and market requirements. Since the requirement of originality under the Designs Act has been fulfilled and the designs have been registered, the second plaintiff possesses the exclusive right to use the said designs and to exploit them for commercial benefit.

7.5 With regard to violating the plaintiff's trade secrets, the learned counsel for the plaintiffs submitted that the Secrecy Agreement signed by the

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first defendant stipulates that the trade secrets and all information relating to the said secrets learned during the course of employment would be considered strictly confidential and held in trust. However, the first defendant has taken an untenable defence that the Secrecy Agreement would not be valid as it was 'not stamped with the required non-judicial Stamp papers'. The first defendant has entered into the Secrecy Agreement knowing fully well the import of such an agreement and has subsequently breached it wilfully. The defendant's commercial exploitation of the technical know-how of the plaintiff's which the defendant has admittedly gained during the course of employment and divulging the information learnt during the course of employment with the plaintiff to the second defendant, is in breach of the Secrecy Agreement. Hence, the first defendant is liable to render true accounts of profits and compensate the plaintiffs for the loss of business suffered by the latter under Section 73 of the Indian Contract Act, 1872.

7.6 With regard to violation of registered designs of the plaintiffs by putting use of trade secrets and technical know-how of the plaintiffs, it is submitted by the learned counsel for the plaintiffs that as per Section 11(1) of the Designs Act read with Section 2(c), as the sole right to exploit the

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designs lies upon the second plaintiff who is the authorized dealer of the first plaintiff to use the first plaintiff's registered designs, no other person including the first defendant has the right to deal in goods in violation of the registered designs of the plaintiffs

7.7 With regard to the issue of proprietorship of M/s.Gopal Instruments, the learned counsel for the plaintiffs submitted that the defendants have admitted in their written statement that the equipments sold by the second defendant carries the name "M/s.Gopal Instruments" in their name plate and brochures of the products namely Heating mantles and Extraction mantles. This proves that the first defendant is the proprietor of M/s.Gopal Instruments.

7.8 It is the main contention of the learned counsel for the plaintiffs that Section 22(1)(a) of the Designs Act, 2000 prohibits the imitating of registered designs without the license or written consent of the registered proprietor. As the defendants have manufactured and sold products that are imitations of the plaintiff's registered design Nos.193288, 193258, 193290 and 193291, they have committed piracy of registered design as per Section

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22 of the Designs Act, 2000. The said provision also provides that the registered proprietor is entitled to bring a suit for recovery of damages for contraventions under the Section and also to be awarded an injunction restraining the repetition of such contravention. Hence, this Court should allow the suit and grant the relief as sought for in the plaint.

8. The learned counsel for the defendants submits that the first defendant was an employee of the second plaintiff from October, 1981 till December, 2002 and oversaw the commercial aspects of the second plaintiff's business which was limited to execution of purchase orders, correspondence with the overseas buyers and dispatch of materials to such buyers apart from representing the second plaintiff in overseas exhibitions. During his tenure with the second plaintiff, the first defendant has represented subject designs at multiple exhibitions held overseas in countries. The second defendant is a company incorporated in August, 2001 and was engaged in the export of various laboratory and scientific instruments. Since the salary paid by the second plaintiff was meager, the first defendant resigned his job with the second plaintiff and joined the second defendant's concern as a Manager. It is contended by the learned

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counsel for the defendants that the plaintiffs did not have any registered designs under their names during the employment of the first defendant with the second plaintiff.

8.1 With regard to the claim of inventions of designs of heating and extraction mantles by the plaintiffs, the learned counsel for the defendants submitted that the subject designs are copies of designs of M/s.Electro Thermal and M/s.Isopad, based in United Kingdom who are world leaders in the manufacture of industrial furnaces and heat treatment equipments and this is evident from the catalogues published in the year 1983. There is nothing novel or original about the subject designs as claimed by the plaintiffs as it can been seen from similar heating and extraction mantles that were previously available in market and no proprietary rights can be fastened onto the plaintiffs. It is contended that much prior to the registration of the designs, the second plaintiff exported their mantles to a Dutch company namely 'M/s.Comfotech' who was their dealer in Netherlands. The catalogue of the second plaintiff subsequent to the registration of the subject design shows no iota of difference between the two. It is stated by the plaintiffs that they were supplying the same heating and extraction mantles even prior to

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the registration of the subject designs. However, the plaintiffs contend that the defendants have copied their designs as early as in the year 2000 which is prior to the registration of the subject designs. The plaintiffs did not even have a Research and Development cell since its inception till the time of resignation of the first plaintiff. The plaintiffs have failed to establish the similarity or dissimilarity between the subject designs and the designs of the plaintiff prior to its resignation. Further, the plaintiff concedes that the first plaintiff manufactures only the parts for heating and extraction mantles but is not involved in manufacture of heating and extraction mantles. This shows that the subject design was a generic, commercially available design and there was no infringement by the defendants.

8.2 With regard to violation of plaintiff's trade secrets and technical know-how of the subject designs by the first defendant, it is submitted by the learned counsel for the defendants that the designs are generic in nature and have been in public domain for very many years even before the plaintiffs commencement of business in heating and extraction mantles. The parts can be easily procured from the local market and assembled by anybody. The defendants deny the claim that the subject design is novel since the

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impugned designs are not developed by the plaintiffs. Though the first defendant is an erstwhile employee of the second plaintiff, he never had access to any trade secrets or the technical know-how of the manufacturing unit and he was in-charge of only the business end of the spectrum specifically with regard to sales, execution of orders and correspondence between the customers and the company. No registered or unregistered design was in the hands of the employer of the first defendant.

8.3 The Secrecy Agreement signed by the first defendant was a part of the second plaintiff's standard operating procedure and such signatures were obtained from all employees irrespective of their position or portfolio. Moreover, at the time of secrecy agreement being signed by the first defendant, the subject designs were not even in existence. Hence the said agreement cannot be called as an agreement. Assuming that the so called Secrecy Agreement is binding upon the first defendant, it does not impose a bar on partaking in trade in the open market. Therefore, the first defendant was free to join the second defendant's company after resignation from the second plaintiff's company.

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8.4 The learned counsel for the defendants further submitted that nothing is new, novel or original in the design of the defendant and the designs were available commercially wherein anybody could assemble the parts commercially so available and hence no liability can be fastened onto the second defendant. The second defendant's design has been registered during the pendency of this suit and the plaintiffs pursued an incomplete and unsuccessful attempt challenging the registration of the second defendant's design.

8.5 P.W.1 in his cross-examination is unable to establish the similarities / dissimilarities between the plaintiff's design and the second defendant's design except for claiming it to be similar. Therefore, it is clear that the first defendant had no contractual obligation with the first plaintiff, and this is not a case of breach of trade secrets either on facts or in law and the defendants are not guilty of infringement vis-à-vis a design commonly available in public domain.

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8.6 With regard to claim of M/s.Gopal Instruments, the learned counsel for the defendants submitted that there is no legal entity either as a proprietorship or partnership in the name of M/s.Gopal Instruments of which the first defendant is the proprietor as alleged by the plaintiffs. To prove the same, the plaintiffs haven not produced any oral or documentary evidence to establish that the first defendant is the proprietor of M/s.Gopal Instruments. It is mainly contended by the learned counsel for the defendants that no company exists in the name of M/s.Gopal Instruments and nothing can be attributed to an entity that does not exist. The first defendant in his personal capacity was only a Manager of the second defendant company. Hence, no liability can be fastened onto the first defendant whatsoever. Hence, no relief can be claimed against the first defendant who is not the proprietor of M/s.Gopal Instruments but only an employee of the second defendant's company.

8.7 With regard to relief of permanent injunction as against the defendants, the learned counsel for the defendants submitted that no notice

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was given to the second defendant announcing that such registration was obtained or that the defendants were pirating the subject design and no notice was served even at the time of instituting the present suit. It is settled law that no claim for protection can be made in the absence of such steps taken by the party seeking for protection. No documents are produced by the plaintiffs to show the announcement of registration or notice indicating infringement to the defendants. Hence, the relief of permanent injunction cannot be granted against the defendants. Further the defendants are not liable as there is no case of infringement and they are not liable to render true accounts or surrender any materials as sought for.

8.8 The learned counsel for the defendants submitted that the registration of the subject designs have been wrongly granted to the plaintiffs as the designs have been in the market even before the plaintiffs have commenced their business in heating and extraction mantles. Further, these mantles can be assembled resulting in designs deceptively similar to that of the plaintiffs. Therefore, there is neither infringement or copy of the subject designs. Hence, the question of paying damages does not arise. Furthermore there is no restriction imposed on the first defendant preventing him from

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carrying on business in heating and extraction mantles. The designs registered in September, 2003 could have created any impression among customers even prior to the registration of the subject designs and that too deceptively similar to those designs available anywhere in the world. Thus the second defendant cannot be prevented from supplying instruments to customers who also happened to be the erstwhile buyers of the second plaintiffs.

8.9 The said Secrecy Agreement does not prevent the first defendant from doing business with the plaintiff's customers. Even if such agreement is binding, the restriction on trade or business cannot operate indefinitely. As per Section 73 of the Indian Contract Act, the plaintiffs have failed to establish the validity of the Secrecy Agreement. The learned counsel for the defendants further submits that in order to claim damages, the plaintiffs ought to establish the extent of loss suffered by him and not base his claim upon the gains made by the defendants. The damages sought by the plaintiffs to an extent of Rs.20,00,000/- is too inflated and not supported by any documentary or oral evidence. Further, the plaintiffs have not produced any books of accounts or ledger entries to prove the loss. Hence, the plaintiffs

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cannot claim damages. The present suit is frivolous, vexatious and charged with an intent to harass the defendants and get a piece of the defendant's blooming business and therefore, the suit is liable to be dismissed.

9. The specific case of the plaintiffs is that the first plaintiff partnership firm has the manufacturing laboratory equipments such as extraction mantles, heating mantles, heating elements etc., since the year 1977. The second plaintiff is the exclusive dealer of the products manufactured by the first plaintiff. The plaintiffs manufacture the above said products using the designs developed in-house. The plaintiffs developed a distinctive and attractive design through a long and expensive process of development spanning from 1977 to 2002 and to protect these designs, the plaintiffs obtained registration under the Designs Act, 2000. The registered extraction mantles and heating mantles under Clause 24-02 has design Nos.193288 to 193291 on 22.09.2003. The first defendant was an employee of the second plaintiff from 27.10.1981 to 31.12.2002 and he joined as an Executive and was subsequently promoted as Assistant Administrative Manager. Owing to the nature of responsibilities, the first defendant was given with the access to trade secrets, documents, designs, technical

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information, data specifications, blue prints, transparencies, test data, additions, modifications, improvement etc., of the second plaintiff as well as suppliers, job workers of the employees of the plaintiffs. The first defendant was restrained from disclosing the information of the plaintiffs vide a Secrecy Agreement dated 09.07.1993 which forbids the first defendant from revealing the trade secrets of the second plaintiffs in perpetuity, regardless of cessation of employment.

9.1. On 31.12.2002, the first defendant resigned from the second plaintiff's company citing personal reasons and he had set up M/s.A.V.Exports and begun trading under the said name. The plaintiffs found that the defendants were dealing in the same products sold by them and selling to customers of the second plaintiff at highly reduced prices. M/s.A.V.Exports was apparently held in the name of the proprietrix of the second defendant who is none other than the mother-in-law of the first defendant. The proprietrix had no experience in manufacturing laboratory equipment. M/s.A.V.Exports operated solely as a facade for the first defendant. The act of the first defendant in sharing the said trade secrets with M/s.A.V.Exports and its proprietrix and the subsequent use of the secrets in

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business constitutes wilful and continued breach of the secrecy agreement, breach of trust of the second plaintiff and also pirated the registered designs of the first plaintiff. The designs of the plaintiffs pass the test for originality as required for registration under the Designs Act, 2000. The test for originality under the Designs Act, 2000 is limited to examining whether the registrant is the author of the design and that it has not been published or registered prior to the application for registration. Since the requirement of originality under the Designs Act has been fulfilled and the designs have been registered, the second plaintiff possesses the exclusive right to use the said designs and to exploit them for commercial benefit.

9.2. The Secrecy Agreement signed by the first defendant stipulates that the trade secrets and all information relating to the said secrets learned during the course of employment would be considered strictly confidential and held in trust. As per Section 11(1) of the Designs Act read with Section 2(c), as the sole right to exploit the designs lies upon the second plaintiff who is the authorized dealer of the first plaintiff to use the first plaintiff's registered designs, no other person including the first defendant has the right to deal in goods in violation of the registered designs of the plaintiffs.

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Section 22(1)(a) of the Designs Act, 2000 prohibits the imitation of registered designs without the license or written consent of the registered proprietor. The defendants have manufactured and sold products that are imitations of the plaintiff's registered design Nos.193288, 193258, 193290 and 193291 and they have committed piracy of registered design as per Section 22 of the Designs Act, 2000. The said provision also provides that the registered proprietor is entitled to bring a suit for recovery of damages for contraventions under the Section and also to be awarded an injunction restraining the repetition of such contravention. Hence, this Court should allow the suit and grant the relief as sought for in the plaint.

10. The specific case of the defendants is that the first defendant was an employee of the second plaintiff from October, 1981 till December, 2002 and oversaw the commercial aspects of the second plaintiff's business which was limited to execution of purchase orders, correspondence with the overseas buyers and dispatch of materials to such buyers apart from representing the second plaintiff in overseas exhibitions. The second defendant is a company incorporated in August, 2001 and was engaged in the export of various laboratory and scientific instruments. Since the salary

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paid by the second plaintiff was meager, the first defendant resigned his job with the second plaintiff and joined the second defendant's concern as a Manager. The plaintiffs did not have any registered designs under their names during the employment of the first defendant with the second plaintiff. The subject designs are copies of designs of M/s.Electro Thermal and M/s.Isopad, based in United Kingdom who are world leaders in the manufacture of industrial furnaces and heat treatment equipments and this is evident from the catalogues published in the year 1983. Much prior to the registration of the designs, the second plaintiff exported their mantles to a Dutch company namely 'M/s.Comfotech' who was their dealer in Netherlands. The plaintiffs were supplying the same heating and extraction mantles even prior to the registration of the subject designs. There is no similarity or dissimilarity between the subject designs and the designs of the plaintiffs prior to its resignation. The first plaintiff manufactures only the parts for heating and extraction mantles but is not involved in manufacture of heating and extraction mantles. The designs are generic in nature and have been in public domain for very many years even before the plaintiffs commencement of business in heating and extraction mantles. The impugned designs are not developed by the plaintiffs. No registered or unregistered

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design was in the hands of the employer of the first defendant. At the time of secrecy agreement being signed by the first defendant, the subject designs were not even in existence.

10.1 The further contention of the defendants is the designs were available commercially wherein anybody could assemble the parts commercially so available and hence no liability can be fastened onto the second defendant. The first defendant in his personal capacity was merely a Manager of the second defendant company. Hence, no liability can be fastened onto the first defendant whatsoever. The registration of the subject designs have been wrongly granted to the plaintiffs as the designs have been in the market even before the plaintiffs have commenced their business in heating and extraction mantles. The designs registered in September, 2003 could have created any impression among customers even prior to the registration of the subject designs and that too deceptively similar to those designs available anywhere in the world. The Secrecy Agreement does not prevent the first defendant from doing business with the plaintiff's customers. The registered designs are generic in nature and have been in public domain for very many years. Therefore, it is contended by the

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defendants that the plaintiffs are not entitled to the relief as sought in the plaint.

11. *Issue No.1 : (i) Whether the plaintiffs can claim to have invented the designs of heating and extraction mantles and whether they can claim exclusive usage of the same?*

According to the plaintiffs, they developed a distinctive and attractive design through a long and expensive process of development spanning from the year 1977 to 2002 and to protect these designs, the plaintiffs obtained registration under the Designs Act, 2000. In order to prove the registration, the certificate of Registration of Design Nos.193288, 193289, 193290 and 193291 is marked as Exs.P29 to P32 which shows the plaintiff's have registered the design on 22.09.2003. The designs of the plaintiffs have passed the test for originality as required for registration under the Designs Act, 2000. The test for originality under the Designs Act is limited to examine whether the registrant is the author of the design and that has not been published or registered prior to publication for registration. The plaintiff’s design being the result of many years of development are original in nature and are the result of the application of decades of experience in the

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market and gradual improvements have been made to the designs based on customer feedback and market requirements. Since the requirement of originality under the Designs Act has been fulfilled and the designs have been registered, the second plaintiff possesses the exclusive right to use the said designs and to exploit them for commercial benefit.

11.1 The fact that the first plaintiff is manufacturing the laboratory equipment such as extraction mantles, heating mantles, heating elements etc. since the year 1977 to 2002 and the second plaintiff is the exclusive dealer of the products manufactured by the first plaintiff, is not denied by the defendants. The plaintiffs were selling the Extraction Mantle and Heating mantles through Design Nos.193288, 193289, 193290 & 193291. Though the defendants have stated that the impugned design Nos.193288, 193289 & 193290 were actually copied by the plaintiffs from the United Kingdom based companies named M/s. Electro Thermal and Isopad respectively, they have not produced any materials to prove the same.

11.2 On a perusal of the pleadings and also the documents it is seen that the plaintiffs have filed the suit only under the Designs Act, 2000.

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Admittedly the plaintiff's designs were registered under Design Nos. 193288, 193289, 193290 & 193291 but so far as the same has not been challenged or cancelled or ratified. The plaintiffs were selling the mantles under the Design Nos.193289 & 193291 for the past several years without any objections and furthermore the first defendant was working as an employee with the second plaintiff and also signed in the Secrecy Agreement which was marked as Ex.P9. The first defendant is a party to that document and he is estopped from raising certain objections. As per Section 11(1) of the Designs Act read with Section 2(c), as the sole right to exploit the designs lies upon the second plaintiff who is the authorized dealer of the first plaintiff to use the first plaintiff's registered designs, no other person including the first defendant has the right to deal in goods in violation of the registered designs of the plaintiffs. Section 22(1)(a) of the Designs Act, 2000 prohibits the imitating of registered designs without the license or written consent of the registered proprietor.

11.3 Therefore from the reading of the pleadings and oral and documentary evidence and legal positions, this Court finds that the plaintiffs can claim the exclusive usage of the impugned designs since they are the

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registered owner of the same and Section 22(1)(a) of the Designs Act, 2000 prohibits the imitating of registered designs without the license or written consent of the registered proprietor of Design Nos. 193288, 193289, 193290 & 193291. Thus, Issue No.1 is answered in favour of the plaintiffs.

12. *Issue No.2: Whether the first defendant is guilty of violating the plaintiffs trade secrets and technical know-how relating to subject designs ?*

Admittedly the plaintiffs registered their designs vide Design Nos. 193288, 193289, 193290 & 193291. The first defendant was working as employee under the second plaintiff and during the employment he executed Ex.P9 Secrecy Agreement. According to the plaintiffs, they developed a distinct and attractive design through a long and expensive process of development spanning from the year 1977 to 2002 and to protect these designs, the plaintiffs obtained registration under the Designs Act, 2000. Admittedly, the first defendant was an employee of the second plaintiff from 27.10.1981 to 31.12.2002 and he joined as an Executive and was subsequently promoted as Assistant Administrative Manager and he resigned from the second plaintiff on 31.12.2002. During his tenure of employment with the second plaintiff, he signed Ex.P9. Therefore the first defendant is

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bound to Ex.P9. Admittedly, the first defendant after resigned from the second plaintiff on 31.12.2002 he joined with the second defendant firm.

12.1 The second defendant is none other than the mother-in-law of the first defendant and also the first defendant has not established that the second defendant had any experience in manufacturing laboratory equipment. Even in the cross-examination the first defendant has conceded that the second defendant had started dealing in extraction mantles and heating mantles only after the first defendant joined the second defendant's company. The first defendant also admitted that they are selling the heating mantles which is not imitating the registered designs of the plaintiffs and also admitted that the first defendant in his personal capacity was only a Manager of the second defendant company. The defendants also admit that they are also manufacturing the heating and extraction mantles and the designs are generic in nature and have been in public domain for very many years even before the plaintiff's commencement of business in heating and extraction mantles and the parts can be easily procured from the local market and assembled by anybody. The defendants did not deny the fact that they are involved on the business which is similar in nature as that of the

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plaintiffs.

12.2 The defendants admitted in the written statement that the second defendant started its business in the month of August, 2001 and is engaged in exports of various laboratory and scientific instruments. The second defendant buys goods from various supplies of raw-materials from various states of India and exports the finished products after some fabrication by independent contractors to various countries. From the month of January, 2003, the second defendant had started dealing with heating mantles and extraction mantles on the basis of public available designs and with suitable modifications of their own. Further, the defendants admitted that the second defendant has no workshop, factory or labour or any tools, fixtures, dies to manufacture heating mantles and does not manufacture heating mantles and farms out all the stages of fabrication to third persons.

12.3 Since the first defendant is a party to Ex.P9-Secrecy Agreement which is entered into between the second plaintiff and the first defendant, the first defendant is guilty of violating the plaintiff's trade secrets and technical know-how relating to the subject designs. Thus Issue No.2 is answered in

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favour of the plaintiffs.

13. *Issue No.3: Whether the first defendant is justified in dealing with goods in violation of registered designs of the plaintiffs by putting use of trade secrets and technical know-how of the plaintiffs without express authorisation ?*

Admittedly, the first plaintiff partnership firm is manufacturing laboratory equipment such as extraction mantles, heating mantles, heating elements etc., since the year 1977. The second plaintiff is the exclusive dealer of the products manufactured by the first plaintiff. The plaintiffs developed a distinct and attractive design through a long and expensive process of development spanning from 1977 to 2002 and to protect these designs, the plaintiffs obtained registration under the Designs Act, 2000. The first defendant was an employee of the second plaintiff from 27.10.1981 to 31.12.2002 and he joined as an Executive and was subsequently promoted as Assistant Administrative Manager. By a Secrecy Agreement dated 09.07.1993 (Ex.P9) entered into between the plaintiffs and the first defendant, the first defendant was restrained from revealing the trade secrets of the second plaintiffs in perpetuity, regardless of cessation of employment.

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13.1 Admittedly the plaintiff's designs was registered under Design Nos. 193288, 193289, 193290 & 193291 but so far as the same has not been challenged or cancelled or ratified. The suit is filed under the Designs Act, 2000. Admittedly, the first defendant after resigned his job from the second plaintiff on 31.12.2002 joined with the second defendant firm. The second defendant is none other than the mother-in-law of the first defendant and also the first defendant has not established that the second defendant had any experience in manufacturing laboratory equipment. Even in the cross-examination the first defendant has conceded that the second defendant had started dealing in extraction mantles and heating mantles only after the first defendant joined the second defendant's company. The Secrecy Agreement signed by the first defendant stipulates that the trade secrets and all information relating to the said secrets learned during the course of employment would be considered strictly confidential and held in trust. However, the first defendant has taken an untenable defence that the Secrecy Agreement would not be valid as it was ‘not stamped with the required non-judicial Stamp papers’. The first defendant has entered into the Secrecy

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Agreement knowing fully well the import of such an agreement and has subsequently breached it wilfully.

13.2 As per Section 11(1) of the Designs Act read with Section 2(c), as the sole right to exploit the designs lies upon the second plaintiff who is the authorized dealer of the first plaintiff to use the first plaintiff's registered designs, no other person including the first defendant has the right to deal in goods in violation of the registered designs of the plaintiffs.

13.3 The defendants admitted in the written statement that the equipments sold by the second defendant carries the name "M/s.Gopal Instruments" in their name plate and brochures of the products namely Heating mantles and Extraction mantles. Section 22(1)(a) of the Designs Act, 2000 prohibits the imitation of registered designs without the license or written consent of the registered proprietor. Admittedly, the defendants have not produced any licence or consent from the plaintiffs but their main defense is that the impugned designs are already existing in public domain for very many years even before the plaintiffs commencement of business in heating and extraction mantles. The plaintiffs themselves copied from the

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open market from the foreign exporters.

13.4 Once the first defendant is a party to the Ex.P9-Secrecy agreement, he is estopped from taking different stands against the terms and conditions in Ex.P9. Thus Issue No.3 is answered in favour of the plaintiffs.

14. ***Issue No.4:*** *Whether the plaintiffs can claim relief against the first defendant who is not the proprietor of M/s.Gopal Instruments ?*

The plaintiff has filed the suit against the defendants nomenclature as the first defendant is the proprietor of M/s.Gopal Instruments and second defendant is the proprietrix of M/s.A.V. Exports. Admittedly, the first defendant was working with the second plaintiff from 27.10.1981 to 31.12.2002. The main contention of the plaintiffs is that upon enquiry, the first defendant has set up M/s.A.V.Exports and begun trading under the said name. The defendants were dealing in the same products sold by them and selling to customers of the second plaintiff at highly reduced prices. M/s.A.V.Exports was apparently held in the name of the proprietrix of the second defendant who is the mother-in-law of the first defendant. The case of the plaintiff is that the defendants have admitted in the written statement

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that the equipments sold by the second defendant carries the name "M/s.Gopal Instruments" in their name plate and brochures of the products namely Heating mantles and Extraction mantles.

14.1 The plaintiffs have alleged that the second defendant is the proprietor of M/s.Gopal Instruments and the defendants also admitted that the second respondent is running business in the name and style of M/s.A.V.Exports. However, M/s.Gopal Instruments is neither a company nor a partnership firm.

14.2 Once the defendants admitted in the written statement that the equipments sold by the second defendant carries the name of M/s.Gopal Instruments in their name plate and brochures of the products namely Heating mantles and Extraction mantles, the plaintiffs are entitled to claim relief as against the first defendant. Even if otherwise the first defendant is not the proprietor of M/s.Gopal Instruments, it is for the defendants who has admitted that the equipment sold by the second defendant carries the name "M/s.Gopal Instrument, to claim and what is the reason he is using the M/s.Gopal Instruments. Therefore, Issue No.4 is answered in favour of the

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plaintiffs.

15. ***Issue No.5*** *Whether the plaintiffs are entitled to the relief of permanent injunction as sought for ?*

Admittedly the plaintiffs are the registered owners of the impugned designs and the first defendant was working as an employee with the second plaintiff and he resigned from the second plaintiff on 31.12.2002. It is also admitted that the second defendant is none other than the mother-in-law of the first defendant who is doing business in the name and style of M/s.A.V.Exports. The contention of the plaintiffs is that the production and manufacture of the heating and extraction mantles for the defendants were done by job workers in their own homes. The second defendant had no manufacturing facilities, no experience or expertise, no raw materials, no customers and the proprietrix had no knowledge of manufacturing the products. Despite the same, the defendants have created cheap products of the valuable registered designs of the plaintiffs and passed them off as their own products to the erstwhile customers of the plaintiffs. Thereby, they have made unlawful profits and have benefited from the goodwill and technical know-how of the plaintiffs without any authorisation as well as damaging the

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reputation and value of the plaintiff's intellectual property.

15.1 According to the plaintiffs, the plaintiffs developed a distinctive and attractive design through a long and expensive process of development spanning from 1977 to 2002 and to protect these designs, the plaintiffs obtained registration under the Designs Act, 2000. Admittedly, the first defendant was the employee of the second plaintiff and the first defendant was also a party to Ex.P9 – Secrecy Agreement dated 09.07.1993 which forbids the first defendant from revealing the trade secrets of the second plaintiffs in perpetuity, regardless of cessation of employment and also admittedly on 31.12.2002, the first defendant resigned from the second plaintiff's company citing personal reasons and he had set up M/s.A.V.Exports. The subsequent use of the secrets in business constitutes wilful and continued breach of the secrecy agreement, breach of trust of the second plaintiff and also pirated the registered designs of the first plaintiff.

15.2 Since the defendants have admitted that they are doing the business but however stated that it is not similar to that of the plaintiff's design and they have not violated the copyrights of the plaintiffs, the

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defendants have not produced any material to prove the same. The defendants only produced different catalogues of their open market and other things. However as already stated the plaintiffs have registered the extraction mantles and heating mantles under Clause 24-02 as design No.193288 to 193291 on 22.09.2003. The second defendant started dealing with heating mantles from the month of January, 2003. Though the defendants have stated that they have started business in the year 2003 prior to the registration, they have not established that the same designs were sold by them from the year 2003. Whereas the plaintiffs have established that the designs were registered with the Designs Act, 2000 and they are the registered owners of the impugned designs. Section 22(1)(a) of the Designs Act, 2000 prohibits the imitation of registered designs without the license or written consent of the registered proprietor.

15.3 As already stated since the defendants have neither produced any license nor produced any written consent from the Registered Proprietors, the plaintiffs are entitled to the relief of permanent injunction as sought for. Accordingly, Issue No.5 is answered in favour of the plaintiffs.

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16. ***Issue No.6****: Whether the defendants are liable to render true accounts as sought for by the plaintiffs and whether the defendants are liable to surrender all the materials used for the alleged pirating of the plaintiffs registered designs ?*

As already stated, the first defendant is a party to the secrecy agreement, Ex.P9 and he also admit that since the year 2003, the defendants have been manufacturing the mantles as that of plaintiffs. However the defendants are not able to establish the same. However, the plaintiffs have established that the said designs are registered by them and they are the owner of the impugned designs. Hence, the onus has been shifted to the defendants that the designs are not imitating and similar to the plaintiff's design and they have got license from the original proprietors of the designs. However, the defendants, failed to prove the same. Therefore the defendants are not entitled to sell the similar designs which is imitating to the plaintiff's designs. Therefore the defendants are liable to surrender all the materials used for the alleged pirating of the plaintiff's registered designs. Accordingly, Issue No.6 is answered accordingly.

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17. *Issue No.7*: *Whether the defendants are liable to pay a sum of Rs.20 lakhs towards the damages inflicted on the plaintiffs ?*

Though the plaintiffs have established that the defendants have violated the secrecy agreement and also the plaintiff is the owner of the impugned designs also, they claim damages of Rs.20,00,00,000/- from the defendants. Section 22 of the Designs Act provides that the registered proprietor is entitled to bring a suit for recovery of damages for the contravention and an injunction can be awarded restraining the reputation of such contract. However, as far as the damages are concerned, the plaintiffs have not established the pecuniary damages caused to them. Hence, the plaintiffs are not entitled for damages. Accordingly, Issue No.7 is answered accordingly against the plaintiffs and in favour of the defendants.

18. *Issue No.8*: *To what other reliefs the plaintiffs are entitled to ?*

Since except Issue No.7, all other issues are answered in favour of the plaintiffs and against the defendants, the plaintiffs are entitled to the relief as sought for except the relief of damages and no further reliefs are granted in favour of the plaintiffs.

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19. In the result, the Civil Suit is decreed in part and the plaintiffs are granted with all other reliefs sought by them except the relief of claim for damages. The defendants are directed to surrender all the dies, fixtures, diagrams, tools, drawings, blueprints, transparencies and any other materials used for pirating the first plaintiff's registered design No.193288, 193289, 193290, 193291 and stocks of offending laboratory apparatus, inventories, machineries such as heating mantles and extraction mantle manufactured, work in progress or made ready by committing piracy of the aforesaid registered designs of the first plaintiff and offending advertising materials, books of accounts, invoices, purchase orders and other documents containing information's / entries containing the details of piracy of the first plaintiff's aforesaid registered design, to the plaintiffs for destruction, within a period of two months from the date of receipt of a copy of this order. No costs.

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Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

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ANNEXURE

Plaintiffs side witness: P.W.1 – Mr.T.N.Kannan

Documents exhibited by the plaintiff:

SNo	Exhibit	Description of the document
1	Ex.P1	Authorised letter issued by first and second plaintiff
2	Ex.P2	The Bio-data along with the letter of D1
3	Ex.P3	The letter sent by P2 to D1 dated 06.10.1981
4	Ex.P4	Bio-Data of D1
5	Ex.P5	Appointment letter of D1 dated 27.10.1981
6	Ex.P6	Agreement entered into between P2 and D1 dated 27.10.1981
7	Ex.P7	Original letter if confirmation of D1
8	Ex.P8	True copy of the circular issued by D2
9	Ex.P9	Original of Employees Secrecy agreement dated 09.07.1983 entered into between the second plaintiff and the first defendant.
10	Ex.P10	Original Resignation letter of D1 dated 16.10.2002
11	Ex.P11	E-mail from the buyers of Indonesia
12	Ex.P12	E-mail reply
13	Ex.P13	E-mail of Indonesian buyers
14	Ex.P14	Fax copy of purchase order
15	Ex.P15	E-mail communication sent by the foreign buyers
16	Ex.P16	True copy of the order confirmation by the second plaintiff
17	Ex.P17	E-mail request sent by the defendant on behalf of the second plaintiff
18	Ex.P18	E-mail sent by the defendant on behalf of the second plaintiff

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19	Ex.P19	E-mail from the Indonesian buyers dated 08.11.2002
20	Ex.P20	Fax sent by the first defendant on behalf of the second plaintiff to the foreign buyers
21	Ex.P21	Foreign acceptance of resignation letter of D1
22	Ex.P22	E-mail enquiry by the purchaser from Indonesia
23	Ex.P23	The reply e-mail for Ex.P22 sent by D1 on behalf of the second plaintiff
24	Ex.P24	E-mail from Indonesian buyers enquiry about D1 Designation.
25	Ex.P25	E-mail sent by the second plaintiff to the foreign buyers
26	Ex.P26	E-mail sent by the Indonesian buyers to the second plaintiff
27	Ex.P27	E-mail sent by the second plaintiff to the Indonesian buyers
28	Ex.P28	E-mail sent by the second plaintiff to the foreign buyers
29	Ex.P29	The original certificate of registration of the design No.193288 of P1
30	Ex.P30	The original certificate of registration of the design No.193289 of P1
31	Ex.P31	The original certificate of registration of the design No.193290 of P1
32	Ex.P32	The original certificate of registration of the design No.193291 of P1
33	Ex.P33	E-mail sent by the second plaintiff to the Indonesian buyers
34	Ex.P34	E-mail reply sent by the Indonesian buyers to the second plaintiff
35	Ex.P35	Brochures of the second plaintiff
36	Ex.P36	Brochures of the defendants
37	Ex.P37	Another brochures of the defendants
38	Ex.P38	True copy of the defendants operating manual

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Defendant's side witness: D.W.1 – Mr.P.R.Gopalakrishnan

Documents exhibited by the plaintiff:

SNo	Exhibit	Description of the document
1	Ex.D1	The photographs and brochure of the second plaintiff's products at exhibition in Melbourne and Sidney organized by the Engineering Export Promotion Council of India in September, 1989.
2	Ex.D2	The authorization letter given by the second plaintiff
3	Ex.D3	The central sales tax registration of the second defendant
4	Ex.D4	The Tamil Nadu General Sales Tax registration of the second defendant
5	Ex.D5	The brochures and catalogues of the second plaintiff prior to registration of first plaintiff design
6	Ex.D6	The copy of purchase order from Syarikat Saintifix, Malaysia with catalog of the second plaintiff
7	Ex.D7	The original brochures and catalogues of the second plaintiff after registration of first plaintiff's design.
8	Ex.D8	The brochure and catalog of the second defendant after registration of the first plaintiff's design.
9	Ex.D9	The original catalogues of electro thermal in the year 1983
10	Ex.D10	The catalog of J.R.Industrial Heaters
11	Ex.D11	The original catalog of Unitech Instruments, Chennai in the year 2002.
12	Ex.D12	The original catalog of Kumar Industries
13	Ex.D13	The original catalog of Isopad in the year 1991
14	Ex.D14	The original catalog of Quimis Aparelhos
15	Ex.D15	The original catalog of Sun scientific

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16	Ex.D16	The original of registered designs of the second defendant No.7097 of 7171
17	Ex.D17	The copy of cancellation petition dated 03.06.2006 filed by the first plaintiff
18	Ex.D18	The original letter from the Patent Office, Kokatta to the second defendant and the first plaintiff
19	Ex.D19	The original letter to the Patent Office, Kokatta from the second defendant copied to the first plaintiff with counter statement of the second defendant
20	Ex.D20	The original letter from the Patent Office, Kolkatta to the first plaintiff
21	Ex.D21	The original letter dated 04.06.2007 from the Patent Office, Kolkatta to the first plaintiff.

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