2025:KER:37835

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

MONDAY, THE 2ND DAY OF JUNE 2025 / 12TH JYAISHTA, 1947

FAO NO. 14 OF 2025

AGAINST THE ORDER DATED 18.11.2024 IN I.A NO.1/2024 IN OS NO.8 OF 2024 OF III ADDITIONAL DISTRICT COURT, THIRUVANANTHAPURAM

APPELLANTS/PETITIONERS/PLAINTIFFS:

1 THANSEER B
AGED 34 YEARS
S/O BASHEER, PROPRIETOR, COOL HILLS,
1/653-B, PODIKONAM ROAD, NANNATTUKAVU, POTHENCODE,
THIRUVANANTHAPURAM, PIN - 695584

2 ANIL KUMAR S
AGED 58 YEARS
S/O SREEDHARAN NAIR, PROPRIETOR, SABARI PLASTICS,
SHED NO 7 MINI INDUSTRIAL ESTATE UZHAMALAKKAL,
NEDUMANGADU TRIVANDRUM, PIN - 695547

3 VARUN A P
AGED 29 YEARS
S/O ANIL KUMAR S, DESIGNER, SABARI PLASTICS,
SHED NO 7 MINI INDUSTRIAL ESTATE UZHAMALAKKAL,
NEDUMANGADU TRIVANDRUM, PIN - 695547

BY ADVS.
SRI.P.RAHUL
SMT.BINDU S.
SMT.ABHINA L.

RESPONDENT/COUNTER PETITIONER/DEFENDANT:

DEEPU
AGED 39 YEARS
S/O SURENDRAN NAIR,PROPRIETOR, KIVI FRESH, DEEPU VILASOM,
KUTTIYANI,PANTHALACODE P.O, VATTAPPARA, NEDUMANGAD
THIRUVANANTHAPURAM, PIN - 695028

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 20.05.2025, THE COURT ON 02.06.2025THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT
(FAO No.14 of 2025)

Dated this the 02nd day of June, 2025

1. Appellants are the plaintiffs in O.S.No.8/2024 on the files of the Third Additional District Court, Thiruvananthapuram. The said suit was for injunction and other reliefs filed under Sections 134 &135 of the Trade Mark Act, 1999, Sections 22 & 23 of the Designs Act, 2000 and Sections 51 & 62 of the Indian Copyright Act, 1957.
2. The plaintiffs filed I.A.No.1/2024 praying for an interim injunction restraining the respondent/defendant or anyone claiming under him from using the design of the bottle/trademark/logo similar to one owned by the plaintiff. The Trial Court dismissed I.A.No.1/2024 as per order dated 18.11.2024 and the said order is impugned in this Appeal. Even though notice was served on the respondent, the respondent has not chosen to appear

before this Court.

3. As per the allegation in I.A.No.1/2024, the first petitioner is the proprietor of the business of manufacturing and selling fruit juice under the brand name ‘RINBOO’; that the second petitioner is the proprietor of the business Sabari Plastics engaged in designing and moulding plastic bottles and containers and the third petitioner is the designer of the second petitioner. As per the requirement of the first petitioner with the second petitioner the third petitioner designed a bottle for the first petitioner in a unique shape and the same was accepted by the first petitioner and the same was introduced in the market on 20.01.2019. The design rights as well as the copyright of the bottle design rests with the petitioner. The unique bottle has become the identification of the product of the petitioner “RINBOO” and is very well known among his peers and general public at large and it became well known in the society. The petitioners

launched the said design of bottle after spending enormous amount for advertisement and social media campaign and the petitioners have spent time, money and energy for designing the said bottle. The respondent is a manufacturer of juice under the trade name ‘KIVI’. The respondent also styled the brand name ‘KIVI’ for his fruit juice in a visually similar manner and bottled it in copying the design of the bottle cylindrical bottle with ribs all over its body created by the petitioner creating confusion among the public. On these allegations, the petitioners sought temporary injunction to restrain the respondent from using the said unique design for the bottles of his fruit juice.

4. The defendant filed a Counter Affidavit to the I.A. contending, inter alia, that the trademark of the respondent has distinctive features to identify the products manufactured by him. A comparison of trade name of both the products and the packing would show that there is absolutely no possibility of confusion

among the public in and identifying the product of the first petitioner and the respondent. The names of the two products are entirely different. There is no positive similarity between the trademark used by the first petitioner and the respondent. The petitioners cannot allege that the trademarks of the first petitioner and the respondent are similar merely for the reason that the bottle in which the product is packed is having some similarity. The design of the bottle of the petitioners is not unique and not a new or original design. Cylindrical shaped bottle with ribs is a common design seen in many plastic bottles. Similarly designed bottles were available in the market for decades. The design of the bottle containing fruit drink 'RINBOO' is available in the market prior to 20.01.2019 and it is a common design of many plastic bottles used in the industry.

5. I heard the learned counsel for the appellant Sri. Rahul P.

6. The learned counsel for the appellant contended that the

petitioners are much aggrieved by the act of the respondent in copying the design of the bottle designed by the petitioners, by the respondent and using the same for packing his product. Exts.A2 to A5 would prove that the design of the bottle was exclusively designed by the third petitioner who is working under the second petitioner, only for the first petitioner. If temporary injunction sought for is not granted, the very purpose for which the suit is filed would be defeated. Learned Counsel cited the decision of this Court in **Leena T v. Seematti** [2020 (3) KLT 668] in which this Court held that an order of injunction can be denied in trademark matters only in exceptional circumstances. The learned counsel cited the decision of the Hon'ble Supreme Court in **National Bell Co. and Gupta Industrial Corporation v. Metal Goods Mfg. Co. Pvt. Ltd. & Anr.** [(1970) 3 SCC 665] to substantiate the point that the plea of common use must fail when it is failed to establish that use by other persons is not

substantial. The learned counsel cited the decision of the **Bombay High Court in M/s. D.R. Cosmetics Pvt. Ltd & Anr. v. M/s. I.R. Industries** [2008 Supreme (BOM) 30] to substantiate the point that even if the plaintiff has not filed cases against all the persons who are infringing his trademark right, action against a single person for trademark infringement is maintainable as the existence of more than one imitation cannot justify what is wrong. Even if the unique design of the bottle invented by the petitioners is used by several persons it will not justify the illegal act on the part of the respondent. The learned counsel further cited the decision of the Delhi High Court in **Shri. Pankaj Goel v. Dabur India Ltd** [2008 Supreme Del 1313] to substantiate the point that the petitioners are not expected to sue all small types of infringers who may not be affecting the business of the 1st petitioner. It is in evidence that the 1st petitioner started the business in the year 2019 and the

respondent started his business much later. The learned counsel contended that he has got every chance in succeeding the suit if the respondent is allowed to use the unique design invented by the petitioners for the bottles of the fruit drink of the 1st petitioner during the pendency of the suit the very purpose for which the suit is filed will be defeated. In such case, the petitioners will be put to irreparable loss and injury. The Learned Counsel concluded by submitting that a prima facie case and balance of convenience are in favour of the petitioners to get an order of temporary injunction as prayed for.

7. I have considered the contentions.

8. Admittedly, the first petitioner and the respondent have been using different trademarks for their fruit juice. First petitioner has been using the trade name ‘RINBOO’ whereas the respondent has been using the trade name ‘KIVI’. The 1st petitioner has trademark registration for his trademark and there is no violation

from the side of the respondent with respect to the trademark. The claim of the petitioners is that the first petitioner has been marketing his product in a unique cylindrical shaped bottle with ribs all over its body designed by the third petitioner. The contention of the respondent is that the bottles in such design are very much available in the market and several persons have been using the very same design for their bottles. The Trial Court dismissed the Application for temporary injunction holding that there is nothing before the Court to conclude that the design of the bottle manufactured by the petitioners is in the exclusive use of the petitioners. On going through the photographs which are exhibited before the Trial Court made available before me, it is clear that both the first petitioner and the respondent have been using bottles having the same shape and design. Even though the petitioners claim that the said design of the bottle is invented by the third petitioner who was in employment of the

second petitioner at the request of the petitioner, there is no evidence before the Court to conclude prima facie that it is the third petitioner who invented the said design for the bottles of the first petitioner. The learned counsel for the appellant relied on Ext.A4 Purchase Order and contended that it is a new design invented by the second and third petitioners. Ext.A4 only says that the new design provided by the second petitioner is acceptable to the first petitioner, placing order for the bottles. It does not in any way prove that the design of the bottle is invented by the third petitioner at the request of the 1st petitioner. Even assuming that the said new design is provided by the second and third petitioners to the 1st petitioner, it is not clear whether they themselves have invented a new design or they simply imitated one of the several designs available in the market. The respondent has a specific case that the design of the bottle used by the first petitioner and the defendant are

common in usage in the industry and there are several fruit drinks packed in such bottles prior to the business of the first petitioner. The respondent has produced Exhibits B3 to B8 photographs in support of this contention. The impugned order would show that the petitioners themselves have filed I.A.No5/2024 impleaded seven other manufacturers as defendants in the suit. These are all matters which are to be proved by taking evidence in the trial of the suit by the petitioners. Now there is no evidence to hold prima facie that the design of the bottle was invented by the third petitioner for the first petitioner and it exclusively belonged to the first petitioner. Admittedly, the first petitioner has registered his trademark 'RINBOO' alone and he has not registered the design of the bottle. If he had registered the design of the bottle he could have claimed exclusive use for the same. Section 22 of the Design Act deals with piracy of registered designs alone. The decision

of this Court in **Beena T.** (supra) does not lay down an absolute proposition. The parameters of granting injunction are to be considered while considering an application for injunction. Considering the prima facie case, balance of convenience and irreparable injury of the parties, I am of the view that the petitioners are not entitled to get temporary injunction as sought for. The Trial Court rightly dismissed the Application for temporary injunction.

9. Accordingly, this appeal is dismissed making it clear that the Trial Court shall dispose of the suit untrammeled by the observations contained in the impugned order and this order and that all legal questions involved are left open to be considered in the suit.

Sd/-

M.A.ABDUL HAKHIM

JUDGE

Jma/shg