IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

FRIDAY, THE 13TH DAY OF OCTOBER 2023 / 21ST ASWINA, 1945

FAO NO. 101 OF 2023

ORDER IN IA.3/23 IN OS 1/2023 OF DISTRICT COURT & SESSIONS COURT,THRISSUR

APPELLANT/S:

ESAF SMALL FINANCE BANK LIMITED
BUILDING NO. VII/83/8, ESAF BHAVAN, THRISSUR, PALAKKAD NATIONAL HIGHWAY, MANNUTHY, THRISSUR-680651, A BANKING COMPANY REP. BY SENIOR MANAGER RAJESH KUMAR.R. AGED 45, S/0. VASUDEVAN NAIR, PRANAVAM HOUSE, PERUVAYAL VILLAGE, KOZHIKODE TALUK, KUNNAMANGALAM P.O. KOZHIKODE DISTRICT-., PIN - 673571

BY ADVS.
SANTHOSH P.PODUVAL
R.RAJITHA
CHITHRA S.BABU

RESPONDENT/S:

SAAF CAPIT FEDERATION
DOOR NO.37/2060-3, CHULLIYIL TOWER, SANKARAYYA ROAD, WEST FORT, THRISSUR-. A COMPANY REP. BY MANAGING DIRECTOR., PIN - 680004

BY ADV G.SREEKUMAR (CHELUR)

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 5.10.2023, THE COURT ON 13.10.2023 DELIVERED THE FOLLOWING:

JUDGMENT

(Dated 13th day of October 2023)

The appellant was the plaintiff in O.S. No.1/23 on the file of District Court, Thrissur. The respondent was the defendant there.

2. The plaintiff filed a suit against the 1st defendant to recover Rs.1 lakh as the plaintiff's registered trade mark has been infringed and a loss has been caused to the plaintiff. A permanent prohibitory injunction was also sought against the 1st defendant from using the trade name SAAF or SAAF with a design implying an 'E' before it or mark or label as shown in plaint B or C schedule or any trade name deceptively or phonetically similar, identical, or colourable imitation of the plaintiff's trade mark and from committing or continuing infringement of the registered trade mark of the plaintiff. A few other reliefs were also prayed for. Along with the suit, I.A No.3/2023 was also filed under Order 39 Rule 1 r/w Section 151 of the CPC to issue a temporary prohibitory injunction restraining the 1st defendant, their men, their principal officers, agents, servants, marketing representatives, franchisees, and others claiming under them from offering services, marketing, advertisement, conducting, directly or indirectly dealing, using in any manner the trade name SAAF or SAAF with a design implying an 'E' before it or mark or label as shown in plaint

B or C schedule or any trade name deceptively or phonetically similar, that of the plaintiff's registered trade mark.

3. The learned Judge, by the impugned order, dismissed the I.A holding that the plaintiff has failed to establish a *prima facie* case for the grant of temporary injunction.

4. According to the plaintiff, it is a Banking Company licensed under Section 22(1) of the Banking Regulation Act, 1949, with a registered trade mark shown in the plaint as A schedule. It entered the banking business, trading under the name and style, "ESAF SMALL FINANCE BANK LIMITED ". The said name has been used by the plaintiff continuously from December 2015 onwards and has acquired a high reputation and goodwill. The trade mark shown as Plaint A schedule has been duly registered under class 36 with No.3459568 and 4392824 with validity upto 17.01.2027 and 30.12.2029, respectively.

5. The 1st defendant company conducts trade under the name and style "SAAF CAPIT FEDERATION" which is phonetically and deceptively similar trademark to that of the plaintiff. The 1st defendant gives the public the impression that they are a part of the plaintiff's banking business. Thus, infringing the trade mark and trade name of the plaintiff and passing off their business and services as those of the plaintiff by using the trade mark described in Plaint B and C schedules,

which are deceptively and phonetically similar and identical to the trademark of the plaintiff described in plaint A schedule. Recently, the 1st defendant opened a new branch at Mannuthy, about 300 meters from the plaintiff's head office. The said act has caused a huge financial loss to the plaintiff and a loss of reputation. Hence, the suit was filed.

6. The same contention has been reiterated in I.A No.3/2023, which is filed in support of the petition to grant a temporary prohibitory injunction.

7. The defendant filed a counter affidavit to the interlocutory application. The defendant has denied almost all the averments in the affidavit in support of the petition for injunction. It was also contended that the logo and trade mark of the defendant are quite different from that of the plaintiff, and the classes of customers of the plaintiff and the defendant are quite different. There is no identical and phonetically similarity in the mark and logo of the plaintiff and the defendant. Hence, the question of creating confusion in the public's and customers' minds will not arise. The logos of both the plaintiff and the defendant are extremely different in color, similarity, and identity, are not deceptively or phonetically similar, and cannot cause any confusion in the minds of the public. The business activities conducted by the plaintiff and the defendant are absolutely different. The plaintiff company is a public

limited company with an RBI license, conducts banking business, and provides various kinds of loans like gold, business, and personal loans. Whereas, the defendant company is incorporated under Section 8 of the Companies Act 2013 to promote economic, social welfare, and developmental activities intended for the general welfare of the public. The plaintiff company is not engaged in the business of providing any kind of loan to the general public. The defendant's name, "SAAF" is written in capital letters with a design implying an 'E' before SAAF" is denied and not proved. The defendant has never infringed any rights of the plaintiff. The plaintiff has come with unclean hands and *mala fide* intention to harass the defendant. There is neither a *prima facie* case in favour of the plaintiff nor a balance of convenience. Therefore, prayed for the dismissal of the application for injunction.

8. The learned Judge, after an evaluation of the registered trademark of the plaintiff as well as the mark and logo used by the 1st defendant, came to the definite conclusion that the plaintiff has failed to establish a *prima facie* case for the grant of injunction as the registered trademark of the plaintiff and the mark used by the 1st defendant are not deceptively similar.

9. The learned Judge had taken note of the contention raised by the counsel for the plaintiff that the emblem inscribed on the left side

of the trade mark of the defendant resembles the letter 'E' and there is every possibility that it could be understood as the trade mark of the plaintiff. Whereas, the counsel for the defendant would argue that the emblem shown on the left side of the letter SAAF is a pictorial representation of a phoenix bird, and it can never be treated as an alphabet 'E'. But the learned Judge had interpreted the emblem as the letter 'S', written in an artistic imagination. Therefore, the general public cannot misread it as "ESAF".

10. The counsel for the appellant, Sri. Santhosh P.Poduval argued that a mere glance at the A schedule along with the B and C schedules would make it clear that the B and C schedules can only be read as "ESAF", though "E" is shown as an emblem before SAAF. If a common man sees such an emblem, he would only read it as ESAF, and not as SAAF as contended by the defendant. The plaintiff obtained the registered trademark ESAF SMALL FINANCE BANK Limited, under class 36. ESAF is the short form of 'Evangelical Social Action Forum', which was founded by one Mr K. Paul Thomas in 1992, who is the Managing Director of the plaintiff and founder of ESAF Group of Entities.

11. The order under challenge is passed in a petition under Order 39 Rule 1 of the CPC for a temporary injunction against the violation of the trade mark and passing off at the instance of the 1st

defendant. So the question to be looked into is whether a *prima facie* case has been made out by the plaintiff, whether the balance of convenience is in favour of him, and if the 1st defendant is allowed to continue with the trade mark, whether irreparable injury, hardship would be caused to the plaintiff.

12. The law relating to injunctions is governed by the Specific Relief Act, 1963 and Code of Civil Procedure, 1908. Interlocutory injunctions are issued provisionally before the trial of the suit and continue until the trial has ended. Before any order is passed in an interim injunction application, the court does not go into general profess to anticipate the determination of the right but merely gives it as its opinion that there is a substantial question to be tried, and till the question is answered for the preservation of the property, the injunction is to be ordered.

12.1 To come to a conclusion as to whether the trade mark is deceptively similar to another, it is not for the court to place the two marks side by side to find out if there are any differences in the designs and whether they are of such character as to prevent one design from being mistaken from the other. It is enough if the impugned mark bears an overall similarity to the registered mark, as that would likely mislead a person, usually dealing with one, to accept the other if offered to

him. In an action for infringement, the plaintiff must make out that the use of the defendant's mark is likely to deceive between the plaintiff's and defendant's mark, either visually or phonetically, and if the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated.

12.2 The crucial test to be applied for an infringement action or a passing off action is to see whether a customer of average intelligence and of imperfect recollection is likely to be confused on the first impression. It is to be noted that the first syllable of a word mark is generally the most important, and when the defendants are using such a similar prefix to that of the plaintiff with little variation in the prefix part of it, the trade marks are deceptively similar, and a cause action for *prima facie* infringement is complete.

12.3 In a matter of temporary injunction, the court does not adjudicate on the subject matter or any part of it on merits. The court considers the application in the light of the well known principles and then excises its discretion, weighing all relevant considerations without any express of opinion on the merits of the matter.

13. The principles of law relating to temporary injunctions is well recognized by the decision of the Apex Court in ***Dalpat Kumar v. Prahlad Singh (*AIR 1993 SC 276)** the relevant portion of the

observation of the Apex Court extracted hereunder:

> "...It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the Court satisfying that:
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> (1) there is a serious disputed question to be tried in the suit, on the facts before the Court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant;
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> (2) the Court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and
>
> (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.
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> The Supreme Court further observed:-
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> ..Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bonafide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in 'irreparable injury' to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that 'the balance of convenience must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.
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> The Court continued:

> ...The phrases 'prima facie' case. "balance of convenience ;and 'irreparable' loss are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice…."

14. As mentioned earlier, the first and foremost thing for grant of a temporary injunction is a *prima facie* case necessary for an order of temporary injunction. When there is a serious question to be tried as to the likelihood of deception, confusion, or potential damage is established, an interim injunction in trade mark infringement is sustainable. When the plaintiff is a registered proprietor of a trade mark and the plaintiff projects a case that the defendant is infringing his mark, the court will generally grant an interlocutory injunction pending the trial of the action, notwithstanding the claim of the defendant to use the mark for *bona fide* description of its goods. The court is entitled to proceed on the footing that a mark that has secured registration and is entered upon the register is *prima facie* valid. A temporary injunction will be granted once the court is satisfied that the defendant's mark is a colourable imitation of or substantially similar to the plaintiff's mark. Infringement may not necessarily be avoided by adding other names to someone's mark. If it is shown that the defendant has acted fraudulently, the court will readily grant an injunction.

14.1 The second most important ingredient for the grant of injunction is whether the injury was actual or imminent. The plaintiff must make out a strong case that there is a reasonable probability that the defendant's wrongful act would materially injure his business and that such danger exists or is imminent, and the apprehended damage will be substantial and irreparable.

14.2 Balance of inconvenience is another aspect to be looked into while granting an interim injunction, that is, by the nature of the injury, which the defendant, on the one hand, will suffer if the injunction was granted and he should ultimately turn out to be right, and that which the plaintiff, on the other hand, might sustain if the injunction was refused, and he should ultimately turn out to be right as well as by the justice of the case.

15. The counsel for the appellant has relied on the judgment of the Apex Court in ***Ruston and Hornby Ltd v. Zamindara Engineering Co.(*****1969 KHC 569)** It was a case in which a limited company incorporated under English Companies Act and having registered office at Lincoln, England, carrying on business in the manufacture of and sale of diesel internal combustion engines and their parts. The said company had a registered subsidiary by the name Ruston Hornsby (India) Ltd, and the respondent firm was carrying on business in manufacturing and

selling internal combustion engines and their parts. The registered trademark of the appellant company was "RUSTON" and that of the defendant was "RUSTAM". The Apex Court held that, it very often happens that although the defendant is not using the plaintiff's trademark, the get-up of the defendant's goods may be so much like the plaintiff's that a clear case of passing off would be proved. It is, on the contrary, conceivable that although the defendant may be using the plaintiff's mark, the get-up of the defendant's goods may be so different from the get-up of the plaintiff's goods, and the prices may also be so different that there would be no probability of deception of the public. In an infringement action, an injunction would be issued as soon as it was proved that the defendant is improperly using the plaintiff's mark.

15.1 Another decision relied on by the counsel for the appellant is **Renaissance Hotel Holding Inc. v. B. Vijaya Sai and Ors (2022) 5 SCC 1**, wherein the issue that came up for consideration was regarding the use of words 'RENAISSANCE' and 'SAI RENAISSANCE'. The Apex Court, after considering Section 29 of the Trade Marks Act, held that 'RENAISSANCE' and 'SAI RENAISSANCE are phonetically and visually similar, and therefore, it would amount to infringement.

15.2. In **Laxmikant V. Patel v. Chetanbhai Shah and Another(2022 KHC 1171)** , the Apex Court held that the plaintiff must

prove a *prima facie* case, the balance of convenience in his favour and his suffering an irreparable injury in the absence of a grant of injunction and the defendant's contention that he has already commenced the business under the offending name would not disentitle the plaintiff to grant of an interim injunction. The said judgment also had taken care of the interference of interim orders passed by the trial court by the High Court. It was held that ordinarily, interference with the exercise of discretion in the matter of granting of a temporary injunction by the High Court and substituting its discretion for that of the trial court is to be applied only when it is shown that discretion has been exercised arbitrarily, or capriciously, or perversely, or where the order of the court under scrutiny ignores the settled principles of law regulating the grant or refusal of interlocutory injunction. If the discretion has been exercised by the trial court reasonably and in a judicial manner, the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

15.3 In **Mercy Bigi v. Sunilkumar [2015(3) KLT 938]**, the learned Single Judge of this court has held that an action for passing off is a common law remedy available to a person who is doing a trademark or rendering a service to prevent others from passing off their goods or services as that of the plaintiff. In order to establish a case for passing off,

the plaintiff has to establish that the plaintiff had acquired a goodwill or reputation attached to the goods or services which he supply in the mind of the purchasing public in association with the identifying name or mark under which his particular goods or services are offered to the public. He should also establish that the misrepresentation by the defendant to the public, whether intentional or not, leading or is likely to lead the public to believe that the goods or services offered by him are the goods or services of the plaintiff. The plaintiff should further establish that he is likely to suffer damage by reasons of the misrepresentation of the defendant. It is now settled that the similarity of true trademarks is to be examined in the context of an unwary person of average intelligence with imperfect recollection. The defendant's trade name is likely to confuse prospective customers of the plaintiff.

16. The counsel for the defendant, Sri. Sreekumar (Chelur) relied on the judgment of the Apex Court in **Vishnudas Trading AS Vishnudas Kishendas v. Vazir Sultan Tobacco Co. Ltd, Hyderabad and Another [(1997) 4 SCC 201}.** The contents of the proposition that if a trader or manufacturer is trading in or manufacturing only one of some of the articles or goods under a trade mark and has no *bona fide* intention to trade in or manufacture the other articles or goods falling under that class, but has obtained registration of its trade mark under

that class which covers several other articles or goods. The registration is liable to be rectified, confining it to the specific articles or goods that are actually intended to be traded in or manufactured.

16.1 He also relied on the decision of the Apex Court in **Nandhini Delux v. Karnataka Cooperative Milk Producers Federation Limited[(2018) 9 SCC 183}**, wherein it was held that registration of trademark qua certain good falling under one class does not vest monopoly over the entire class of goods with the proprietor of a registered trademark. He has specifically relied on paragraph 29 of the said judgment, which reads as follows:

> 29. This Court, in National Sewing Thread Co. Ltd. v. James Chadwick and Bros. Ltd, accepted the following principles which are to be applied in such cases: (AIR p. 363, para 22)
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> "22. The principles of law applicable to such cases are well settled. The burden of proving that the trade mark which a person seeks to register is not likely to deceive or to cause confusion is upon the applicant. It is for him to satisfy the Registrar that his trade mark does not fall within the prohibition of Section 8 and therefore it should be registered. Moreover, in deciding whether a particular trade mark is likely to deceive or cause confusion, that duty is not discharged by arriving at the result by merely comparing it with the trade mark which is already registered and whose proprietor is offering opposition to the registration of the mark. The real question to decide in such cases is to see as to how a purchaser, who must be looked upon as an average man of ordinary intelligence, would react to a particular trade mark, what association he would form by looking at the trade mark, and In what respect he would connect the trade mark with the goods which he would be purchasing". (Emphasis added)

16.2. In ***Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd*** **[(2001) 5 SCC 73]**, the Apex Court has held the test to determine the similarity and dissimilarity between the competing marks. It was held

that phonetic similarity is not to be ignored when the competing words are written differently. It is also held that the question has to be approached from the point of view of an Indian of average intelligence and imperfect recollection and not from the view of an Englishman. In paragraph 35, it is held as follows:

> "35. Broadly stated, in an action for passing-off on the basis of unregistered trade mark, generally for deciding the question of deceptive similarity, the following factors are to be considered:
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> (a) The nature of the marks Le, whether the marks are word marks or label marks or composite marks, ie. both words and label works
> (b) The degree of resemblances between the marks, phonetically similar and hence similar in idea.
> (c) The nature of the goods in respect of which they are used as trade marks.
> (d) The similarity in the nature, character and performance of the goods of the rival traders.
> (e) The class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the goods.
> (f) The mode of purchasing the goods or placing orders for the goods.
> (g) Any other surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks."

16.3 He also relied on the decision of the Apex Court in **Neon Laboratories Limited v. Medical Technologies Limited and Others {(2016) 2 SCC 672}**, for the well-settled proposition that the appellate court should not flimsily, whimsically, or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. If the discretion has been exercised by the trial court reasonably and in a judicial manner, the fact that the appellate court

would have taken a different view may not justify interference with the trial court's exercise of discretion.

17. In the light of the above-mentioned decisions of the Apex Court submitted on behalf of both the plaintiff and the defendant, the order of the District Judge has to be analyzed. The application for an injunction under Order 39 Rule 1 is filed for a temporary injunction against the trademark violation and passing off at the instance of the first defendant. The registered trademark of the plaintiff/appellant is **ESAF SMALL FINANCE BANK** under class 36 with registration No.3459568 and ESAF Small Finance Bank with the device of two men encased in a rectangle under class 36 with registration No.4392824 and ESAF Small Finance Bank with the device of two men encased in a rectangle with the tagline "Joy of Banking" under class 36 with registration No.4392825.

17. The defendant trademark is shown as B and C schedules. Admittedly, the defendant does not have a registration till date, and his application for registration is pending with the Registrar, and the plaintiff has already objected to it. The status of the application of the defendant's trademark is accepted and advertised. So, it is at the stage where the Registrar is considering the objection of the plaintiff.

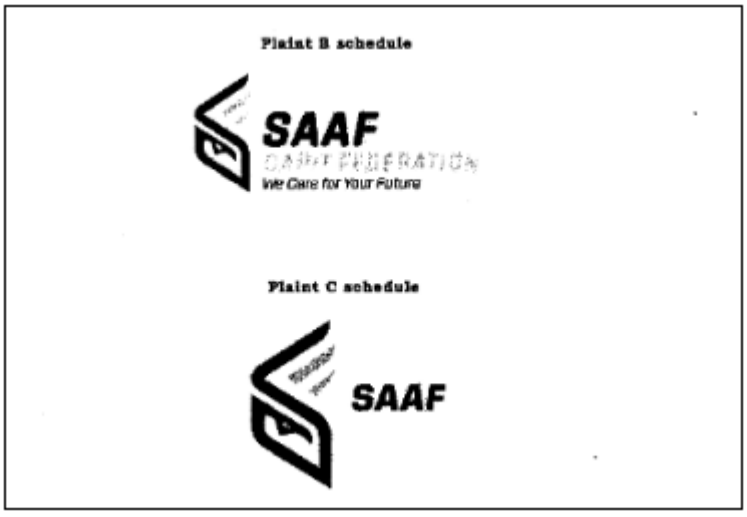
18. For a proper understanding of the registered trademarks of the appellant, as well as the one mark which the first defendant uses, is

extracted below:

Plaintiff's Registered Trade mark:



Defendant's Trade mark



19. While considering the application under Order 39 Rule 1 for grant of injunction, the court should see whether a *prima facie* case is made out, the balance of convenience is in favour of the plaintiff, and irreparable injury is caused to the plaintiff. In the case of a trademark, the

court is to look into the infringed trademark along with the mark used by the defendant and to *prima facie* arrive that the mark used by the defendant is deceptively similar in the vision of an unwary person of average intelligence with imperfect recollection. In this context, it is to be noted that along with the application for an injunction, an application for issuance of the Commission was also filed, and the District Court has allowed the commission application, and a Commissioner was appointed, who, after visiting the defendant's Institution, has filed a report.

20. The counsel for the appellant submits that even though more than 50 documents were filed along with the application for an injunction, the learned District Judge has only referred to 4 documents on the side of the plaintiff and one document on the side of the defendant.

21. The learned Judge has not looked into the Commission report filed by the Commissioner, though it cannot be entirely accepted at this stage, it would be a guiding factor in the disposal of the injunction application. He submitted that along with the Commission Report, a few application forms obtained from the office of the first defendant, along with a few photographs showing the marks and the logo, were also produced. If the learned Judge had gone through the Commissioner's Report, it would be evident that the Commissioner has brought to the notice of the court that the business being operated by the defendant as

well as the plaintiff to a certain extent is the same However, the plaintiff does banking business, loans are also given to the customers by the plaintiff as well as the defendant which can be seen from the applications forms obtained by the Commissioner from the office of the first defendant. The learned Judge has not turned his eyes to the Commissioner's Report while considering the application for an injunction. Moreover, the learned Judge, after seeing the logo in front of the mark of the first defendant, interpreted in his own way that it represents 'S' when the first defendant does not even have a case that it represents the letter 'S' and it only represents a phoenix bird. Therefore, the order passed by the learned Judge is perverse, arbitrary, capricious, and against the settled principles of law regulating the grant or refusal of interlocutory injunctions.

21. It is also argued by the learned counsel for the appellant that nowhere in the counter affidavit the defendants stated when the company was started and, from which date the mark was being used. Only a few sentences state the mark is not similar to that of the registered trademark, and the defendant is conducting a different activity than the plaintiff's.

22. The counsel for the respondent, on the other hand, relied on Section 17 of the Trade Marks Act, 1999, which reads as follows:

'when a trademark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark when taken as a whole'. The registered trade mark of the plaintiff is ESAF Small Finance Bank. Therefore, he cannot take out the word 'ESAF' out of the registered trademark and contend that since the first defendant has used the word SAAF with a logo before it, he cannot contend that the defendant has infringed the trademark of the plaintiff, 'ESAF Small Finance Bank', because the first defendant has never used the words 'Small Finance Bank' in the trademark of the first defendant. So, there cannot be an infringement of the trademark of the plaintiff, and therefore, the court below rightly exercised the jurisdiction and discretion in dismissing the application for injunction.

22. He also submitted that when discretion is exercised in a judicial manner, the appellate court shall not substitute its discretion except when it is exercised arbitrarily, capriciously, or perversely and against the settled principles of law regulating the grant or refusal of interlocutory injunctions. He also prayed that in such situations, this court has the amble power to direct the learned Judge to dispose of the suit within a time frame without interfering with the orders passed by the learned Judge.

23. A reading of the order passed by the learned Judge would

show that the learned Judge has exercised his discretion in not granting an injunction to the plaintiff because the plaintiff failed to establish a *prima facie* case. It is to be noted that when we look at the registered trademark of the plaintiff as well as that of the trademark of the first defendant, as shown above, the court below has to look into whether an unwary person of average intelligence with imperfect recollection is likely to confuse that the first defendant is a part of the plaintiff. The logo, which is in the front of the trademark of the first defendant, has been interpreted by the learned Judge as 'S'. The defendant's case is that, it is a representation of a phoenix bird. The plaintiff's case is that the letter 'E' is written differently, so that the customers or the common man will have to read it as 'ESAF'.

24. On consideration of the entire facts and circumstances of the case, as well as the order passed by the learned Judge and also, the decision of the Apex Court mentioned above, I am of the opinion that the learned Judge has not exercised his discretion in tune with the general principles of law regulating the grant or refusal of interlocutory injunction, and it is exercised arbitrarily and perversely. Why I say this is the Commission Report produced certain documents, even though the evidentiary value has to be looked into at the trial, the learned Judge should have looked into it to arrive at a conclusion whether the business

operated by the plaintiff and the first defendant, atleast to some extent, is one and the same or not. Moreover, the learned Judge ought not to have interpreted the logo in his own way. For these reasons, I am of the considered opinion that the discretion exercised by the learned Judge is arbitrary and against the principles of law regulating the grant or refusal of an interlocutory application, and therefore, the same has to be interfered with, and I do so.

Therefore, the order passed by the learned Judge in I.A No.3/2023 dated 06.07.2023 is set aside and is remanded to the learned District Judge to reconsider it in the light of the available evidence produced from the sides of the plaintiff and the first defendant, and also the dictums laid down by the Apex Court in the decisions mentioned above.

With the above observations, the FAO stands allowed.

Sd/-

BASANT BALAJI,

JUDGE

JS/