



COMMERCIAL TRADE MARK CIVIL SUIT - NO. 01 of 2024

ORDER BELOW EXHIBIT - 5

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Mr. J.B. Chhotala : Ld. Advocate for the Plaintiff.

Mr. I.B. Kheni : Ld. Advocate for the defendant no.1.

Mr. K.A. Buddhdev : Ld. Advocate for the defendant no.3.

Ms. K. Jha : Ld. Advocate for the defendant no.4.

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1. The Plaintiff has filed the present suit alongwith application under Order 39, Rule I & II of The Code of Civil Procedure Code.
2. The plaintiff has prayed for following reliefs which are as under :
 - 2.1. *The defendants their proprietors/partners/directors/heirs, agents, dealers, distributors, stockiest, servants, manufacturers and other business personnel be restrained permanently from manufacturing, marketing, selling, using promoting and advertising in any manner their products having the identical*

and deceptively similar designs with copied ladies' garment set along with ornamental surface, patterns, get-up, concepts as represented in para 5,16,18 above and respective annexures with list which are identical and/or deceptively similar to the plaintiffs prior adopted and registered designs which is unique and novel design alongwith ornamental surface patterns, get up with specific concept as represented in para 5 and annexures with list and thereby the defendants may be restrained by an order of ex parte ad interim injunction from infringement of plaintiffs Registered Design of the Ladies' garments set.

- 2.2. *The defendants their proprietors/partners/directors/heirs, agents, dealers, distributors, stockiest, servants, manufacturers and other business personnel be restrained permanently from manufacturing, marketing, selling, using promoting and advertising in any manner their products having the identical and deceptively similar designs with copied ladies' garment set along with ornamental surface patterns, get-up concept as represented in Para 5,16,18 above and respective Annexures with list which are dential and/or deceptively similar to the plaintiffs prior adopted and used designs with unique and novel design along with ornamental surface patterns, get up with*

specific concept as represented in Para 5 and annexures with list thereby the defendant be restrained by an order of ex parte ad interim injunction from passing off the registered Design of the plaintiff's products under the copied designs/articles/trade dress as that of the plaintiff.

2.3. *The Hon'ble court be pleased to direct the defendant to hand over all duplicate designs, blocks, dyes, prints, art-work, packing material, labels, pamphlets, brochures, any other literature, advertising material, stationery material containing and consisting of the identical and deceptively similar designs/ (as shown in para nos. 5,16,18 and respective annexures withlist) for destruction, to the plaintiff.*

2.4. *The Hon'ble court may be pleased to grant an ex parte ad interim injunction in terms of para 33(a) & (b).*

2.5. *The Hon'ble Court may be pleased to grant such other and further relief/s as may be deemed fit, just and proper in the interest of justice.*

3. It is the case of the plaintiff that plaintiff is a proprietorship firm doing its business in the name and style of **M/S KASHT BHANJAN FASHION**, proprietary firm of **Mr. Khunt Premjibhai**. The plaintiff

is in the clothing business, selling, marketing and advertising various types of ready made garments, dress material, sarees and other clothing material specifically designed for the girls, ladies, woman. The plaintiff is doing business continuously, openly and extensively since 11.08.2017. The defendants in the present suit seem to be engaged in the identical/similar business of marketing and selling clothing material, ready-made garments, dress material and other clothing products situated at the address mentioned in the cause title. The defendants are operating from the E-commerce website www.flipkart.com and www.ajio.com as well as the retail store outlet wherein they sells/markets/advertises ready-made garments, dress material, sarees and other clothing products. The defendants are marketing, selling, distributing their product with identical design printed on the dress material, clothing products alongwith specific ornamental surface pattern (hereinafter referred as 'Design') as that of the plaintiff's prior adopted registered design. The details of the defendants are extracted from website as well as from various product purchases. It is further submitted that the plaintiff has obtained the registration of the design from and approved the same from the **Controller of General of Patents, Designs and Trademark, The Patents Office, Kolkata**. It is further submitted that the design is registered vide Design Registration

No.390885-001 dated 22.07.2023. The registered design (as shown in interim application page No.5) of the plaintiff i.e., 'Ladies Garment Set' is uniquely formulated, designed and executed by the plaintiff for the first time in the market.

- 3.1. The advertisements of the plaintiff's designed product with its unique design have been relayed on media platform extensively so as to bring awareness amongst the large population of our country who identify the said designs of the plaintiff's product being associated with plaintiff only and none else. The plaintiff has gained tremendous goodwill and reputation in the market due to its high quality goods. It is further submitted that Design Registration Certificate is the *prima facie* evidence and the same proves that the plaintiff herein is the registered proprietor of the said design.
- 3.2. It is submitted that the defendants herein above have subsequently adopted the identical designs which are as that of the plaintiff's registered designs. The defendants have not even applied their mind to change the photo-shoot models' images while selling the products on-line and off-line and openly displayed it without permission or authorization of the plaintiff. Therefore, the same amounts to the infringement of registered design of the plaintiff as per the Design Act, 2000. The plaintiff has also produced registered design and

copied design with URL link for ready reference. It is further submitted that the plaintiff's unique design are being infringed by displaying on-line as well as off-line market places and which are being sold on the website such as www.flipkart.com and www.ajio.com. It is further submitted that cause of action arose due to illegal selling of Ladies Garment Set with identical designs alongwith ornamental surface pattern, which are identical and similar to the plaintiff's well known registered designs.

3.3. It is further submitted that the defendants are deceiving and confusing the purchasers by using the designs of the plaintiff and once the goodwill, reputation and recognition of the plaintiff's designs gets diluted by counterfeiter, the dilution and damage thereof cannot be compensated in terms of money and therefore, there appears an irreparable injury to the plaintiff. Hence, balance of convenience is entirely in favor of the plaintiff and against the defendants. Hence, the defendants are required to be restrained immediately by way of an order of injunction. Therefore, the present suit has been filed and above mentioned interim reliefs have been sought.

4. Notice of the present suit is issued upon the defendants. The defendant nos. 1,3,5 have present before the court where, none

present for defendant nos.2 and 5. Written statements have been filed on behalf of defendant nos.1 and 3.

5. Ld. Advocate for the defendant no.1 has filed written statement and he has emphatically denied all the allegations made against him. It is further submitted that the plaintiff has not come with clean hands before the court. It is further submitted that the claim of the plaintiff as well as injunction application are against the principles of natural justice and therefore, the same are not maintainable. The defendant has submitted that he is not marketing, advertising or selling any design that is identical or similar to the registered design of the plaintiff. It is further submitted that defendant has no knowledge regarding the business and goodwill of the plaintiff. It is further submitted by the defendant that the design used by the defendant is not similar that to plaintiff and also he has not pirated the same. It is further submitted that when the defendant has not used the design then, in what manner, there is need of taking permission of the plaintiff. It is further submitted that there is no deception or confusion created by the defendant while selling his product in the market as both the design i.e., of the plaintiff as well as defendant are different. It is further submitted that there is no question of good will and misrepresentation of the plaintiff. It is further submitted that also the defendant has not copied/used

design of the plaintiff while selling the same through online websites. Hence, it is submitted that looking to the averments made by the plaintiff as well as documents produced by the plaintiff, there is no *prima facie* case made out against the present defendant no.1. Hence, is submitted that the plaintiff is not entitled any interim relief and prayed to reject the present application.

6. Ld. Advocate for the defendant no.3 has also filed written statement on the record. It is submitted by the defendant that allegations made against the present defendant are false and fabricated. It is further submitted that the petition filed by the plaintiff is bad for non-joinder and mis-joinder of parties. The plaintiff has concealed the facts in the petition as well as injunction application. It is submitted by the defendant that he has never produced nor sold and made any transaction on on-line platform any such goods infringing the subject matter of the present suit. It is submitted that the plaintiff has falsely implicated the present defendant as a party in the suit. It is further submitted that there is no *prima facie* case against the present defendant and also the balance of convenience and irreparable loss also does not lie in favor of the plaintiff. Therefore, the defendant has prayed for rejection of the present application. Further, no one has appeared on behalf of defendant

nos. 2 and 5 despite having been served, therefore, for the purpose of this application, they are being proceeded *ex parte*.

7. I have heard Ld. Advocates for respective parties and perused the entire record and documents alongwith present application.
8. Before proceeding further, it is required to be noted that the defendant nos. 1 and 3 have stated in their written statement and also orally before the court that they are not manufacturing and/or selling any product having identical or deceptively similar design with that of the registered design of the plaintiff. They have further submitted that they do not intend in future also to manufacture, market or sell any ladies garments or any product having identical or deceptively similar design with that of the registered design of the plaintiff. The defendant no.4 is e-commerce platform for selling the products of different manufacturers and suppliers. The counsel appearing on behalf of the defendant no.4 has submitted that they are not directly selling any such product. It is only that the different manufacturers or sellers sale their products through defendant no.4. She has further submitted that the defendant no.4 is duty bound to abide by any order passed by this court. Hence, in view of the reply filed by the defendant nos. 1 and 3 that they are bound by statements which they have made in their reply and also in view of

the aforesaid facts and circumstances of the case, I pass the following order in the interests of justice :

O R D E R

1. The present application is hereby **ALLOWED**.
2. The Defendant nos. 1, 2 and 3, their proprietors/partners/directors/heirs, agents, dealers, distributors, stockiest, servants, manufacturers and other business personnel are hereby restrained from manufacturing, marketing, selling, using promoting and advertising in any manner their products having the identical and deceptively similar designs with that of the plaintiff.
3. So far as, defendant nos. 4 and 5 are e-commerce platform who are directed to remove the URL of defendant nos. 1,2 and 3, from their website and not to allow the said defendants from showing and selling any product design which is deceptively similar designs with that of the plaintiff.
4. No order as to costs.

Date : 25-01-2024
Place : Surat.

(**ASHISH J.S. MALHOTRA**)
Special Commercial Judge &
5th Additional District Judge,
District & Sessions Court, Surat
(Unique ID Code: GJ01504)