

Order below exhibit-5

(1) This is an application filed by the Plaintiff under Order-39 Rule-1 & 2 read with Section-151 of the Code of Civil Procedure, 1908 for seeking temporary injunction restraining defendants from infringement of registered trademark Shree Ganesh Live Aloopuri and Shree Ganesh Live Aloopuri & Raswala Khaman of the plaintiff until final disposal of this suit.

(2) The notices were issued by the Court and they were duly served to the defendant and he appeared before the Court but no written statement was submitted by him. The plaintiff has submitted documents vide mark-3.

Submission on behalf of plaintiff.

(3) Heard the Ld. Advocate for the plaintiff. He has argued as per application for temporary injunction. He further contended that there is, prima facie, case in favour of the plaintiff against defendants and the balance of convenience is also in his favour. He further contended the plaintiff would suffer irreparable loss if the injunction

would not be granted in favour of plaintiff. Hence prayed for temporary injunction.

Submission on behalf of defendants.

(4) The defendant has not appeared before the Court to argue the matter.

Principles governing grant of temporary injunction

(5) This is an application for temporary injunction and there are three basic principles for granting or refusing to grant temporary injunction i.e. prima facie case in favour of the party seeking injunction, balance of convenience in favour of such person and last there must be a irreparable loss which are likely to be caused to party if injunction is not granted to such person. And an injunction being an equitable remedy is always at the discretion of the court. However, such discretion must be based on sound judicial principles and guided by rules of Equity and the peculiar facts and circumstances of the case. Apart from three basic principles, the court is also required to see the conduct of party seeking equitable

relief of temporary injunction since the granting of injunction is an equitable relief and is drastic or serious order. There are two basic maxims of equity which are important to be considered at the time of deciding injunction application which are “He who seeks equity must do equity” and “He comes to equity must come with clean hand”.

Analysis

(6) Looking to the materials on record, it appears that the court vide its order dtd. 04.04.2025 passed interim order below Exh. 5 restraining defendant from committing the infringement and passing of the registered trademark till next date. The defendant has not contested the suit and the averment made in the plaint may be accepted prima-facie. So in view of the aforesaid fact this Court is of the opinion that the plaintiff has shown prima-facie case in the present case against the defendant. It is well-settled that in case of infringement of any intellectual properties,

the appropriate remedy is the injunction restraining the defendants from committing infringement.

(7) The Hon'ble Gujarat High Court in “Adani Export Ltd. Vs. Hindustan Organic” reported in 2000 (3) GLR page no-2759 has held in para-31 and 32 of such pronouncement as under;

It is well settled principles of law that the rule that before the issue of a temporary injunction, the Court must satisfy itself that the plaintiff has a prima facie case, does not mean that the Court should examine the merits of the case closely and come to a conclusion that the plaintiff has a case in which he is likely to succeed.

This would amount to prejudging the case on its merits. All that the Court has to see is that on the face of it the person applying for an injunction has a case which needs consideration and which is not bound to fail by virtue of some apparent defects. (Para 31).

In order to make out a prima facie case, necessary for granting an interlocutory injunction, the plaintiff need not establish his title. It is enough if he can show that he has a fair question to raise as to the existence of right which he alleged and can satisfy the Court that

the property in dispute should be preserved in its present actual condition until such question is disposed of. The Court must also, before disturbing any man's legal right stripping him off any of the rights with which law has clothed him, be satisfied that the probability is in favour of his case ultimately failing in the final issue of the suit (Para 32).

It is also a well settled principles of law that what the Court has to determine in granting injunction is whether there is a bona fide contest between the parties and when there is a fair and substantial question to be decided as to the rights of the parties in the suit, it is not necessary for the purpose or is it right that the Court should further examine the question in dispute or anticipate the decision of the question in the suit itself. (Para 32.1).

(8) So, in view of such position of law, this court inclines to grant temporary injunction in favour of the plaintiff against the defendants since the plaintiff has established prima facie case in his favou. The plaintiff has also satisfied that if the temporary injunction is not granted to the plaintiff, he will have to suffer irreparable loss which

could not be compensated in terms of money and the balance of convenience is also in favour of the plaintiff. Hence I hereby pass following order in the interest of justice.

ORDER

- The application filed by the plaintiff vide Exhibit-5 is hereby allowed.
- The defendant and all acting on behalf of him is hereby restrained from committing of an infringement of registered trademark of the plaintiff Shree Ganesh Live Aloopuri and Shree Ganesh Live Aloopuri until final disposal of the suit.
- Cost shall be the cost in the cause of the suit.

Pronounced and signed in open court on October 6th,
2025.

Date : 06.10.2025

Place: Surat

[Amitkumar Narendrabhai Dave]

Commercial Court & 9th Addl. District
Judge, Surat

UIC No.GJ00807.