

**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 No. 1 to 7 from infringement of registered design of the plaintiff and for passing off such design. And directing defendant No.8 and 9 to comply with removal of URL links from their platform placed by the defendants No. 1 to 7 until final disposal of this suit.

(2) The notices were issued by the Court and they were duly served to the defendants. The plaintiff has submitted documents vide marks 3/1 to 3/13. The defendant No. 9 has submitted his written statement vide Exh. 27. The compromise has been worked out between the plaintiff and defendant No. 1 to 7. The defendant NO. 9 has been ordered to be deleted from the present suit.

**Submission on behalf of plaintiff.**

(3) Heard the Ld. Advocate for the plaintiff. He has argued as per application for temporary injunction. He

further submitted the plaintiff is having registered design of described in Para 6 and 21 of the plaint and the defendants No.1 to 7 have copied the said design which is described in Para 18 of the plaint and thereby he has infringed the registered design of the plaintiff. 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) Heard the the Ld. Advocate for the defendants. The Ld. advocate for the defendant contended that the application of the plaintiff should be dismissed since it does not disclose satisfy the basic requirement of granting temporary injunction. He further submitted as per their written statements. He further submitted that considering the materials on record, it is crystal clear that the suit of

the present plaintiff is hopelessly found to be not maintainable. He further submitted that there is no, prima facie, case in favour of the plaintiff against defendants. And the balance of convenience is not in his favour. He further contended that the plaintiff would not suffer irreparable injury if injunction would not be granted in her favour. Hence prayed for rejection of application for temporary injunction.

- (5) The Ld. Advocate for the defendant No.9 has submitted that it being an intermediary is protected u/s 79 of Information Technology Act and is bound to comply the order of the competent Court.

**Principles governing grant of temporary injunction**

- (6) 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

- (7) Looking to the materials on record, it appears that the present suit filed by the plaintiff is for seeking for perpetual injunction restraining defendants from committing infringement of his registered design. It is

averred in the plaint that plaintiff's product under unique registered design is sold across various e-commerce platforms including defendant's own website and platform. The unique design Saree and Blouse (Set) registered design was launched by plaintiff and defendant No.1 to 7 are infringing his registered design and they have copied the design of the plaintiff and thereby committed an infringement of registered design of the plaintiff. The plaintiff has submitted certificate of registration of design issued by Controller General of Patents, Designs and Trademarks. It is undisputed that plaintiff has registered design of his product title as Saree and Blouse (Set). And the plaintiff is entitled to institute for suit for injunction restraining defendants from pirating his design. It is not the case of the defendants that he has taken any defence against registered design of the plaintiff in view of Section 19 of The Design Act. 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 defendants. 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 or pirating of any registered design. The defendant is alleged to have pirating the design of the plaintiff and sold his products through the platforms of the defendant No.8 and 9, so that the balance of convenience is in favour of the plaintiff and if the defendants are not restraining from selling his products in breach of registered design of the plaintiff, the plaintiff would irreparable injury.

(8) 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).

(9) 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 favour by showing he has equal share into suit properties. 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 defendants No. 1 to 7 and all acting on behalf of them are hereby restrained from using, selling or offering for sale or advertising in any manner including on the internet and e-commerce platforms, directly or indirectly dealing in impugned

design Saree and Blouse (Set) of the plaintiff or any identical or deceptively similar to the plaintiff's design until final disposal of the suit.

- Cost shall be the cost in the cause of the suit.

Pronounced and signed in open court on July 01<sup>st</sup>, 2025.

Date: 01/07/2025

Place: Surat

(Amitkumar Narendrabhai Dave)

Commercial Court &  
9<sup>th</sup> Addl. District Judge  
Surat

Judge Code: GJ-00807