



**IN THE COURT OF LXXXIV ADDL. CITY CIVIL AND
SESSIONS JUDGE (CCH-85) (COMMERCIAL COURT),
BENGALURU**

DATED THIS THE 22nd DAY OF NOVEMBER 2024

PRESENT

SRI.RAMAKANT CHAVAN,
B.Com., LL.B.(Spl)
LXXXIV ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.

**ORDERS ON I.A.No.II
IN
Com.O.S.No.1309/2024**

APPLICANTS / PLAINTIFFS:

1. Mr.Balasubramanya Hangal Manjunath
Sole Proprietor of Inventree Solutions,
S/o H. S. Manjunath
Aged 42 years,
R/at No.67, 10th Main,
13th Cross, Malleshwaram,
Bengaluru – 560 003
2. Innomech Hi Tech LLP,
A Limited Liability Partnership
Having address at No.67,
10th Main Road, 13th Cross,
Malleshwaram, Bengaluru – 560 003
Rep. by its Partner
Mr. Balasubramanya Hangal Manjunath
3. Mr. K. R. Chandra Prakash,
Sole Proprietor of Innomech Technologies,
Aged 76 years,
S/o K. S. Ramachandra Rao,
Proprietor of Innomech Technologies,
No.96/2, 1st Floor, 16th Cross,

West Park Road, Malleshwaram,
Bengaluru – 560 003

(By Smt.Priya V., Adv.)

AND

OPPONENTS/DEFENDANTS:

1. Mr. Govindaraja Kalai,
Sole Proprietor of
M/s GK Trading Company,
No.84/2B 1st Floor,
Door No.158-1 VIII,
Vsderhobli, Kundapura – 576 201

2. Mrs. Sridevi,
Sole Proprietor of
M/s Easy Life Enterprises,
D.No.5-48, L-2 Industrial Estate,
Padavu, Yeyyadi, Mangalore,
Dakshina Kannada,
Karnataka – 575 008

Also at:

Building No.180/7374,
Near Yellamma Temple Bilishivale,
Bidrahalli Hobli, West Taluk
Bengaluru, Karnataka – 560 077

3. Govinda Prakash Saya,
Sole Proprietor of
M/s Saya Enterprises,
No.594, APMC Road,
Puttur – 574 201
Karnataka

(By Sri.K. Rama Bhat, Adv.)

ORDERS ON I.A.No.II

The plaintiffs have filed this I.A.No.II U/Or XXXIX Rules 1 and 2 CPC, to pass an exparte ad interim injunction order of

temporary injunction restraining the defendants, its proprietors, their sister concerns, associates, assigns in business, distributors, stockiest, dealers, agents and servants from importing, manufacturing, selling, offering for sale, advertising, directly or indirectly in any manner including through websites or other online shopping portals dealing in the impugned product bearing the impugned trade dress and get up or any other trade dress and get up as may be that are fraudulent or obvious imitation of the plaintiff's trade dress and get up amounting to passing off of the plaintiff's product in any manner whatsoever.

2. Along with the application, the plaintiff No.1 has filed his affidavit stating that the suit is filed for permanent injunction restraining the defendants from passing off of the plaintiffs' product in any manner, surrender of goods, rendition of accounts and to pay punitive damages. That the plaintiff No.1 being an engineer have previously implemented patented innovations for Jaguar Land Rover, Ford, Honda in USA etc. He own areca farmland in his hometown of Arkalgud. Concerned by the perilous conditions faced by Indian farmers, particularly the high risks and increasing morality rates associated with plucking coconut from tall tress, he invented a device titled "A Mechanism for operating a device at Higher Height from Ground. The said device is designed to significantly improve the efficiency and safety of farming operations, thereby enhancing productivity and supporting the livelihood of millions of farmers.

It is further pleaded that, the plaintiff No.1 choose to make the product of carbon fiber for poles and pipes which provides optimal strength and composition to ensure these poles and pipes remained sturdy and stable when used at significant heights and also enhanced the design by incorporating a locking mechanism, making the carbon fiber poles telescopically adjustable. This allowed the device's height to be easily modified, the angle of operation can be manually adjusted between 60 to 90 degrees towards the tree and away from the user. The clamp system incorporates a uniquely designed bolt in a hexagonal shape and the hole is bordered by a recessed groove that contributes to the unique design of the clam. The bending handles allows the pole to rotate 360 degrees, enhancing efficiency and ease of use.

It is further pleaded that, the plaintiff No.1 selling the product under the brand 'Hi-Tech' Dhoti with product color being a combination of blue and black. In 2018, he began commercializing the product through his father-in-law in Bengaluru. This was done by setting up a sole proprietorship named Innomech Technologies/ 3rd plaintiff. As the product gained significant popularity and demand, the plaintiff No.1 established a Partnership firm, Innomech Hi Tech LLP / 2nd plaintiff. In 2022, he founded another sole proprietorship called Inventree Solutions and continue to commercialize and sell the products through all three entities. The plaintiffs have been selling their product all over India including Karnataka, Tamil Nadu, Kerala, Goa and Maharashtra. The plaintiffs have spent substantial amount of money towards publicity by way of

print and electronic media advertisements on a huge scale, issuing and circulating the pamphlets and other promotional material for the benefit of the consumers.

It is further pleaded that, on perusal of the advertisement and marketing materials, it is evident that the name of the product, 'Hi-Tech' Dhoti has been used throughout and words 'double lock, 'inter lock' 'Anti shake' and 'shock proofing' etc. are technical terms coined / invented by the plaintiff widely used for popularizing the product of the plaintiff and thereby which the consumers associate the same with the plaintiffs' product alone and none else. The plaintiffs have earned enormous turnover since inception, which reiterates the success and high demand for the plaintiffs' product. To ensure the rights over the invention is protected, on 16.03.2018, he made an application for grant of the patent, "Mechanism for operating a device at Higher Height from Ground", before the Patent Office. On 24.12.2024, the patent was granted by the Patent Office, but, however the said patent has lapsed due to non payment of annuities due to exceptional circumstances faced by the 1st plaintiff. However, the 1st plaintiff has approached the Hon'ble Madras High Court for restoration of the patent numbered WP (IPD) No.25/2024, which is currently pending adjudication.

It is further pleaded that, lately there have been multiple instances of counterfeit products sold by various third parties which is an exact copy of the plaintiffs' product. After considerable effort, the plaintiffs identified the defendants

violating their rights. The 2nd defendant was earlier buying products from the plaintiff and supplying till first week of January 2024. The defendants now engaged in unscrupulous acts of imitating and selling substandard counterfeit products which was identified in last week of January 2024. The defendants have resorted to exploiting the goodwill and the reputation of the plaintiffs and their products by imitating the product and selling the same under an identical trademark without the plaintiffs' permission. The violation is so egregious that, the defendants are closely mimicking the plaintiff's exact color scheme (blue), features, design / shape and configuration to deceive farmers who are the plaintiffs' primary target customers. The defendant have even copied the style of branding as followed by the plaintiffs with identical words printed on the product, the unique features of locking system and bending handle. The defendants are guilty of committing passing off and unfair competition.

It is further pleaded that, the 1st defendant through his proprietorship concern M/s GK Trading company, is engaged in the sale of identical product under the trade name 'G-Tech' Dhoti which is identical to plaintiffs 'Hi-Tech' Dhoti. The 2nd defendant is also engaged in the business of trading, dealing with sale of identical product. The 3rd defendant is also engaged in sale of identical product under the tradename 'SayaTech' Dhoti which is identical to the plaintiffs' 'Hi Tech' Dhoti. The defendants have adopted deceptively similar names to the product such as, 'G-Tech', 'Easy Tech' and 'Saya Tech' which is phonetically identical and deceptively similar to the

plaintiffs' product 'Hi-Tech'. Moreover, the marketing material of 'Easy Life', promotes their products as 'Hi Tech' premium Dhoti which clearly shows their malafide intention to pass off their goods as that of the plaintiffs. It is pertinent to note that, the cautionary note printed in a red box in white letters have also been slavishly copied by the defendants and placed on the same location on their products that of the plaintiffs, to sail as close as possible with the plaintiff's product.

It is further pleaded that, it is evident from the impugned products that, the defendants have deliberately, intentionally and blatantly imitated the overall get up, features, layout, configuration, colour combination and trade dress of the plaintiffs' product in question. The defendants has even copied the branding style of the plaintiffs by merely changing the prefix and using the suffix 'Tech' which is phonetically identical and deceptively similar to the plaintiffs. The defendants intended to create confusion among these customers and to deceive them, to the detriment of the plaintiff. The defendants straining every nerve to ride on the tailcoat of the goodwill and reputation that the plaintiffs and their product command amongst consumers for their quality, distinctive and attractive get up and trade dress. The plaintiffs are the prior user of the products having established their products well in the market. The defendants are, therefore, guilty of passing off and unfair competition and ought to be enjoined. The defendants have copied not one but all the features of the plaintiffs' product, thereby completely destroying the distinctiveness that the get up and trade dress have acquired vis-a-vis the said products

manufactured and sold by the plaintiffs.

It is further pleaded that, the plaintiffs on gaining knowledge of the defendants' sale of counterfeit products, had issued a legal notice dated 27.01.2024 to the 2nd defendant seeking to restrain them from selling the counterfeit products. The 2nd defendant issued a reply dated 16.02.2024 through email. On 04.06.2024, the 1st plaintiff issued another legal notice to the 1st defendant who issued a reply dated 10.06.2024. The 1st plaintiff tried through various means to settle the dispute amicably but the same went in vain. Subsequently, the plaintiffs filed a suit for patent infringement against the defendants in Com.O.S.No.920/2024 before the LXXXIII Addl. City Civil and Sessions Judge, Bangalore which was withdrawn.

It is further pleaded that, counterfeit products sold by third parties fail to meet the required quality and standards, leading to harm for farmers who purchase these imitation items. This has resulted in injuries and in a few cases, fatalities among farmers. The adoption of the impugned trade dress and product configuration of the plaintiffs by the defendants is intended to create "injurious association" between the goods and the business of the plaintiffs with that of the defendants amounting to passing off. The defendants are therefore liable to be enjoined from marketing lookalikes and such other products that may lead to passing off of the defendants products for those of the plaintiffs. The defendants are further causing irreparable injury and damage to

consumers at large by subjecting them to deception practiced by the defendant in passing off its goods for those of the plaintiffs. The plaintiffs are entitled to be compensated for damages suffered in excess of Rs.3.5 lakhs which must be paid by the defendants. Therefore, the illegal trade activities of the defendants ought to be restrained immediately by an order of injunction passed by this court. The plaintiffs have no knowledge about the extent a quantum of the sales of the impugned products thereof by the defendants. Every product sold by the defendant results in tarnishing the plaintiffs' reputation as a manufacturer of quality products.

It is further pleaded that, the defendants also sell their products with the jurisdiction of this court through third party e-commerce website like India Mart. The plaintiffs have a strong prima facie case. The balance of convenience lies heavily on the plaintiffs and against the defendants. If the relief as prayed for are not granted, grave and irreparable harm and injury will be caused to the plaintiffs and the members of purchasing community which cannot be compensated monetarily. If the defendants are not restrained by an injunction of this court then the defendant will continue with their nefarious activities thereby resulting in uncalculated losses caused to the plaintiffs and purchasing public which can never be compensated. The adoption of impugned trademark is per se dishonest. Hence, prays for allowing the application.

3. The other side has filed objections to the application denying most of the contents of the application and affidavit

annexed to IA No.II. It is further contended that, the suit is filed by the plaintiffs against the defendants for the relief of permanent injunction, by making false claims and submissions. The plaintiffs have misguided the court and fraudulently obtained TI order on 27.09.2024, this court has passed interim order. The entire case filed by the plaintiffs and this application are false, fraudulent, vexatious and filed only with an ulterior motive. The plaintiffs have suppressed the material facts before the court. The prayer sought under this application is same and identical to the final prayer sought in the suit. Final prayer cannot be granted at the interim stage of the suit.

It is further stated that, the plaintiffs are trying to claim design rights and patent rights over the 'Hi-Tech' Dhoti when same are not eligible to be protected in any way under the Design Act 2000 and Patent Act, 1970. Only to create false rights over the product which they have no claim of innovation or ownership, the plaintiffs have filed this false suit. The Trade Dress is applicable only to the visual aspects of a product and not the technical design aspect of the same. It is established principle of law that, to obtain any protection for trade Dress, the owner has to establish uniqueness and goodwill associated with the unique and distinctive characteristics of the Trade Dress to the level that, the customers and public at large associate that particular characteristics to the owner of the Trade Dress and no one else. The plaintiffs claim that, they are the dealers of Telescopic Dhoti having blue handle. In fact, a quick online search itself reveals more than thousand vendors

and suppliers selling the said product having blue handle more than 10 years. The defendants are selling the said telescopic Dhoti having blue handle in the State of Karnataka and other States since 2018.

It is further stated that, the defendants are in the business of agricultural equipments and supplies, they have significant operation or business in the entire state of Karnataka. This fact has not been disclosed before the court. The plaintiffs have falsely stated in the application that, the operations of the defendants were recently known to them and the defendants are passing off their products as plaintiffs' which is completely false. The products of the defendants and the plaintiffs are completely different in their appearance, branding and name. The allegation of the plaintiffs is that, applicants are trying to pass off their products as plaintiffs, is also false and secured exparte interim order. The plaintiffs are not liable to claim any right of Trade Dress. The plaintiffs have suppressed the fact that, the defendants have run well established business since more than 11 years with substantial sales having wide range of products. The plaintiffs are unable to face the success and growth of the defendants and want to eat the entire market alone and clearly going against the concept of free market and trying to establish monopoly. The defendants (it ought to be plaintiffs) have employed various tactics before well, such as calling and threatening the defendants and their agents.

It is further stated that, the detailed search shows the

fact that, the impugned product is not a creation of the plaintiffs as claimed by them, the product has been manufactured in the early 90s by various manufacturers in USA and China. The plaintiffs are claiming to be owners of the Trade Dress. The plaintiffs have been importing Hi-Tech Dhoti having blue handle into India and have been selling in India since very recently. The plaintiffs have not earned goodwill sufficiently and recognition in the market. The defendants are among 1000 other vendors who have been selling the impugned product.

It is further stated that, the plaintiffs had falsely obtained a patent No.385112 and the same ceased to exist in the year 2022. The said patent was with respect to a harvester with a counter weight at the bottom. The defendants have never sold any such harvester. The plaintiffs had filed a suit claiming patent infringement against one of the business entity of the defendants in Com.OS.No.920/2024 and obtained exparte order against the defendants by making false representation. The defendants filed Com.Appeal No.251/2024 before the Hon'ble High Court of Karnataka, after hearing, set aside the exparte order. Later, the plaintiffs had withdrawn the Com.OS.No.920/2024. The plaintiffs' patent has become invalid and they have filed the present suit to claim similar rights over the product which were earlier decided in the previous suit. The plaintiffs are drawing out similarities between their product and the product of the defendants, which states the minute details of the product. The exparte interim order obtained by the plaintiffs, and misused the same

and cause undue harassment to the defendants. The plaintiffs went on to publish defaming and misleading articles against the plaintiffs (it ought to be defendants) that, the court had declared that the articles are fraud. Hence, on these grounds and other grounds pray for dismissal of the application.

4. Heard.
5. The following points do arise for my consideration:
 1. Whether the plaintiffs have made out a prima facie case to allow IA No.II?
 2. To whom irreparable loss will cause?
 3. In whose favour the balance of convenience lies?
 4. What Order?
6. My findings to the aforesaid points are as under:
Point No.1 : In the affirmative
Point No.2 : To the plaintiffs
Point No.3 : In favour of the plaintiffs
Point No.4 : As per the final order for the following

REASONS

7. **Point No.1** : The learned counsel for the plaintiffs has submitted her arguments on the basis of the contents of the application as well as plaint averments and also defence taken by the defendants through their statement of objections. The plaintiff No.1 is an Engineer, had earlier implemented patented innovations for Jaguar, Land Rover and Ford, Honda in USA and Europe. The plaintiff No.1 owns areca farmland in his hometown at Arkalgud. When he visits to his lands,

workers were using minimal safety equipment while climbing the areca and coconut trees. Each year, about 500 to 800 labourers who scale these trees and suffer fatal accidents or become disabled due to falls from heights ranging from 50 to 80 feet. The plaintiff No.1 looking into these conditions faced by the poor farmer, he invented a device called as "a Mechanism for operating a device at higher height from ground". The said device is designed to significantly improve the efficiency and safety of the farmers. She has pointed out towards the photographs of this device.

8. She has further submitted that, the plaintiff No.1 implemented the locking mechanism by employing a specifically engineered clamp system to secure the pole attached to the device. This system incorporates a uniquely designed bolt in a hexagonal shape. The product is distinguished by several key features including the use of blue coloured carbon bottom pipe for fibre poles, bending handle for spraying and a blue lock lever for securing the clamp.

9. She has further submitted that, the plaintiff No.1 has been selling the product under the brand 'Hi Tech' Dhoti with the product colour being in a combination of blue and black since beginning in order to make it distinctive. In the year 2018 the plaintiff No.1 began commercializing the product through his father-in-law by name Chandraprakash K.R. This was done by setting up a sole proprietorship named Innomech Technologies i.e. the plaintiff No.3. It has obtained GST certificate also. The plaintiff No.1 is the owner of this

intellectual property rights including the proprietary, innovative possession related to the product, which is a culmination of the extensive research, effort and investment. The labour, skill and judgment in addition to financial investments made by the plaintiffs to create the product and its designs used for the manufacture of the product and wide publicity of the product was also given in the various magazines and English as well as Kannada newspapers, even published through News channels also.

10. She has further submitted that, the 1st plaintiff to ensure the rights over the said product / device, made an application on 16.03.2018 for grant of the patent for the product. On 24.12.2024 the plaintiff patent was granted by the concerned authority. But, the said patent has been lapsed due to non payment of annuities due to exceptional circumstances. The plaintiff No.1 approached the Hon'ble High Court of Madras for restoration of patent in W.P.(IPD) No.25/2024 and it came to be allowed on 19.10.2024.

11. She has further submitted that, there have been multiple instances of counterfeit. The products sold by various third parties which is an exact copy of the product of the plaintiffs. They took steps to identify the individuals responsible for producing cheap imitation of their product. The plaintiffs identified the defendants violating their rights. The 2nd defendant was earlier buying products from the plaintiffs and supplying till January 2024. The defendants well aware of the demand and success of the plaintiffs' product, now the

defendants are engaged in unscrupulous acts by imitating and selling sub standard counterfeit products. The plaintiffs are still investigating other sources of violation. The defendants have restored to exploiting the goodwill and reputation of the plaintiffs and their product and selling the same under an identical trademark without the permission of the plaintiffs. The defendants are mimicking the plaintiffs' exact colour, features, design and shade to deceive the farmers, who are the plaintiffs' primary target customers.

12. She has further drawn my attention towards the documents / materials produced on behalf of the plaintiffs including the copy of GST, continuous sale of the product since 2018, paper cuttings, photos and copies of the notices. She has further submitted that, the present suit is filed by the plaintiffs for the relief of permanent injunction against the defendants, their properties. The present suit is for passing off. After considering the urgency and materials on records, this court has granted temporary injunction.

13. She has further stated that, demonstration has been made by showing the product of the plaintiffs as well as counterfeit product of the defendants, it looks same, only to deceive the customers of the plaintiffs, who are the farmers. She has further submitted that, a death has been occurred because of the counterfeit instrument/device which is counterfeit, manufactured by the defendant. She has also drawn my attention towards the documents i.e. the copy of the plaint in O.S.No.920/2024 filed by the plaintiffs for the relief of

permanent injunction, copy of the orders passed in Com.Appeal No.251/2024 filed by the other side, copy of the office order dated 23.02.2022 issued by the Horticulture Department, Bengaluru, copy of the office note dated 10.09.2024. She has also drawn my attention towards the memo dated 16.10.2024 i.e. the Mahazar report conducted regarding Fibre Dhoti for the years 2023-24. The report also clearly go to show that, the device / instrument of the defendant was found defective and it is a counterfeit instrument / device. The report has been issued by the concerned Revenue Department.

14. She has also drawn my attention towards the adoption of impugned Trade Dress and product configuration of the plaintiffs by the defendants is intended to create injurious association between the goods and business of the plaintiffs with that of the defendants amounting to passing off. The defendants have therefore, passed off their goods that of the plaintiffs and they are liable to be restrained from marketing such other products. The defendants are further causing further irreparable injury and damage to the customers at large. The plaintiffs have already suffered and continued to suffer huge loss and damage by reason of the unlawful trade activities of the defendants.

15. She has further drawn my attention towards the documents produced on behalf of the plaintiffs, a W.P. No.25/2024 was pending before the Hon'ble High Court of Judicature at Madras regarding patent and passed an order on

19.10.2024 and a direction has been given to the Controller General of Patents, Designs and Trade Marks accept the application for restoration of Form-15 of Patent No.385112.

16. During her arguments, she has relied upon decisions reported in – Dart Industries Inc. and another Vs Techno Plastic Industries in Civil Suit No.828/2015 of Madras High Court, Mohan Lal, Proprietor of Mourya Industries Vs Mr.Ashok and another in 2013 SCC Online Del 1980, Faber Castell Aktiengesellschaft & another Vs Cello Pens Pvt. Ltd. & Anr. In 2016 (65) ITC 76 (Bom), Gorbatschow Wodka KG Vs John Distilleries Ltd. in 2011 (4) Mh.L. J. and Midas Hygiene Industries (P) Ltd. Vs Sudhir Bhatia & Ors. In (2004) 3 SCC 90

17. Per contra, the learned counsel for the defendants also submitted his written arguments, he has pointed out towards the statement of objections filed to IA No.2 and also contents of the affidavit annexed to IA No.2. He has pointed out towards the various documents and materials produced on behalf of the defendants. The plaintiffs have suppressed the material true facts before the court. The suit of the plaintiffs is not maintainable. After waiting Two months, after the withdrawal of the earlier suit, this suit has been filed. The plaintiffs have obtained exparte injunction by suppressing material facts before the court with malafide injunction by saying that, the defendants do not get the subsidy from the Govt. Department. Earlier, the plaintiffs had filed a suit in Com.O.S.No.911/2024 before CCH-84 and interim exparte order was granted. Later, an appeal is preferred by the

defendants in Com.Appl. No.251/2024 wherein the interim exparte order has been set aside on 22.07.2024. Later, the plaintiffs had withdrawn the suit on 01.08.2024.

18. It is further stated that, there is no cause of action to institute this suit. True fact is that, both the plaintiffs and the defendants are selling the impugned product in the market since last several years. The plaintiffs have stated that, they have come up with the impugned product and they are the only manufacturers of the same. Truly speaking, the plaintiffs are importing the products from China and they are selling the same in India. He has pointed out towards the documents also produced on behalf of the plaintiffs. The suit in Com.O.S.No.911/2024 is noway connected to the present defendants. The plaintiffs have once again misrepresented and misguided this court. The plaintiffs have produced a photograph of a farmer who has died. They have misrepresented that, the farmer has died because of the product of the defendants. But, it is not correct. The plaintiffs have never whispered about Com.Appl.No.251/2024 before the Hon'ble High Court of Karnataka.

19. It is further stated that, the prayer sought by the plaintiffs under this IA and the final prayer sought in the suit are one and the same. Final prayer cannot be granted at the interim stage of the suit. The plaintiffs have availed exparte interim order by suppressing the facts. The defendants have more than 40 outlets across Karnataka and are well reputed in agricultural equipment business from last Ten years. The

product brochures of the defendant No.2 shows the different products and also the location of various outlets. He has pointed out towards the documents produced on behalf of the defendants.

20. It is further stated that, the owner has to establish the uniqueness and goodwill associated with the unique and distinctive characteristics of the Trade Dress to level that, the customers and the public at large associate that particular characteristics to the owner of the Trade Dress and no one else, it is the principle of law to obtain any protection for Trade Dress. There are various vendors in Karnataka alone, who are selling the impugned article for the last several years. There are several vendors in India and Abroad are selling the said Dhoti since last many years. The plaintiffs have not stated clearly what is their Trade Dress. The plaintiffs are using patent to claim that they have created the product. The patent is ceased in the year 2022 itself. The origin of the products is from various vendors from China, the plaintiffs and the defendants are also importing the products from China. The defendants have produced the Airway bill from its vendors in China to establish the same. The plaintiffs have not produced any documents to show that, the Chinese manufacture is manufacturing the impugned product/s exclusively for them. The plaintiffs have not generated goodwill in the market.

21. It is further stated that, the plaintiffs have not produced any evidence to show that, the alleged death/accident is caused by use of the product of the

defendants. The plaintiffs have not made out a prima facie case to grant interim order under this IA.

22. He has also pointed out towards the prayer sought in the plaint and IA. To claim passing off protection against trade dress of a product, the said product must have generated significant goodwill and recognition in the business, which the plaintiffs have not. It is only a commercial business tactic used by the plaintiffs to impair the defendants' business and to take undue advantage.

23. During his arguments, he has relied upon several decisions reported in - Dart Industries Inc. & Anr. Vs Techno Plast & Ors. in (2016) SCC Online Del 4016, L'oreal India Pvt. Ltd. Vs Henkel Marketing India Ltd. & Anr. in (2005) SCC Online Bom 969, Techno Plast Vs Dart Industries Inc. in 2017 SCC Online Mad 1447, Agarwal Industries Ltd. Vs Golden Oil Industries in AIR 1999 Bom 362 and T. Arivandandam Vs T. V. Satyapal & Anr. in 1977 AIR 2421.

24. After hearing the learned counsel for the plaintiffs and after going through the written arguments on this IA by the other side, I have gone through the pleadings of the parties. I have also perused the contents of the application as well as objections by the either side. Admittedly, this suit is filed for the relief of bare injunction. The plaintiffs got exparte interim order. The defendants have appeared through their counsel and filed statement of objections.

25. After perusing the records and materials produced by both the parties, the plaintiffs had filed a suit in Com.OS.No.920/2024 for the relief of permanent injunction against 8 defendants, wherein the defendant No.1 in the suit on hand was defendant No.7. There also the plaintiffs obtained exparte injunction. Later, the defendants therein had preferred Com.Appl.No.251/2024 before the Hon'ble High Court of Karnataka and it came to be allowed. The interim exparte order was set aside. It was argued in the said Com.Appeal that, "the suit itself is not maintainable and in support of his submission, he has produced the printout from the official website maintained by the Department. Prima facie, it reveals that, the patent has ceased on 24.03.2022. Admittedly, the suit is filed in the year 2024." It is held by the Hon'ble High Court of Karnataka that, "Under these circumstances, without getting into the question, whether the appeal is maintainable or not, this court is of the view that, the interim exparte order has to be set aside and accordingly, set aside. All the contentions of the parties have to be considered by the trial court on merits without being influenced by any of the observations made in this order". Later, the suit came to be withdrawn by filing a memo by the plaintiffs. The plaintiffs' earlier suit and case on hand are one and the same, except the relief. But, the defendants are different.

26. The earlier suit in Com.OS.No.920/2024 was filed for the relief of permanent injunction and other reliefs – "The defendants and their employees, agents etc. restrained from directly or indirectly using the patented technology bearing

Patent No.385112". The suit on hand is also for the relief of permanent injunction. The relief sought in the suit on hand – "The defendants, their sister concerns, distributors and dealers etc., restraining from importing, manufacturing, selling, offering for sale, advertising in any manner including through websites or online shopping portals". That suit also came to be withdrawn by the plaintiffs by filing memo on 01.08.2024 and the suit came to be disposed of as withdrawn.

27. Another suit was filed in Com.OS.No.911/2024 for the relief of infringement of patent and passing off. It also came to be withdrawn on 19.07.2024. After perusing the order sheet in the said suit, the plaintiffs have permitted to withdraw the said suit. But, the court has not granted the liberty as sought by the plaintiffs for pursue remedies. Though those suits were for the relief of permanent injunction. It is argued on behalf of the plaintiffs that the present suit is filed for passing off.

28. Subsequently, the plaintiffs have filed the present suit. The earlier suit in Com.OS.No.920/2024 was on the basis of patented technology i.e. patent No.385112 and also passing off the goods/materials of the plaintiffs.

29. I have gone through the materials on record. The say of the plaintiffs is that, since long time, they are in the market and introduced the 'Hi Tech' Dhoti for the use of the farmers. Their further say is that, the defendants are counterfeit these products and used the same in the market. On the other hand, the say of the defendants is that, the

plaintiffs are not the manufacturers of these Dhotis, they are also in the market since more than Ten years and marketing the very same product. Their further say is that, both, the plaintiffs as well as the defendants import the equipment from China. Therefore, there is no infringement of any right or Trade Mark of the plaintiffs. Their further say is that, not only the plaintiffs and the defendants, even several other sellers are in the market selling the very same products.

30. After perusing the materials on record and Mahazar report issued by the Revenue Department in Uttara Kannada District, the products supplied by M/s GK Trading Company i.e. the defendants' company, it is found that-

"ದೋಟಿಯ ಮೇಲಿನ ಕಂಪನಿ ಹೆಸರನ್ನು ಅಳಿಸಿ ಸ್ವಿಕ್ಚರ್ ಅಂಟಿಸಿರುತ್ತಾರೆ. 8000 ರೂಪಾಯಿ ಹೆಚ್ಚಿನ ಮೊತ್ತವನ್ನು ಕಂಪನಿಯವರು ಪಾವತಿಸಿಕೊಂಡಿರುತ್ತಾರೆ. ಗುಣಮಟ್ಟದ ಕುರಿತು ಯಾವುದೇ ಸಮಸ್ಯೆ ಇರುವುದಿಲ್ಲ" and

"ದೋಟಿ ಮೇಲಿನ ಕಂಪನಿ ಹೆಸರನ್ನು (ಇನ್ನೋಮೆಕ್ ಟೆಕ್ನಾಲಜಿಸ್ ಹೈಟೆಕ್) ಅಳಿಸಿ ಸ್ವಿಕ್ಚರ್ ಅಂಟಿಸಿರುತ್ತಾರೆ. 8000 ರೂಪಾಯಿ ಹೆಚ್ಚಿನ ಮೊತ್ತವನ್ನು ಕಂಪನಿಯವರು ಪಾವತಿಸಿಕೊಂಡಿರುತ್ತಾರೆ. ಗುಣಮಟ್ಟದ ಕುರಿತು ಯಾವುದೇ ಸಮಸ್ಯೆ ಇರುವುದಿಲ್ಲ"

ಸ್ಥಳ ಪರಿಶೀಲನೆ ಸಮಯದಲ್ಲಿ ಹೈಟೆಕ್ ದೋಟಿ (ಇನ್ನೋಮೆಕ್ ಟೆಕ್ನಾಲಜಿಸ್) ಕಂಡುಬಂದಿರುತ್ತದೆ. ಗುಣಮಟ್ಟ ಹಾಗೂ ಕಂಪನಿಗೆ ಪಾವತಿಸಿದ ಮೊತ್ತದಲ್ಲಿ ಯಾವುದೇ ಲೋಪದೋಷ ಕಂಡುಬಂದಿರುವುದಿಲ್ಲ"

31. This Mahazar goes to show that, the defendants company i.e. M/s GK Trading company used the very same product/s and even changed the stickers affixed on the products of the plaintiffs. It is also shown in the report that, in regard to quality is concerned, there is no dispute. Several farmers were present at the time of Mahazar. Apart from this, earlier the plaintiffs had patent and because of non payment of

annuities and due to exceptional circumstances faced by the plaintiff No.1, the patent No.385112 has been lapsed. A petition was filed before the Hon'ble Judicature of Madras is pending for consideration in W.P.(IPD) No.25/2024. It also goes to show that the plaintiffs had patent over their product/s i.e. 'Hi Tech' Dhoti and it came to be allowed with an observation that, "In fine, the Writ Petition is allowed and the respondent is directed to accept the petitioner's application for restoration (Form-15) of patent No.385112 granted on 24.12.2021". The said order passed by the Hon'ble High Court of Judicature at Madras on 19.10.2024.

32. It is also argued on behalf of the defendants and he has drawn my attention towards the legal status regarding Patent No.385112 i.e. belongs to the plaintiffs. It is dated 24.03.2022. The legal status shows "Ceased". This is the printout from the official website of Office of the Controller General of Patents, Designs and Trademarks, Department for Promotion Industry and Internal Trade Ministry of Commerce and Industry, Govt. of India. But, in view of the W.P. referred above i.e. W.P.(IPD) No.25/2024 came to be allowed with a direction as referred above. The document produced on behalf of the defendants obtained from official website does not hold water.

33. I have also gone through the 'Hi Tech' Dhoti produced before the court at the time of arguments on this IA on behalf of the plaintiffs and even the counterfeit product being created by the defendants is also produced at the time

of demonstration. After going through the same, both are similar to each other, including colour, height and buttons and other parts etc. There are many similarities in the product/s. The plaintiffs used the Trade name as 'Hi Tech' Dhoti. The defendants used identical Trade name - 'G Tech' Dhoti. The Trade Dress of the plaintiffs' products - Colour combination of Blue pole and Blue and Black clamps on the top. The Trade dress of the defendants' product is identical colour combination of Blue pole and Blue and Black clamps on the top. Printed note on the plaintiffs' product - cautionary note printed in a red box in white letters. The defendants also slavishly intimated a cautionary note printed in the red box and in white letters. Apart from these, several other similarities found at the time of demonstration. I have also perused the various reports, photographs of these products of the plaintiffs as well as the defendants.

34. I have gone through the decisions relied upon by the learned counsel for the plaintiffs referred above. The principles laid down in these decisions are well founded. These decisions come to the aid of the plaintiffs at this juncture. I have also gone through the decisions relied upon by the learned counsel for the defendants referred above. The principles laid down in these decisions are well founded. These decisions do not come to the aid of the defendants at this juncture after considering the materials and facts and circumstances of the case.

35. It is held one of the decision reported that, even more fraudulently, the boundaries and contours of the common law remedy of passing off are tested and challenged by entitling answers to questions such as – What is the impact of copying on a passing off action. No doubt in the case on hand, the plaintiffs are not manufacturers as per the say of the defendants. But, it requires full dressed trial. In another decision regarding Trademark, it is held by the Hon'ble High Court of Mumbai in Gorbatschow Wodka K.G. Vs John Distilleries Ltd. - "Sec.27(2) of the Trademarks Act provides that, nothing in the act shall be deemed to affect the right of action against any person for passing off goods or services. The section is a statutory recognition of the principle that, the remedy of passing off lies and is founded in common law. The law has not restricted remedy only in relation to goods of a particular nature or quality but, across the spectrum of trade business". It is also held in para No.24 of the said judgment that -

"24. The submission of the Defendant is that because the purchasers of the Plaintiff's product are educated and affluent, they have within them a discerning capacity which renders the possibility of a deception unlikely. The submission involves a basic fallacy. The fallacy lies in assuming that while those who are educated or affluent have the ability to discern, since they have higher disposable incomes, persons who do not belong to that category are more likely to be deceived. Gullibility as a trait of human character does not necessarily possess social or economic attributes. The ability of a consumer to discern is not necessarily relatable to social class or economic status and to make such an assumption would lead the Court to an unwitting st Maurya ereotype. At least the Court must not accept such st Maurya ereotypes. An ordinary consumer with a lower disposable

income may well be concerned, as much as a consumer of high end products is, about the quality of what she consumes. But the point which has been urged before the Court is that an unwary consumer of low priced, fast moving consumer goods is more likely to be deceived than a purchaser of a premium commodity. The inference sought to be drawn is that passing off is more likely in the former and improbable in the case of the latter. Stretched to its logical conclusion, the submission of the Defendant would lead to a result where the remedy in passing off becomes available only in respect of goods which the average consumer purchases for the daily necessities of life. For, it is the submission of the Defendant that it is in the case of such goods that the consumer makes a decision to purchase without a careful and discerning mind. The remedy in passing off would be rendered Maurya Maurya illusory if such an argument were to be accepted. The law has not restricted the remedy only in relation to goods of a particular nature or quality but across the spectrum of trade and business.

As contemporary experience shows goods and services across the spectrum are subject to imitation and piracy. The protection of the remedy in passing off is as much available to a manufacturer who invests capital, time and ingenuity in producing premium goods or services or those styled as fast moving consumer goods. The Court will not readily assume that because consumers of premium goods and services have higher disposable incomes or, as the Defendant states are educated, that the likelihood of deception is minimal. If the law were to accept such a position, it would only open a pathway for deceit. Less than honest competitors in business would carefully grind away at the features of an existing mark with an established reputation so that eventually nothing will be left of the uniqueness of the mark. The protection of intellectual property will be a writ in sand if such a submission is accepted. The class of purchasers is undoubtedly a relevant consideration, but the Court must have due regard to all the relevant circumstances including that."

36. It is also held in one of the decision in Mohan Lal, Proprietor of Mourya Industries Vs Mr.Ashok and another in 2013 SCC Online Del 1980, it is held in para No.19 that -

"19. In order to answer the second issue, one would have to briefly delve into what constitutes a passing off action. A passing off action simply put is an action filed to vindicate one's claim that the defendant by employing mis- representation (whether intentional or not) is seeking to represent to the public at large that his goods are those of the claimant and such a mis- representation has caused or is likely to cause substantial damage to the goodwill/reputation which is attached to the plaintiff's goods. Therefore, in a passing off action the plaintiff would have to establish the following ingredients :-

(i). that there is goodwill or reputation attached to the goods or services which the plaintiff offers, in the mind of the purchasing public, i.e., the consumers, who associate or are in a position to identify such goods or services by virtue of trademark used, which could include the get-up, trade- dress, signs, packaging, label, etc.

(ii). that the defendant has employed mis- representation which has made the consumers believe that the defendants goods are those of the plaintiff. It is no defence in an action of passing off that the mis- representation was unintentional or lacked fraudulent intent;

(iii). And lastly, that the defendant's action has caused damage or is calculated to cause damage;

37. The another defence by the defendants as stated supra, the plaintiffs have suppressed the material facts before the court, not disclosed the true facts. Even the farmer's death is also falsely stated, the reason is different. I am of the opinion that, though it is not vital at present, but, it also requires full dressed trial. I have gone through the orders

passed by the Hon'ble High Court of Karnataka in W.P.No.27337/2024 on 04.10.2024 against the exparte orders passed on IA No.2. It is observed that, "it is forthcoming that, the interim injunction granted in favour of the plaintiffs in the earlier was set aside by this court and the defendant, who is the petitioner in the present Writ Petition having vehemently contested the grant of an interim relief, it is expedient that the interim order dated 27.09.2024 granted by the trial court in O.S.No.1309/2024 be vacated and the interim relief sought for by the plaintiffs in the suit be considered after the contention of both sides are put forth and adjudicated upon. Having regard to the afore mentioned, ad-interim stay as sought for is granted." It is also observed by the Hon'ble High Court of Karnataka that, "It is made clear that, it shall be open for the trial court to consider the interim application/s filed by the plaintiff, in O.S.No.1309/2024 on its merits and adjudicate upon the same in accordance with law".

38. As discussed supra, the earlier suit filed by the plaintiffs is against some other defendants was though for the relief of permanent injunction, from restraining the defendants therein from directly or indirectly using the patented technology. But, in the case on hand, the prayer sought is restraining the defendants from importing, manufacturing, selling, offering for sale, advertising, directly or indirectly in any manner, obvious imitation of the plaintiffs' trade dress and get up amounting to passing off of plaintiffs product. Therefore, as discussed herein above, all these facts decided only after a trial. Merely because the defendants and the

plaintiffs imported the equipments for manufacturing or preparing the Dhotis, it cannot be said that, the defendants have not infringed the right of the plaintiffs at this scenario. It is also argued on behalf of the plaintiffs that, the defendants may use different Colour, different buttons and technology for their products, but not as same that of the product/s of the plaintiffs. By considering these facts, I am of the opinion that the plaintiffs have made out a prima facie case. Therefore, in view of the discussions made supra, I answer the Point No.1 in the affirmative.

39. **Point No.2:** This is in respect to irreparable loss is concerned, the plaintiffs who are in the market since long time and selling the products by name 'Hi Tech' Dhoti having patent earlier and registration, if the TI is not granted as sought, till disposal of the suit on merits, much loss will be cause to the plaintiffs. Considering the present circumstances and facts of the case, much loss will be caused to the plaintiffs, if compared with the defendants. Accordingly, I answer the Point No.2 in favour of the plaintiffs.

40. **Point No.3:** This is for a balance of convenience. The plaintiffs have made out a case for trial, by producing the material and factual aspects, the plaintiffs have made out a prima facie case at this juncture. The balance of convenience lies in favour of the plaintiffs. Accordingly, I answer the Point No.3 in favour of the plaintiffs.

41. IA No.3 is filed on behalf of the defendants for rejection of plaint on 24.10.2024. But, the plaintiffs have not

filed objections, prayed time. Both the advocates have submitted their arguments on IA Nos.1 and 2 only. Hence, IA Nos.1 and 2 filed on behalf of the plaintiffs are considered at present.

42. **Point No.4:** In view of the discussions made supra, I made the following:

ORDER

The application filed on behalf of the plaintiffs U/Or. XXXIX Rules 1 and 2 CPC, as I.A.No.II is hereby allowed in part.

The defendants, its proprietors, their sister concerns, associates, assigns in business, distributors, stockiest, dealers, agents and servants are hereby temporarily restrained from selling, offering for sale, advertising, directly or indirectly in any manner including through websites or other online shopping portals dealing in the impugned product bearing the impugned trade dress and get up or any other trade dress and get up as may be that are fraudulent or obvious imitation of the plaintiffs' trade dress and get up amounting to passing off of the plaintiffs' product in any manner whatsoever, till disposal of the suit on merits.

(Dictated to the Stenographer typed by her directly on the computer, corrected and then pronounced by me in the open court on this the **22nd** day of **November 2024**)

(RAMAKANT CHAVAN)
LXXXIV Addl. City Civil & Sessions Judge,
(CCH-85) Commercial Court, Bengaluru.