

-:: ORDER BELOW EXHIBIT 5 ::-

- (1) The instant application at Exhibit 5 has been preferred by the plaintiff under Order XXXIX of the Code of Civil Procedure seeking an ad-interim injunction restraining the defendants from manufacturing and marketing their product under the trade mark SK5 in respect of Ink for printing, photocopies, etc. which is deceptively similar to the plaintiff's trademark SK4 SPT. The defendant's reply to this injunction application is on record vide exh. 15.
- (2) The brief facts giving rise to the instant suit are that the plaintiff is a private limited company doing business of manufacturing and marketing the ink for printing, photocopiers, skin, dressing in class 2 of the Trade Marks Act, 1999. The plaintiff has claimed to be the registered proprietor of the trade mark SK4 SPT label and is using the same trade mark since 2012. It is further alleged by the Ld. Counsel for the plaintiff that the plaintiff has been using the said trademark in respect of the said goods without any objection of any parties from the market and has acquired tremendous reputation and goodwill in the market. Now it came to the knowledge of the plaintiff that the defendants have adopted and started use of mark SK5 label for the same products with a view to encase the reputation of the plaintiff's mark which is structurally, phonetically and visually similar to the SK4 SPT of the plaintiff. The plaintiff has thus filed the instant suit seeking an injunction restraining the defendant from manufacturing and selling their product under the

impugned trademark SK5 which is identical and/or deceptively similar to the plaintiff's registered trade mark. Through the instant application the plaintiff has claimed for an interim injunction stating that he shall suffer great loss of money as well as that of reputation in the defendant is not restrained from using the aforesaid disputed trademark.

- (3) I heard the learned counsel for the plaintiff and perused the reply filed by the defendants. At this stage only the preliminary points are to be seen which are but natural: prima facie case; balance of convenience and irreparable loss.
- (4) The plaintiff relying upon his application and also on the aforementioned facts has stated that he is using since long the disputed trade mark SK4 SPT and is also the registered proprietor of the said trade mark; whereas the defendant's usage of the deceptively similar mark must be stopped by suitable interim order.
- (5) The defendant on the other hand strongly opposed this application at exh. 5. Although the Ld. Counsel for the defendant has raised number of objections through his written reply at exh. 15 including the contentions that the plaint does not disclose a cause of action and that the plaintiff does not get a clear right to sue but under this order we are not going on to those points as here we are concerned with the application at exh. 5 only. With respect to the present application the Ld. Counsel for the defendant has submitted that the plaintiff has suppressed material facts from the Court that the

application of the plaintiff for registration of different marks, viz. SK-4 and CHALLENGER SK-4 have been objected by the Ld. Registrar of Trade Marks. The defendant has further contended that although the plaintiff's mark 'SK4 SPT' is registered but his application for registration of the mark SK4 is still pending; meaning thereby the plaintiff is claiming ownership and registration of 'parts of a mark' which is specifically prohibited in view of the provisions under section 17 of the Trade Marks Act, 1999. The Ld. Counsel for the defendant has also drawn attention of this Court on page 5 of his reply (exh.15) which shows the pictorial representation of the trade marks being used by both the parties, viz. 'SK4 SPT' and 'SK5-Digital Solvent Ink'. By showing these marks the Ld. Counsel has claimed that both the marks are totally different and no question of misrepresentation arises at all. Another important ground raised by the Ld. Counsel for the defendant is that another application for registration of mark SK-4 is also pending in the name of Manshiv Movements (India) Ld., Morena (Madhya Pradesh) of dt. 20/02/2012 and when the application of the plaintiff seeking registration of the same mark SK-4 got an objection the counsel of the plaintiff therein replied to the said objection that *"the mark applied for registration is very different and goods also different from the pending and registered mark"*. With all these submissions the Ld. Counsel for the defendant has tried to assert that in the same field there are other parties also who are using the trade marks containing 'SK' and even

'SK-4' and hence the plaintiff has totally failed to make out his prima facie case or balance of convenience and hence, the present injunction application must be rejected.

- (6) In the present case it is a non-disputed fact that both the parties to the suit are dealing with the same goods in the same category, the only question is that of proprietorship or the ownership over the said trade mark 'SK'. The Ld. Counsel for the plaintiff also did not deny the 'logos' shown by the defendant in his reply at page.5 neither he has denied the fact that his application for registration of the mark SK-4 has been objected on the ground that another party's application for registration of the same mark is pending prior to his application. Eventually this case is turning out to be claim of proprietorship over the parts of the mark which in my opinion does not entitle the defendant for an interim injunction.
- (7) Both the parties to the application has also relied upon various precedents of the Hon'ble Supreme Court and Hight Courts but no such legal point is involved in this application which would have required their discussion in this order. The basic principles of granting an injunction application are only taken in to consideration by this Court. We have not gone through the detailed averments and and the evidence of both the parties but only those facts which are admitted to both the parties are being taken into consideration.
- (8) Thus, after going through the entire submissions below the instant injunction application I find it difficult to say that any prima facie

case could have been shown by the plaintiff. I am of the opinion that at this stage granting injunction in favour of the plaintiff may result in inconvenience to the defendant also. Moreover, the plaintiff in my opinion the plaintiff also could not prove any irreparable loss that could result to him if the injunction as sought for is not granted in his favour. Hence, the final order:

- : FINAL ORDER : -

The application at Ex. 5 is rejected.

There shall be no order as to cost.

Date: 14/05/2018
Place: Ahmedabad

[Rahul P. S. Raghav]
10th Additional District Judge,
Ahmedabad (R) at Mirzapur.
UIC No.GJ 01508