



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (LODGING) NO. 36385 OF 2022
IN
COMMERCIAL IP SUIT (LODGING) NO. 66 OF 2023**

Atomberg Technologies Private Limited ... Applicant/Plaintiff
vs.
Luker Electric Technologies Private Limited ... Respondent/Defendant

Mr. Virag Tulzapurkar, Senior Counsel a/w. Mr. Sharan Jagtiani, Senior Counsel a/w. Mr. Hiren Kamod, Mr. Vaibhav Keni, Ms. Neha Iyer, Mr. Rohan Lopes, Mr. Prem Khullar and Mr. Anees Patel, i/by. Legasis Partners for applicant/plaintiff.

Mr. Ravi Kadam, Senior Counsel a/w. Mr. Ashish Kamat, Mr. Rashmin Khandekar, Ms. Megha Chandra, Mr. Deepak Deshmukh, Mr. Shrikant Pillai, Mr. Vivek Dwivedi and Ms. Rasika Dhebe, i/by. Naik Naik & Co. for respondent/defendant.

**CORAM : MANISH PITALE, J
RESERVED ON : 23rd MARCH, 2023
PRONOUNCED ON : 5th JUNE, 2023**

ORDER:

. The applicant/plaintiff has filed the present suit and application for interim reliefs in the context of its registered design of ceiling fan named Atomberg Renesa Ceiling Fan. The registration is dated 8th September, 2018. According to the plaintiff, it was served with caveats filed by the defendant before this Court and the District Court at Ernakulam in Kerala, sometime in the last week of September, 2022, when it realized that the defendant had obtained registration for two ceiling fans: Size Zero Fan 1 and Size Zero Fan 2. According to the plaintiff, the said registrations were obtained on 21st March, 2022, by the defendant in a fraudulent manner, as the impugned

designs and ceiling fans of the defendant infringe upon the registered design of the ceiling fan of the plaintiff.

2. The plaintiff claims that further enquiry revealed that only the fan with impugned design Size Zero Fan 1 was introduced into the market and ceiling fan as per the impugned design Size Zero Fan 2 was yet to be introduced in the market.

3. It is the case of the plaintiff that the defendant had committed the act of infringement as also, the tort of passing off. As the defendant was put to notice, it appeared through counsel and upon completion of pleadings, the application was taken up for hearing and disposal.

4. The plaintiff claims to have started its production of ceiling fans in the year 2015, selling the same online from the year 2016 and further that in the year 2018, the plaintiff entered the retail market all over India. The plaintiff claims to have high profile clients and it has been given awards, details of which have been given in paragraph 4 of the plaint. The plaintiff claims to have used two house-marks Atomberg and Gorilla, further stating that with passage of time, the plaintiff gave up the use of its house-mark Gorilla. It is also stated in paragraph 8 of the plaint, that any reference to Atomberg Renesa Ceiling Fan includes Atomberg Gorilla Renesa Ceiling Fan. It is specifically pleaded in paragraph 9 of the plaint that the design of the Atomberg Renesa Ceiling Fan was created in September, 2018 by Directors of the plaintiff and registration was secured under the Designs Act, 2000 (hereinafter referred to as the Designs Act) on 8th September, 2018. The Directors gave permission to the plaintiff to use the said registered design and subsequently, on 15th February, 2021, they executed a deed of

assignment in favour of the plaintiff. On this basis, the plaintiff claims proprietary rights in the said registered design bearing registration No.309694 in class 23-04. Copy of the registration certificate is placed on record alongwith the plaint.

5. In paragraph 10 of the plaint, the plaintiff has stated in detail as to what, according to it, are the unique features of the said registered design. The plaintiff claims that such features give an aesthetic look to the aforesaid ceiling fan of the plaintiff called Atomberg Renesa Ceiling Fan. In order to demonstrate the extent of goodwill earned by the plaintiff in respect of sale of Atomberg Renesa Ceiling Fan, sales turnover figures are stated, supported by certificate issued by Chartered Accountant. For the year 2021-2022, the approximate sales have been shown to the tune of Rs.1,03,64,53,181.45.

6. The plaintiff claims that the aforesaid ceiling fan is immensely popular, owing to its design and aesthetic look and that the plaintiff has been using the said design, openly, continuously and extensively since the year 2018. The plaintiff further claims that it has been vigilant in protecting its proprietary rights pertaining to the said registered design of Atomberg Renesa Ceiling Fan.

7. The plaintiff has given details of the enquiries made in the context of the defendant, which revealed registration of the impugned designs on 21st March, 2022 for Size Zero Fan 1 and Size Zero Fan 2 of the defendant. The plaintiff has then given a table of comparison of the rival products, seeking to highlight the similarities in the two, alleging that the defendant has slavishly copied the essential and fundamental features of the registered design of the plaintiff in the context of its Atomberg Renesa Ceiling Fan. On

the basis of such pleadings, the plaintiff is seeking interim reliefs in the context of infringement and passing off against the defendant.

8. The defendant filed its detailed reply alongwith voluminous documents, in order to oppose the application for interim reliefs. The defendant has stated that it is not a fly-by-night operator and that instead, it is a well-established company in the ceiling fans market and that it has invested crores of rupees for developing its infrastructure as well as research and development. The defendant has stated its sales turnover for the financial year 2021-2022 at Rs.299.42 crores, which is supported by certificate issued by the Chartered Accountant. The defendant claims to have designed the two fans Size Zero Fan 1 and Size Zero Fan 2 after extensive research and development.

9. The defendant has alleged that the plaintiff has indulged in suppression of material facts, particularly the fact that the design of the plaintiff, in question, was already published in the public domain by the plaintiff itself, thereby indicating that the registration of design of the plaintiff is, at the *prima facie* stage itself, unsustainable and that it cannot be relied upon. In this regard, the defendant has placed on record certain posts of the plaintiff in the public domain of August 2018, which were prior to registration of the design of the plaintiff on 8th September, 2018. Specific reliance was placed on Exhibits Q, R and S in that regard. The defendant has then relied upon certain delivery challans and invoices to contend that the design of the plaintiff was already in the public domain, although the fans based on the said design were called Gorilla Ceiling Fans. In this context, the defendant relied upon statement made by the plaintiff in paragraph 8 of the plaint, wherein the plaintiff specifically stated that

reference to Atomberg Renesa Ceiling Fan included Atomberg Gorilla Renesa Ceiling Fan. On this basis, the defendant claims that the application deserves to be rejected on the ground of suppression of material facts.

10. The defendant further claims that there is nothing novel or unique in the design of the plaintiff, thereby indicating that registration of the design itself could not have been granted to the plaintiff, as per the provisions of the Designs Act. It is further submitted that the features of the plaintiff's design, highlighted in paragraph 10 of the plaint, all refer to functional features, thereby indicating that the registration of the design could not have been granted. The defendant has then pleaded in the reply that the claim of the plaintiff is hit by Section 4(c) of the Designs Act, which provides that there is prohibition of registration of a design, which is not significantly distinguishable from a known design or combination of known designs. It is further submitted that, at best, the design of the plaintiff is nothing but a trade variant.

11. The defendant has further pleaded, without prejudice to its earlier contentions, that there are material differences in the rival designs and a table is placed on record to highlight the same. On the aspect of passing off also, it is submitted that no case is made out as per settled law, *inter alia*, for the reason that mere similarity of shape is not enough, but something more is required to claim the tort of passing off. On this basis, the defendant has sought dismissal of the application for interim reliefs.

12. The plaintiff, in its rejoinder affidavit, has sought to deal with the contentions raised on behalf of the defendant and it has reiterated its stand taken in the plaint.

13. Mr. Virag Tulzapurkar, learned senior counsel appearing for the plaintiff has relied upon the pleadings in the plaint and the documents filed therewith, as also the rejoinder affidavit placed on record. It is submitted that as per settled law, in the context of the Designs Act and the claim of infringement of a registered design, as also the tort of passing off, the test of “look and feel” and “appeal to the eye” ought to be applied to examine as to whether the plaintiff has indeed made out a case in its favour. After referring to the pleadings and documents on record to show the registration of the plaintiff’s design of Atomberg Renesa Ceiling Fan and the goodwill earned in that context from the year 2018 onwards, the learned senior counsel appearing for the plaintiff prayed for grant of interim reliefs in terms of prayer clauses (a) and (b) of the application.

14. The learned senior counsel appearing for the plaintiff dealt with the objections raised on behalf of the defendant. He relied upon actual rival products produced in the Court, to contend that on first look itself, it would be evident to this Court that the defendant has copied almost all the features of the registered design of the plaintiff pertaining to Atomberg Renesa Ceiling Fan. The learned senior counsel placed reliance on paragraph 10 of the plaint, which highlighted the features of the plaintiff’s design and he submitted that all the features indicated aesthetic aspects of the design and what could be said to be capricious features, which had nothing to do with functionality. It was vehemently denied that features highlighted in paragraph 10 of the plaint describe only functional features. Reliance was specifically placed on judgment of the learned Single Judge of this Court, in the case of *Whirlpool of India Limited vs. Videocon Industries Limited* [order dated 27th May, 2014 passed in Notice of Motion No.2269 of 2012 in Suit

No.2012 of 2012]. It was submitted that for the defence of functionality to succeed, it was not enough to say that the form has some relevance to the function and if a particular function could be achieved through a number of different forms, then the defence of functionality must fail. It was submitted that in all ceiling fans, there would be a motor as also blades, etc. and therefore, reference to blades and other aspects of the plaintiff's design in paragraph 10, could not be related to functionality. Instead, all such features indicated the aesthetic aspects of the registered design of the plaintiff. It was further submitted that the judgment of the Division Bench of this Court, in the case of *Videocon Industries Limited vs. Whirlpool of India Limited (2012 SCC OnLine Bom 1171)*, confirming the aforementioned order of the learned Single Judge of this Court, reiterated the said position of law and further held that if a *prima facie* conclusion is reached that there is infringement of a registered design, injunction ought not to be deferred till conclusion of trial because the protection granted under the Act would be rendered illusory.

15. The learned senior counsel for the plaintiff extensively referred to the table of comparison between the rival products placed on record and submitted that when the plaintiff's design pertaining to Atomberg Renesa Ceiling Fan was compared to the ceiling fans in the market, past and present, it was clear that the plaintiff's design was indeed unique and novel. It was further submitted that comparison of the plaintiff's Atomberg Renesa Ceiling Fan with the impugned design/fans of the defendant would show that the defendant had copied the unique and essential features of the plaintiff's design.

16. It was further submitted that the aspect of trade variant, alleged on behalf of the defendant, was without any substance and hence, the same

could not be a ground for rejecting interim reliefs.

17. The learned senior counsel appearing for the plaintiff submitted that the contentions sought to be raised orally on the part of the defendant that the relief of passing off cannot be granted in the context of the Designs Act, by relying upon the definition of “design” under Section 2(d) of the Designs Act, is without any substance. It was submitted that the judgment of the Delhi High Court, on which reliance was placed on behalf of the defendant, demonstrated that such a contention had been rejected. In any case, this Court had consistently considered the aspect of the tort of passing off in the context of the Designs Act and hence, the said contention is without any merit.

18. On the aspect of alleged suppression of material facts by the plaintiff while seeking interim reliefs, it was submitted that the documents at Exhibits Q, R and S, as also, the invoices placed on record by the defendant, pertaining to the fans of the plaintiff, bearing the earlier house-mark Gorilla Ceiling Fans, could be of no avail. It was submitted that even if the said exhibits were to be taken into consideration, the design of the plaintiff, pertaining to Atomberg Renesa Ceiling Fan was unique and different and it could not be said that the same was published prior to registration of the design on 8th September, 2018. The learned senior counsel appearing for the plaintiff submitted that therefore, the interim application may be allowed in terms of prayer clauses (a) and (b).

19. Mr. Ravi Kadam, learned senior counsel appearing for the defendant, relied upon the detailed reply and the voluminous documents filed on behalf of the defendant and he submitted that in the present case, the plaintiff had

failed to make out its case for grant of interim reliefs. It was submitted that since the plaintiff failed to make out *prima facie* in its favour, despite the design registration dated 8th September, 2018 held by the plaintiff, interim reliefs ought not to be granted in the present application.

20. The learned senior counsel appearing for the defendant relied upon the documents placed on record on behalf of the defendant to submit that the plaintiff's design was already in the public domain prior to grant of registration on 8th September, 2018 and that therefore, the plaintiff is not entitled to rely upon the registration of such design for grant of interim reliefs. The learned senior counsel relied upon Sections 2(d), 4(c), 19 and 22 of the Designs Act, to contend that since the material on record demonstrated that the design was already published prior to its registration and in any case, it was not significantly distinguishable from known designs or combination of known designs, it could not be said that the plaintiff had indeed made out a *prima facie* case in its favour. The learned senior counsel appearing for the defendant emphasized upon the fact that the defendant was not a fly-by-night operator and that it had established itself in the market of ceiling fans over a period of time. Emphasis was placed on the fact that the ceiling fans of the defendant, based on the impugned design, was priced higher than the ceiling fans of the plaintiff, which was a significant factor on the aspect of passing off. The learned senior counsel then referred to the contents of the plaint, particularly paragraphs 8 to 11, to contend that since the plaintiff itself stated that Atomberg Gorilla Renesa Ceiling Fan and Atomberg Renesa Ceiling Fan were interchangeable, it was clear that the design of the plaintiff was already published and in public domain before grant of registration, thereby diluting its value. According to the defendant, the features highlighted in paragraph 10 of the plaint were all

functional features and there was no aesthetic aspect or “capricious” aspect to such features, as required under the law governing the Designs Act. It is further submitted that no infringement was revealed in the plaintiff’s design and that the registered design nowhere showed LED lights, for the plaintiff to take advantage of the said feature. The learned senior counsel submitted that adverse inference has to be drawn against the plaintiff for suppression of facts from this Court.

21. Reliance was placed on the judgment of this Court, in the case of *M/s. Kemp & Company & another vs. M/s. Prima Plastics Limited (1998 SCC OnLine Bom 437)*, to contend that mere copying, if at all, was not enough for the tort of passing off and that the plaintiff was required to show something more than the alleged similarity between the goods, which the plaintiff, in the present case, had failed to demonstrate. Reliance was also placed on the judgment of the Delhi High Court, in the case of *Philips Lighting Holding B.V. vs. Jai Prakash Agarwal and Ors.* [order dated 5th July, 2022 passed in CS (COMM) 46/2019 and CS (COMM) 76/2019], to contend that ordinary trade variants in an old design could not qualify as a new or original design for a party to seek interim reliefs. A slight variation from the pre-existing design would disqualify a design for registration. Relying on the said position of law, in the present case, on this ground also, the plaintiff had failed to make out a *prima facie* case for pressing interim reliefs. The learned senior counsel referred to the table of comparison given in the reply affidavit filed in the present application, to demonstrate the differences in various aspects of the rival designs, including the canopy and other features. On this basis, it was submitted that the present application deserved to be dismissed.

22. Heard learned senior counsel for the rival parties and perused the material on record. A perusal of the relevant provisions of the Designs Act shows that “design” is defined in Section 2(d) thereof. Section 4 pertains to “Prohibition of registration of certain designs”, while Section 19 pertains to “Cancellation of registration” and Section 22 of the Designs Act refers to “Piracy of registered design”. The said provisions clearly indicate that if a design does not appear to be new or original or if it has been disclosed to the public and if it is not significantly distinguishable from known designs or combination of known designs, the registration itself cannot be granted. Any such registration can also be cancelled, if it is found that the design in question has been already published prior to the date of registration, if the design is not new or original and if the design is otherwise not registrable under the Designs Act and it is not covered under the definition of “design” under Section 2(d) thereof. Thus, the value of registration of a design stands diluted, if material is available to indicate that it was published prior to the date of its registration. This aspect assumes significance in the present case, in the light of the material placed on record and contentions raised on behalf of the rival parties.

23. The documents placed on record do show that the plaintiff’s design of its ceiling fan was registered on 8th September, 2018. To that extent, the plaintiff is entitled to assert its proprietary rights in such registered design. But, if there is material to indicate that the design *prima facie* stood hit by prohibition of registration under Section 4 of the Designs Act or is *prima facie* liable for cancellation under Section 19 thereof, the Court would be slow in granting interim reliefs to the plaintiff.

24. In the present case, the defendant has placed detailed reply affidavit

on record in the present application and it has relied upon certain documents at Exhibits Q, R and S, which are social media posts of the plaintiff. These posts are dated 14th August, 2018 and they show the picture of plaintiff's ceiling fan with its house-marks Gorilla and Atomberg. It is significant that these posts in the public domain are prior to the date of registration of the plaintiff's design i.e. 8th September, 2018. In other words, these are publications prior to the registration of the plaintiff's design. The defendant has also placed on record invoices and delivery challans showing that Atomberg Gorilla Renesa Ceiling Fans of the plaintiff were sold in February, 2018 onwards, again prior to the date of registration of the plaintiff's design.

25. This aspect becomes crucial for the purposes of the present application, when the said documents are read in conjunction with the pleading of the plaintiff in paragraph 8 of the plaint. It is specifically pleaded in paragraph 8 of the plaint that the ceiling fan of the plaintiff in question named Atomberg Renesa Ceiling Fan was formerly known as Atomberg Gorilla Renesa Ceiling Fan. The defendant is justified in contending that when such material is appreciated, it leads to the inference that Atomberg Gorilla Renesa Ceiling Fan and Atomberg Renesa Ceiling Fan are interchangeable. Although the plaintiff has tried in its rejoinder affidavit to explain the said aspect of the matter, *inter alia*, claiming that Atomberg and Gorilla are house-marks of the plaintiff and that with time, the plaintiff gave up the use of the house-mark Gorilla, at this stage, this Court is of the opinion that such an explanation cannot come to the aid of the plaintiff, while deciding the application for interim reliefs. The stated stand taken in paragraph 8 of the plaint read with Exhibits Q, R and S, as also the delivery challans and invoices placed on record, do create an impression that the plaintiff's design was already in public domain and published prior to the

date of registration i.e. 8th September, 2018. A perusal of the designs of the fans shown at Exhibits Q, R and S *prima facie* shows that they are similar to the registered design of the plaintiff. This indicates that the registration of plaintiff's design may itself be hit by Sections 4(b) and 19(b) of the Designs Act. When this Court is exercising discretion for grant of interim reliefs, the plaintiff not having disclosed the documents at Exhibits Q, R and S alongwith the delivery challans and invoices filed with the reply affidavit, is a crucial aspect of the matter and it indicates that the plaintiff is not entitled for grant of such interim reliefs.

26. Apart from this, this Court has considered the rival contentions on the aspect of novelty and originality claimed by the plaintiff in its design of ceiling fan. It was emphasized on behalf of the plaintiff that even if the pictures of ceiling fans shown at Exhibits Q, R and S, were to be taken into consideration, there was a marked difference in the shape of the blades of the fan insofar as the registered design is concerned and that therefore, the novelty and originality in the registered design is clearly made out. It was emphasized that when the registered design is compared with other designs of ceiling fans on which the defendant has relied, it becomes even more obvious that the registered design of the plaintiff was indeed new and original. In this regard, much emphasis was placed on the detailed table of comparison brought to the notice of this Court, showing the registered design of the plaintiff's ceiling fan being compared to other ceiling fans, as also the earlier ceiling fans of the plaintiff itself.

27. This Court is of the opinion that although the plaintiff may claim that its registered design is considerably different, new, unique and original as compared to the designs of ceiling fans in the public domain, but, the design

of the ceiling fan depicted by the plaintiff itself at Exhibits Q, R and S in the public domain is *prima facie* found to be almost similar to the registered design. The difference, if at all, is slight and trivial and therefore, the plaintiff has failed to make out a strong *prima facie* case about novelty and originality of its registered design. In that sense, the defendant is justified in claiming that the plaintiff cannot rely upon a mere trade variant to seek orders of interim injunction against third parties. Reliance placed on the decision of the Delhi High Court in the case of **Philips Lighting Holding B.V. vs. Jai Prakash Agarwal and Ors.** (*supra*) is appropriate.

28. It is also significant that the plaintiff has placed much emphasis on its pleadings in paragraph 10 of the plaint to claim that the aesthetics of its design have been brought out and that the “look and feel” as also “appeal to the eye” of the plaintiff’s design is such that a case for grant of interim reliefs is made out. As opposed to this, the defendant claims that the features highlighted in paragraph 10 of the plaint are nothing but aspects of functionality.

29. In this regard, even if the law laid down by the learned Single Judge of this Court, in the case of **Whirlpool of India Limited vs. Videocon Industries Limited** (*supra*), confirmed by the Division Bench of this Court, in the case of **Videocon Industries Limited vs. Whirlpool of India Limited** (*supra*), is to be taken into consideration, it cannot be said at this stage that such a defence cannot at all be taken by the defendant, while resisting the prayer for interim reliefs. At this stage, it would also be relevant to refer to the table of comparison between the rival designs, given by the defendant alongwith its reply affidavit. A perusal of the same shows that on each aspect of the matter, including the canopy, lid, rod, packaging of the boxes containing the

rival products and the remote associated with the rival products, *prima facie* there are differences in the products. Even if the rival products are to be compared as a whole, when the plaintiff claims exclusive proprietary rights in the design, it has failed to make out a *prima facie* case in its favour in view of the design of the plaintiff being published and being in the public domain prior to the date of registration of its design. This Court is not impressed by the contention raised on behalf of the plaintiff that the defendant cannot raise the aspect of absence of novelty and originality, since the defendant itself applied for and obtained registration for its impugned designs, for the reason that it is the plaintiff, who must stand on its legs to demonstrate a strong *prima facie* case within the four corners of the law to claim interim reliefs. To that extent, the plaintiff has failed to make out its case for claiming infringement of its proprietary rights.

30. Insofar as passing off is concerned, although it was orally argued on behalf of the defendant that considering the definition of “design” under Section 2(d) of the said Act, the relief of passing off cannot at all be granted, this Court is of the opinion that even in the judgments of the Delhi High Court relied upon by the defendant, the Full Bench and the Special Bench have held against the proposition sought to be canvassed on behalf of the defendant. This Court has been consistently considering the question of relief pertaining to passing off in such matters on merits and therefore, at this interlocutory stage, it would not be appropriate to pronounce upon the same.

31. In any case, as per the position of law brought to the notice of this Court and considering the material on record, this Court finds that the plaintiff has not been able to make out a strong *prima facie* case for granting

interim reliefs in respect of the tort of passing off. This Court, in the case of **M/s. Kemp & Company & another vs. M/s. Prima Plastics Limited** (*supra*), has dealt with in detail about the aspect of passing off in the context of rival claims under the Designs Act. This Court referred to the provisions of the Designs Act, as also established authorities on the said aspect of the matter and held as follows:

“19. It would be seen that in order to establish goodwill and distinctiveness in a particular get up, there must be something more than mere similarity between the goods themselves. Mere copying is not to pass off. If a person copies shape or configuration or get up of other persons goods or article, by itself it cannot be said that he has made false representation. No one is prevented from copying and selling an article in the market provided he does not make a false representation suggesting that the article which he is selling is in fact that of plaintiff. Monopoly in the property is only preserved in favour of registered design holder. If the plaintiff has to succeed on the ground of passing off, he must show something more than mere similarity between the goods. Exceptions apart, where an article is shaped in an unusual way not primarily for giving same benefit in use or for any other practical purpose, but capricious in order purely to give an article a distinctive appearance, characteristic of that particular manufacturer’s goods, a case may be made out by the plaintiff that he has reputation and goodwill in the distinctive appearance of the article itself which could provide him a cause of action in the passing of if his goods were copied.”

32. Applying the said position of law, at this stage, while examining the aspect of *prima facie* case being made out for grant of interim reliefs, this Court is of the opinion that even if the Court was to proceed on the basis that the defendant has copied the design of the plaintiff, something more than mere similarity would have to be demonstrated by the plaintiff for successfully claiming interim reliefs. The plaintiff would have to show that *prima facie*, the defendant not only copied the design, but that the defendant

was making a false representation. In this context, at this stage, the table of comparison of the rival products placed on behalf of the defendant in the reply affidavit, assumes significance, for the reason that apart from showing certain differences pertaining to the canopy, rod, etc., the defendant has also shown how the boxes and packaging of the rival products is different. Therefore, this Court finds that the plaintiff has not been able to make out that 'something more', as required under law, to successfully claim interim reliefs against the defendants, even on the aspect of passing off.

33. Although the learned counsel for the rival parties did refer to other judgments in the notes/submissions filed before this Court, reference has been made to the judgments that were specifically referred to and relied upon, during the course of oral arguments. Applying the position of law brought to the notice of this Court in the context of provisions of the Designs Act, particularly Sections 2(d), 4 and 19 thereof, this Court is of the opinion that the plaintiff has failed to make out a *prima facie* case in its favour for grant of interim reliefs. As the plaintiff has failed to make out a *prima facie* case in its favour, the aspects of balance of convenience and irreparable loss that the plaintiff may suffer in the absence of interim reliefs, pale into insignificance.

34. In the light of the above, this Court finds no merit in the application and accordingly, the application is dismissed. Needless to say, the observations made in the present order are limited to disposing of the present application. It is clarified that the suit would proceed on merits, without being influenced by the observations made in this order.

(MANISH PITALE, J)

Priya Kambli

17/17