

  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

**S.B. Civil Miscellaneous Appeal No. 1570/2021**

M/s Ornate Jewels Proprietor Piyusha Nyati, 732, Pratap Nagar,  
Dadabadi, Kota (Raj.) Through Authorised Signatory Rahul Nyati.

----Appellant

Versus

Wow Overseas Private Limited, T-7, Shyam Apartment, C-77,  
Sarojani Marg, C-Schem, Jaipur- 302001 (Raj.) Through  
Authorised Signatory/director/ Managing Director/representative  
At Also Bunglow-32, Sai Niwas Co-Op. Hsp Society, Undri, Pune-  
411060 (Maharashtra)

----Respondent

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For Appellant(s)	:	Mr. Arnav Goyal for Mr. G.D. Bansal
For Respondent(s)	:	Mr. Pratush Choudhary, Mr. Ragindra S. Rajawat for Mr. Deepak Chauhan

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**HON'BLE MR. JUSTICE SUDESH BANSAL**

**Order**

**18/09/2023**

1. Appellant-plaintiff has preferred this Civil Misc. Appeal under Section 104 read with Order 43 Rule 1 (r) CPC challenging the order dated 20.03.2021 passed by the Additional District Judge No.3, Jaipur Metropolitan-I, Jaipur, dismissing the application for temporary injunction filed by the plaintiff as well as counter application for temporary injunction filed by the respondent-defendant vide common order.
2. Heard learned counsel for both parties and perused the material available on record.
3. It appears from the record that the appellant plaintiff is in use of a trademark "ORNATE JEWELS" in respect of Gold,

Diamond, Precious and Semi Precious Jewelry and got this trademark with logo registered in Class 35 before the Registrar of Trademark on 11.09.2020. The plaintiff claims the use of this trademark since 01.02.2012. The respondent-defendant is also using the trademark "ORNATE JEWELS", but with a altogether different logo in the same field and the trademark of respondent-defendant is also registered before the Registrar of Trademark since 10.05.2016, in Class 14. Both the parties having their trademark and logo registered claimed temporary injunction against each other for not to use the trademark "ORNATE JEWELS" during the course of the suit, claiming to be inventor and prior user of the trademark. It is not in dispute that both trademark are registered in different class and have different logo.

4. Learned Trial Court vide impugned order dated 20.03.2021 dismissed the stay applications of both the parties, with findings/ observations that at the stage of temporary injunction, without evidence, it is not possible to decide the fact as to who is the prior user of the impugned trademark as there is no sufficient material on record. Further the trial Court referred the provisions of Section 28 (3) of the Trademark Act, 1999 and observed that since both the parties have registered trademark, it is not permissible to grant injunction against either of the party, nonetheless both may claim protection against third party.

5. In addition, learned Trial Court has observed that since the Trademark of respondent is registered since 2016 and the appellant applied in 2018, therefore, during the course of registration of trademark of appellant, the Registrar Trademark raised an objection that the similar name of Trademark is already

registered and sought explanation from the appellant, but this objection was replied by the appellant stating that the trademark of respondent bearing No.3256088 is wholly different and not similar to his trademark. The trial Court has observed that the trademark of appellant is registered in Class 35 whereas the trademark of responded is registered in Class 14 and the logo of both trademark holders is entirely different. The trial Court has observed that in view of reply by the appellant before the Registrar of Trademark at the time of registration, the appellant is estopped to take a different stand, and now he cannot be permitted to state that the registered trademark of respondent is similar which is contrary to his own stand taken before the Registrar of Trademark while dealing with the objection of similarity of trademarks.

6. Learned Trial Court has referred to the provisions of Section 115 of the Evidence Act while applying the principle of estoppel against the appellant as also have placed reliance of the judgment of Hon'ble Supreme Court and Delhi High Court referred in the impugned order.

7. This Court finds that the counsel for appellant has not disputed the fact of filing the reply by the appellant-plaintiff before the Registrar of Trademark, in response to the objection, raised by the Registrar, in respect of similarity of his trademark with the respondent. Thus, it is apparent that findings of Trial Court, in this respect are not perverse but stands in line with the record.

8. As far as the issue in respect of prior user, this Court does not find any perversity in the fact finding recorded by the Trial Court, as such the evidence of parties would require to decide this

issue more so, when both the parties are claiming prior user of the Trademark in question and have registration in their favour.

9. It is more important to weigh that the Trial Court has also noticed that the appellant plaintiff did not approach to the Civil Court with clean hands while filing the present application for temporary injunction alongwith the suit for permanent injunction on 02.01.2021. The plaintiff has nowhere disclosed in the application about having knowledge of the registration of Trademark of respondent, which certainly has come to his knowledge at least during the course of registration nor the plaintiff disclosed about filing of reply before the Registrar of Trademark, to the effect of having no similarity of his trademark of the Trademark of respondent.

10. This Court does not find any illegality or perversity in impugned order nor the opinion expressed by the Trial Court cannot be said to be one of the impossible view in such facts and circumstances. Impugned order passed on the application for temporary injunction is discretionary in nature and reasonably possible view, until and unless the same suffer from any vice of arbitrariness, perversity or grave illegality/ irregularity, which leads to miscarriage of justice, such order does not warrant interference by the Appellate Court.

11. In the celebrated judgment of the Hon'ble Supreme Court in **Wander Ltd. Vs. Antox India Private Ltd. [1990 (Supp) SCC 727]** while dealing with the scope of interference in matters of temporary injunction in respect of passing of action for the trademark by the Appellate Court, the Hon'ble Supreme Court has opined in para 14 as under:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.”

12. In another judgment, in case of **Mod Mehtab Khan & Ors Vs. Khushnuma Ibrahim Khan & Ors.[2013 (9) SCC 221]**, Hon'ble Supreme Court reiterated and affirmed the large portion as expounded in Wander Ltd. (supra), para No.20 is being extracted hereunder:-

“In a situation where the learned Trial Court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the Appellate Court could not have interfered with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The Appellate Court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the Appellate

Court was wrong in its conclusions what is sought to be emphasized is that as long as the view of the Trial Court was a possible view the Appellate Court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in [Wander Ltd. v. Antox India \(P\) Ltd.](#) ”

13. The Hon'ble Supreme Court in **Gujarat Bottling Co. Ltd. Vs. Coca Cola Co. [(1995) 5 SCC 545]**, has held as under:

“43. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies.”

14. This Court is of opinion that Trial Court has reasonably concluded on the basis of material on record that no prima facie case in favour of plaintiff is proved to issue any temporary injunction restraining the defendant not to use his registered trademark nor balance of convenience and irreparable injury is

found in favour of the plaintiff otherwise also findings are just prima facie view and not final.

15. In that view of matter, this Court is not inclined to interfere with impugned order, however deems it just and proper in the interest of justice to observe that findings recorded by the Trial Court in impugned order and as affirmed by this Court would not adversely affect merits of the case of either of the party. Suit and counter claim if filed by defendant shall be considered and decided by the Trial Court, according to the respective evidence adduced by the parties, on its own merits and without being influenced by findings/observations made in the impugned order or in the present order.

16. Accordingly, the instant Misc. Appeal stands disposed of.

17 Stay application and any other pending application, if any, stand disposed of.

(SUDESH BANSAL),J