John Richard Brady And Ors. vs Chemical Process Equipments P. Ltd. And ... on 6 July, 1987

Equivalent citations: AIR1987DELHI372, AIR 1987 DELHI 372

JUDGMENT

Arun B. Saharya, J.

1. By this application under Order 39 Rules 1 and 2 read with Section 151, C.P.C. Plaintiffs have prayed for an ad interim injunction to restrain the Defendants from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in Machines that arc substantial imitation and reproduction of the design, manuals and Drawings of the Plaintiffs' Fodder Production Unit and thereby amounting to infringement of the Plaintiffs' Copyright therein, or from dealing in those Machines made on the basis of information and know how disclosed to them by the Plaintiffs in conditions of strict confidence, and from doing any other thing as is likely to lead to passing off the Defendants' products as those of the plaintiffs.

2. In the Suit, the Plaintiffs have sought permanent injunction to restrain the Defendants from infringing Copyright of the plaintiffs, from passing off Defendants' products as those of the plaintiffs', for rendition of accounts of profits, and for delivery up of all infringing materials and articles etc.

3. According to the plaintiffs, John Richard Brady (hereinafter referred as Brady) is an American National. He is a Mechanical Engineer and is the President and Managing Director of Fometa Overseas S.A. Castellana, Madrid, Spain. He conceived the idea of growing fresh green grass used as basic food for livestock in a compact unit capable of producing grass throughout the year irrespective of external climatic conditions. He developed the original Fodder Production Unit in the year 1972. It was tested under extreme climatic conditions in various Countries in the World. Steps were taken, from time to time, to improve the Unit by optimising its size and achieving greater productivity. After extensive experimentation, an improved Fodder Production Unit (hereinafter referred to as the FPU) was invented by Brady. He applied for grant of patent in India in relation to the FPU. His patent application is pending. Technical details of the FPU are contained in catalogues which illustrate it by technical Drawings and. other specifications. The Drawings are the original artistic work. Brady is the owner of Copyright in the Drawings and is entitled to exclusive right to publish and reproduce the Drawings whether two dimensionally or three dimensionally.

4. It is alleged that Brady collaborated and set up plaintiff No. 2, a joint venture Company Fometa (India) Machine Private Ltd. Plaintiff No. 3 Sanjeevani Fodder Production Private Ltd. was formed for purpose of establishing arid operating the first fodder production feed station as a prototype model commercial facility in India.

It was decided by the plaintiffs that a phased programme would be adopted to manufacture the FPU in India for both domestic and export sales. To indigenise manufacture of the FPU, the Plaintiffs sought quotations from Defendant No. 1 for the supply of thermal panels manufactured by it. The panels required were of highly specialised type. To enable the Defendants to send their quotations for supply of the said components and to precisely match those components with the FPU, all the technical material, detailed know how, Drawings and specifications concerning under express condition that it must maintain strict confidentiality regarding the know how Discussions between the parties culminated,in an agreement whereby Defendant No. 1 agreed to supply the specialised thermal panels required by the Plaintiffs, Terms and conditions of the agreement were set out in a letter dated 31-8-84 written by Defendant No. 1 to Plaintiff No. 3. Later, Plaintiffs discovered the inability of the Defendants to supply the required thermal panels, so, they did not place any order on the Defendants. It is alleged that Defendant No. 2, who is Managing Director of Defendant No. 1, along with several other representatives of the Defendants, with a view to acquire the working know how and technology of the FPU, made a number of visits to Goa where the Plaintiffs' FPU was in operation. Some of these visits were without the knowledge of the plaintiffs who were later informed about them by their employees. The plaintiffs learnt that in the month of November, 1985 the Defendants were falsely representing that the innovation concerning the FPU originated from them. The plaintiffs also acquired a pamphlet of a Fodder Production Unit (FPU) manufactured by the Defendants, or on their behalf, without the consent, permission and authorisation from the plaintiffs. The Defendants described the Machine produced by them as 'pushti'.

5. It is alleged that the Machine produced by the Defendants is entirely based upon disclosures made by plaintiffs, to the Defendants. They committed breach of confidence reposed in them. They wrongfully converted and misappropriated the know how information, drawings, designs, and specifications disclosed to them under strict confidentiality and have also infringed the Copyright of Brady by making the Machine in three dimensional form from the two-dimensional artistic work of the plaintiffs in Drawings of the FPU.

6. On 28-11-85, Brady sent a notice to the Defendants calling upon them to desist from manufacturing and selling their Machines in. violation of this rights. The Defendants sent a preliminary reply dated 11-12-85 which was followed by a detailed reply dated 23-1-86 alleging that the Defendants have been making thermal components since long.

7. It is alleged by the plaintiffs that the. Machine produced by the Defendants is an inferior version of the plaintiffs' FPU. It is causing and is further likely to cause immense damage to the plaintiffs' business and reputation. The plaintiffs claim jurisdiction of this court to entertain and try the suit under Section 62(2) of the Copyright Act, 1957 on the plea that they have been carrying on their business for profit and gain at Delhi and that the Defendants have also been circulating pamphlets of the infringing Machine and offering it for sale at Delhi.

8. According to the Defendants, they have neither infringed Copyright of Brady nor they are liable for breach of any of the terms of the agreement dated 31st August, 1984. They denied that the technical Drawings of the FPU are artistic work, but the Defendants did not controvert the specific plea in the plaint that Brady "is the owner" of the Copyrights in the Drawings. They alleged that

there are other firms making such Machines in the international market for a long time, namely, LAND SAVERS and SOMERSET ZERO GRASS U.K. and DHANY A, India. It is alleged that the FPU is based on the long known theory of Hydroponic System. The Defendants denied that Plaintiffs gave them any Drawings or technical material or know how concerning the FPU. They alleged that plaintiffs "supplied specifications only with regard to the thermal panel in order to enable the defendants to make quotations and also a tray to know the size of the thermal panels." They denied having inspected the FPU of the plaintiffs, or that they committed breach of confidence as alleged by the plaintiffs.

9. It is alleged that the Machine produced by the Defendants is different from that of the plaintiffs in respect of substantial features, such as:--

> (i) Plaintifffs' FPU works only on electric light, while the Defendants' Machine works on sunlight during the day and on electricity by night;
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> (ii) The Plaintiffs FPU has no windows, it is air tight, and it is hermetically sealed, while the Defendants' Machine has transparent window which can open outwards, it is not air tight, and is not hermetically sealed;
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> (iii) To take out trays, one has to enter the FPU while they can be removed from outside the Defendants Machine; and
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> (iv) Sump Tank for collecting and removing waste is built in the bottom panel of the FPU while it is separately provided underneath the Defendants' Machine.

10. While pointing out some functional differences mentioned above, the Defendants pleaded ".,.....when a comparison is made of the production units in the international market, they would appear similar but there would be vast difference in the matter of technical designs and process conditions". Further, it was pleaded ".....a close reference would reveal that though they apparently are similar yet there is vast difference in the mechanical design of each component and the process conditions." Regarding the nature of their business activities and source of their know-how, the Defendants pleaded that they "obtained their know-how about panels from M/s. Bayers, West Germany, from where the Defendants procured Machine to make panels in December, 1983, got raw materials there from and representatives of the defendants got training there. The defendants have been doing similar jobs right from the end of 1983."

Based on this position, the defendants pleaded that they "have not violated any of the rights of the plaintiffs in issuing the pamphlet, no consent, permission, authorisation or license from the plaintiffs was required."

11. The Defendants questioned territorial jurisdiction of this Court, on the plea that the plaintiffs did not actually and/or voluntarily reside in Delhi nor any of them carries on business or personally works for gain in Delhi, no material is placed on record to show it, and, that none of the defendants either reside or work for gain in Delhi.

12. In Replication, the plaintiffs explained the circumstances in which persons named by the Defendants were dealing in similar machines in the international market.

It was pointed out that over a period of 14 years various improvements were made in the basic Unit, a considerable number of patents have been granted in a large number of countries and some patent applications are pending but not a single application has been rejected in any country in the world.

Since Brady had received international recognition and being the Inventor of the "Commercial Grass Machine" concept, a large number of Companies were interested in obtaining licenses from Companies of his Group. One such Company "HYDRODAN"

(Corby) Ltd., which took a license in;

November, 1981 market a Fodder Machine under the brand name "LAND SAVER". As regards DHANYA, it was explained that Mr. Roy John was employed by Brady's Company Fometa Overseas S.A. He obtained the entire technology under conditions of strict.

confidentiality, but in violation of the confidentiality clause, has introduced the Machine in 1986, and that plaintiffs have already initiated legal steps to ensure the discontinuance of Mr. Roy" John's unlawful activities. Likewise, as regards SOMERSET ZERO GRASS MACHINE, U. K., Plaintiffs have explained that the said Company has been started by an ex. employee of Brady's Company TOMBRA RODAN S.A. Thus, it was controverter by the plaintiffs that there are a large number of firms that had technology prior to Brady. It was asserted that the Defendants were earlier manufacturing only Thermal Panels but have now started copying the FPU in violation of the plaintiffs' rights.

13.The Drawings in which the plaintiffs, claim copyright are contained in their Technical Bulletin. Those Drawings were meant to serve as the blue print for the construction of a three dimensional article of functional or utilitarian value namely, the FPU. Such Drawings are capable of being infringed by copying of a three dimensional article. British Leyland Motor Corporation v. Armstrong Patents Co., 1986 FSR 221. The Machine produced by the Defendants is depicted by their pamphlet.

14. To establish a prima facie case on merits, learned counsel for the plaintiffs, contended that the Defendants' Machine is a three dimensional reproduction of Brady's Drawings amounting to infringement of his copyright. According to him, there was a striking general similarity between the Defendants' Machine and the Plaintiffs' FPU as well as the Drawings, and this, combined with Defendants access to the Drawings and to the plaintiffs' FPU, established a prima facie case of copyright infringement which the Defendants have to answer. Further, he contended that the know-how imparted by plaintiffs to the Defendants, the Drawings and other technical documents like specifications etc. were not a matter of public knowledge and were by their nature confidential, that the unauthorised use of the labour of Brady who prepared them provided a 'spring-board' by which the Defendants had obtained an unfair advantage over the plaintiffs which should be restrained by an Injunction, and that failure to do so would render the action itself futile.

15. On the other hand, the Defendants based themselves upon technical pleas of want of territorial jurisdiction of the Court, ambiguity in pleadings of the plaintiffs to show cause of action or a strong prima facie case on merits, some functional differences in the Machine produced by the Defendants and the FPU of the plaintiffs, and that the Defendants were manufacturing the Machines in dispute for the last two years.

16. Before proceeding to deal with the prima facie case on merits, it will be appropriate to advert to the technical questions urged on behalf of the Defendants regarding territorial jurisdiction of this Court and the nature of pleadings of the parties in this case.

17. The plaintiffs have invoked jurisdiction of this Court under Section 62(2) of the Copyright Act, 1957 (hereinafter referred ' to as the Act) on the plea that the plaintiffs carry on business in Delhi, within the local limits of the jurisdiction of this Court. This is denied by the Defendants. This is a mixed question of facts and law. It cannot be decided at this stage. Only averments made in the plaint can be seen at this stage. The plaintiffs have pleaded the necessary facts in the plaint to invoke territorial jurisdiction of this Court.

18. Next, the Defendants urged that the pleadings of the plaintiffs were indefinite, vague and disclosed no cause of action, much less a strong prima facie case against the Defendants. It was argued that the, law in India was different from that, in England inasmuch as the presumptions under, Sub-section (1) of Section 20 of the U. K. Copyright Act, 1956 in respect of Copyright in any work and the ownership thereof are not available under the Indian law and that the plaintiffs ought to have pleaded necessary facts to show that Brady is the 'Author' of the work in respect of which Copyright is claimed and that the provisions of Section 40 of the Act applies to the work. The first part of the controversy is wholly unnecessary and does not arise for consideration as the plaintiffs specifically pleaded in para 7 of the plaint "The plaintiff No. 1 is the owner of the copyrights in the said Drawings and the Catalogues." In the written statement, para 5 dealt with paragraph 7 of the plaint. There is no specific denial to this plea of the plaintiffs. By virtue of Order 8, Rule 5 of the Code of Civil Procedure 1908, this plea has to be taken to be admitted by the Defendants. So far as the applicability of the provisions of Section 40 ,of the Act is concerned, counsel for the plaintiffs referred to the order published in the official gazette as required by Section 40, called the International Copyright Order, 1958, under which Spain and USA are mentioned as two of the countries in the schedule in which the Drawings were undisputably first published by Brady, which entitles his work to protection under Sections 13 and 40 of the Act in India Further, the Defendants criticised the plaint; by pointing out uncertainty about the claim of copyright in Drawings, specifications or the design of the FPU by the plaintiffs. According to them, the plaintiffs were really asserting copyright 'in design' but they did not plead the qualification prescribed under sub-section (2) of Section 15 of the Act in.the plaint. An effort was made to explain the legislative intention behind limited protection to the extent of reproduction up to fifty times by an industrial process by the owner of the copyright under. 15 of the Act. That part of the argument is not being discussed here as the plaintiffs pressed their claim for copyright only in respect of the Drawings. Prima facie, that really appears to be their case though reference to the design and also specifications has been made in the plaint for purposes of copyright. At the time of hearing of the case, both parties realised the ambiguities and imprecise nature of their pleadings. Although the case really relates to

enforcement of copyright, particularly in the Drawings of Brady and to enforcement of confidentiality of the relationship between the parties, the plaint as also the written statement suffer from a mixture of pleadings generally applicable to both patent and Copyright in spite of the different nature and attributes of the two rights. Not only the plaint but the written statement also indicates ambiguity in the perception and pleadings required for the purpose of a case for enforcement of copyright or of the equity of confidentiality. In any event, the Defendants' criticism of the pleadings of the plaintiffs is really of no avail to them at this stage. The plaint does disclose cause of action and also a sufficiently strong prima facie case against the Defendants for trial of copyright claimed by Brady in his Drawings and also for the enforcement of the confidentiality in respect of technical information, know-how, specifications and Drawings etc. entrusted by the plaintiffs to the Defendants in the hope and on the faith of a commercial relationship with them which did not fructify but is alleged to have been abused by the Defendants to the detriment of the plaintiffs.

19. Now, reverting to the merits of the case, it is relevant to recall that Brady is an Inventor of the FPU. He is the Author; of the Drawings contained in the Technical Bulletin placed on record by the plaintiffs. Obviously, the sole purpose of those Drawings was to serve as the blue print for the construction of the FPU. Brady incorporated Companies in India to manufacture FPU in India for both domestic and export sales. The Defendants were manufacturing only Thermal Panels on the basis of the know-how, equipment, raw materials and also training of personnel with the help of M/s. Bayers of West Germany. To indigenise manufacture of the FPU, the , plaintiffs contacted the Defendants for supply of Thermal Panels manufactured by them. The parties entered into negotiations. During the discussions, the plaintiffs entrusted to the Defendants technical information concerning FPU. It is clear from correspondence between the parties which is on record that the plaintiffs gave to the Defendants not only specifications but also some 'Drawings'. The terms of agreement between the parties were set out by the Defendants in a letter dated 31st of August, 1984. From the points confirmed in ' that letter, it is clear that the defendants had agreed to supply to the plaintiffs 'Thermo Panels complete with angles and sump tank', The dimensions and description of the Thermo Panels and of the angles etc. stated in that letter, read in the context of the detailed description of the FPU in the Technical Bulletin of the plaintiffs, substantially support the plea of the plaintiffs that they supplied all the technical material, specifications and Drawings concerning the FPU to the Defendants to enable them to precisely match with the FPU components which were to be supplied by the Defendants. Confidentiality of technical details entrusted to the Defendants was stipulated by clause 8 in the following terms:--

> "We solemnly undertake that during the pendency of the Contract we would not manufacture these panels for anybody else nor would be instrumental in divulging the details and the specifications furnished to us."

20. Apart from the information and material supplied by the plaintiffs to the Defendants, it is also pleaded by the plaintiffs that the Defendants had access to the plaintiffs' FPU at Goa. This is, of course, denied by the Defendants. This will be one of the issues for trial. Nevertheless, this plea of the plaintiffs has to be borne in mind in forming a prima facie view of the case of the plaintiffs for deciding the present application.

21. The plaintiffs' arrangement with the Defendants for supply of Thermal panels and angles etc. for FPU failed. We are not concerned with the question why it failed. While the Defendants were manufacturing only Thermal panels on the basis of know-how, equipment, raw material, training etc. from M/s. Bayers of West Germany since 1983, suddently, in 1985, the plaintiffs discovered that the Defendants had come out with the Machine in question. According to them, the Defendants abused the technical information, know-how, specifications and Drawings etc. of their FPU which were entrusted to the Defendants under express condition of strict confidentiality and they also had access to their FPU at Goa, which they used as a 'spring-board' to jump into the 5 business field to the detriment of the plaintiffs. Plaintiffs have strongly relied upon the undisputable access that the defendants had to their Drawings etc. and also to the FPU itself (which is disputed by the Defendants) and the rapidity with which the Defendants emerged in the market as a manufacturer of a Machine which is substantially similar to that of the plaintiffs' FPU. The Defendants tried to escape from the confidentiality clause by pleading that the contract was neither concluded nor was it acted upon between the parties.

22. This is just the situation in which the Courts must enforce the general rules of equity and restrain breach of confidence as recommended in the leading Saltman's case, Saltman Engineering Coy. Ld., Ferotec Ld. and Monarch Engineering Coy. (MITCHAM) Ld. v. Campbell Engineering Coy., Ld. (1948) 65 RPC 203, by Patrick Hearn in his book the Business of Industrial Licensing, by Roskill, J. in Cranleigh Precision Engineering Ltd. v. Bryant 1966 RPC81, by Lord Denning, M. R. in Scager v. Copydex Limited 1967 RPC 349 and also by S. Ranganathan J. of this Court in Konrad Wiedemann Gmbh & Co. v. Standard, Castings P. Ltd. and Ors.

23. In Saltman's case a question arose whether or not there was a viable contract and if not whether breach of confidence could in law have occurred. It was found by the Court of Chancery that there was in fact no binding contract and thus no breach of confidence. The Court of Appeal held to the contrary. The observations of Lord Greene M. R. made in that case apply with full force, to the plea raised by the Defendants in the present case. It was observed at page 216:--

> "The suggestion that no contract was made is used for some purpose which, again, I am afraid that I do not understand. It is suggested that the absence of a contract at that time in some way, at some time, modified or discharged the obligation of the Defendants to treat the drawings as confidential matter. It seems to me that it would not matter the least bit whether there was a contract or whether there was not a contract. I find as a fact, without hesitation, that there was a contract, but, contract or no contract, the Defendants got those drawings into their hands knowing, or knowing shortly afterwards, that they belonged to Saltmans, that they were obviously confidential matter, and they knew that they had got them into their hands for a strictly limited purpose. How on that basis they could say that the fact that there was no contract released them from any obligation of confidence I do not know, nor can I see how the fact, if it had been the fact, that there was no contract in June, 1945 could in any way have affected their position after the 22nd November. 1 have already said what the position was, in my opinion and, indeed, in the opinion of the Defendants' own witnesses at that date. 1 have already said that nothing happened at or after that

> date which could justify the Defendants in thinking that they were relieved from their obligation of confidence."

24. Patrick Hearn, in his Book has dealt with this subject under the heading Secrecy.

He also dealt with the principles laid down in , Saltman's case (1948-65 RFC 203). It is pertinent to extract the portion from his book from page 112 to 115. It reads :--

> "Secrecy The maintenance of secrecy which plays such an important part in securing to the owner of an invention the-uninterrupted proprietorship of marketable know-how, which thus remains at least a form of property, is enforceable at law. That statement may now be examined in the light of established. rules making up the law of trade secrets. These rules may, according to the circumstances in any given case, either rest on the principles of equity, that is to say the application by the Court of the need for conscientiousness in the course of conduct, or by the common-law action for breach of: confidence which is in effect a breach of contract.
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> In considering these alternatives there are three sets of circumstances out of which proceedings, may arise:
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> (a) where an employee comes into possession of secret and confidential information in the normal course of his work, and either carelessly or deliberately passes that information to an unauthorised person;
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> (b) where ah unauthorised person (such as a new employer) incites such an employee to provide him with such information as has been mentioned above; and
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> (c) where, under a license for the use of know-how, a licensee is in breach of a condition, either expressed in an agreement or implied from conduct, to maintain secrecy in respect of such know-how and fails to do so.

All these hypotheses fall within the general rules of equity and breach of confidence propounded in the leading Saltman case, Saltman Engineering Co. v. Cambell Engineering Co. (1948) RFC 203). The facts, as far as they matter here, were that Saltman Engineering owned confidential drawings concerning the design and construction of certain specialist tools. Through an agent they purported to contract with Campbell Engineering for the manufacture of some of these tools, and to that end they handed over the drawings. Cambell Engineering used these drawings for their own purposes. There was contention as to whether or not there had been a viable contract, and if not whether a breach of confidence could in law have occurred. In the Court of Chancery the Judge held that there was in fact no binding contract and thus no breach of confidence.

The Court of Appeal found that;

(a) there was such a contract as had been claimed, and that the documents provided by Saltman Engineering were confidential and known to be such by Campbell Engineering;

(b) apart from contract, there was an obligation of confidence resting on Campbell Engineering by the delivery of the drawings, which they knew to be the property of Saltman Engineering, and which had been provided to them for a limited purpose, that is to say the manufacture of certain specific tools;

(c) a document may be confidential if it is the result of work done by its maker, even if the matter contained therein is public knowledge;

(d) this being so, Campbell Engineering had broken confidence by using documents for purposes other than those for which they had been delivered, and there was no agreement releasing them from the obligation of confidence; and

(e) Saltman Engineering was entitled to have the documents returned to them and to receive damages for the breach.

These bald findings are more specifically explained in the judgment of Lord Greene, then Master of the Rolls, which contains four important statements:

> 1. If two parties make a contract under, which one of them obtains for the purpose of the contract, or in connection with it, some confidential matter then, even though the contract is silent on the matter of confidence, the law will imply an obligation to treat such confidential matter in a confidential way as one of the implied terms of the contract, but the obligation to respect confidence is not limited to cases where the parties are in confidential relationship.
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> 2. If a defendant is proved to have used confidential information, obtained directly or indirectly, from a plaintiff, without the consent, express or implied, of the plaintiff, he will be guilty of an infringement of the plaintiff's rights.
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> 3. It seems to me that it would not matter the least bit whether there was a contract;

but contract or no contract, the defendants got those drawings into their hands knowing, or knowing shortly afterwards, that they belonged to Saltmans, that they were obviously confidential matter, and they knew that they had got them into their hands for a strictly limited purpose.

4. Information to be confidential must 11 apprehend, apart from contract, have the necessary quality of confidence about it, namely, it must not be something which is public property and public knowledge.

It is important to note that the word, 'information' used in the last statement of the learned Master of the Rolls refers to know-how imparted by word of mouth, by letter or by demonstration. It does

not refer to drawings or other such technical documents which are by their nature confidential whether or not a matter of public knowledge. This is on the established principle that the use of such drawings amounts to the unauthorised use of the labour of the person who has prepared them, and thus provides a 'spring-board' by which an infringer may obtain an unfair advantage over competitors."

25. With regard to confidential information, Roskill J. in Cranleigh Precision Engineering Ltd. v. Bryant and Anr., 1966 , RPC 81 observed at page 96 "……..the possessor of such information must be placed under a special disability in the field of. competition in order to ensure that he does not get an unfair start." Lord Denning, M. R. clarified in Seager v. Copydex Limited 1967 RFC 349 at page 368 that "the law on this subject does not depend on any implied ! contract. It depends on the broad principles of equity that he who has received information in confidence shall not take unfair advantage of it."

26. In Konrad Wiedemann Gmbh & Co. v. Standard Castings Private Limited and Ors.* S. Ranganathan J. observed at page 256. "If, therefore, as concluded by me, the plaintiff has established the existence of a confidential relationship which is sought to be abused, equity requires that such abuse should be restrained; a failure to do so would render the action itself futile." 27. To show infringement of copyright, the plaintiffs have described their own FPU and the Defendants' Machine in the plaint and have placed on record their own! Technical Bulletin and the pamphlet of the Defendants which illustrate them. The FPU is described in paras 5 and 6 of the plaint as follows:--

> "After extensive experimentation an improved Fodder Production Unit was invented by the plaintiff No. 1. the said-writ is a machine with a controlled thermal efficient environmental chamber housing growing seed trays with built in self-contained recycling water/nutrient reservoir, pumping/irrigation, lighting, gas exchange/aeration and temperature/ humidity, control systems for utilizing a method for the daily production of 1000 Kgs. of highly nutritious fresh green grass feed for livestock on any land location and under any climatically condition.
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> Structurally, there is a chamber unit comprising one floor, one ceiling and lateral walls. Inside this chamber are the components to support a number of seed bed trays placed horizontally in a side to side position and which extend inwards from the lateral walls to form elongated rows vertically spaced from floor to ceiling of the chamber. There is a sump tank in the floor to hold water and a nutrient solution which is periodically drawn from the said sump tank in an amount sufficient to soak the seeds in the trays and the grass growing from them. There are also elements arranged to supply light to the growing grass. The chamber is further characterised by being an entirely hermetic chamber built from polyester sandwich panels, molded and glued together by resins to a central core of expanded polyurethane foam. The chamber consists of one front panel with an Air Conditioner in the upper part and an access door in the lower part, provided with air-tight looking rubbers of special design, as well as hinges and created lockings, also, having a lock and a handle. In the

inner side of the door leak proof lights are mounted equipped with fluorescent tubes. In the left side of the outer panel there is an electric panel box provided with the different elements of control necessary for the correct operation, of the unit. The plaintiff No. 1 has applied for the grant of a patent in India in relation to his improved Fodder Production unit and the said patent application is pending."

28. With regard to the Defendants' Machine it is stated in para 17 of the plaint :--

"……The defendants have adopted fodder production units comprising a chamber with one floor, one ceiling and lateral walls. Inside the chamber are components to support a number of seed bed trays placed horizontally in a side to side position and which extend inwards from the lateral walls to form; elongated rows vertically spaced from floor to ceiling of the said chamber. There is provided a sump tank outside the unit to hold water and a nutrient solution which is periodically drawn from the said sump tank in an amount sufficient to soak the seeds in the trays and the grass growing from them. They (these ?) are further provided a plurality of window arrangements for permitting day light to permeate the unit. The chamber consists of one front panel with an air conditioner in the upper part and an access door in the lower part provided with air tight locking rubbers as well as hinges, also having a lock and a handle. There is further provided on the outer panel an electric panel box with different elements of control necessary for the correct operation of the unit."

29. Apart from the detailed Drawings of different components of the FPU, the Technical Bulletin of the plaintiffs illustrates the FPU by a sectional drawing in section 1.0 of the Bulletin. It was urged on behalf of the plaintiffs that a comparison of the said sectional drawing with the picture of the Defendants' Machine in their pamphlet obviously shows a striking general similarity between the two of them.

30. Section 52(1)(w) of the Act quite plainly contemplates a direct visual comparison of the object with the drawings from the point of view of persons who are not experts in relation to object of that description It provides:--

"52. Certain acts not to be infringement of Copyright-

(1) The following acts shall not constitute an infringement of copyright namely :

(a)……

……

……

(w) the making of an object of any description in three dimensions of an artistic work in two dimensons, if the object would, not appear, to persons who are not experts in relation to objects of

that description, to be a reproduction of the artistic work."

31. This provision in the Act is similar to Section 9(8) of the English Copyright Act, 1956, which has been subject matter of several, decisions of Courts in England.

32. Dealing with the case of a sectional drawing, Buckley, L.J. pointed out in Solar Thomson Engineering Co. Ltd. v. Barton 1977 RPC 537 at page 559 that the notional unskilled observer should be treated as having a sectioned cheek piece in his hand for the purposes of Section 9(.8). Applying that test, it appears that the defendants' Machine shown in their Pamphlet is a mere reproduction of the plaintiffs' drawing.

33. Infringement of copyright has to be tested on visual appearance of the Drawing and the object in question. The purpose, functional utility, efficacy of different parts and components of the object or the material of which they may be made are irrelevant for the purpose of copyright.

34. Apart from the striking general similarity between the defendants' Machine and the Drawings of the plaintiffs being obvious to the eye, though the defendants' claim that there are some functional differences between their Machine and the FPU, the defendant;; had access to the Drawings of the plaintiffs as discussed above, and, the rapidity with which the defendants have produced the Machine lead to the inference that the Defendants have copied the Drawings of plaintiffs. It is significant to point out that the defendants have not shown how in fact they had arrived at their Machine. In such circumstances, the inference is unescapable that the plaintiffs have established a prima facie case of copying to which the defendants have to answer. This prima facie view formed by me is supported by the principles laid down by the House of Lords in L.B. (Plastics) Limited v. Swish Products Limited 1979 RPC 551.

35. Learned counsel for the defendants, relying upon Mohini Mohan Singh v. Sitanath Basak , Sallendra Nath De v. Chayanik Chitra Mandir, (1951) 55 Cal WN 713, E. Gomme Limited v. Relaxateze Upholstery Limited, 1976 RPC 377 and R. G. Anand v. Delux Films, , contended that the differences between the plaintiffs' FPU and the Defendants' Machine were not merely colourable imitation but were so substantial as to dispel the allegation of infringement of copyright of the plaintiffs. As pointed out earlier, the alleged differences are of functional nature and have no impact on visual comparison of the object with the drawings for the purpose of testing infringement of copyright.

36. In spite of the defendants pointing out differences between their Machine and the plaintiffs FPU, they themselves conceded in the written statement that on comparison of the production units they would appear similar though they would be different in matter of technical designs of different components and their process conditions. Further, at the time of hearing, Learned counsel for the defendants undertook to produce a sectional picture of the Defendants' Machine to show visual difference with that of the plaintiffs' Drawing in section 1.0 of their Technical Bulletin but he did not do so.

37. In these circumstances, no opinion can be finally expressed at this stage on the question of infringement of copyright claimed by the plaintiffs in drawings of Brady by the production of the Machine in question by the Defendants, but the plaintiffs have made out a strong prima facie case of infringement of their copyright, and of strict confidentiality under which specifications, drawings and other technical information about the FPU were supplied to the Defendants, which the Defendants will have to meet at the trial of the suit.

38. Balance of convenience is clearly in favor of grant of injunction to the plaintiffs. Unless the Defendants arc restrained by grant of temporary injunction during pendency of the suit, irreparable injury and loss which cannot be estimated in terms of money, will be caused to the plaintiffs by the Defendants continuing to manufacture, sell or deal in their Machine which is a substantial reproduction in three dimensional form of the Drawings of the plaintiffs' FPU in which Brady has copyright. It will also be in the interest of justice to restrain the Defendants from abusing the know-how, specifications, Drawings and other technical information regarding the plaintiffs' FPU entrusted to them under express condition of strict confidentiality, which they have apparently used as a 'spring-board' to jump into the business field to the detriment of the plaintiffs. I find no substance in the plea of the Defendants that the plaintiffs have disentitled themselves from the grant of interim; injunction by the alleged delay in seeking; that relief from this Court. The plaintiffs' instituted the present suit on 1st of May, 1986 and simultaneously sought interim injunction; against the Defendants by the present application after the Defendants repudiated the claim of the plaintiffs by a detailed reply dated 23rd of January, 1986 to a notice dated 28th of November, 1985 by which the plaintiffs called upon the Defendants to immediately desist from infringing their rights sought to be protected by the suit. In view of Brady being a foreign national, the time taken in seeking relief from Court cannot be said to be unreasonable. Interim injunction was granted in British Northrop Limited v.

Texteam Blackburn Limited, (1974) RPC page 57 by Megarry, L. J. in spite of there being a delay of about one year in the plaintiffs bringing action against the defendant. At page 79, it was observed "Finally, I turn to the more general considerations in relation to granting or withholding an injunction. Mr. Mervyn Devies relied on delay by the plaintiffs, both per se and as allowing the defendants' activities to rank as part of the status quo. However, I do not think that there was enough delay to provide any bar to an injunction.

39. Therefore, the Defendants are hereby restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in Machines that are substantial imitation and reproduction of the Drawings of the plaintiffs' FPU or from using in any other manner whatsoever the know-how, specifications, Drawings and other technical information about the FPU disclosed to them by the plaintiffs till the final disposal of the suit.

40. Accordingly, the application is allowed with costs. Counsel's fee Rs. 2,500/-.