



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

TUESDAY, THE 18TH DAY OF NOVEMBER 2025 / 27TH KARTHIKA,

1947

FAO NO. 118 OF 2025

AGAINST THE ORDER DATED 23.08.2025 IN I.A.NO.2 OF
2025 IN OS NO.2 OF 2025 OF ADDITIONAL DISTRICT COURT-I,
MANJERI

APPELLANT/PETITIONER/PLAINTIFF:

RAJEEV K P
AGED 46 YEARS
S/O.SAHADDEVAN, HOUSE NO.10, AKG HOUSING COLONY,
SOUTH BAZAR, KANNUR-670002. PROPRIETOR OF
M/S GLOBAL PHARMACEUTICALS, HAVING OFFICE
ATTHAVAKKARA COMPLEX, THAVAKKARA,
KANNUR, PIN - 670012

BY ADVS.
SRI.P.MARTIN JOSE
SRI.K.M.JAMALUDHEEN
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA
SRI.R.GITHESE
SHRI.AJAY BEN JOSE
SRI.MANJUNATH MENON
SHRI.SACHIN JACOB AMBAT
SMT.ANNA LINDA EDEN
SHRI.HARIKRISHNAN S.
SMT.ANAVADYA SANIL KUMAR



SMT.ANJALI KRISHNA
SRI.S.SREEKUMAR (SR.)

RESPONDENT/RESPONDENT/DEFENDANT:

UNAI.S.K.K. ,
AGED 40 YEARS, S/O ABOOBACKER.K.K, KAVUNGAL,
KELAPPURATH, PUDUKKUDI, CHIRAVIL, KONDOTTY,
MALAPPURAM-673638.
PROPRIETOR OF MARIYA HYGENE SOLUTION, PUNNA
RESIDENCY, NEAR CALICUT INTERNATIONAL AIRPORT,
KOZHIKODE, PIN - 673647

BY ADVS.
SRI.K.MOHAMMED RAFEEQ
SHRI.P.P.ABDUL SAGEER
SRI.BIBIN MATHEW
SRI.P.M.MATHEW
SRI.AMARNATH R LAL
SHRI.SANALDEV E.P.
SMT.VISHNUMAYA ANANDAN
SHRI.SONYMON ANTONY
SMT.SHIFANA M.
SMT.FIDA P.
SHRI.ABHIJITH P.A.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR
ADMISSION ON 06.11.2025, THE COURT ON 18.11.2025 DELIVERED
THE FOLLOWING:



S.MANU, J.

FAO No.118 of 2025

Dated this the 18th day of November, 2025

JUDGMENT

Plaintiff in O.S.No.2 of 2025 of the Additional District Court, Manjeri, has filed this appeal aggrieved by the order dated 23.08.2025 in I.A.No.2 of 2025. By the impugned order, I.A.No.2 of 2025 filed by the appellant / plaintiff for interim injunction was dismissed with costs.

2. Appellant is the proprietor of M/s.Global Pharmaceuticals. Appellant has obtained trade mark registration for the trade name and mark 'BOKASHI BUCKET'. The design applied to the 'BOKASHI BUCKET' Compost Bin is registered in the name of the appellant under the Designs Act, 2000. The product of the appellant can convert biodegradable solid waste to excellent manure within 15 days. It is an innovative waste management solution. Appellant



claims that the product has gained popularity in the market and it is scientifically designed. Suchitwa Mission and Local Self Government Authorities have purchased the 'BOKASHI BUCKET' of the appellant in large quantities. It is being sold on online platforms also. Appellant claims to have significant turn over with the sale of 'BOKASHI BUCKET'. According to the appellant the design registered in the name of the appellant is a novel and original one. Further the appellant claims that on account of long, exclusive and extensive use coupled with voluminous sales, promotional activities and presence, the product has earned very high reputation in the market.

3. According to the appellant, it's distributors in Kerala detected an identical product being sold by the respondent which mimics the style of the product of the appellant. Respondent has deliberately copied and reproduced a replica of the overall design, shape, configuration, get up and even features of the 'BOKASHI



BUCKET' Compost Bin. The respondent is passing off his product as that of the 'BOKASHI BUCKET' Compost Bin of the appellant. The respondent is unauthorizedly using the trade mark of the appellant thereby infringing the registered trade mark of 'BOKASHI BUCKET' of the appellant. Hence the suit was filed.

4. I.A.No.2 of 2025 for temporary injunction was filed along with the suit. The District Court has passed an order of ad-interim injunction against the respondent. Thereafter, the respondent entered appearance and filed a written statement as also objection in the I.A. The respondent contended that there was no novelty in the design of the appellant. It was also contended that the registration of trade mark was obtained by concealing material facts and through misrepresentation. Respondent has already filed rectification petition to cancel the registration of the appellant. Further the appellant approached the Court suppressing material facts. Though no patent registration is obtained by the appellant, he



claimed in the suit to have patent registration also. The respondent was using the brand name 'MARIA' in the 'BOKASHI BUCKET' sold by him. 'BOKASHI BUCKET' is a common descriptive word used in the market since 2013. Respondent is a *bonafide* prior user who has been manufacturing and selling 'MARIA BOKASHI BUCKET' from 2013 onwards. Respondent also contended that the trade mark registration of the appellant is generic and consists of descriptive words in public domain. The registration is now subject to the decision in the rectification application filed by the respondent. The design of the appellant has no specialty or distinctiveness. The design is openly available in the internet from 2008. The registration has become ineffective on account of the failure of the appellant to file counter statement on time in the rectification application. The brand name of the appellant is 'BIO DROPS'. Name of the respondent's brand is 'MARIA' for the product 'BOKASHI BUCKET'. Many other persons are also selling 'BOKASHI BUCKET' and the



same would show that it is a general descriptive term in public use. Respondent, therefore, submitted that the temporary injunction be vacated.

5. The Court appointed an Advocate Commissioner and obtained a report. Documents produced by the appellant were marked as Exts.A1 to A6 and the documents of the respondent were marked as Exts.R1 to R100. Thereafter the learned Additional District Judge heard the parties and passed the impugned order. The learned Judge has held that the appellant/petitioner failed to make out a *prima facie* case. Balance of convenience was also not in his favour. It was also found that no irreparable injury would be caused to him. Finding so, the learned Judge vacated the interim injunction order granted on 21.03.2025.

6. Heard Sri.S.Sreekumar, learned Senior Counsel appearing for the appellant and Sri.P.P.Abdul Sageer, learned counsel appearing for the respondent.



7. Learned Senior Counsel for the appellant at the outset itself submitted that the appellant is seeking temporary injunction only the basis of registration of the trade mark and no other aspects would be pressed into service in this appeal. He made reference to various provisions of the Trade Marks Act, especially Sections 23, 28 and 29. Learned Senior Counsel placed heavy reliance on the judgment of the Hon'ble Supreme Court in ***Renaissance Hotel Holdings Inc. v. B.Vijaya Sai and Others [(2022) 5 SCC 1]***. He submitted that once registration is obtained under Section 23 of the Trade Marks Act, the registered proprietor obtains the exclusive right to use the trade mark in relation to the goods or services in respect of which the trade mark is registered. Also, a right accrues on the proprietor to obtain relief in respect of infringement of the trade mark. Infringement of trade mark is dealt with Section 29 of the Act. He made pointed reference to Section 29(3) which mandates that “in any case falling under clause (c) of sub section (2), the Court shall



presume that it is likely to cause confusion on the part of the public”.

Sub Section 2(c) of Section 29 of the Trade Marks Act reads as under:

“29(2)(c) Its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.”

8. Learned Senior Counsel hence contended that when infringement as under sub section 2(c) is found, the presumption under Section 29(6) would apply. He further contended that the appellant is entitled for the protection offered under various provisions of Chapter IV of the Trade Marks Act and the Court below went wrong in rejecting the application for interim injunction. He pointed out various observations of the learned Additional District Judge in the impugned order and submitted that the learned Judge approached the issue in a totally wrong perspective. He pointed out that in paragraph 29 of the impugned order, the learned Judge has discussed about the difference in the brand names of the appellant



and the respondent. The learned Judge held that both of them use different brand names for the same product and also that 'BOKASHI BUCKET' is a generic descriptive term in public use. In the next paragraph, the learned Judge made reference to Section 9 of the Trade Marks Act and observed that common descriptive words cannot be exclusively appropriated as trademarks. Learned Senior Counsel contended that those aspects are not at all relevant when infringement of a registered trade mark is pointed out and reliefs are sought on the basis of the same. He further contended that the learned Judge went on to discuss about prior user in paragraph 31 of the impugned order. The learned counsel submitted that there was no material before the learned Judge to show that the respondent is a prior user. The learned Judge also discussed about design patent registration which was also not a germane consideration.

9. The learned Senior Counsel heavily relied on the judgment



of the Hon'ble Supreme Court in ***Renaissance Hotel Holdings Inc.*** (Supra). He made particular reference to Paragraph Nos.33, 37, 38, 48, 49, 50, 52 and 54 to 61 of the judgment. He argued that when the trade mark of the defendant is identical with the registered trade mark of the plaintiff and that the goods or services of the defendant are identical with the goods or services covered by the registered trade mark, it is laid down by the Hon'ble Supreme Court that the Court shall presume that it is likely to cause confusion on the part of the public. He also submitted that if the essential features of the trade mark of the plaintiff have been copied by the defendant, even in the get up, packing and other writing or marks on the goods or on the packets though may show marked differences, the same would be immaterial in the case of infringement of the trade mark. He also submitted that the Hon'ble Supreme Court has held in unmistakable terms that even in such cases, if there is an infringement of the trade mark, an injunction would be issued as soon as it is proved that the



defendant is improperly using the plaintiff's mark. He hence submitted that the Court below has committed a grave error by dismissing the application for interim injunction. He asserted that as long as the registration of the petition is in force, the appellant is entitled for an order of injunction.

10. The learned counsel for the respondent vehemently refuted the contentions of the learned Senior Counsel. He argued that on 12.03.2025 application for rectification was filed in the Trademark Registry against the registration of trade mark obtained by the appellant. The learned counsel contended that the appellant failed to file his counter statement within the time limits provided under the relevant Rules. He argued that in view of Rule 97 and 98 of the Trade Marks Rules, 2017, failure of the appellant to file counter statement has to be treated as failure to contest the matter and the registration has become inoperative in view of the provisions of Rule 98 of the Trade Marks Rules. He therefore asserted that the



appellant cannot raise any claim on the basis of the registration of the trade mark anymore. The learned counsel made reference to various documents produced before the Trial Court and submitted that the name/description 'BOKASHI BUCKET' is a generic term used widely in various countries and hence the appellant cannot claim any exclusive right over the same. He also submitted that the said aspect is evident from the fact that Suchitwa Mission in its tender documents also mentions about 'BOKASHI BUCKET'. The term is not capable of trade mark protection, being inherently generic. He further submitted that the design registration claimed by the appellant is also not valid. Learned counsel submitted that the design was published in the year 2018, prior to the design application of the appellant. The respondent/defendant is an approved service provider for Suchitwa Mission, Kerala. He also submitted that the report of the Advocate Commissioner and photographs clearly highlighted the distinction between the two



brands. Learned counsel further submitted that the respondent's brand name is 'MARIA' and the appellant's brand name is 'BIO DROPS'. He submitted that the said aspect was rightly taken note of by the Court below. The learned counsel further contended that application for rectification was submitted before the filing of the suit by the appellant. Nonetheless the same was suppressed by the appellant. Therefore, the appellant approached the Court without clean hands. The appellant also raised a false claim that it has obtained patent registration. Hence, by its conduct, the appellant became disentitled to equitable reliefs. He further submitted that the appeal is liable to be dismissed.

11. In reply to the contentions of the learned counsel for the respondent, the learned Senior Counsel invited the attention of the Court to Section 57 of the Trade Marks Act dealing with cancellation and varying of registration. The learned Senior Counsel submitted that mere submission of an application for rectification will not



amount to freezing of registration already granted. He also submitted that Rule 98 of the Trade Marks Rules relied on by the learned counsel for the respondent also does not provide for any such consequence. The learned counsel pointed out various other provisions of the Rules and submitted that nowhere under the Act or the Rules there is any provision to the effect that for delay in filing the counter statement, registration can be treated as ceased to have force and effect. He also submitted that on 04.11.2025 counter statement was filed by the appellant. Learned Senior Counsel made reference to Section 124 of the Trade Marks Act and submitted that even if the suit is stayed as provided under the said provision, the Court is not precluded from making any interlocutory order. Regarding the contention of the learned counsel for the respondent that 'BOKASHI BUCKET' was in use in several foreign countries, the learned Senior Counsel submitted that the same has no consequence, as under Section 11(3) of the Trade Marks Act, use in



India is the relevant aspect. He further submitted that the respondent has no case that any other manufacturer in India has registration for the trade mark 'BOKASHI BUCKET' other than the appellant. The learned Senior Counsel relied on Section 31. It provides that the original registration of the trade mark and all subsequent assignments and transmissions of the trade mark shall be *prima facie* evidence of the validity thereof. He further contended that there was no suppression in the suit as alleged. He pointed out that the application for rectification was filed according to the respondent only on 12.03.2025 and no notice was received with respect to the same by the appellant before the suit was filed. Therefore, the contention regarding suppression is baseless. He also submitted that an application for amendment has already been filed before the Trial Court for rectifying an inadvertent mistake that crept in while drafting the plaint. He submitted that the appellant made a mistake in stating that he had obtained copyright. The said



mistake happened only for the reason that the design registration certificate of the appellant was also issued by the authority under the Copyright Act. On realizing the mistake, application to amend the pleading was filed. He hence submitted that there is no substance in the contentions raised by the respondent.

12. Perusal of the impugned order shows that several aspects were considered by the learned Additional District Judge on the basis of contentions raised by both sides. However, before this Court the learned Senior Counsel appearing for the appellant submitted that the appellant is seeking interim injunction solely on the ground of infringement of registered trade mark. He further clarified that the appellant requests this Court only to consider the said aspect. Nonetheless the learned counsel appearing for the respondent argued the matter elaborately and raised many contentions with respect to other facets of the issue also. Since the appellant confines his case on infringement of trade mark, I am of



the view that the only issue to be considered by this Court is as to whether the appellant is entitled for temporary injunction for the alleged infringement of trade mark.

13. The fact that the appellant has obtained trade mark registration for the trade name and mark 'BOKASHI BUCKET' as per Exts.A1, A2 and A3 registration certificates is indisputable. The respondent has approached the Registrar seeking rectification with respect to the registrations obtained by the appellant. Nevertheless, no decision has been taken by the Registrar in the applications for rectification. As noted above, the learned Senior Counsel asserted that the appellant is entitled for all beneficial consequences of the registration including temporary injunction when infringement is *prima facie* established. It is to be noted that the products of the appellant and the respondent in the instant case are identical. They are Compost Bins. The respondent also admittedly uses the term 'BOKASHI BUCKET' to describe his product. The respondent has a



case that he is marketing the product in a different packing and the writings on the packets have marked differences. However, the appellant has obtained registration for the trade name and mark 'BOKASHI BUCKET'. As long as the registration remains valid, the rights conferred on account of the registration will be available to the appellant. In case any situation contemplated under Section 29 of the Trade Marks Act is established, the appellant can definitely contend that there is infringement of its registered trade mark. In the case at hand the respondent uses the term 'BOKASHI BUCKET' to describe his product which is a registered trade mark of the appellant. As noted above, the goods are identical. Therefore, the appellant is right in contending that there is infringement of trade mark.

14. The learned counsel for the respondent denied that the appellant is entitled for any rights conferred by registration for the reason that the respondent has already approached the Registrar



with applications for rectification. He submitted that valid grounds are raised in the applications for rectification and the applications will be allowed as the registrations obtained by the appellant are not in tune with the provisions of the Trade Marks Act. The learned counsel asserted that in view of Rule 98 of the Trade Marks Rules the registered proprietor is bound to submit a counter statement within two months or within such further period not exceeding one month in the aggregate when he received a copy of the application for rectification submitted under Rule 97. He further contended that in case no counter statement is filed within the period of three months from the date of receipt of the application, the registration shall cease to have force. He submitted that on failure of the registered proprietor to submit counter statement within the time limit stipulated under Rule 98, it shall be presumed that the registered proprietor has conceded. Thereafter the registered proprietor cannot have any claim on the basis of the registration. Rule 98 of the Trade Marks



Rules is extracted hereunder for ready reference:

“98. Further procedure.- Within two months from the receipt by a registered proprietor of the copy of the application mentioned in rule 97 or within such further period not exceeding one month in the aggregate, he shall send to the Registrar on Form TM-O a counter statement of the grounds on which the application is contested and if he does so, the Registrar shall serve a copy of the counter statement on the person making the application within one month of the receipt of the same. In case no counter-statement has been filed within the period of three months from the date of receipt of the application mentioned in rule 97, the applicant for rectification shall file evidence in support of his application for rectification under the provisions of rule 45(1). The provision under rules 46 to 51 shall thereafter apply *mutatis mutandis* to the further proceedings on the application.”

15. A careful reading of Rule 98 shows that a period of two months is available to the registered proprietor from the date of receipt of a copy of application under Rule 97 or within such further period not exceeding one month in the aggregate to submit counter statement. If the counter statement is submitted, the Registrar shall serve a copy of the same on the person making the application within one month of the receipt of the same. In case no counter statement has been filed within the period of three months, the



applicant seeking rectification shall file evidence in support of the application. The Rule provides a time frame for submitting counter statement and for adducing the evidence. The consequence of non-submission of the counter statement within an aggregate period of three months as per the Rule, is that the applicant will be entitled to file evidence. No other consequence is provided in the Rule. There is no provision in the Act also which provides for deemed annulment of the registration on failure to file counter statement within the time limits stipulated under Rule 98. Therefore, contention of the learned counsel for the respondent that as a consequence of non-filing of counter statement, the registration of the appellant ceased to be in force cannot be accepted. The learned counsel has not pointed out any other provision in support of his contention other than Rule 98. Therefore, this Court has to proceed to examine whether the appellant is entitled for temporary injunction on the premise that the registrations obtained by the appellant under the Trade Marks Act



remain valid and consequently the appellant is entitled for the rights conferred by the statute.

16. The learned Senior Counsel for the appellant had extensively referred to the judgment of the Hon'ble Supreme Court in ***Renaissance Hotel Holdings Inc.*** (Supra). A three Judge Bench of the Hon'ble Supreme Court has comprehensively analyzed the provisions of Sections 28 and 29 of the Trade Marks Act and has laid down the principles to be applied in cases of infringement of trade mark. Regarding the relevant provisions of Sections 28 and 29 as well as the Scheme of the Act, the Hon'ble Supreme Court held as under:

“48. The legislative scheme is clear that when the mark of the defendant is identical with the registered trade mark of the plaintiff and the goods or services covered are similar to the ones covered by such registered trade mark, it may be necessary to prove that it is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark. Similarly, when the trade mark of the plaintiff is similar to the registered trade mark of the defendant and the goods or services covered by such registered trade mark are identical or similar to the goods or services covered by such registered trade mark, it may again be necessary to establish that it is likely to cause confusion on the part of the



public. However, when the trade mark of the defendant is identical with the registered trade mark of the plaintiff and that the goods or services of the defendant are identical with the goods or services covered by registered trade mark, the Court shall presume that it is likely to cause confusion on the part of the public.

49. Having considered the legislative scheme as has been elaborately provided in the said Act, it will be apposite to refer to the observations of this Court, while considering Section 21 of the Trade Marks Act, 1940 in *Durga Dutt Sharma [Durga Dutt Sharma v. Navaratna Pharmaceuticals Laboratories, (1965) 1 SCR 737: AIR 1965 SC 980]* : (AIR pp. 989-90, para 28).

“28. The other ground of objection that the findings are inconsistent really proceeds on an error in appreciating the basic differences between the causes of action and right to relief in suits for passing off and for infringement of a registered trade mark and in equating the essentials of a passing off action with those in respect of an action complaining of an infringement of a registered trade mark. We have already pointed out that the suit by the respondent complained both of an invasion of a statutory right under Section 21 in respect of a registered trade mark and also of a passing off by the use of the same mark. The finding in favour of the appellant to which the learned counsel drew our attention was based upon dissimilarity of the packing in which the goods of the two parties were vended, the difference in the physical appearance of the two packets by reason of the variation in the colour and other features and their general get-up together with the circumstance that the name and address of the manufactory of the appellant was prominently displayed on his packets and these features were all set out for negating the respondent's claim that the appellant had passed off his goods as those of the respondent. These matters which are of the essence of the cause of action for relief on the ground of passing off play but a limited role in an action for infringement of a registered trade mark by the registered proprietor who has a statutory right to that mark



and who has a statutory remedy for the event of the use by another of that mark or a colourable imitation thereof. While an action for passing off is a common law remedy being in substance an action for deceit, that is, a passing off by a person of his own goods as those of another, that is not the gist of an action for infringement. The action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for the vindication of "the exclusive right to the use of the trade mark in relation to those goods" (vide Section 21 of the Act). The use by the defendant of the trade mark of the plaintiff is not essential in an action for passing off, but is the sine qua non in the case of an action for infringement. No doubt, where the evidence in respect of passing off consists merely of the colourable use of a registered trade mark, the essential features of both the actions might coincide in the sense that what would be a colourable imitation of a trade mark in a passing off action would also be such in an action for infringement of the same trade mark. But there the correspondence between the two ceases. In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial; whereas in the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff."



50. It could thus be seen that this Court has pointed out the distinction between the causes of action and right to relief in suits for passing off and for infringement of registered trade mark. It has been held that the essentials of a passing off action with those in respect of an action complaining of an infringement of a registered trade mark, cannot be equated. It has been held that though an action for passing off is a common law remedy being an action for deceit, that is, a passing off by a person of his own goods as those of another; the action for infringement is a statutory right conferred on the registered proprietor of a registered trade mark for the vindication of the exclusive rights to the use of the trade mark in relation to those goods. The use by the defendant of the trade mark of the plaintiff is a sine qua non in the case of an action for infringement. It has further been held that if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark, would be immaterial in a case of infringement of the trade mark, whereas in the case of a passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff.

51. Again, while considering the provisions of Section 21 of the 1940 Act, this Court in *Ruston & Hornsby [Ruston & Hornsby Ltd. v. Zamindara Engg. Co., (1969) 2 SCC 727]*, observed thus : (SCC pp. 729-30, paras 4-6)

“4. It very often happens that although the defendant is not using the trade mark of the plaintiff, the get up of the defendant's goods may be so much like the plaintiff's that a clear case of passing off would be proved. It is on the contrary conceivable that although the defendant may be using the plaintiff's mark the get up of the defendant's goods may be so different from the get up of the plaintiff's goods and the prices also may be so different that there would be no probability of deception of the public. Nevertheless, in an action on the trade mark, that is to say,



in an infringement action, an injunction would issue as soon as it is proved that the defendant is improperly using the plaintiff's mark.

5. The action for infringement is a statutory right. It is dependent upon the validity of the registration and subject to other restrictions laid down in Sections 30, 34 and 35 of the Act. On the other hand the gist of a passing off action is that A is not entitled to represent his goods as the goods of B but it is not necessary for B to prove that A did this knowingly or with any intent to deceive. It is enough that the get-up of B's goods has become distinctive of them and that there is a probability of confusion between them and the goods of A. No case of actual deception nor any actual damage need be proved. At common law the action was not maintainable unless there had been fraud on A's part. In equity, however, *Lord Cottenham, L.C., in Millington v. Fox* [*Millington v. Fox*, (1838) 3 My & Cr 338 : 40 ER 956] held that it was immaterial whether the defendant had been fraudulent or not in using the plaintiff's trade mark and granted an injunction accordingly. The common law courts, however, adhered to their view that fraud was necessary until the Judicature Acts, by fusing law and equity, gave the equitable rule the victory over the common law rule.

6. The two actions, however, are closely similar in some respects. As was observed by the Master of the Rolls in *Saville Perfumery Ltd. v. June Perfect Ltd.* (1941) 58 RPC 147 at p. 161 (HL):

'The statute law relating to infringement of trade marks is based on the same fundamental idea as the law relating to passing-off. But it differs from that law in two particulars, namely (1) it is concerned only with one method of passing-off, namely, the use of a trade mark, and (2) the statutory protection is absolute in the sense that once a mark is shown to offend, the user of it cannot escape by showing that by something outside the actual mark itself he has distinguished his goods from those of the registered proprietor.



Accordingly, in considering the question of infringement the courts have held, and it is now expressly provided by the Trade Marks Act, 1938, Section 4, that infringement takes place not merely by exact imitation but by the use of a mark so nearly resembling the registered mark as to be likely to deceive.' ”

52. It could thus be seen that this Court again reiterated that the question to be asked in an infringement action is as to whether the defendant is using a mark which is same as, or which is a colourable imitation of the plaintiff's registered trade mark. It has further been held that though the get-up of the defendant's goods may be so different from the plaintiff's goods and the prices may also be so different that there would be no probability of deception of the public, nevertheless even in such cases i.e. in an infringement action, an injunction would be issued as soon as it is proved that the defendant is improperly using the plaintiff's mark. It has been reiterated that no case of actual deception nor any actual damage needs to be proved in such cases. This Court has further held that though two actions are closely similar in some respects, in an action for infringement, where the defendant's trade mark is identical with the plaintiff's trade mark, the Court will not enquire whether the infringement is such as is likely to deceive or cause confusion.”

17. The Hon'ble Supreme Court categorically held in paragraph 56 of the judgment that in case of an eventuality covered under clause (c) of sub section (2) of Section 29, in view of the provisions of sub section (3) of Section 29 of the Act, the Court shall presume that it is likely to cause confusion on the part of the public. Section 29(2) reads as under:



“(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of--

(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or

(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or

(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark,

is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.”

18. In the case at hand, as the respondent also admittedly uses the term 'BOKASHI BUCKET' and the goods/products of the appellant and the respondent are identical, the case definitely falls within the ambit of sub section (2)(c) of Section 29 the Act. Therefore, this Court has to presume that confusion is likely to be caused. The Hon'ble Supreme Court further held as under in Paragraph No.59.

“59. In these circumstances, we are of the considered view that it was not open for the High Court to have entered into the discussion as to whether the appellant-plaintiff's trade mark had a reputation in India and the use of the mark



without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark. We find that the High Court has erred in entering into the discussion as to whether the respondent-defendants and the appellant-plaintiff cater to different classes of customers and as to whether there was likely to be confusion in the minds of consumers with regard to the hotel of the respondent-defendants belonging to the same group as of the appellant-plaintiff's. As held by this Court in *Ruston & Hornsby*, in an action for infringement, once it is found that the defendant's trade mark was identical with the plaintiff's registered trade mark, the Court could not have gone into an enquiry whether the infringement is such as is likely to deceive or cause confusion. In an infringement action, an injunction would be issued as soon as it is proved that the defendant is improperly using the trade mark of the plaintiff." [Emphasis added]

19. It is thus clear that when it is proved that the defendant is improperly using the trade mark of the plaintiff, an order of injunction would be issued. In the case at hand, the respondent is admittedly using the term 'BOKASHI BUCKET' which is registered as its trade mark by the appellant. Hence, I am of the view that the appellant is entitled for temporary injunction and the Court below went wrong in dismissing the interim application for injunction by the impugned order.



20. Though the learned counsel for the respondent had made submissions regarding suppression and misleading by the appellant, those allegations have been effectively denied by the learned Senior Counsel for the appellant. I am also satisfied that the normal considerations relevant in the matter of granting temporary injunctions weigh in favour of the appellant, in the facts and circumstances of the case.

In the result, the impugned order is set aside. I.A.No.2 of 2025 in O.S.No.2 of 2025 of the Additional District Court, Manjeri, is allowed. The respondent, his men, agents or anybody acting or claiming under him are restrained by temporary injunction from manufacturing and selling or promoting Compost Bins as illustrated in the schedule to I.A.No.1 of 2025 in this FAO by infringing or passing of the registered trade mark 'BOKASHI BUCKET' till the disposal of the suit.

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Appeal is allowed as above. Parties to suffer respective costs.

Sd/-

**S.MANU,
JUDGE**

MC