

N. Rangaswamy Vs Godrej and Boyce Manufacturing Co. Ltd.

Court: Madras High Court

Date of Decision: Aug. 29, 2002

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 15
 Copyright Act, 1957 â€” Section 15

Citation: (2003) 26 PTC 408

Hon'ble Judges: A. Ramamurthi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

A. Ramamurthi, J.

The applicant filed an application to pass an order of interim injunction restraining the respondents and their men from infringing the applicant's copyright in any manner or by representing to any third parties, the efficacy of their products as part of the process in the

drawings, diagrams and literature annexed as document No. 1 in the plaint.

2. The case in brief is as follows :- The plaintiff filed a suit seeking a declaration , that he is the owner of the copy right in the drawings, schematic

diagrams and literature mentioned in document No. 1. It is used to describe his pilfer-proof process, for securing transportation of liquid petroleum

cargo in trucks and for a consequential injunction. The applicant seeks to protect his intellectual property rights in the system and methodology

developed by him, as evidenced by the diagrams and drawings. The respondent/defendant is now making hectic canvassing for selling its locks as

part of the Pilfer Proof Locking System for Liquid Transportation Systems. It is circulating among all the major oil companies its publicity materials

which contain drawings, diagrams and descriptions, which are found to be the same as that of the applicant. He has developed/invented a solution

after putting in enormous efforts, research and study. The respondent cannot adopt the same for promoting the sale of their locks. The pilfer-proof

process developed by the plaintiff is a unique one, involving a combined understanding of the loading process of the cargo at the depots and the

unloading process at the retail outlets. The process involves a complex system of locking and keying, which is represented in a schematic diagram

conceived by him. If the keys, master keys and locks are used as described in this diagram, the security of the liquid cargo will be virtually total.

The training literature has been written out by the plaintiff and the copy right therein also, vests in him. All of these combined with the highly secure

Abloy locks used by the plaintiff, on trucks, together forms the pilfer-proof process. The respondent cannot be permitted and will result in a

complete loss of the years of research and development put in by the applicant in developing his pilfer-proof process. The respondent is a large

corporation and has large resources at its disposal. Unless the respondent is restrained by an order of interim injunction from infringing the

applicant's copy right in his drawings, diagrams and literature, the respondent will make use of the same and will cause great prejudice. The

applicant sent a notice to the respondent and an evasive reply was also sent. The Petroleum Ministry itself convened a joint meeting on 14.3.2001,

to resolve the issue, but there was no progress. The applicant has got a prima facie case as he has evolved the process single-handedly, quite a

long time back, whereas the respondent is seeking to enter the fray only now. The plaintiff had spent considerable amount of time and money in the

development of the pilfer-proof process and in the drawing up of the schematic diagrams and the literature. The oil corporations have also found

the process to be excellent and the implementation of the process has found official recognition. If an injunction is granted, the respondent will not

be prejudiced and if not, the plaintiff stands the risk of losing his business. Thus, the balance of convenience is also in favour of the applicant and

hence, the petition.

3. The respondent filed a detailed counter affidavit and denied the various averments. The suit is not maintainable and has to be dismissed in limine.

The constitution of Sterna Security is not disclosed anywhere in the plaint. The defendant has its registered office at Mumbai and branch office at

Ambattur. The applicant has not obtained leave to sue under Clause 12 of the Letters Patent and as such, the Court has no jurisdiction to entertain

and try the suit. The applicant has no copy right vested in document No. 1 annexed to the plaint. The Security solutions for petroleum arena is

offered/developed by ASSA Abloy and not by the applicant. The plaintiff has no intellectual property right vested in it in respect of security

solutions in the petroleum arena. The plaintiff cannot claim any copy right in the drawings and literature created by ASSA Abloy. In the absence of

any written assignment of the copyright to and in favour of the applicant, the plaint is not maintainable. The plaintiff has admitted that the padlock is

manufactured by ASSA Abloy of Sweden/Finland and not by the plaintiff. There is no explanation as to how the plaintiff claims rights in respect of

Abloy padlock. The entire description is that of the Key system and padlock developed by ASSA Abloy and not by the plaintiff. The details of

various types of padlock, the pricing range, advantageous of the alleged technology are given. These documents are obviously that of ASSA

Abloy and hence the plaintiff cannot claim any intellectual copyright based on the said system. The plaintiff having come to existence only in the

year 1998, cannot claim any monopoly over the said patent. The life of the patent has long since expired and the technique involved has fallen into

public domain and the system can now be used by any person. The plaintiff has filed documents used by Abloy in implementation of the system.

The plaintiff, who is not the proprietor of Abloy trade mark, cannot base his claim on those documents. The plaintiff has filed industrial drawings

used in respect of "Pilfer Proof Locking System for Liquid Transporting System". They do not contain the name of the draughtsman or author of

the work, the date of the drawing, the material in which the said design would be made, the description of the drawing, etc. The drawings are only

an alteration/modification etc. of the material belonging to ASSA Abloy of Sweden.

4. The drawings relate only to shape and configuration and there is no functional aspect involved. u/s 15 of the Copyright Act, industrial drawings

which are capable of being registered under the Designs Act, are eligible for protection only for the first 50 times commercial production of the

articles by industrial process based on the drawings are made. Abloy Security Limited are the proprietors of number of patents registered in US

Patent Office as mentioned in para "y". The sealing of the tankers carrying petroleum products have been made mandatory by Petroleum Rules,

1976. The use of plastic sealing has now been replaced by padlock sealing and it cannot be termed as an invention as there is no novelty involved.

The concept involved in the alleged security system is already known for several decades. As neither the padlock nor the master key system is

manufactured by the plaintiff and even according to the plaintiff, they belong to and are imported from ASSA Abloy, a foreign company, the

plaintiff has no copyright or any other intellectual property right. A slight alteration or modification in the use of the material does not make it an

invention. The defendant carries on specialized and established business in the manufacture of safe deposit lockers for several financial institutional

and banks all over India for the last more than 30 years. The defendant is India's most leading manufacturer of locks and security systems. The

turnover of the defendant in respect of the sale of locks during the last three years is also disclosed and it is running more than Rs. 32 crores in the

year 1999-2000. The defendant has developed its own padlocks and security-management solution for petroleum tankers. They have applied for

design registration in respect of Padlock on 3.1.2001 and in respect of Locking Strip on the same day and is awaiting design registration

certificate. The defendant has developed an invention for an Improved Padlock which relates to a locking mechanism with added security which

lock the shackle at both the ends in its locking position thereby making it difficult for pry opening by jimmying or similar device. They have carried

out extensive research in developing a safe pilfer-proof security locking mechanism/system for petroleum tankers in Indian conditions. The

invention created by the defendant has no connection whatsoever, direct or indirect, with the plaintiff or with ASSA Abloy. Since January 2001,

the defendant has supplied effective and foolproof locking system for petroleum tankers for several leading petroleum companies. The salient

features of the Security Management Solution developed by the defendant are also given in para 10 of the counter. The design of the padlock

developed, created by the defendant is completely different from that of ASSA Abloy. They also denied that they are making hectic canvassing for

selling their locks and circulating among all the major companies, its publicity materials, which contain drawings, diagrams and description which

are found to be the same as that of the applicant. The plaintiff is a pirate, who has copied the literature and they have no locus standi to file the suit

or application. There is no necessity for the respondent to adopt the system allegedly developed by the applicant as the respondent has its own

well reputed research and development. Even prior to February 2001, the security management solution was offered by the respondent to various

companies. There is no legal prohibition to the invention, creation of a security locking system for petroleum tankers by the defendant. The plaintiff

has no design registration and cannot claim design infringement. There is no scope for misleading or confusing the customer. The excellent business

reputation developed by the defendant would be wiped out if the injunction as prayed for by the plaintiff is granted. The defendant has made out a

prima facie case for dismissal of the suit. There is inordinate unexplained delay and laches in filing the suit. Hence, the application for interim

injunction is liable to be dismissed.

5. The applicant/plaintiff filed a reply affidavit and stated that Sterna Security is a registered partnership firm and it has Mr. N. Rangaswamy and R.

Narayanan as partners. Mr. Rangaswamy, in addition to his position as a partner is holding a designated position of Chief Executive. Mr. N.

Rangaswamy has executed a power of attorney dated 16.2.2001 in favour of Narayanan which constitutes the necessary authority for him to file

the suit. The suit can be instituted in a court within whose jurisdiction the defendant resides or carries on business or where part of cause of action

has arisen. The suit has been filed before this Court because the respondent is having its branch office at Chennai and the said office was circulating

a schematic diagram of a locking and keying solution which they were representing as their own. It is not correct to state that diagram No. 1

annexed alongwith the plaint belongs to ASSA Abloy of Sweden/Finland. ASSA Abloy's ownership of the intellectual property in the locks, while

true, has no relevance in the context of the plaintiffs invention which is of a wider purport. The plaintiffs invention is a locking and keying system

which makes for pilfer-proof oil tankers. The applicant has not based his averments in the plaint on the basis of locks and keys, but on the basis of

the solution. It is the applicant, who is the author and creator of the pilfer-proof locking system. It is not necessary that every pictorial

representation of the same should contain the name of the draughtsman or author of the work, date of drawing, material in which the said design

would be made, a description of the drawing etc. The applicant had already applied for the patent and the same is pending before the Registrar of

Patents. Padlock by itself is only a part of overall solution offered by the applicant. The sealing system is part and parcel of the overall solution. It is

the clear admission that the defendant is not the original inventor or the creator of the system now being propagated by it. ASSA ABLOY is the

proprietor of the locks while the applicant is the proprietor of the solution. There is no conflict of interest between the applicant and ASSA

ABLOY. The applicant will be greatly prejudiced and harmed if the respondent continued to indulge in such abuse.

6. The respondent filed rejoinder to the reply affidavit of the applicant and stated that the letter dated 29.7.2002 from a Singapore Company lacks

veracity. The Sterna Security System is again a fiction of imagination created by the applicant to mislead the Court. The applicant for the first time,

produced photocopy of a Telephone Directory, to show that the defendant's Locks Division has a branch office at Chepauk, Chennai. They do

not have a branch office in the City of Chennai in respect of the Locks Division either at Chepauk address or at any other place in the City of

Chennai. Appropriate action would be taken with the Chennai Telephone Directory to delete the entry relating to defendant's Locks Division

Branch office address at Chepauk, Chennai. There is no document produced by the plaintiff to prove any sales made by the defendant of its

petroleum tankers locking/security management system in the City of Chennai. The plaintiff has been awarded the tender by some companies and

the defendant has been successful in other tenders. In any event, as the defendant has filed its written statement in August 2001, there is no urgency

involved, the interim injunction application deserves to be dismissed in limine. It is in the national interest to have healthy competition to ensure that

the oil companies get the best, most efficient locking security system to avoid pilferage and vandalism in petroleum tankers and also at the best

price. The plaintiff cannot claim monopoly rights especially as the plaintiff does not have any registered patent in the alleged system. Only in the

reply affidavit, the plaintiff has for the first time claimed passing off. There is no whisper of passing off in the plaint nor there is any relief of passing

off claimed in the plaint. If the video belongs to ASSA Abloy, the plaintiff cannot claim any copyright or ownership of the security system. For

adaptation, no one can claim copyright. To claim copyright, the plaintiff has to show the name and nationality of the author, the year of first

publication, the owner of the copyright, etc. The defendant has research and development at Vikhroli, Mumbai having more than 30 engineers,

technicians and technocrats involved in extensive study and research to design and develop locks and locking systems to suit the requirement of

various industries and diverse customers. Unless documents and date are filed before the Court, it is not possible to maintain that the plaintiff

actually or in fact made improvement or developed any independent innovative improvement Pilfer Proof locking solution, which is capable of

intellectual property protection.

7. Heard the learned counsel for the parties.

8. The points that arise for consideration are:

(1) Whether the applicant has got prima facie case and the balance of convenience is in their favour ?

(2) Whether the objections raised by the respondent relating to jurisdiction is sustainable ?

(3) To what relief ?

9. Points : The applicant/plaintiff filed the suit for declaration that he is the owner of the copyright in the drawings, diagrams and literature annexed

with plaint document No. 1 and for permanent injunction. The document No. 1 is of the year 1998 containing the schematic diagram and manual

pilfer-proof system devised by him together with accompanying literature. The applicant also filed the application for interim injunction. It is the

specific case of the applicant that he wants to protect his intellectual property right in the system and methodology developed by him, as evidenced

by diagrams and drawings. The pilfer-proof process developed by the applicant is a unique one involving a combined understanding of the loading

process of the cargo at the depots and the unloading process at the retail outlets. The process involves a complex system of locking and keying,

which is represented in a schematic diagram conceived by the applicant and if the keys, master keys and locks are used as described in the

diagram, the security of the liquid cargo will be virtually total. There is lot of demand from the dealers of the petroleum as well as retails relating to

the process developed by the applicant. Now, the respondent is making hectic canvassing for selling its locks as part of the pilfer-proof locking

system as devised by the applicant. He also seeks to use the applicant's schematic locking diagrams, training literature, etc. The respondent is a

large Corporation with large resources at its disposal and unless an order of interim injunction is granted from infringing the applicant's copyright in

the drawings, diagrams and literature, the applicant will be put to much loss and hardship, which cannot be compensated in money and the balance

of convenience is also only in favour of the applicant. Further more, the applicant has devised the scheme as early as 1998 and the respondent

substantially reproduced the same in his diagram and literature and as such, they are only subsequent users.

10. Per contra, the learned counsel for the respondent contended that the suit as well as the application filed before this Court are not sustainable in

law since no part of the cause of action had arisen within the jurisdiction of this Court. The respondent is not having its branch office within Madras

City and the Locks Division is situate only at Ambattur which is outside the jurisdiction of this Court. Admittedly, the applicant has also not

obtained any leave under Clause 12 of the Letters Patent. The plaint was also filed in his individual capacity and not as a Managing Partner of any

company. Document No. 1 annexed to the plaint is that of ASSA Abloy of Sweden/Finland and as such, the applicant has no copyright based

upon this document. The security solutions for petroleum arena is offered/developed by ASSA Abloy and as such, the applicant has no intellectual

property right and it is not disclosed that any written assignment of copyright in the literature of drawings was given to the applicant at any point of

time. All rights in an adaptation of the work vests with the original owner only and the applicant cannot make use of the same and prevent the

respondent. The applicant has only reprinted the materials used by ASSA Abloy of Sweden. Even the drawings now filed by the applicant do not

contain the name of the draughtsman or author of the work, the date of the drawing, the materials which are necessary in industrial drawing design.

They are only an alteration/modification of the material belonging to the foreign company. In short, the applicant is only a pirate and he cannot

maintain the present application. But the respondent carries on specialised and established business in the manufacture of safe deposit lockers for

more than 30 years and the turnover is more than Rs. 32 crores during 1999-2000. The respondent has developed its own padlocks and security

management solution for petroleum tankers and they have also applied for design registration on 3.1.2001. They had carried out extensive research

in developing a safe pilfer-proof security locking mechanism/system for petroleum tankers in Indian conditions. The invention created by them had

no connection either directly or indirectly with the applicant or with ASSA Abloy. The respondent had also supplied effective and foolproof

locking system for petroleum tankers for several leading petroleum companies in India.

11. The burden is only upon the applicant to establish that he has got prima facie case and the balance of convenience is in his favour. The

applicant had filed a xerox copy of the Telephone Directory to show that the respondent had a Locks Division at Chepauk and as such, this Court

has got jurisdiction to entertain the suit as well as the application. However, The learned counsel for the respondent stated that the entry in the

Telephone Directory is not a correct one and they are taking steps to remove the same. According to the respondent, their Locks Division is

situated only at Ambattur, which is outside the jurisdiction of the Court and under the circumstance, the applicant ought to have taken leave under

Clause 12 of the Letters Patent. Para 16 of the plaint relates to cause of action, wherein it is stated that the respondent continues to indulge in

violations and making hectic attempts at Chennai among other places where the respondent is having a branch office. Only to substantiate the

same, the xerox copy of the Telephone Directory was filed which clearly contains the name of the respondent and it is specifically stated as Locks

Division. It can be presumed under law that the entries in the Telephone Directory are made properly and correctly and this being so, there need

not be any entry in the name of the respondent and that so specifically mentioning as Locks Division. It is quite probable that the branch office of

the respondent relating to Locks Division could have been available at Chepauk and they are taking steps to remove the entry. The suit was filed in

the year 2001 and for more than one year, no steps have been taken by the respondent to remove the entry. There is prima facie material to come

to the conclusion that the branch office of the respondent is situate within the jurisdiction of this Court and as such, seeking leave under Clause 12

of the Letters patent is absolutely unnecessary. It is open to the respondent to establish by evidence during the course of the trial about the non-

existence of the Locks Division at Chepauk during the time of filing of the suit or not. Till then it is open to the applicant to place reliance upon this

public document and make use of the same?

12. The applicant had filed typed set of documents to show that M/s. Sterna Security is a partnership firm consisting of two persons. Now, an

objection has been raised by the learned counsel for the respondent to show that the suit has been filed by a single individual represented by a

power of agent and as such, it is not maintainable under law. The learned counsel for the respondent further stated that the same individual is

described as Senior Executive and as Managing Partner in some of the documents. Whatever it may be, the applicant is also one of the person

concerned in the administration of M/s. Sterna Security and this being so, I am of the view that the objections now raised by the respondent need

not be looked into at this stage and it is always open to the respondent to raise the objections during the course of trial.

13. The applicant had filed number of documents including his schematic diagram, literature, etc. as well as the material of ASSA ABLOY. Pages 1

to 46 relate to the Abloy Institute and Module on the implementation of the Abloy Security System on POL TT Trucks. It is seen from the

document dated 29.7.2002 that the applicant is a dealer of ASSA ABLOY, Singapore, wherein it is stated as follows :

This has reference to the security solution developed by our distributor/partner in India, Sterna Security, for use in the transportation of liquids,

specifically liquid tank trucks. This solution has been developed by Sterna Security using locks from ABLOY OY, a Finnish lock company

belonging to ASSA ABLOY, the leading lock group in the world. Sterna Security has installed the system in several locations all over the country

with very satisfactory results during this period. The security system consists procedures, training, startup of locations, customised master-key

systems, proprietary key profiles, service and other articles.

But the learned counsel for the respondent stated that this document-could have been created by the applicant to suit his case and moreover, it has

come into existence after filing of the suit under the caption "'TO WHOM IT MAY CONCERN'". It is pertinent to state that ASSA ABLOY is a

recognised and reputed concern is not disputed. This document also will give an indication that the solution has been developed only by Sterna

Security and it will falsify the contention of the respondent that the origin of the solution was only with the ASSA ABLOY and the applicant is only

a pirate. To a limited extent, this document advances the case of the applicant that ASSA ABLOY, the reputed company dealing in padlocks,

have categorically stated that only M/s. Sterna Security have developed this solution. In my view, this document clearly establishes a prima facie

case in favour of the applicant.

14. The diagrams filed by the applicant are found from pages 47 to 61. It is clearly stated that they relate to pilfer-proof locking system for liquid

transporting system, Dimension drawing and technical specification. Each valve is locked with padlock and through a locking bar. The side view of

the tank truck with individual locks are also seen. One other diagram relates to the working of the valve. The third drawing relates to delivery valve

locking pattern. One other diagram relates to the tank truck with single lock (side view). One of the diagram relates to master key system and Anr.

relates to Loading/feeding masterkey, and it shows individual C/D each with unique separate keys and designated padlocks. Another diagram also

relates to master key system version 2. Diagrams relate to Flanges without welding and flanges with welding, man hole cover, man hole cover with

lock, man hole cover modification and delivery valve without welding. In all these documents, the address of Sterna Security with the

corresponding drawing number has been intimated. However, the learned counsel for the respondent contended that these drawings cannot be

taken into consideration since they have not disclosed the name of the draughtsman or author of the work, the date and other particulars. When the

diagrams filed by the applicant clearly contained the name of M/s. Sterna Security relating to the concern of the applicant, this is prima-facie proof

to show that the origin of the diagrams is only that of the applicant. As adverted to, the foreign company itself has given a certificate to the effect

that the security solution was provided only by M/s. Sterna Security and if the same is considered with the diagrams filed by the applicant, it will

lead to the irresistible conclusion that the applicant is the founder and prior user of the system,

15. The Indian Oil Corporation has placed orders with M/s. Sterna Security is evident from the various documents filed on the side of the

applicant. In the communication dated 21.1.2000 based upon the quotation dated 13.10.1999, Indian Oil Corporation sought for supply of 564

Nos. of Abloy Locks. By the communication dated 10.1.2000, Bharat Petroleum Corporation Limited sent a communication to the applicant for

supply and implementation of Abloy padlocks for Pilot Projects about 1000 Nos. One of the pilot project is at Shakurbasti out of three places.

New locking system for tank trucks has been widely published in the newspapers also and the copies of the same were filed by the applicant.

Simultaneously the respondent company had also addressed the Hindustan Petroleum Corporation Limited dated 9th September 2000 pointing out

the benefits if 90 mm ultra disc padlock is used. A comparison of the diagrams and the literature filed on behalf of the applicant with the materials

given by the respondent indicates that it is a substantial reproduction in material particulars. M/s. Sterna Security themselves have sent a

communication to the President, Locks Division of the respondent on 29.1.2001 that recently the respondent company had offered a similar

solution and asked them as to how they were able to access the designs and drawings for the solution. The respondent was requested to refrain

from using the designs and drawings since they were developed by the applicant. The respondent sent a reply dated 12.2.2001 and denied the

same and sought more particulars. The applicant had also filed other copies of the documents relating to the quotation sent by various Oil

Corporation to them for purchasing the security locks and the dealers of Indian Oil Corporation had also sent communication to the Corporation

about the successful functioning of the security system and they agreed to bear 50% of the cost of Abloy locking system. These documents also

supported the case of the applicant.

16. The typed set of documents filed on the side of the respondent relate to the Certificate of Design Registration in January 2001 and terms and

conditions from Hindustan Petroleum Corporation to them for supply of security locks on 9.5.2001. The communication dated 9.5.2001 has been

sent to the respondent by Hindustan Petroleum Corporation by way of tender enquiry. The applicant, on the other hand, had filed a letter dated

19.11.1998 from Indian Oil Corporation to them relating to the introduction of locking solution in their depots at Coimbatore. Another

communication dated 13.4.1999 given by Bharat Petroleum Corporation Limited to the applicant fixing the time and venue for the demonstration

on 24.4.1999 at 3.30 pm in Hotel Retreat, Madh Island, Mumbai. The Oil Coordination Committee had also sent a communication to the

applicant for presentation on security solution in transportation of petroleum products on 22.04.1999 at 10.30 hours at OCC Conference Hall,

New Delhi. The subject is clearly given as ""Presentation by M/s. Sterna Security, Dealers of M/s. ASSA ABLOY on ""Security Systems"". This

document would clearly indicate that even as early as 15.04.1999, the applicant was invited for the demonstration by the Oil Coordination

Committee at New Delhi. The aforesaid documents filed on the side of the applicant clearly establish that they have got a prima facie case.

17. The learned counsel for the applicant relied on the decision reported in King Features Syndicate Incorporated and Anr. v. O. & M. Kleeman,

Limited AIR 1941 PC 417, wherein it was held as follows :

The defendants' dolls and brooches were reproductions in a material form of the plaintiffs' original artistic work and were not the less so because

they were copied, not directly from any sketch of the plaintiffs, but from a reproduction in material form derived directly or indirectly from the

original work, and that section 22 of the Copyright Act, 1911 did not operate to bring an existing copyright to an end or to absolve pirates from

the offence of piracy".

18. Reliance is also placed on R.G. Anand Vs. Delux Films and Others, as follows :

Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such

a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in

the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would

amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads

to the conclusion that the defendant is guilty of an act of piracy. One of the surest and the safest test to determine whether or not there has been a

violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an

unmistakable impression that the subsequent work appears to be a copy of the original".

19. Reliance is also placed on Gramophone Company of India Limited Vs. Shanti Films Corporation and others, under Order 39 Rule 1 of Civil

Procedure Code, pointing out guiding principles relating to grant of interim injunction.

20. The applicant also relied on John Richard Brady and Others Vs. Chemical Process Equipments P. Ltd. and Another, relating to the denial of

jurisdiction in court by defendants. It was held that it was mixed question of law and fact and could not be decided at such stage, only averments in

plaint could be seen.

21. The learned counsel for the respondent relied on Gupta Brothers Conduit Pipe Mfg. Co. Pvt. Ltd. v. Anil Gupta, 2002 (1) CTMR 34 : 2002

(24) PTC 159 (Delhi) that "where there is no averment that plaintiff has its office or it works within the territorial jurisdiction of the Court trying the

matter and nothing to show/prove that the defendant works there, the Court has no territorial jurisdiction". The facts in that case would clearly

indicate that the principle cannot be made applicable to the case on hand.

22. Reliance is also placed on Wockhardt Veterinary Ltd. v. Raj Medicos and Anr., 1999 (Supp) A.L.R. 103 that every suit should be instituted in

the Court of the lowest grade. Ingenuine valuation of suit will not invest the jurisdiction of court to try the suit. Section 15 of the CPC on the statute

book lays down that every suit shall be instituted in the Court of the lowest grade competent to try it.

23. It has been held in S.S. Products of India v. Star Plast, 2001 PTC 835 relating to jurisdiction to entertain the suit and the facts in the case will

clearly demonstrate that it has no application to the case on hand.

24. It has been held in Premier Distilleries (P) Ltd v. Shashi Distilleries, etc., 2001 3 L.W. 585 as follows :

When plaintiff cannot demonstrate that a part of cause of action arose within the jurisdiction of this Court the fact that it can be said to arise within

a short distance away from it (Pondicherry in this case) is of no avail. Cause of action must precede the action and not follow it. It is something

which has occurred and which gives a right to take action. Essence of the action of passing off is deceit on the part of the defendant in trying to

pass off his goods as that of the plaintiff.

This decision is not applicable to the case on hand.

25. Reliance is also placed on American Cyanamid v. Ethicon, (1975) 1 All ER 504 for the principle of balance of convenience to be considered

by court while determining in whose favour it lies for granting or refusing the relief.

26. Another decision relied on is Eastern Book Company v. Navin J. Desai, 2001 PTC 243 under Order 39 Rules 1 and 2 of CPC relating to

copying of short notes and headnotes of Supreme Court judgments. Considering balance of convenience and irreparable loss and injury the same

arrangement as before should continue pending appeal and the defendant shall be free to sell their CD-ROM with the text of the judgments

alongwith their own headnotes which should not be copy of the headnotes of the plaintiffs.

This decision is also not applicable to the case on hand.

27. The respondent also relied on Eastern Book Company v. Navin J. Desai, AIR 2001 Delhi 185 : 2001 (21) PTC 57 (Delhi) as follows :-

The judgments/orders published by the plaintiffs in their law reports ""Supreme Court Cases"" is not their original literary work but has been

composed of, compiled and prepared from and reproduction of the judgments of the Supreme Court of India, open to all. Merely by correcting

certain typographical or grammatical mistakes in the raw source and by adding commas, full stops and by giving paragraph numbers to the

judgment will not their work as the original literary work entitled to protection under the Copyright Act.....There being no copyright in the

plaintiffs, there is no question of the defendant infringing any alleged copyright"".

There is no dispute about this principle, but it has no application to the case on hand.

28. The literature produced by the respondent in the typed set (page No. 221) is as follows :-

INNOVATIVE CUSTOMIZED SECURITY MANAGEMENT SOLUTION FOR PETROLEUM TANK LORRIES.

Based on interactions with various officials of different petroleum companies, an exclusive security management system is developed fulfilling the

following requirement :

1. The tank lorry top dome & discharge valves to be locked with padlocks at the filling stations.
2. The padlocks are unlocked at the retail outlets for unloading the petroleum products.
3. After unloading at the retail outlet, the padlocks are fitted back on to the tank lorry into their respective position, in duly locked condition.
4. The empty tank lorry with the padlocks returns to the filling station for refuelling.

The salient features of the security management solution are also furnished. The respondent has sent a communication to Bharat Petroleum

Corporation Limited, Indian Oil Corporation Limited and other companies only in January 2001. The respondent has also thanked other

companies on 15.2.2001 that giving an opportunity to present Security Management system with Godrej padlock for petroleum tank lorries. These

documents indicate that only in the year 2001, the respondent company has entered into this field, whereas the documents filed on the side of the

applicant clearly establish beyond any shadow of doubt that even in the middle of 1998 they were already in the system. No doubt, the respondent

company was already in the field relating to safe deposit lockers in the bank and other systems. But so far as the present security solution is

concerned, they were far behind the applicant. Considering the fact that the respondent is a very big company and they being a subsequent entrant

in the new field, cannot trespass into the area of the applicant, who were already in the system even in 1998. It appears that the respondent being a

big company, is attempting to swallow the small company floated by the applicant and attempting to throttle it by making use of the same diagram,

literature, etc. so that the small company of the applicant would incur loss and ultimately will go out of the field. The intention of the respondent is

amply clear and as such, it is the duty of the Court to protect the interest of the prior user of the system and prevent the subsequent user from

making use of the same system. There are enough materials to come to the conclusion that the respondent and their officials had occasion to know

about the solution devised by the applicant and ultimately the giant company of the respondent had succeeded and they have entered into the field,

which was in the hands of the applicant.

29. The learned counsel for the applicant brought to the notice of the Court the communication sent by the respondent dated 19.9.2000 to the

Chief Manager, Operations, HPCL, Mumbai. They want to have a fruitful interaction with them. The other communication is dated 20th October

2000 by the respondent to BPCL, Mumbai, wherein it is stated as follows :-

After two rounds of discussions with you and your team, and after noting down the exact nature of your requirement, we are happy to bring

forward to you the Ultra Petroleum Locks which will be part of the comprehensive Locking system.....Mr. T.S. Murali, GM-Design and

Development and Mr. Karbilkar-Manager Manufacturing, of our Division, have visited Shakur Basti in Delhi on 16th October.

Based on the observations at the site and on the tankers and the processes that are being followed, we have very well understood your exact

nature of requirement. We are having internal discussions on this issue and should be able to get back to you with a concrete proposal between 6th

and - 11th of November"".

This communication would clearly indicate that already from the Oil Corporation, the applicant had received quotation and four pilot projects area

have been also earmarked long back and one of the pilot project areas is Shakur Basti in Delhi. Under the circumstance, it is possible for the

respondent and the officials to have a look at the diagram and other literature of the applicant and the respondent being a big company, may not

require a longer time to imitate the same. Subsequently, in another communication dated 6.12.2000, the respondent had addressed the HPCL,

Mumbai that they are working out a comprehensive Security Solution for the Petroleum Tankers and they have made progress on this and would

like to meet them between 18.12.2000 and 23.12.2000.

30. It is seen from the documents that to prevent pilferage of petroleum products only, the solution has been designed and planned by the applicant

and introduced as early as June 1998. The schematic diagrams and other literature produced on the part of the applicant prima facie establish that

they are the prior user in the said field, whereas the respondent had subsequently adopted the same figure and formula and made correspondence

with the Oil Corporation in the same field. The foreign company also addressed a letter to the effect that the applicant company was the first one to

introduce the system in India. The letter correspondence from the Oil Corporation to the applicant and similarly from the dealers to the Oil

Corporation also probalilise the case of the applicant. As adverted to, the officials of the respondent had occasion to know the diagrams and the

literature of the applicant and they have made use of the same at a later point of time. It is contended by the learned counsel for the respondent that

the applicant had not filed the annual sales turnover or the availability of infrastructure and the number of persons employed. These are not matters

now relevant to be considered. Admittedly the applicant is only a new entrant in the field, but the respondent company is already an established

one in respect of other goods. Hence, I am of the view that the applicant has made out a prima facie case and the balance of convenience is in his

favour and as such, the respondent has to be restrained by an interim order pending disposal of the suit.

31. For the reasons stated above, O.A. No. 376 of 2001 is allowed.