AIR 1996 Bom 149 : (1996) 2 BomCR 642 : (1996) 98 BOMLR 972

Bombay High Court

Case No: Appeal from Order No''s. 1152 to 1154 of 1994 in Interim Application No''s. 3 to 5 of 1993 in Civil Suit No''s. 3 to 5 of 1993

Kirloskar Diesel Recon Pvt. Ltd. and another		APPELLANT
	Vs	
Kirloskar Proprietary Ltd. and others		RESPONDENT

Date of Decision: Oct. 10, 1995

Acts Referred:

- COMPANIES ACT, 1956 - Section 105, 2, 22, 299, 30

Citation: AIR 1996 Bom 149 : (1996) 2 BomCR 642 : (1996) 98 BOMLR 972

Hon'ble Judges: S.M. Jhunjhunwala, J

Bench: Single Bench

Advocate: Shri H.W. Kane and Mr. Rahul M. Kadam and Sh. A.P. Hariani, of M/s. Hariani and Co, for the Appellant; Sh. Varindera Tulzapurkar and Mrs. Anita Jaiman and Sh. H.J. Engineer, of M/s. Gordhandas and Fozdar, for the Respondent

Judgement

S.M. Jhunjhunwala, J.

These appeals are directed against common order dated 14th June, 1994 passed by the III Additional District Judge, Pune in respondents'' applications under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 for grant of interim injunction in Civil Suits bearing Nos. 3 of 1993, 4 of 1993 and 5 of 1993 filed by the respondents herein in the court of the District Judge, Pune at Pune. The 2nd appellant and the respondents in these appeals are common, the 1st appellant in each appeal in different. The respondents in appeal from Order No. 1152 of 1994 are the plaintiffs in Civil Suit No. 3 of 1993. The respondents in appeal from Order No. 1153 of 1994 are the plaintiffs in Civil Suit No. 4 of 1993 and the respondents in appeal from Order No. 1154 of 1994 are the plaintiffs in Suit No. 5 of 1993. All these suits have been filed for permanent injunction to restrain the appellants herein from using the word ''Kirloskar'' as part of the corporate name of the 1st appellant in each appeal and/or its trading style so as to pass off or enable others to pass

off the goods and/or business of 1st appellant in each Appeal as that of the respondents. In each of the said suits restricted to passing off action, the respondents had filed an application for grant of interim injunction. All these applications for grant of interim injunction have been disposed of by the common order dated 14th June, 1994 impugned in these appeals. By the order impugned in these appeals, pending the hearing and final disposal of the said suits., the appellants by themselves, their servants and agents and/or any other person(s) claiming by, under or through them or any of them have been restrained from using the word ''Kirloskar'' as part of corporate name of 1st appellant in each of the appeals and/or trading style so as to pass off or enable others to pass off the goods of the 1st appellant in each appeal and/or business as that of the respondent or in any way connected with the respondents. Since common questions of fact and law are involved in these appeals, the same are being disposed of by this common judgment.

2. Briefly stated, the respondents'' case as pleaded is as under :

(i) Each of the respondents is a Company duly incorporated and registered under the provisions of the Companies Act, 1956 and that each of them belong to well known ''Kirloskar Group of Companies''. The word ''Kirloskar'' forms part of the corporate name of each of the respondents. The 1st respondent is the registered holder of various trade-marks under the provisions of the Trade and Merchandise Marks Act, 1958 (for short, ''the Act'') and also the registered holder of the Artistic word ''Kirloskar'' in English, Hindi and Marathi under the provisions of the Copyright Act, 1957. The respondents 2 to 5 are the licensees and registered users of various trade marks and/or copyrights held, possessed and owned by the 1st respondent and are using the same in relation to ''sale promotion campaigns'' of the products manufactured and marketed by them. The respondents 6 and 7 are the permitted users of the copyrights held, possessed and owned by the 1st Respondent and that the said copyrights are being used by the said users in relation to the products manufactured and marketed by them.

(ii) One Laxmanrao Kashinath Kirloskar, the founder of the ''Kirloskar Group of Companies'', commenced business of bicycle repairing in 1888 along with his brother Ramuanna at Belgaum. In the year 1910, they shifted to Kundal of which name later on changed to Kirloskarwadi due to the activities of ''Kirloskar Group of Companies''. In the year 1920, the Kirloskar brothers converted their private Company into a public limited company. In the course of time, they expanded business and incorporated various companies. The word ''Kirloskar'' was adopted as trade mark and has been extensively used by various companies of Kirloskar Group. Accordingly, the word ''Kirloskar'' has becomes part of the corporate name of ''Kirloskar Group of Companies'' which connotes the distinctiveness, reputation, quality and goodwill acquired over scores of year. The word ''Kirloskar'' forms an important part of the corporate name of the respondents and other companies belonging to ''Kirloskar Group of Companies''.

(iii) The 2nd appellant in each appeal was associated with the ''Kirloskar Group of Companies''. Between June, 1983 and August 1985, he was president of the 3rd

respondent. During that time, a vigorous campaign for image building of the ''Kirloskar Group of Companies'' was carried out. Though the 2nd appellant, who is the promoter of the 1st appellant in each of the appeals, was aware that Kirloskar'' is a registered trade mark of the 1st respondent and as such could not be used as a part of corporate name of appellant in each of the appeals, promoted the 1st appellant in each Appeal with word ''Kirloskar'' as part of the corporate name by suppressing the fact that none of the 1st appellant is a Company belonging to the ''Kirloskar Group of Companies.''

(iv) On 28th May, 1992, the 2nd respondent received a letter from DD Penning & AD Penning, the Patent & Trade Marks Agents, intimating that Kirloskar Holdings Pvt. Ltd., who is the 1st appellant in Appeal No. 1154 of 1994 was proposing to get a logo mark registered in respect of the parts and components of internal combustion engines and engine tools. On further enquiry, it was revealed that the said Kirloskar Holdings Pvt. Ltd., was incorporated on 3rd April, 1991 and that the 2nd appellant is the promoter thereof. It was further revealed that Kirloskar Diesel Recon Pvt. Ltd., who is the 1st appellant in Appeal No. 1152 of 1994, was incorporated on 12th March, 1991 and that the 2nd appellant is the promoter thereof. It was also revealed that Kirloskar Transport Pvt. Ltd., who is the 1st Appellant in appeal No. 1153 of 1994, was incorporated on 22nd January, 1991 and that the 2nd appellant is the promoter thereof. On 3rd August 1992, the 1st Respondent addressed a letter pointing out, inter alia, that the use of the word ''Kirloskar'' in corporate names of the 1st appellant in each of the Appeals would not merely create confusion but would also result in deception and further pointed out that the action of the 1st appellant in each of the appeals amounted to passing off 1st appellant''s goods and business as that of the 1st respondent even though none of the 1st appellant had any connection with the ''Kirloskar Group of Companies''. Each of the 1st appellant in the appeals was called upon to forthwith cease and desist from using the word/name ''Kirloskar'' as part of its trade name. Since the appellants contended that they were entitled to use the word/name ''Kirloskar'' part of the corporate names of the 1st appellant in each of the appeals and refused to desist from using the word/name ''Kirloskar'' as part of the corporate names, the respondents filed that said suits to restrain the 1st appellant in each of the appeals by a perpetual order and injunction of that court from using the word ''Kirloskar'' as part of 1st appellant''s corporate name and/or trading style so as to pass off or enable others to pass off the 1st appellant''s goods and/or business as that of the respondents or in some way connected with the respondents and the ''Kirloskar Group of Companies''. In each of the said suits, the said applications for grant of interim injunctions were made.

3. Briefly stated, the appellants'' case as pleaded is as under :

(i) That the 1st respondent is not the recorded or registered holder of Trade Mark or trade name ''Kirloskar'' and that the 1st respondent has not acquired proprietory right over the said Trade Mark or the trade name.

(ii) That the other respondents have not obtained licences from the 1st respondent to use the Trade Mark or trade name "Kirloskar".

(iii) Though the appellants admit that there are as many as 27 companies as mentioned in the plaints filed in the suits who have used the name "Kirloskar" as part of their corporate names, according, to the appellants, many of such companies are not the members of the so called "Kirloskar Group of Companies".

(iv) That the name of the 1st appellant in each appeal has been allotted under the provisions of the Companies Act, 1956 after following the requisite procedure and observing necessary guidelines as per Section 22 thereof and such allotment could have been challenged within a period of one year therefrom which the respondents did not do and as such, the respondents are not entitled to raise an issue in respect thereof at this belated stage.

(v) That there is no concept of "Kirloskar Group of Companies".

(vi) That the name "Kirloskar" does not form an important part of the corporate name of the respondent and of other companies mentioned by the respondents in the plaints filed. The word "Kirloskar" is not exclusively associated with the so called "Kirloskar Group of Companies" and that the respondents alone have no right to adopt the word "Kirloskar" as a Trade Mark or trade name.

(vii) That "Kirloskar" is a surname and by virtue of the provisions of Sections 9 and 34 of the Act, the persons having the surname "Kirloskar" are entitled to adopt and use it as their Trade Marks and/or trade name and as such, the appellants have right to use it.

(viii) That the word "Kirloskar" does not connote any distinctiveness, reputation, quality or goodwill, alleged to have been acquired by the respondents over scores of years. According to the appellants, whatever, goodwill the respondents acquired has even been lost.

(ix) That there has been considerable delay on the part of the respondents in instituting the suits and as such, the respondents are not entitled to any interim relief as sought by the respondent.

(x) Since notice u/s 299 of the Companies Act, 1956 was given by the 2nd appellant in the meeting of the Board of Directors of Kirloskar Cummins Ltd., held on 14.5.1991 enumerating the names of 1st appellant in each appeal as the companies promoted by him, the respondent since then had the knowledge of promotion and incorporation of the 1st appellant company in each appeal. That notice was a constructive notice also to the 1st respondent. In the circumstances, inaction by the respondents since May, 1991 amounts to consent or acquiescence on their part to the name of 1st appellant in each of the appeals and as such, the respondents have waived their right to challenge the same and the suits now filed are bad on principles of delay, laches, acquiescence, waiver and

estoppel.

4. Mr. Kane, learned Counsel appearing for the appellants, has submitted that the 3rd Additional District Judge, Pune at Pune has no jurisdiction to entertain and try the suits filed by the respondents and as such, the order granting interim injunction passed by the learned Judge is liable to be set aside by this court, Mr. Kane has further submitted that the field of activity of the appellants and the respondents being different and there being dissimilarity in the products of the appellants and those of the respondents, the passing off action instituted by the respondents is untenable and as such, the respondents are not entitled to any relief by way of interim injunction granted by the learned Judge, Mr. Kane has also submitted that the respondents, who are the plaintiffs in the suits, having no common cause of action against the appellants are together not entitled to maintain the said suits and as such, the learned Judge ought not to have granted interim injunction against the appellants. It is further submitted on behalf of the appellants that the 1st respondent is not manufacturing any goods, and that the 1st respondent has permitted respondents 2 to 5 to use as licensees the trade marks owned by the 1st respondent on the products manufactured by them and as such, the user of the trade mark ''Kirloskar'' by respondents 2 to 7 cannot be considered as ''deemed user'' thereof by the 1st respondent and hence in the facts and circumstances of the case, no interim injunction ought to have been granted against the appellants preventing the appellants from having the word ''Kirloskar'' as a part of the corporate names of 1st appellant in each appeal. It is also submitted on behalf of the appellants that in the facts and circumstances of the case, the 1st respondent cannot be said to have acquired reputation or goodwill by reason of use of trade mark or trade trade name ''Kirloskar'' by respondents 2 to 7. Mr. Kane has further submitted that the nature of trade activities and trade channels of the appellants and respondents being different, the probability of confusion or deception being caused in diminished and the respondents having not made out strong prima facie case for grant of interim injunction against the appellants, the interim injunction as granted by the learned Judge ought not to have been granted. Mr. Kane has also submitted that the appellants having adopting their corporate names containing the word ''Kirloskar'' bona fide, no interim injunction of the nature granted ought to have been granted. It is also submitted on behalf of the appellants that there is no evidence on record to show that prior knowledge of respondents'' goodwill made the appellants to mala fide adopt the word ''Kirloskar'' in their corporate names. Mr. Kane has submitted that u/s 34 of the Act, the 2nd appellant is entitled to bona fide use of his surname as part of corporate name of his companies and as such, no interim injunction ought to have been granted by the learned Judge. It is further submitted on behalf of the appellants that the respondents having disentitled themselves for grant of equitable reliefs on account of delay and laches on that part, no interim injunction as granted ought to have been granted in favour of the respondents. It is finally submitted on behalf of the appellants that taking the balance of convenience into consideration, the injunction granted by the trial court ought not to have been granted as the balance of convenience lie in favour of the appellants.

5. In support of his submissions, Mr. Kane has put reliance on judgments in cases of Alkem Laboratories Pvt. Ltd. v. Alchem (India) Ltd. ((Notice of Motion No. 3028 of 1988 in Suit No. 3198 of 1988 decided on 27.11.1990), by Srikrishna, J. of Bombay High Court); Indian Aluminium Co. Ltd. v. Indals (Agencies) Pvt. Ltd. (Notice of Motion No. 7 of 1990 in Suit No. 3648 of 1989 decided on 25.11.1991), by Jhunjhunuwala, J. of Bombay High Court); Aktiebolaget Volvo v. Volvo Steels Ltd. (Notice of Motion No. 950 of 1995 in Suit No. 1055 of 1955 decided on 28.4.1995), by Jhunjhunuwala J. of Bombay High Court) : S.M. Chemicals & Electronics Ltd. v. M/s. Symtronics (Notice of Motion No. 38 of 1975 in Suit No. 25 of 1975 decided on 7.8.1975), by Rege, J. of Bombay High Court); In the matter of The Pianolist Company Ltd. (1906) 23 RPC 774 ; In the matter of In Re: R.T. Engineering and Electronics Co., , String fellow v. McCain Foods (GB) Ltd. (1984) RPC 501 ; Victory Transport Co. Pvt. Ltd., Ghaziabad Vs. The District Judge, Ghaziabad and Others, ; Sony Kabushiki Kaisha Vs. Shamroa Maskar and Others, ; In the matter of John Taylor Peddle 61 RPC 31; Parker-Knoll Ltd. & Parker-Knoll (Texthes) Ltd. v. Knoll International Britain (Furniture & Texthes) Ltd. 1961 RPC 346 ; Bajaj Electricals Limited Vs. Metals and Allied Products and Another, ; Turton v. Turton (1889) 42 Ch.D. 128; Parker-Knoll Ltd. v. Knoll International Ltd. 1962 RPC 265; Boswell-Wilkie Circus (Pvt.) Ltd. v. Brian Boswell Circus Pvt. Ltd. (1986) FSR 479; Country Sound Pic. v. Qcean Sound Ltd. (1991) FSR 367; Harold Lee (Mantles) Ld. & Harlee Ld. v. Harold Harley (Fashions) Ld. & Harold Harley (Sales) LD. 71 RPC 57 ; K.G. Khosla Compressors Ltd. Vs. Khosla Extrakting Ltd. and Others, ; Poddar Tyres Ltd. Vs. Bedrock Sales Corporation Ltd. and Another, and Optrex India Ltd. v. Optrex Ltd. (Appeal No. 381 of 1989 from Notice of Motion No. 2165 of 1987 in Suit No. 2436 of 1987 decided on 15th and 17th November, 1989) by Desia and Kenia, JJ.).

6. Mr. Tulzapurkar, learned Counsel appearing for the respondents has submitted that u/s 105(c) of the Act, the District Court Pune at Pune has the jurisdiction to entertain and try the said suits. Mr. Tulzapurkar has further submitted that the appellants are not entitled to represent that their goods and/or business or services offered by them are of the respondents or in some way connected with the respondents and that in the suits by the respondents, the respondents are not required to establish fraudulent intention on the part of the appellants in incorporating the word or name ''Kirloskar'' as part of corporate names of the 1st appellant in each of the appeals. It is further submitted on behalf of the respondents that in the passing off action, it is not necessary for the respondents to proved actual confusion or deception to get the relief of grant of injunctions prayed for. In the submission of the learned Counsel, what the respondents are required to establish is a likelihood of deception or confusion being caused and is for the court to decide whether there is a likelihood of deception or confusion being caused by reason of the word/name ''Kirloskar'' forming part of the corporate names of the 1st appellant in each of the appeals. Mr. Tulzapurkar further submitted that the respondents have established reputation to such an extent that the word ''Kirloskar'' either as a trade mark or as a part of trade name of the respondents has come to be associated exclusively with ''Kirloskar Group of Companies'' of which the respondents are part and that the law recognises that

in a variety of circumstances, reputation and goodwill in a name, mark or get up may be shared or divided amongst number of different people and as such, the respondents together have a cause of action to file the said suits as framed and filed. Mr. Tulzapurkar has also submitted that requirement of a common field of activity is not found in passing off action more particularly so since the focus is shifted from the external objective test of making comparison of activities of parties to the state of mind of public in deciding whether it will be confused. In the submission of the learned Counsel in the case of trading name which has become almost a household word and under which trading name a variety of activities are undertaken, a passing off action can successfully lie if other person has adopted identical or similar trading name even when such other person does not carry on similar activity. In the submission of Mr. Tulzapurkar, the trade name ''Kirloskar'' has become a household word under which variety of activities are undertaken by the respondents and since the appellants have adopted ''Kirloskar'' as part of their trade names, action in passing off lies against the appellant even if the appellants may not carry on activities similar to those of the respondents. Even if the appellants'' activities are remote, in the submission of the learned Counsel, the same are likely to be presumed a possible extension of respondent''s business or activities. Mr. Tulzapurkar further submitted that the law of passing off protects goodwill against its erosion by use of identical or similar trading name or mark. He has further submitted that the exclusive reputation in trading name is to be protected and prevented from being debased. In the submission of the learned Counsel, the defence that the 2nd appellant is entitled to use his surname as part of corporate names of 1st appellant in the appeals is not available in a passing off action. In any event, the defence that a person is entitled to use his own name or surname is not available to a limited company as the provisions of Section 34 of the Act give no such defence to an artificial person. It is also submitted that the adoption of the word ''Kirloskar'' by the appellants in the corporate names if the 1st appellant in the appeals is not bona fide. The learned Counsel has further submitted that even if the defence of Section 34 is available to the 1st appellant in each of the appeals, such artificial person has no absolute right to use its own name and the law makes no distinction between confusion and deception. In the submission of Mr. Tulzapurkar, an injunction to prevent the use of impugned corporate names can be granted even at the interlocutory stage. It is further submitted that there has been no delay or laches on the part of the respondents in filling the suits and that there has been no acquiescence on the part of the respondents so as to disentitle the respondents the relief of injunction as prayed for. It is further submitted that even if there has been some delay in institution of the suits, such delay by itself does not amount to acquiescence on the part of the respondents and does not disentitle the respondents to relief granted by the trial Court. Mr. Tulzapurkar has submitted that in the facts of the case, the appellants neither have nor can even plead to have the balance of convenience in their more particularly so when the appellants have not shown the extent of their business activities and are not using the word ''Kirloskar'' as trade mark but as part of their trading style and also as the existence of 1st appellant in each of the appeals is very recent as against the existence of the respondents which is over a period of more than 50 years.

7. In support of this submission, Mr. Tulzapurkar has put reliance on judgments in cases of :

(1) Asim Gadighar Vs. Abdul Aziz, ;

(2) K. G. Khosla Compressors Ltd. v. M/s. Khosla Extraction Ltd. (supra);

(3) Albion Motor Car Company LD v. Albion Carriage & Motor Body Works LD. (supra);

(4) Baume & Co. Ltd. v. A. H. Moore Ltd. (1958) 2 All ER 113;

(5) Bajaj Electricals Ltd. v. Metal & Allied Products (supra);

(6) Sturtevant Engineering Co. Ltd. v. Sturtevant Mills Co. of USA Ltd. (1936) 3 All. ER 137;

(7) John Haig & Coy. LD V. John D. D. Haig LD. (1957) 16 RPC 381;

(8) Fine Cotton Spinners & Doublers'' Association LD and John Cash & Sons LD. v. Harwood Cash & Co. LD. 24 RPC 533);

(9) Kingston, Miller & Co. Ltd. v. Thomas Kingston & Co. Ltd. (1912) 1 CD 575;

(10) Parker-Knoll Ltd. v. Knoll International Ltd. 1962 RPC 265;

(11) Boswell-Wilkie Circus (Pty.) Ltd. v. Brian Boswell Circus (Pty.) Ltd. (1985) FSR 434;

(12) Hindustan Pencils (P) Ltd. Vs. India Stationery Products Co. and Another, ;

(13) Astra-IDL Limited Vs. TTK Pharma Limited, ;

(14) Schering Corporation v. Kilitch Co. (Pharma) Pvt. Ltd. (1994 (1) IPLR 1);

(15) Daimler Benz Aktiegesellschaft and another Vs. Hybo Hindustan, ;

(16) Bhandari Homeopathic Laboratories v. L. R. Bhandari (Homeopaths) Pvt. Ltd. (1976 Tax LR 1382 (Delhi));

(17) The North Cheshire & Manchester Brewery Co. Ltd. v. The Manchester Brewery Co. Ltd. (1899) AC 83;

(18) Ewing v. Buttercup Margarine Co. Ltd. (1917) 2 Ch. 1;

(19) Sarabhai International Ltd. v. Sara Exports International (1987) PC 269 : AIR 1988 Delhi 134 :7);

(20) Saville Perfumery LD v. June Perfect LD. & F. W. Woolworth & Co. LD. 58 RPC 147;

(21) Wright, Layman & Umney LD. v. Wright 66 RPC 149;

(22) British Bala Shoe Co. Ltd. v. Czechoslovak Bata Co. Ltd. 64 RPC 72;

(23) Sheraton Corporation of America v. Sheraton Motels Ltd. 1964 RPC 202;

(24) Poddar Tyres Ltd. v. Bedrock Sales Corporation Ltd. (supra); and

(25) Power Control Appliances and Others Vs. Sumeet Machines Pvt. Ltd., ;

8. The respondents belong to the well-known ''Kirloskar Group of Companies'' who are carrying on their respective business in India. In addition to the respondents, there are some other companies also belonging to ''Kirloskar Group of Companies'' such as :

(1) Kirloskar Electrodyne Ltd.,

(2) Kirloskar Systems Ltd.,

(3) The Mysore Kirloskar Ltd.,

(4) Kirloskar Consultants Ltd.,

(5) Kirloskar Filters Pvt., Ltd.,

(6) Kirloskar Computers Service Ltd.,

(7) Kirloskar Engineering Pvt. Ltd.,

(8) Kirloskar Sons and Co., Pvt., Ltd.,

(9) Kirloskar Institute of Advanced Management Studies,

(10) Kirloskar Snydergeneral Ltd.,

(11) Kirloskar Silk Industries Ltd.,

(12) Kirloskar Automative Products Ltd.,

(13) Kirloskar Informatics Ltd.,

(14) Kirloskar Bio Chemical Ltd.,

(15) Kirloskar Gas Ing. Ltd.,

(16) Kirloskar Metglass Ltd.,

(17) Kirloskar Ebara Pumps Ltd.,

(18) Kirloskar Developers and Builders Pvt. Ltd.,

(19) Kirloskar Musical Instruments Pvt. Ltd.,

(20) Kirloskar Warner Swasey Ltd.,

(21) Kirloskar Cummins Ltd.,

(22) Kirloskar Kissan Equipment Ltd.,

(23) Kirloskar Ferrous Industries Ltd.,

(24) Kirloskar Services Pvt. Ltd.,

(25) Kirloskar Kenys Ltd.,

(26) Kirloskar (Malaysia) D. Bhd.

(27) Kirloskar Ghatge Patil Auto Ltd.

The word ''Kirloskar'' forms an important part of the corporate names of the respondents and other companies belonging to ''Kirloskar Group of Companies''. The respondents and the other aforesaid companies have been incorporated to carry on diverse business. In respect of the business carried on by the respondent and the other aforesaid companies, their products came to be associated by the consumers and the members of the public exclusively with the ''Kirloskar Group of Companies''. The word ''Kirloskar'' was adopted as a trade-mark and has been extensively used in respect of the products manufactured by the companies belonging to ''Kirloskar Group of Companies''. The 1st respondent is the registered proprietor of various trade marks containing the word ''Kirloskar''. The said trade marks are registered in different classes and the earliest registration date back to the year 1951 by the 2nd respondent. As per provisions of the Act, the 1st respondent has granted the ''registered user'' of the mark ''Kirloskar'' to respondents 2 to 5 and agreements in respect thereof have been duly registered in companies with the provisions of the Act and are valid. The products of the companies belonging to ''Kirloskar Group of Companies'' are of national and international repute and standard and such companies have grown into a dynamic group of diversified companies. The products manufactured by these companies are popular not only in India but also in a large number of countries abroad, ''Kirloskar Group of Companies'' have a large number of manufacturing plants. Their gross fixed assets of Rs. 6 crores as on 31st March, 1992, are now in the region of about Rs. 325 crores and the turnover in the region of Rs. 625 crores with gross profit of Rs. 212 crores. The respondents have established sales offices at all important cities in India and at few places abroad and market the products in the trade name ''Kirloskar''. The ''Kirloskar Group of Company'' including the respondents use the trade name ''Kirloskar'' on their letter heads, papers, goods, etc., and the 1st respondents, on behalf of the ''Kirloskar Group of Companies'' has carried on extensive

advertisement campaign known as ''image building programme'' since the year 1982. Even prior to the year 1982, identical companies were undertaken by respective individual companies belonging to the ''Kirloskar Group of Companies''. The said campaign have been for projecting the image of companies belonging to ''Kirloskar Group of Companies'' and consisted of releasing advertisements in newspapers, magazines, as also by display of neon signboards. The expenses incurred by 1st respondent were shared by the companies belonging to ''Kirloskar Group of Companies''. In the year 1988, centenary celebrations were held by the ''Kirloskar Group Companies'' and the Central Government issued a comparative postal stamp to mark the occasion. At that time, a brochure was published by the respondents. The activities of ''Kirloskar Group of Companies'' which originally consisted of manufacture of fodder cutters, which was one of the objects of the 2nd respondent, spread and expanded over a variety of activity entering into market with new products and lately with the business of even providing services of financial consultancy coupled with business of leasing and hire purchase, which business is carried by respondents 6 and 7. The business of ''Kirloskar Diesel Recon Pvt. Ltd., the 1st appellant in appeal No. 1152 of 1995 is similar to the business of respondents 6 and 7. The 2nd respondent carries on business inter alia of manufacturing power driven pumps, valves, hermetic sealed compressors units, machine tools, sugar can crushers, etc. The 3rd respondent carries on business inter alia of manufacturing diesel engines of 3 HP and above, assembling of generating sets in the ranges of 0.5 KVA two 1000 KVA, Bi-metal Bearing, engines valves, etc. The 4th respondent carries on business inter alia of manufacturing electric motors, alternators, generators, transformers, are welding and resistance welding equipments, micro and mini computers, etc., Respondent No.s 5 carries on business inter alia of manufacturing air and gas compressors of all types and ranges including reciprocating centrifugal and rotary, refrigeration compressors, condensers, etc., Respondent No. 6 carries on business inter alia of leasing, and licence, and the 7th respondent carries on business inter alia of leasing, hire purchase and other finance related activities, Respondents 2, 3, 4, 5, 6 and 7 were incorporated on 15th January, 1920, 26th June 1946, 26th July 1946, 27th July 1970, 23rd April 1984 and 21st Sept. 1983 respectively. Even new companies are from time to time formed and incorporated by the ''Kirloskar Group of Companies'' and they are expanding into various industries and businesses like machinery, manufacturing engines and electrical goods financing and leasing, investment consultancy, sericulture, musical instruments, etc. In the facts and circumstances, it is explicit and obvious that the word ''Kirloskar'' which forms part of corporate names of the respondents and other companies belonging to ''Kirloskar Group of Companies'' connotes the distinctiveness, reputation, quality and goodwill acquired over scores of the years and is understood as connoting association with famous ''Kirloskar Group of Companies.''

9. Section 105 of the Act reads as under :

''105. Suit for infringement, etc., to be instituted before District Court.

No suit -

(a) for the infringement of a registered trade marks; or

(b) relating to any right in a registered trade marks; or

(c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff''s trade mark, whether registered or unregistered;

shall be instituted in any court inferior to a District Court having jurisdiction to try the suit."

According, for passing off action arising out of the use by the appellants of any trade mark which is identical with or deceptively similar to the respondents'' trade mark whether registered or unregistered, a suit is required to be instituted in the District Court having jurisdiction to try the same. As per Section 2(d) of the Act, a mark is deemed to be ''deceptively similar'' to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion. The word "mark" as per Section 2(j) of the Act includes a device, brand, hearing label, ticket, name, signature, word, letter or numeral or any combination thereof. The term "trade mark" is defined in Section 2(v) of the Act as under :

"trade mark" means -

(i) in relation Chapter X (other than Section 81), a registered trade mark or a mark used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right as proprietor to use the mark; and

(ii) in relation to the other provisions of this Act, a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some persons having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark registered as such under the provisions of Chapter VIII."

The very definition of ''trade mark'' includes ''mark'' and the very definition of ''mark'' includes ''name'' and as such, the term ''trade mark'' in Section 105(c) of the Act must, therefore, be considered to be a comprehensive term including within itself ''trade name'' as also ''mark'', ''business name'' as also ''name'' under which articles, goods, etc. are sold. What is necessary is connection or nexus between the mark used in relation to the goods and the person claiming a right to use the same. While determining the question of jurisdiction, there is no warrant to draw a distinction between passing off action based on trade marks and other passing off actions. The Act covers all passing off actions whether based on trade mark''s or marks or trade names or business names. Same view has been taken by this court in the case of M/s. Aziz Gandighar v. Abdul Aziz son of Lal Mohamed Khureshi (supra) on which reliance has been placed by Mr. Tulzapurkar. u/s

105(c) of the Act, the District Court, Pune at Pune has the jurisdication to entertain and try the suits filed by the respondents against the appellants.

10. The 2nd appellant had given notice u/s 299 of the Companies Act, 1956 in the year 1991. In the month of June/July 1992, the respondents had served notice upon the appellants objecting to use of Trade Mark "Kirloskar" as part of the corporate names of 1st appellant in each of the appeals. It is correct that a period of about 1-1/2 years elapsed between the 2nd appellant serving the notice u/s 299 and the respondents instituting the said suits. The question, however, arises for consideration is whether this period of about 1 1/2 years can be said to amount to consent, waiver, or acquiescence on the part of the respondents so as to disentitle the respondents to the equitable relief of injunction. The respondents had served notice upon the appellants on acquiring the knowledge that the appellants intend to use the word "Kirloskar" as part of the corporate names of the 1st appellant. As a matter of fact, there is no delay on the part of the respondents in approaching the trial court for the reliefs claimed. Even assuming that there has been some delay on the part of the respondents in approaching the trial court as contended by the appellants, as held by this court in the case of Ashtra - IDL Ltd., v. TTK Pharma Ltd., (supra) the question of delay has to be balance against the likelihood of respondents" ultimately succeeding in the action and where the strength, the respondents" prima facie case is very strong, the respondents" delay in filling the action would not disentitle the respondents to the relief and it would be right to grant rather than to withhold interlocutory injunction prayed for. In my view, the respondent have made out a very strong prima facie case for grant of interlocutory relief and in the circumstances, I hold that delay, if any, on the part of the respondents in filling the suits does not disentitled respondents to interlocutory relief nor it amounts to consent, waiver or acquiescence on the part of the respondents nor even estoppel so as to disentitle the relief of grant of interlocutory relief to the respondents. Moreover, as held by the Delhi High Court in the case of Hindustan Pencils Pvt., Ltd. v. India Stationery Products Co. (supra) even where there is an honest concurrent user by the defendant then inordinate delay or laches may defeat the claim of damages or rendition of accounts but the relief of injunction should not be refused. This is so because the interest of the general public, which is the third party in such cases, has to be kept in mind. Since in my view, in the facts of the case, prejudice is likely to be caused to the general public who may be misled into buying the goods of the appellants thinking them to be goods of the respondents then interim injunction in terms as prayed for has to be issued. When the appellants have deliberately and wilfully adopted the Trade Mark of the respondents as part of the corporate names of the 1st Appellants and each appeal with knowledge that the Appellants by such adoption were violating Respondents" rights, essential elements of estoppel are lacking and in such a case the protection of Respondents" rights by injunctive relief never is properly denied. Moreover, the doctrine of estoppel can only be invoked to promote fair dealings. While agreeing with the views expressed by the Delhi High Court in the case of Hindustan Pencils (P) Ltd. Vs. India Stationery Products Co. and Another, . Division Bench of this court in the case of Schering Corporation v. Kilitch

Co. (Pharma) Pvt. Ltd. (supra) has held that mere lapse of time does not amount to laches. The Honourable Supreme Court of India in the case of M/s. Power Control Appliances v. Sumeet Machines Pvt. Ltd. (supra) has held that so as to avail of defence of acquiescence u/s 30(1)(b) of the Act, the acquiescence must be such as to lead to the inference of a licence sufficient to create a new right in the defendant. In the facts of the case, there is nothing to infer of a licence sufficient to create a new right in the Appellants.

11. The principle of balance of convenience applies when the scales are evenly balanced. The existence of 1st Appellant in each appeal is very recent whereas the existence of the Respondents belonging to ''Kirloskar Group of Companies'' has been for over a period of 50 years. On their own showing, the Appellants are not using the word ''Kirloskar'' as Trade Mark but as part of trading style whereas the Respondents have not only acquired distinctiveness and goodwill in the word ''Kirloskar'' but it is even the registered Trade Mark of the 1st Respondent. There is sufficient evidence of record to show that the huge business is carried by ''Kirloskar Group of Companies''. There is nothing on record to show the extent of the business of the Appellants. The 2nd Appellant has throughout been aware about the business reputation of the Respondents and efforts of the Respondents in protecting their rights in the trade marks as also of preventing others to use the word ''Kirloskar'' as a part of the trading name or trading style. By grant of the interim injunction in favour of the Respondents, the Appellants are not prevented from carrying on business without the word ''Kirloskar'' forming part of the corporate name of the 1st Appellant in each Appeal. In the facts of the case, the Respondents'' reputation is likely to be adversely affected if the Appellants are not prevented from using the word ''Kirloskar'' as part of the corporate names of the 1st Appellant in each appeal. In the facts of the case, the balance of convenience is not in favour of the Appellants.

12. This takes me to the controversy pertaining to ''common field of activity'' and also to the question that if the fields of activities are different and the goods manufactured by the Respondents are different than those manufactured by the Appellants, whether the Respondents are entitled to interim injunction in passing off action. Mr. Kane has submitted that since there is no common field of activity between the Appellants and the Respondents and the goods manufactured or the services rendered by the Appellants being different than those by the Respondents, the question of Appellants passing off their goods or services as those of the Respondents does not arise and as such, the Respondents are not entitled to grant of interim injunction as prayed for. In support of his submission, Mr. Kane has put reliance on the case of Alkem Laboratories Pvt., Ltd. v. Alchem (India) Ltd. (supra). In this case, the products manufactured by the defendants therein is dissimilar to those manufactured by the plaintiffs and on the facts, was held that it was unlike that any intending purchaser of "Ferric Alumina" or "Ferric Alum" would be deceived or confused into thinking that in the said product had some connections with the plaintiffs therein. The learned Judge, on the facts of the case, held that there was no material before him to show that the registered trade marks ''AIKEM'' and ''ALFAKEM'' were so widely known that they had acquired secondary meaning so that they denoted or

had come to mean that they were the goods manufactured by the plaintiffs therein. In the case of Indian Aluminium Co. Ltd. v. Indals (Agencies) Pvt. Ltd. (supra) the question had arisen whether the defendants therein should be restrained from using the trade mark ''Indals'' ''INDAL'' or any other deceptively similar name to the registered trade mark ''INDAL'' of the plaintiffs therein and from passing off the goods of the defendants as those of the plaintiffs as also from using the mark ''INDAL'' or deceptively similar name as part of its corporate name. On the facts of the case, the court was satisfied that the defendants therein had honestly and bona fide adopted its name as Indals (Agency) Pvt. Ltd. and the explanation given by the defendants was valid, just and proper. However, while deciding the said Notice of Motion, it was laid down that in order to succeed in an action of the nature under consideration, the Plaintiff is required to establish prima facie that (i) the adoption of the present name by the defendant is dishonest and mala fide and has been done with fraudulent intention to pass off its goods for those of the plaintiff; (ii) deception or confusion is being caused or likely to be caused because the customers and/or members of the public by reason of the defendant adopting its present name and thereby there is immediately danger to the reputation and goodwill of the plaintiff; (iii) the defendant is in fact using the plaintiffs trade mark or any mark deceptively similar to the registered mark of the plaintiff; and (iv) the field of activity of the plaintiff and the defendant are similar or almost similar. Mr. Kane also relied upon the case of Aktiebolaget Volvo v. Volvo Steels Ltd. (supra), a case of passing off action where the plaintiffs therein sought to restraining the defendants therein from using the word ''Volvo'' or any other deceptively similar word as part of the corporate name and/or trading style of the defendants so as to pass off the defendant''s goods and/or business as that of the plaintiffs. On the facts of that case, it was held that the plaintiffs did not enjoy any reputation in the Indian market and the sales of the plaintiff''s product in India were absolutely insignificant. It was further held that the activities and products of the plaintiffs in the defendants being different and distinct, there was no question of the defendants passing off their products as the products of the plaintiffs and there was not likelihood of deception and/or confusion amongst the traders and/or customers. Mr. Kane has further relied upon the case of S.M. Chemicals & Electronics Ltd. v. M/s. Symtronics (supra), wherein the plaintiffs sought to restrain in the defendants from infringing the plaintiffs'' registered mark ''SYMTRONICS'' electronics goods under the mark of ''SYMTRONICS'' as and for the plaintiffs'' electronics goods and also from carrying on business under the trade style ''SYMTRONICS''. On the facts of the case, this court held that no prima facie case was made out as regards infringement of plaintiffs'' trade mark by the defendants. The court further held that the nature of the goods as manufactured by the defendants was different than those of the plaintiffs. It was further held that the possibility of confusion or deception being not in existence, it was not necessary to grant injunction as sought by the plaintiffs. In the case of M/s. R.T. Engineering & Electronics Co. (supra), on which reliance has also been placed by Mr. Kane, this court has held that where the persons who buy the products are literate, the possibility of confusion or deception being caused does not arise. Reliance has also been placed by Mr. Kane on the case of M/s. Victory Transport Co. Pvt. Ltd. v. District Judge Gaziabad (supra), where the Allahabad

High Court has held that with regard to a passing off action, there are broadly two tests which have to be applied for determining the question whether the plaintiff is entitled to an injunction. The tests as laid down are (i) whether the words used in trade name of the plaintiff are mere descriptive words of common use or have they come to acquire a distinctive or secondary meaning in connection with the plaintiff"s business so that the use of those words in the trade name adopted by another was likely to deceive the public; and (ii) where there is a reasonable probability that the use of the name adopted by the defendant was likely to mislead the customers of the plaintiff by reason of similarity of the two trade names. In the case of Sony Kabushiki Kaisha v. Shamrao Maske (supra), on which also reliance has been placed by Mr. Kane, this court has held that the factors creating conclusion would be the nature of the mark itself, the class of customers the extent of the reputation, the trade channel, the existence of any connection in the course of trade but the list is not exhaustive and there will be several other circumstances which are required to be taken into consideration in combination before recording a conclusion as to whether there is likelihood of deception or confusion by use of the mark. In the facts of that case, it was further held that the registration of mark "SONY" in respect of "Nail Polish"s ought by the respondents therein was not likely to cause confusion or deception in the minds of the customers of electronic goods like Television, Recorders, and Transistors manufactured by the petitioners therein under the mark "SONY", the electronics goods and nail polish being items poles apart looking to the nature and purpose of their use.

13. The expression "common field of activity" was coined by Wynne-Parry J. in McCulloch v. Levis A. May (Product Distributors) Ltd., popularly known as "Uncle Mac" case reported in 65 RPC 58 in which he held that its presence or absence was conclusive in determining whether or not there was passing off. However, the requirement that a "common field of activity" is conclusive in determining whether there can be passing off has been extensively criticised by Manning J. in the case of Henderson v. Radio Corp. Pty. (1969) RPC 218, holding that it would be unsafe to adopt the view expressed in McCulloch v. Mary that what has been called a common field of activity must be established in every case to entitle the plaintiff to succeed. He further held that it is going too far to say that the absence of this so-called common field of activity necessarily bars a plaintiff from relief. With the passage of time, law on requirement of common field of activity in a passing off action has radically changed. There is no requirement for a common field of activity to found a claim in passing off. In Marage Studies v. Counter Feat Clothing Co. Ltd. (1991) FSR 145, Browne Wilkison V-C said that the so-called requirement of the law that there should be a common field of activity is now discredited. The real question in each case in whether there is as a result of misrepresentation a real likelihood of confusion or deception of the public and consequent damage to the plaintiff. The focus is shifted from the external objective test of making comparison activities of parties to the state of mind of public in deciding whether it will be confused. With the passage of time and reputation acquired, the trade mark "Kirloskar" has acquired the secondary meaning and has become almost a household word. The judgments relied

upon by Mr. Kane pertain to the cases of one type of business and not where variety of businesses have been carried by the plaintiff and defendant as in the instant case. The business activities of the Respondent vary from pin to piano as borne out from the object clauses of the Memorandums of Association of the Respondents. The Appellants have still to commence their business activities but as mentioned in the Memorandums of Association of 1st Appellant in each appeal, some of the object clauses therein over lap with the activities of Respondents and more particularly of Respondents Nos. 6 and 7.

14. In the case of trading name which has become almost a household word and under which trading name a variety of activities are undertaking, a passing off can successfully lie if the defendant has adopted identical or similar trading name and even when the defendant does not carry on similar activity. Even if the defendant''s activities in such circumstances, are remote, the same are likely to be presumed a possible extension of plaintiff''s business or activities. In the instant case, the Respondents have established that word ''Kirloskar'' has become a household word and their businesses cover variety of activities and that there is even a common connection with some activities of the respondents and activities of the Appellants. In the case of Albion Motor Car Company Ltd. v. Albion Carriage and Motor Body Works Ltd. (supra) on which reliance has been placed by Mr. Tulzapurkar, it has been held that the Defendant Company''s business had not been proved to be the same class of business as that of the Plaintiff Company, yet the probability of confusion between the two companies, both being connected with the motor car industry, was proved and injunction was granted. In that case, the Plaintiff Company carried business in a large way as makers of engines and chassis of commercial and other motor-cars, their goods being identified and known to the trade by the name ''Albion'' for which they had two Trade Marks. The defendants did not make motor cars or manufacture engines or chasis. In the action, the plaintiffs alleged that the use of the word ''Albion'' in the title under which the defendants company was later on incorporated was calculated to deceive and lead to the belief that the defendant Company was a branch of or connected with the plaintiff company.

15. The law of passing off protects goodwill against its erosion or mark. The exclusive reputation of trading name is protected and prevented from being debased. The Delhi High Court in the case of Dainlar Benz Aktregesellschaft v. Hybo Hindustan (supra) relied on by Mr. Tulzapurkar, has correctly held that the trade mark law is not intended to protect a person who deliberately sets out to take the benefit of somebody else''s reputation with reference to goods, especially so when the reputation extends world wide. It is further held that there are names and marks which have become household word ''Benz'' as name of a car would be known to every family that has ever used a quality car. The name ''Benz'' as applied to a car, has a unique place in the World. Thus, the boxes in which the defendant sells undergarments for men, and the representation therein is of a man with his legs separated and hands joined together above his shoulder, all within a circle indicate, the strong suggestion of a link between the three pointed star of ''Mercedes Benz'' car and the undergarments sold by the defendant. This cannot be

considered to be a ''honest concurrent user'' by the defendant of the said symbol and hence, the defendant could be restrained from using the word ''Benz'' with reference to any underwear which is manufactured by the defendant.

16. The 2nd Appellant had participated in image building programme of the Respondents. The reputation enjoined by the Respondents cannot be disputed. The 1st Respondent though did not manufacture goods cannot be said to have no reputation in the trade mark ''Kirloskar'' or the goodwill in the mark more particularly when the 1st Respondent has given licences in favour of Respondents 2 to 5 for use of the trade marks registered in favour of the 1st Respondent. The Respondents 2 to 7 being the registered users of the trade marks owned by the 1st Respondent in accordance with the Act, the 1st Respondent is also deemed user thereof. Though Mr. Kane has submitted that in the facts of the case, the Respondent have no common cause of action and in want of proofs establishing common reputation the Respondent are not entitled to the equitable relief of injunction, I find no merit in the submission made. Indeed, in a variety of circumstances reputation and goodwill in a name, mark or get up may be shared or divided amongst a number of different people. Where goodwill is shared, plaintiffs may being proceedings jointly, separately or in a representative capacity. In the case of K. C. Khosla Compressor Ltd. v. M/s. Khosla Extraktions Ltd. (supra), the Delhi High Court has held that passing off action need not merely relate to the goods but it relates to name also. I agree with the ratio of the said Judgement. Prima facie, I am satisfied when reference is made to ''Kirloskar'' in business circles it is referred to the Respondents and the words. ''Kirloskar Group of Companies'' again refer to the companies of the group of the Respondents. Nothing has been brought on record to show that the Appellants belong or could belong to ''Kirloskar Group of Companies''. In the facts of the case, to me there appears to be no reason why the names of the 1st Appellant in each appeal should be as they are except that the said names were deliberately used to cash on the goodwill and reputation of the Respondents and ''Kirloskar Group of Companies''. The Appellants are not entitled to represent to the customers or public at large that the goods/or business or services offered by them are of the Respondents or in some way connected with the Respondents.

17. Equally, there is no substance in the submission of Mr. Kane that incorporation of word ''Kirloskar'' as part of name of 1st Appellant in each appeal is bona fide and u/s 34 of the Act, the Appellants are entitled to use the same. No doubt as per Section 34 of the Act a proprietor or a registered user of a registered trade mark is not entitled to interfere with any bona fide use by a person of his own name or that of his place or business, or of the name, or of the name of the place of business, of any of his predecessors in business, or the use by any person of any bona fide description of the character of quality of his goods, in the facts of the case, it cannot be said that the use of the word ''Kirloskar'' as part of the corporate name of the 1st Appellant in each Appeal is bona fide more particularly when admittedly the 2nd Appellant was associated in a high office with the ''Kirloskar Group of Companies'' as aforesaid and had participated in the image building campaigns and programmes of the Respondents and ''Kirloskar Group of Companies''.

The very fact that the Appellants have chosen to incorporated the word "Kirloskar" as part of the corporate names of 1st Appellant in each appeal shows that the Appellants want to trade on the reputation of the Respondents and "Kirloskar Group of Companies" and also on the goodwill of the Trade Mark "Kirloskar" of which the 1st Respondent is the registered proprietor and Respondents 2 to 7 are the proprietor users. Moreover, saving for use of name as provided in Section 34 of the Act does not apply to artificial person like incorporated company. In the case of incorporated company, the adoption of the name is by choice whereas in the case of matured person, the adoption of surname is not by choice. In view of the law laid down by the House of Lords in the case of Parker Knoll v. Knoll International Ltd. (supra), a company can be prevented from using a particular name even if it does not cause anything more than confusion. Same view has been expressed by Delhi High Court in the cases of :

(i) Bhandari Homeopathies Laboratories v. L. R. Bhandari (Homeopanthics) Pvt. Ltd., (supra);

(ii) K. G. Khosla Compressors Ltd. v. M/s. Khosla Extraktions Ltd. (supra); and

(iii) Sarabhai International Ltd. v. Sara Exports International, (supra).

In the case of the North Cheshire and Manchester Brewery Co. Ltd. v. The Manchester Brewery Co. Ltd. (supra), the House of Lords has also taken the same view and held that since the name of the appellant company was calculated to deceive, the appellants must therefore be restrained by injunction in the usual way. In the case of Ewing v. Buttercup Margarine Co. Ltd. (supra), the Court of Appeal has held that the court has jurisdiction to restrain a defendant from using a trade name colourably resembling that of the plaintiff if the defendant"s trade name, though innocently adopted, is calculated to deceive either (a) by diverting customers from the plaintiff to the defendant, or (b) by occasioning a conclusion between the two businesses e.g. by suggesting that the defendants" business is an extension, branch or agency of or otherwise connected with the plaintiff"s business. The ratio of the decisions in the case of Turton v. Turton (supra) as also in the matter of John Taylor Peddle (supra) have, on the facts, no applicability. However, ratio of the decision of this court in the case of Poddar Tyres Ltd. v. Bedrock Sales Corporation Ltd. (supra) applies with full force to the facts of the instant case. The word "Kirloskar" was not adopted bona fide as part of corporate names of 1st Appellant in each of the appeals. The defence that a man has a right to use his personal name is not available in a passing off action and interlocutory injunction is to be ordered since no man is entitled, even by the honest use of his own name, so to describe or mark his goods as in fact to represent that they were the goods of another person. Same view has been taken by the court of Appeal in the case of Baume & Co. Ltd. v. A. H. Moore Ltd. (supra). Even in the case of Sturtevant Engineering Co. Ltd. v. Sturtevant Mill Co. of USA Ltd. (supra) and John Haig & Co. LD v. John D. D. Haig LD (supra) the same view has been taken. Prior to the decision in the Parker-Knoll"s case by the House of Lords, as held in the case of Fine Cotton Spinners and Doublers Association Ltd. and John Cash Sans Ltd. (supra), a

company could be incorporated with the personal name of the promoter provided the promoter carried on business in that name and the entire goodwill was taken over by the company. However, in view of law, laid down by the House of Lords in the case of Parker-Knoll, a company can be prevented from using a particular name even if it does not cause anything more than confusion. The Supreme Court of South Africa (Natal Provincial Division) after reviewing English authorities and comparing South African and English Authorities in Boswell-Wilkie Circus (Pvt.) Ltd. v. Brian Boswell Circus (Pvt.) Ltd. 1985 FSR 434, has taken the same view. On the facts of instant case, ratio of the decision in the case of Harold Lee (Mautles) LD and Harlee LD v. Harold Harley (Fashions) LD and Harold Harley (Sales) LD (supra) has no application. In the case of Bajaj Electricals Ltd. Bombay v. Metals and Allied Products, Bombay (supra) the Division Bench of our Court has while granting injunction put reliance on Parker-Knoll''s case decided by House of Lords wherein Lord Morris while opening the speech, observed :

"In the interests of fair trading and in the interest of all who may wish to buy or to sell goods the law recognises that certain limitations upon freedom of action are necessary and desirable. In some situations the law has had to resolve what might at first appear to be conflicts between competing right. In solving the problems which have arisen there has been no need to resort to any abstruse principles but rather. I think, to the straight forward principle that trading must not only be honest but must not even unintentionally be unfair."

18. In passing off action, the plaintiff is not required to establish fraudulent intention on the part of the defendant and as such, it was not necessary for the respondents to establish fraudulent intention on the part of the appellants in incorporating the word ''Kirloskar'' as part of corporate names of 1st appellant in each of the appeals. It was even not necessary for the respondents to prove causing of actual confusion amongst the customers or public at large by the appellants adopting the word ''Kirloskar'' as part of corporate names of 1st appellant in each of the appeals. What the respondents were required to establish, which the respondents have established, is a likelihood of deception or confusion. Same view is expressed in Parker-Knoll Ltd. (supra). The North Cheshire and Manchester Brewery Co. Ltd. (supra) and Saville Perfumery Ld. (supra).

19. An injunction to prevent the use of the word ''Kirloskar'' as part of the corporate names of the 1st appellant in each appeal can be granted even at the interlocutory stage. Similar view has been taken in the case of British Bata Shoe Co. Ltd. v. Czechoslovak Bata Co. Ltd. (supra), and in the case of Sheraton Corporation of America v. Sheraton Motels Ltd. (supra) and also by this court in the case of Poddar Tyres Ltd. v. Bedrock Sales Corporation Ltd. (supra).

In the result, the order of the learned Judge granting interim injunction is upheld and each of the appeals of the appellants is dismissed with costs.

The learned counsel for the appellants applies for stay of the operation of the order.

In the facts and circumstances mentioned in the judgment, the application for stay is refused.

Issuance of certified copy is expedited.

20. Order accordingly.