

(2009) 04 DEL CK 0555

Delhi High Court

Case No: IA No. 2552 of 2004 in CS (OS) No. 155 of 2004, IA No. 2551 of 2004 in CS (OS) No. 156 of 2004 and IA No. 2550 of 2004 in CS (OS) No. 157 of 2004

Mrs. Kiran Jain

APPELLANT

Vs

Mr. Janki Dass Jain and Others

 Mr. Jaininder Jain and

Others Vs Mr. Arihant Jain and

Others
 Mr. Arihant Jain and

Others Vs Mr. Jaininder Jain and

Others

RESPONDENT

Date of Decision: April 8, 2009

Citation: (2009) 40 PTC 1 : (2010) 7 RCR(Civil) 1548

Hon'ble Judges: S.N. Aggarwal, J

Bench: Single Bench

Advocate: Shailen Bhatia, Amit Jain and Vandana Nathan, in IA No. 2552/2004 in CSOS No. 155/2004 and IA No. 2551/2004 in CSOS No. 156/2004 and Sudhir Chandra Aggarwal, Amarjit Singh and Mahendra Rana, in IA No. 2550/2004 in CSOS No. 157/200, for the Appellant; Sudhir Chandra Aggarwal Amarjit Singh and Mahendra Rana, in in IA No. 2552/2004 in CS(OS) No. 155/2004 and IA No. 2551/2004 in CS(OS) No. 156/2004 and Shailen Bhatia, Amit Jain and Vandana Nathan, in IA No. 2550/2004 in CS(OS) No. 157/2004, for the Respondent

Judgement

S.N. Aggarwal, J.

These three interim injunction applications filed by the parties against each other in their separate suits are proposed to be decided by this common order. The dispute in all these three applications relate to the use of trademark "KANGARO".

2. Briefly stated the facts of the case are that there are three partnership firms namely M/s Kangaro Industries (Regd.), M/s Jain Manufacturing Company and M/s Kanin (India) consisting of partners from the family of Mr. Janki Dass Jain.

3. In the year 1959, Mr. Janki Dass Jain had established M/s Kangaro Stationary Industries as a sole proprietorship firm, which in 1963 was converted into a partnership firm M/s Kangaro Industries (Regd.) with Mr. Janki Dass Jain and Mr. Arihant Jain as its partners. With the passage of time, other firms and companies were formed/incorporated which included Jain Manufacturing Company incorporated in the year 1978, M/s Kanin (India) Pvt. Ltd. in September, 1983; M/s Kangaro (India) Pvt. Ltd. In May, 1987 and M/s Kanin (India) in the year 1990. In all these units Mr. Janki Dass Jain and his family members were either partners or Directors or shareholders.

4. From time to time, five trademarks were registered as "KANGARO" in respect of goods manufactured and produced by the aforesaid firms/companies, the description of which is as follows:

Sl. No.	Regd. No.	Name	Class	Date of registration
1	376224	Kangaro	16	25.05.1981
2	384556	Kangaro	16	23.12.1981
3	463530	Kangaro	7	24.11.1986
4	486516	Kangaro	8	26.02.1988
5	486510	Kangaro	16	26.02.1988

5. The first four registrations referred above are in favour of M/s Kangaro Industries (Regd.) and fifth registration is in favour of M/s Jain Manufacturing Company.

6. Mr. Janki Dass Jain had three sons namely Mr. Arihant Jain, Mr. Jaininder Jain and Mr. Vishwa Jain. They along with their wives were either partners or Directors in the firms/companies established by the Jain family of Ludhiana from time to time. We are here concerned with the dispute regarding use of mark of "KANGARO" by the three partnership firms namely M/s Kangaro Industries (Regd.), M/s Jain Manufacturing Company and M/s Kanin (India). The constitution of these three firms with the change made in its constitution from time to time is as follows:

FIRM M/S KANGARO INDUSTRIES (REGD.)

03.04.1963 Arihant Jain & Janki Dass Jain took
over the business of proprietorship
firm of Janki Dass Jain

01.04.1974 Janki Dass Jain
Arihant Jain
Vishwa Jain } New Partners
Mrs. Kiran Jain }

31.03.1978 Retirement of Vishwa Jain

01.04.1978 Arihant Jain
Janki Dass Jain
Mr. Kiran Jain
31.03.1995 Retirement Deed
Retirement of
Mrs. Kiran Jain.

01.04.1995 Partnership Deed
Arihant Jain
Janki Dass Jain
Vishwa Jain }
Mrs. Raman Jain } New Partners
Mrs. Neelam Jain }

15.05.1995 Retirement Deed
Retirement of
Janki Dass Jain

16.05.1995 Partnership Deed
Arihant Jain
Vishwa Jain
Mrs. Raman Jain
Mrs. Neelam Jain

FIRM M/S KANIN (INDIA)

01.04.1989 Jaininder Jain
Mrs. Neelam Jain

01.01.1995 Partnership Deed
Jaininder Jain
Mrs. Neelam Jain
Arihant Jain }
Vishwa Jain }
Mrs. Raman Jain }
Ambrish Jain s/o } New Partners
Vishwa Jain
Ms. Archana Jain }
D/o Arihant Jain

31.03.1995 Retirement Deed
Retirement of
Jaininder Jain

01.04.1995 Partnership Deed
Mrs. Neelam Jain
Arihant Jain
Vishwa Jain
Mrs. Raman Jain
Ambrish Jain
Ms. Archna Jain

15.05.1995 Retirement Deed
Retirement of
Ambrish Jain
Ms. Archna Jain

16.05.1995 Partnership Deed
Mrs. Neelam Jain
Arihant Jain
Vishwa Jain
Mrs. Raman Jain

FIRM M/S JAIN MANUFACTURING COMPANY

1978 Smt. Saraswati Jain
Mr. Vishwa Jain
Mrs. Raman Jain

1988 Smt. Saraswati Jain expires
Mr. Vishwa Jain
Mrs. Raman Jain

01.01.1995 Partnership Deed
Mr. Vishwa Jain
Mrs. Raman Jain
Janki Dass Jain }
Jaininder Jain } New Partners
Mrs. Kiran Jain }

31.03.1995 Retirement Deed
Retirement of
Mr. Vishwa Jain
Mrs. Raman Jain

01.04.1995 Partnership Deed
Janki Dass Jain

Jaininder Jain
Mrs. Kiran Jain.

7. It may be seen from the constitution of the three partnership firms given above that the change in the partnership was brought out in these three firms on or about 31st March, 1995 when partnership deeds & retirement deeds were executed between the incoming and outgoing partners of these firms. The result of reconstitution on or about 31st March/1st April, 1995 was that the two firms namely M/s Kangaro Industries (Regd.) and M/s Kanin (India) came to be owned by Mr. Arihant Jain and Mr. Vishwa Jain and their families except that Mr. Janki Dass Jain remained partners in M/s Kanin (India) Regd. till 15.05.1995 when he retired from the said firm and after his retirement the above mentioned two firms were exclusively owned by Mr. Arihant Jain and Mr. Vishwa Jain and their families. The third firm M/s Jain Manufacturing Company came to be owned by Mr. Jaininder Jain, his wife Mrs. Kiran Jain & father Mr. Janki Dass Jain.

8. In the year 1992, an agreement was made between the above three firms on 20.03.1992 that each of these firms will hold registration of the trademark "KANGARO" only in respect of the goods actually manufactured and sold by them so as to avoid overlapping of the goods. It is provided in the said agreement that M/s Kangaro Industries (Regd.) will have a right to the use of trademark "KANGARO" in respect of paper punches and board clips, M/s Kanin (India) will have a right in respect of staplers, staple pins and staple pin removers and M/s Jain Manufacturing Company will have a right in respect of Index file clips and base plates thereof.

9. On 16.08.1994, necessary requests were made in Form TM-36 to the Registrar, Trademarks for carrying out modifications/amendments in Trademark No. 376244 and Trademark No. 486510 in conformity with the agreement dated 20.03.1992. Modifications/ amendments were carried out on 25.08.1994.

10. In the later half of December, 1994, differences arose between the members of the Jain family and accordingly in December, 1994, it was mutually agreed and decided to separate and distribute the various concerns, their management and control amongst the family members of Mr. Janki Dass Jain. It was decided that Mr. Arihant Jain, Mr. Vishwa Jain along with their families will separate from the rest of the family. It was agreed and understood that Mr. Arihant Jain, Mr. Vishwa Jain together will take over the two partnership firms namely M/s Kangaro Industries (Regd.) and M/s Kanin (India). As regard the third partnership firm M/s Jain Manufacturing Company, it was decided that the same will be taken over by Mr. Jaininder Jain and his family. These understandings were acted upon. The cross holdings in the three firms were streamlined by execution of formal retirement deeds. Mrs. Kiran Jain wife of Mr. Jaininder Jain retired from M/s Kangaro Industries (Regd.), Mr. Jaininder Jain retired from M/s Kanin (India) and Mr. Vishwa Jain and Mrs. Raman Jain retired from M/s Jain Manufacturing Company on 31.03.1995 and

thereafter the partnership of the said businesses were reconstituted. Mr. Janki Dass Jain also retired from M/s Kangaro Industries (Regd.) on 15.05.1995.

11. Consequent upon change in the constitution of three partnership firms referred above, large sums of money as were payable in terms of the respective retirement deeds were also paid inter-se parties.

12. Even after the agreement of 1992 and the retirement and reconstitution of the firms in 1995 but before the retirement of Mr. Janki Dass Jain, there was rumbling and dissatisfaction between the three brothers (S/sh Arihant Jain, Jaininder Jain and Mr. Vishwa Jain) CS(OS)Nos.155-157/2004 Page 7 of 37 with regard to land, building and machinery. As a result thereof, the three brothers on the persuasion of their father agreed to refer the disputes relating to land, building and machinery of partnership firms to arbitration vide agreement dated 10.04.1995. Mr. Ram Kumar Jain and Mr. Raj Kumar Behal were appointed as arbitrators.

13. On 14.04.1995, a document purporting to be a family arrangement was prepared and was signed by all the three brothers, their father Mr. Janki Dass Jain and also the two arbitrators namely Mr. Ram Kumar Jain and Mr. Raj Kumar Behal.

14. On 23.11.1995 Form TM-24 was filed by Mr. Arihant Jain etc. with the Registrar, Trademarks for removal of the names of Mr. Janki Dass Jain and Mrs. Kiran Jain (wife of Mr. Jaininder Jain) from the register of Trademarks and for assignment/transfer of the trademark No. 376224 and No. 463530 in his favour and in favour of his brother Mr. Vishwa Jain and their respective wives. While this application in Form TM-24 dated 23.11.1995 was pending, on 01.07.1996 yet another application in Form TM-24 was filed for the same purpose duly signed by Mr. Arihant Jain. This second application in Form TM-24 pertains to assignment/transfer of all the four trademark Nos. 376224, 384556, 463530 & 486516 in the names of Mr. Arihant Jain and Mr. Vishwa Jain and their families being partners in M/s Kangaro Industries (Regd.) and M/s Kanin (India). The transfer/ assignment was asked for on the basis of change in the constitution of these firms as per retirement deeds and new partnership deeds dated 31st March/1st April, 1995 and the retirement deed dated 15.05.1995 and new partnership deed dated 16.05.1995.

15. Similarly on 28.02.1996 an application in Form TM-24 was also filed by Mr. Janki Dass Jain, Mr. Jaininder Jain and Mrs. Kiran Jain for recording them as registered proprietors of T.M. No. 486510 that stood registered in favour of the firm M/s Jain Manufacturing Company. The basis of their Form TM-24 was also the retirement deeds/partnership deeds as relied by the Arihant Group.

16. On 20.08.1996, Mr. P.K. Talwar, Advocate for Mr. Janki Dass Jain and Mrs. Kiran Jain sent a letter to the Registrar, Trademarks stating that the trademark matter between the retiring and the continuing partners of M/s Kangaro Industries (Regd.) has not been decided finally and therefore the Registrar was asked not to allow any change in the constitution of firm M/s Kangaro Industries (Regd.) till his clients were

heard in the matter. On 02.09.1996 Mr. K.N. Naik, Advocate of Mr. Arihant Jain etc. sent a letter to the Registrar, Trademarks along with an affidavit of Mr. Arihant Jain stating that the retiring partners of M/s Kangaro Industries (Regd.) have relinquished their rights after receiving their shares from the partnership business. The said affidavit was supported by copy of ledger account of the retiring partners certified by the Chartered Accountant, certificate from the bank confirming payments made to the retiring partners and the Registrar, Trademarks was requested to allow their Form TM-24 and record assignment/transfer of trademark "KANGARO" in the name of continuing partners (Mr. Arihant Jain, Mr. Vishwa Jain, Mrs. Raman Jain and Mrs. Neelam Jain) of M/s Kangaro Industries (Regd.).

17. On 25.09.1996, the Registrar, Trademarks in reply to letter of Mr. P. K. Talwar, Advocate requested him (Mr. P.K. Talwar) to furnish the supportive documents within 21 days from the date of the said letter. The copy of the said letter was also sent to Mr. K.N. Naik, Advocate and also to Mr. Arihant Jain etc. On 18.10.1996, the Registrar, Trademarks received a letter from Mr. K.N. Naik, Advocate on behalf of Mr. Arihant Jain etc. in response to its letter dated 25.09.1996 requesting the Registrar, Trademarks to take necessary action on Form 24 in case no reply is received from Mr. Jaininder Jain etc. by the Registry and in the absence of any proof furnished by them. Since no reply was received by the Registrar either from Mr. Jaininder Jain or from counsel in spite of lapse of 21 days, the Registrar on 30.10.1996 decided the case of Form TM-24 in respect of four trademark Nos. 376224, 384556, 463530 & 486516 in favour of Mr. Arihant Jain etc. trading as M/s Kangaro Industries (Regd.).

18. Immediately after passing of order dated 30.10.1996 by the Registrar, Trademarks allowing Form TM-24 of Mr. Arihant Jain etc. in regard to above referred four trademarks, Mr. Jaininder Jain etc. group became active and started protesting against the order passed by the Registrar, Trademarks on 30.10.1996. On 01.11.1996, Mr. P.K. Talwar, Advocate sent a telegram to the Registrar, Trademarks and asked him not to allow Form TM-24 of Mr. Arihant Jain etc. On 04.11.1996, the Registrar, Trademarks passed the following order:

Telegram from Mr. P.K. Talwar, Advocate has been received at 4 PM on 01.11.1996. This telegram is sent in response to this office letter dated 25.09.1996. Since the abovenamed Advocate has failed to comply with the official requirement within stipulated period, no further correspondence is required to be made with him. However to provide full natural justice, other parties may be given a chance to furnish necessary documentary evidence in support of their claim. 30 days time to be given for compliance, failing which no further correspondence had to be entertained. This case was dealt by me hence Ld. C.G. has directed me to put up. Sd/. 04.11.1996

19. While the objections of Mr. Jaininder Jain etc. against the order of Registrar dated 30.10.1996 were pending consideration before the Registrar, litigation started

between the parties in December, 1996.

20. On 06.12.1996 Mr. Jaininder Jain etc. (hereinafter to be referred to as the "Jaininder group") filed a civil suit in the Court at Ludhiana. This suit was filed for grant of a decree of declaration that the parties are bound by the terms and conditions made under the family arrangement dated 10/14.04.1995 and permanent injunction restraining the defendants (Mr. Arihant Jain etc.) from getting the trademark "KANGARO" transferred in their favour or in favour of any other firm falling to their share in the family arrangement dated 10/14.04.1995 and restraining them from selling, manufacturing, exhibiting and advertising in any manner the said trademark. This suit is CS(OS) No. 156/2004 in this Court.

21. On 17.01.1997 Mr. Arihant Jain, Mr. Vishwa Jain, Mrs. Raman Jain and Mrs. Neelam Jain (hereinafter to be referred to as the "Arihant group") also filed a suit in the Court of Additional District Judge, Ludhiana for permanent injunction restraining Jaininder group from using the trademark "KANGARO". This suit is CS(OS) No. 157/2004 before this Court.

22. On 10.02.1997, the Jaininder group filed a rectification petition being C.O.4/1997 in this Court u/s 56 of the Trade and Merchandise Marks Act, 1958 for removal of entry made by the Registrar of Trademarks on 30.10.1996. In the said rectification petition, the Jaininder group raised dispute regarding recordal of the names of Arihant group as continuing partners of reconstituted firm M/s Kangaro Industries (Regd.) by the Registrar vide order dated 30.10.1996. The Jaininder group also claimed that their names should be recorded as subsequent registered owners of the trademark registered in favour of partners of M/s Kangaro Industries (Regd.) in view of family settlement dated 10/14.04.1995.

23. Before the Registrar could decide the objections against the order dated 30.10.1996, the Registrar was informed by the Jaininder group to keep his hands off as a civil suit had been filed before the District Court of Ludhiana.

24. On 30.03.1998, Mr. Jaininder Jain's wife Ms. Kiran Jain filed a suit in Ludhiana Court {CS (OS) No. 155/2004 in this Court} for declaration that there has been a family arrangement dated 10/14.04.1995 settling the dispute between the parties and in the alternative, she also prayed that she may be declared to be a continuing partner in M/s Kangaro Industries (Regd.). She further prayed for dissolution of partnership firm M/s Kangaro Industries (Regd.) and for permanent injunction restraining Ms. Neelam Jain and Mr. Vishwa Jain from carrying on the business in the name and style of M/s Kangaro Industries (Regd.) and for rendition of accounts.

25. All these suits filed by the parties against each other in the Court at Ludhiana were accompanied with an application for interim injunction seeking an injunction against each other from using the trademark "KANGARO". The Court at Ludhiana passed an interim order in CS(OS) No. 156/2004 on 07.01.1997 and directed the parties to maintain status quo regarding the use of trademark "KANGARO" by them.

26. All the three suits as per details whereof given hereinabove, filed by the parties against each other in Ludhiana Court were transferred to this Court vide order dated 08.09.2003 passed by the Hon"ble Supreme Court in Transfer Petition (Civil) No. 198-203/2003. Subsequent to their transfer from Ludhiana Court to this Court, these suits have been registered as CS(OS) Nos. 155/2004, 156/2004 & 157/2004.

27. In the rectification petition being C.O. No. 4/1997, an application for interim injunction was filed by the Jaininder group seeking stay of operation of the order of the Registrar, Trademarks dated 30.10.1996 whereby the names of Mr. Arihant Jain, Mr. Vishwa Jain, Mrs. Raman Jain and Mrs. Neelam Jain trading as M/s Kangaro Industries (Regd.) were recorded as subsequent registered proprietors of Trade Mark Nos. 376224, 384556, 463530 & 486516. It was further prayed in the application that the said partners of the firm be restrained from using the entries of registered trademarks made in their favour in any other proceedings.

28. The said application being IA No. 1397/1997 was dismissed by a reasoned order passed by the Single Judge of this Court on 01.05.1997 {reported as 2004 PTC 157}. It was observed by the Single Judge that the retirement of Mr. Janki Dass Jain and Mrs. Kiran Jain as well as the fact of their having received large sums of money in consideration thereof was admitted by the Jaininder group. The alleged family settlement relied upon by Jaininder group was considered to be a disputed document and interim injunction application filed by them was dismissed by the Single Judge vide order dated 01.05.1997 holding that the fair opportunity of hearing was granted by the Registrar before recording the names of the subsequent registered proprietors.

29. Aggrieved by the order passed by the Single Judge dated 01.05.1997 dismissing their interim injunction application, the Jaininder group filed an appeal being FAO(OS) No. 130/1997 before the Division Bench of this Court who by its reasoned order dated 10.05.2002 dismissed the appeal and confirmed the order of the Single Judge. This order of the Division Bench is reported in 2004 29 PTC 160. The Division Bench did not find any infirmity in the order passed by the Registrar or by the Single Judge. It was held that the question as to whether the document purported to be a family settlement relied upon by the Jaininder group is in the nature of family settlement or mere proposal and also the legality and validity of the said document were held to be disputed questions required to be proved in accordance with law in the civil suits transferred from Ludhiana Court to this Court.

30. The Jaininder group being dissatisfied with the order of the Division Bench of this Court dated 10.05.2002, preferred a SLP being SLP (Civil) No. 17535/2002 before the Supreme Court of India, which was also dismissed on 08.09.2003. The order of the Hon"ble Supreme Court dismissing the SLP is reported in 2004 (29) PTC 174 (SC).

31. It may be noted that while the appeal against the order of the Single Judge was pending before the Division Bench, the civil suit filed by the parties against each

other did not proceed because of assurance given by the parties to the Division Bench that they will not proceed with their suits pending hearing of the appeal.

32. Thereafter, vide order passed by this Court on 05.10.2005, all the three suits referred above filed by the parties against each other were consolidated and were ordered to be heard and decided along with the rectification petition filed by the Jaininder group being C.O.4/1997. Consolidated issues were also framed in all these cases on 05.10.2005.

33. The dispute between the parties relate to use of mark "KANGARO" coined and founded by their late father Mr. Janki Dass Jain. Mr. Janki Dass Jain being the creator of the said mark has expired during the pendency of proceedings of these suits on 17.02.2005. The family of late Mr. Janki Dass Jain is split into two groups. Mr. Jaininder Jain, his wife and son represent one group (Jaininder group) whereas Mr. Arihant Jain, Mr. Vishwa Jain their wives and children represent the other group known as Arihant group. There appears to be a serious dispute between them for over a decade about the use of mark "KANGARO" by each one of them for different items of stationary manufactured and marketed by them. Both of them claim a right to use the mark "KANGARO" and have prayed for interim injunction against each other from using the mark "KANGARO".

34. I have heard the arguments of learned Counsel for both the parties and have also gone through their written synopsis and the entire material available on record.

35. The trademark "KANGARO" is a well-known trademark in the line of stationery items and this mark appears to have international reputation. The fight over the use of this mark for different items of stationery is between three real brothers. Two brothers, namely, Mr. Arihant Jain and Mr. Vishwa Jain, are on one side and the third brother Mr. Jaininder Jain is on the other side. The mark "KANGARO" is the creation of their late father, Shri Janki Dass Jain who had adopted and started using the said mark since 1959 and thereafter, several firms and companies were formed in which the family members of late Janki Dass Jain were either partners or Directors. Five registrations in respect of trademark "KANGARO" were obtained on different dates, four were got in the name of the firm M/s. Kangaro Industries (Regd.) and one mark was obtained in the name of the firm, M/s. Jain Manufacturing Company.

36. Details of four registrations of mark "KANGARO" obtained in the name of firm M/s. Kangaro Industries (Regd.) are as under:

REGISTERED TRADE MARK No.	CLASS	GOODS	DATE OF REGISTRATION
376224	16	Paper Punches and Board Clips	25.05.1981
384556	16	Staple Presses (Office use)	
		and other staples thereof	23.12.1981
463530	07	Punching Machine	24.11.1986
486516	08	Hand Tools	26.02.1988

37. The details of the fifth registration mark obtained in the name of the firm M/s. Jain Manufacturing Company are as under:

38. Because of inter se dispute amongst the three brothers relating to their business carried on by them in the name of three firms, namely, i) M/s. "KANGARO" Industries (Regd.); ii) Kanin (India); and iii) M/s. Jain Manufacturing Company, an agreement dated 20th March, 1992 was arrived at between these three firms and as per the said agreement, the firm M/s. Kangaro Industries (Regd.) was given the right to use the mark "KANGARO" for paper punches and board clips; the firm M/s. Kanin (India) was given the right in respect of staplers, staple pins and staple pin removers and the firm M/s. Jain Manufacturing Company was given the right to use the mark "KANGARO" for manufacturing and marketing index file clips and base plates thereof.

39. It seems that in order to further streamline the business carried on by the three brothers with their wives and children along with their late father Shri Janki Dass Jain in the names of above mentioned three firms, the three brothers decided to have complete control over the affairs of one firm each and since the two brothers Shri Arihant Jain and Shri Vishwa Jain decided to remain together, on or around 31st March, 1995, the two firms namely M/s. Kangaro Industries (Regd.) and the firm M/s. Kanin (India) went to their exclusive share whereas the firm M/s. Jain Manufacturing company came to the share of the third brother, Mr. Jaininder Jain and his family. Consequent thereto, retirement deeds and new partnership deeds were executed between the incoming and outgoing partners of these three firms on 31st March, 1995/1st April, 1995. The father of the three brothers, Late Shri Janki Dass Jain, who continued to remain partner in M/s. Kangaro Industries (Regd.) at the time of this change, also retired from the firm M/s. Kangaro Industries (Regd.) on 15.05.1995 and consequent thereto, a retirement deed dated 15.05.1995 and a new partnership deed between the continuing partners of the said firm was executed on 16.05.1995.

40. After change in the constitution of the three firms mentioned above was brought about around 31.03.1995/01.04.1995, the three brothers on persuasion of their late father Shri Janki Dass Jain entered into an arbitration agreement on 10.04.1995 and agreed to refer their dispute regarding land, building and machinery owned by these firms to the arbitration of Shri Ram Kumar Jain and Shri Raj Kumar Behal. A document dated 10/14th April, 1995 was prepared which bears the signatures of all the three brothers as also of both the arbitrators, Shri Ram Kumar Jain and Shri Raj Kumar Behal.

41. The document dated 10/14th April, 1995 is admittedly in the handwriting of Mr. Arihant Jain. However, there exists a dispute between the three brothers, hereinafter to be referred to as "Arihant Group" and "Jaininder Group" about the legality, validity and enforceability of document dated 10/14th April, 1995 purported to be a family settlement. The Arihant Group has disputed the authenticity of the document dated 10/14th April, 1995 stating that the said document according to

them was in eight sheets whereas according to the Jaininder Group, the document, they are relying, is only in six sheets. The Arihant Group in support of its contention that the document purported to be a family settlement, is in eight sheets has relied upon the affidavits of the arbitrators namely Mr. Ram Kumar Jain and Mr. Raj Kumar Behal (their affidavits are at pages 38 and 49 of the convenience file of the Arihant Group) who in their separate affidavits sworn by them before the notary public on 09.07.2002 have deposed that the instrument dated 10/14th April, 1995 was in eight sheets and was signed by all the three brothers and also by both of them. On the other hand, Mr. Bhatia learned Counsel appearing on behalf of the Jaininder Group has also referred and relied upon the affidavits of the same arbitrators sworn by them before the notary public on 20.09.2002 to contend that the instrument dated 10/14th April, 1995 has only six sheets. The affidavits of the arbitrators relied upon by the Jaininder Group were not placed on record earlier and they were filed by the learned Counsel for the Jaininder Group along with his short additional submissions filed on 01.04.2009 after the arguments on interim injunction application were concluded and the case was reserved for orders.

42. Upon considering the fact of two contradictory affidavits filed by the arbitrators regarding the number of sheets used for preparing the document dated 10/14th April, 1995 purported to be a family settlement, I am of the view that this raises a serious dispute regarding the authenticity of the said document. Whether this document was having six sheets or eight sheets is a question of fact which cannot be decided at this initial stage in the absence of evidence of the parties on this aspect. At this stage, what is relevant to be noted is that photocopies of all the eight sheets of document dated 10/14th April, 1995 purported to be a family settlement is on record and is available at pages 39 to 48 of the convenience file submitted by the Arihant Group. All the eight sheets of this document are in the handwriting of Shri Arihant Jain. The said document purports to contain two alternative proposals which both have been signed by all the three brothers, their late father Shri Janki Dass Jain and also by both the arbitrators. Reference for the same can be made to pages 45 and 48 of the convenience file of the Arihant Group. The two alternative proposals, firmwise and productwise, mooted by the parties in the presence of the arbitrators, are as follows:

PROPOSALS I. FIRMWISE : PARTIES PROPOSAL I PROPOSAL II Arihant Jain and Vishwa Jain -Kangaro Industries (Regd.) -Kangaro Industries (Regd.) Unit II - Kanin (India) -Kangaro Industries (Regd.) Unit II -Kangaro Industries (Regd.) -Jain Manufacturing Company -Jindal Stationery Manufacturing Co. -Kangaro (India) Pvt. Ltd. - Kanin (India) Pvt. Ltd. Jaininder Jain - Jain Manufacturing Co. -Jindal Stationery Manufacturing Co. -Kangaro (India) Pvt. Ltd. - Kanin (India) Pvt. Ltd. - Kanin (India) CS(OS)Nos.155-157/2004 Page 21 of 37 II. PRODUCTWISE : PARTIES PROPOSAL I PROPOSAL II Arihant Jain and Vishwa Jain All types of paper punches and staplers except stapler HD-10N, HD-10D, M-10, HP-45 and staple remover SR-300 All types of paper punches, stapler No. 10, 10B, HP-10, 10-JA, 45-L, HP-45, M-10, staple remover

and stapler HD- 12S/17 Jaininder Jain Index file clip and stapler HP-45, M-10, Staple remover SR-300, stapler HD-10N and HD-10D Index file clip, HD-10N, 10-D, HD-45, 555 and 999

43. As per the first proposal contained in the document dated 10/14th April, 1995, the trade mark "KANGARO" has gone to the share of the Jaininder Group and the trade mark "KANIN" has come to the share of Arihant Group. The trade name "KANGARO" has gone to the share of Arihant Group and the trade name "KANIN" has come to the share of Jaininder Group. The second proposal contained in the document, does not deal with the distribution of either the trademark or the trade name as dealt with in the first proposal.

44. Mr. Shailen Bhatia, learned Counsel appearing on behalf of the Jaininder Group has argued that the trademark "KANGARO" is the property of the joint family and the right in the said trademark does not belong to any individual. He has placed heavy reliance on the document dated 10/14th April, 1995 which according to him is a family settlement regarding use of trademark "KANGARO" for different stationery items manufactured and marketed by the three firms. The argument of Mr. Bhatia is that in terms of family settlement dated 10/14th April, 1995 the trademark "KANGARO" exclusively belongs to the Jaininder Group and according to him, the Arihant Group has no legal right to use the said mark in relation to its stationery business. Mr. Bhatia has referred and relied upon the pleadings of the Arihant Group contained in their two applications, one u/s 34 of the Arbitration Act, 1940 and the second u/s 8 of the Arbitration and Conciliation Act, 1996, filed for stay of suit of Jaininder Group being CS(OS) No. 156/2004. It was contended that the Arihant Group itself has relied upon document dated 10/14th April, 1995 as a ground for stay of the above referred suit of Jaininder Group. It was submitted that the Arihant Group itself has stated in its applications u/s 34 and Section 8 that the parties had agreed to refer their remaining unsettled disputes for the decision of the arbitrators whose decision was agreed to be final and binding on all the three brothers. It was further contended by Mr. Bhatia that this Court should not doubt the document dated 10/14th April, 1995 which according to him is a family settlement as the said document is admittedly in the handwriting of Mr. Arihant Jain. His further contention was that in case, the said document had eight sheets and not six sheets, then why Arihant Group did not produce the original of the last two missing sheets which contained an alternative proposal allegedly given by the Arihant Group.

45. Mr. Bhatia learned Counsel appearing on behalf of the Jaininder Group has referred and relied upon the judgments of the Hon'ble Supreme court in [K.K. Modi Vs. K.N. Modi and Others](#), ; [Ramkishore Lal Vs. Kamal Narain](#), and [Ram Charan Das Vs. Girjanandini Devi and Others](#), , in support of his contention that the family settlement arrived at by the parties to this suit by way of document dated 10/14th April, 1995 should not be lightly interfered by this Court because according to him,

the settlement has already been acted upon by some of the members of the family.

46. On the other hand, Mr. Sudhir Chandra Aggawal, learned senior counsel, appearing on behalf of the Arihant Group has argued that the document dated 10/14th April, 1995 was not a family settlement and according to him, this document contains only two alternative proposals, one given by the Jaininder Group and the other by the Arihant Group. He responded to the argument of Mr. Bhatia regarding non-production of the originals of two missing sheets by the Arihant Group by submitting that the original of document dated 10/14th April, 1995 (eight sheets) was in fact retained by the arbitrators with themselves and the parties were given only the photocopies of the said document. The learned senior counsel for the Arihant Group in support of his above contention has relied upon the admission of Jaininder Group in its written statement filed on 24.01.1997 in CS(OS) No. 157/2004 where in para 2 of its written statement, the Jaininder Group has admitted that the original of document dated 10/14th April, 1995 was retained by the arbitrators in their possession. It was further contended that the document dated 10/14th April, 1995 cannot be a family settlement because it contains two alternative proposals, and the document does not state as to which out of these two proposals, were finally accepted by the parties.

47. The contention of the learned senior counsel appearing on behalf of the Arihant Group was that the rights of the parties, i.e., of Arihant Group and of Jaininder Group to use the trade mark "KANGARO" in relation to different items of stationery manufactured and marketed by different firms/companies flow from the partnership deeds and the retirement deeds executed between the incoming and outgoing partners of the three firms during 1995.

48. The Arihant Group and the Jaininder Group also have dispute between them about the nature of agreement dated 20.03.1992. Mr. Bhatia appearing on behalf of the Jaininder Group had argued that the agreement dated 20.03.1992 was an agreement between the three brothers whereby all three of them decided to represent one firm each. However, the argument of the Arihant Group is that the agreement of 20.03.1992 was an agreement between the three firms to streamline their business and in terms of the said agreement, the goods were divided and demarcated between Kangaro Industries (Regd.), Kanin (India) and Jain Manufacturing Company. It was submitted that the three firms, on restructuring, were taken over by the respective continuing partners, with all assets, property and goodwill. It was only for this reason that registered trade mark "KANGARO" registered under No. 486510 for index file clips was acquired by Jain Manufacturing Company.

49. I have given my anxious consideration to the above rival arguments advanced by learned Counsel for the parties. I do not find any merit in the argument of the counsel for the Jaininder Group that the property in the trademark "KANGARO" belongs to a joint family and not to the individual family members. It may be noted

that the constitution of the three partnership firms was changed from time to time when ultimately, around first half of 1995, the two firms namely M/s. Kangaro Industries (Regd.) and M/s. Kanin (India) came to the exclusive share of the Arihant Group whereas the third firm M/s. Jain Manufacturing Company went to the share of Jaininder Group.

50. I also do not find any merit in the argument of Mr. Bhatia that the agreement of 20.03.1992 was between the three brothers inter se and not between the three firms of which either they themselves or their wives were partners. The Jaininder Group in fact has admitted in its written statement in CS(OS) No. 157/2004 that the agreement dated 20.03.1992 was between the three firms, namely, M/s. Kangaroo Industries (Regd.), Jain Manufacturing Company and M/s. Kanin (India). This admission on the part of the Jaininder Group in its written statement belies their stand that the agreement dated 20.03.1992 was between the brothers inter se and not between the firms. It appears that an attempt is made on the part of the Jaininder Group to show as if the business done by the three brothers in the name of the three firms was a joint family business and they vide their agreement dated 20.03.1992 had simply decided as to which firm in which they were partners will deal in what item. It is a matter of record that four registrations in respect of trademark "KANGARO" vide registration No. 376224, 384556, 463530 and 486516 were obtained on different dates in the name of the firm M/s. Kangaro Industries (Regd.) in which the wife of Shri Jaininder Jain also remained one of its partners till 31.03.1995. On account of dispute between the parties in relation to their business carried on by them in the name of three firms, the parties had agreed to separate the control and management of all the three firms so that each of these three firms could be exclusively controlled by one or the other group. Pursuant thereto, the firms Kangaro Industries (Regd.) and M/s. Kanin (India) came to the share of Arihant Group whereas the Jain Manufacturing Company went to the share of Jaininder Group. This was in the year 1995. Retirement deeds and new partnership deeds were executed between the incoming and outgoing partners of all the three firms in March/April, 1995 and again on 15.05.1995. As per these partnership deeds/retirement deeds, the Jaininder Group acquired right in the trademark "KANGARO" for different items of stationery covered by the four registrations being registration No. 376224, 384556, 463530 and 486516 and the Jaininder Group acquired the right in the trademark registered as per registration No. 486510 in Class 16 for index file clips and base plates registered in favour of Jain Manufacturing Company.

51. The Jaininder Group is relying upon the document dated 10/14th April, 1995 which according to it is a family settlement in terms whereof the trademark "KANGARO" exclusively belongs to them. A serious dispute exists between the parties about the genuineness and authenticity of the said document. The said document purports to contain two alternative proposals which are both inconsistent to each other. The document does not state as to which out of the two proposals

was agreed to be treated as final and binding by the parties. The contention of the Jaininder Group, that since the Arihant Group itself has admitted in its applications u/s 34 of the Arbitration Act, 1940 and application u/s 8 of the Arbitration and Conciliation Act, 1996 that the parties vide their agreement dated 10/14th April, 1995 had agreed to refer their remaining unsettled disputes to the arbitrators, and therefore, the Arihant Group cannot be permitted to wriggle out of its admission to dispute the genuineness of the family settlement, seems to hold no water. The Jaininder Group does not dispute the existence of document dated 10/14th April, 1995. What it disputes is the nature of the said document, whether the document is a family settlement or merely a proposal. Hence, the stand taken by the Arihant Group in their application u/s 34 of the Indian Arbitration Act, 1940 and application u/s 8 of the Arbitration & Conciliation Act, 1996 regarding existence of an agreement cannot be taken in aid by the Jaininder Group to say that the document relied upon by them is a family settlement. The mere fact that the said document is in the handwriting of Mr. Arihant Jain is also of no help to Jaininder Group because mere admission of handwriting of a document does not ipso facto amount to proof of its contents, particularly when the nature of the said document is in dispute.

52. In [Ramji Dayawala and Sons \(P\) Ltd. Vs. Invest Import](#), it was held by the Hon'ble Supreme Court as under :- "Undoubtedly, mere proof of the handwriting of a document would not tantamount to proof of all the contents of the facts stated in the document. If the truth of facts stated in a document is in issue, mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence, i.e., by the evidence of those persons who can vouchsafe for the truth of the facts in issue."

53. In view of the above judgment of the Supreme court, I have no hesitation in saying that the document dated 10/14th April, 1995 relied upon by the Jaininder Group at this stage cannot be said to be a family settlement only because the said document happens to be in the handwriting of Mr. Arihant Jain. There is a serious dispute between the parties, whether this document was in eight sheets or in six sheets. If the document relied upon by the Jaininder Group is found to have eight sheets, then another question will arise as to why two alternative inconsistent proposals were made in the said document, if it was to be treated as a family settlement, final and binding on the parties.

54. The document dated 10/14th April, 1995 relied upon by the Jaininder Group as a family settlement is further shrouded in suspicion. If a final settlement has been arrived at between the parties regarding use of trademark "KANGARO" by each one of them for different stationery items, then why this fact was not reflected in the retirement deed dated 15.05.1995 executed on the retirement of Shri Janki Dass Jain. This fact of alleged family settlement was not even mentioned in the new partnership deed dated 16.05.1995 executed between the continuing partners of

the firm M/s. Kangaro Industries (Regd.). It may be noted that the retirement deed dated 15.05.1995 as well as new partnership deed dated 16.5.95 were executed shortly just within one-two days of the purported family settlement dated 10/14th March, 1995. The things were fresh in the mind of the parties at the time they had executed the retirement deed/partnership deed in May, 1995 and in case there was any conclusive family settlement with regard to use of trademark "KANGARO" then this fact must have been mentioned in the said documents. It may further be noted that the Jaininder Group had filed TM 24 in the office of Registrar, Trademarks on 28.02.1996 for recordal of change of proprietorship of trademark No. 486510 in favour of continuing partners of M/s. Jain Manufacturing Company. This TM 24 was filed by the Jaininder Group on 28.02.1996 on the basis of retirement deed/partnership deed dated 31.03.1995/01.04.1995 and 15.05.1995/ 16.05.1995. without any whisper about the alleged family settlement. In case, the alleged family settlement was arrived at between the parties as contended by the Jaininder Group, then why this fact was not disclosed by this group while filing TM 24, filed after about 9 months of the alleged family settlement. The fact of alleged family settlement was not even disclosed in the letter dated 19.08.1996 sent by Shri P.K. Talwar (Advocate for Shri Janki Dass Jain and Mrs. Kiran Jain) to the Registrar, Trademarks. Furthermore, it may also be noted that the firm M/s. Jain Manufacturing Company of which Mr. Janki Dass Jain, Mrs. Kiran Jain and Mr. Jaininder Jain were partners, admitted before the Excise authorities in the year 1997 that the Jaininder Group is proprietor of trademark "KANGARO" for which they hold registrations. M/s. Jain Manufacturing Company claimed right to trademark "KANGARO" only for "index file clips" as subsequent proprietors of trademark No. 486510 in terms of agreement of 1992. All these facts prima facie create a serious doubt on the nature, legality and validity of the document invoked by the Jaininder Group as document of the family settlement.

55. The purported family settlement dated 10/14th April, 1995 even otherwise does not prima facie appear to be admissible in evidence in view of the provisions of the Indian Registration Act, Stamp Act and Section 45 of the Trade Marks Act, 1999. The said document purports to create or extinguish right in the immovable property and was, therefore, required to be executed on nonjudicial stamp papers and also required compulsory registration. The alleged agreement of family settlement is pursuant to an arbitration agreement of 10th April, 1995 to which all the partners of the three firms, are not parties. In view of provisions contained in Section 19 of the Partnership Act, one partner cannot effect transfer of partnership assets in the absence of express or implied consent of the other partners. Since this document purported to be a family settlement does not bear the signatures of all the partners of the three firms, the said document prima facie appears to be not tenable in law.

56. In view of what has been discussed by me above, I am of the view that the above referred judgments on the point of family settlement relied upon by counsel for the Jaininder Group are not applicable to the facts and circumstances of the present

case because in all those cases, the family settlement considered by the Court was not in dispute whereas in the present case, the alleged family settlement is shrouded in strong suspicion.

57. The learned senior counsel appearing on behalf of the Arihant Group has referred and relied upon an order dated 30.10.1996 passed by the Registrar, Trade Marks allowing TM 24 of the Arihant Group in regard to four registrations of trademark "KANGARO" being registration Nos. 376224, 384556, 4365380 and 483516 and recorded the Arihant Group as proprietors of the trademark vide these registrations on the basis of retirement deed/partnership deed of 31.03.1995/01.04.1995 and 15/05/1995/16.05.1995. The argument of the learned senior counsel for the Arihant Group was that the Arihant Group being the registered proprietor of trademark "KANGARO" as per the above referred registration Nos., the said group has a statutory right to protect its registration in view of provisions contained in Section 28, 29, 31 and 135 of the Trade Mark Act, 1999. It was submitted that the use of an identical deceptively similar mark by anybody which even includes Jaininder Group also, constitutes an act of infringement and, therefore, the Jaininder Group is liable to be restrained from using the trademark "KANGARO" in respect of goods covered by the registrations in its favour referred above.

58. On the other hand, Mr. Bhatia, learned Counsel appearing on behalf of the Jaininder Group has argued that the order dated 30.10.1996 was procured by the Arihant Group from the Registrar, Trademarks by concealing the fact of family settlement and also by not filing the affidavits of the retiring partners of M/s. Kangaroo Industries (Regd.) that they have relinquished their right in the use of trademark "KANGARO" in favour of the continuing partners of the said firm, as is the established practice in the trade mark registry. The Jaininder Group has pleaded fraud against the Arihant Group in regard to order dated 30.10.1996 of the Registrar, Trademarks. Mr. Bhatia has relied upon a decision of this Court in Anand Kumar Deepak Kumar and Anr. v. Haldi Ram Bhujawala and Anr. 1999 19 PTC 466 to buttress his argument that the fraud vitiates all transactions and that the registration of trademark obtained by fraud would not acquire finality or immunity from challenge u/s 32(a) of the Trade and Merchandise Marks Act, 1958.

59. Mr. Bhatia has also argued that the order dated 30.10.1996 recording the Arihant Group as registered proprietor of trademark "KANGARO" is even otherwise violative of the principles of natural justice and fair play. In support of his said contention, he has relied upon another judgment of this Court in Kohinoor Paints Faridabad (P) Ltd. v. Paramveer Singh 1996 (16) PTC 69, wherein it is held as under:

it is well-settled that once an order is passed in violation of the principles of natural justice, the order is void in law and if that order is relied upon for any purpose, it can be challenged whenever and wherever it is produced.

60. I have given my anxious consideration on the plea of fraud and violation of principles of natural justice in regard to order dated 30.10.1996 urged on behalf of the Jaininder Group but on giving my anxious consideration to the same, I have not been able to persuade myself to agree with the submissions made on behalf of Jaininder Group in regard to the above. The judgment on these aspects relied on its behalf are not applicable to the facts of the case. The court at this stage is only considering which party has a prima facie case for restraining the other party from using the trademark "KANGARO" for different stationery items covered vide registration No. 376224, 384556, 463530 and 486516.

61. The question regarding legality, validity and enforceability of the purported family settlement dated 10/14th April, 1995 has been considered upto the Supreme Court. Right upto the Supreme Court, the courts have declined to stay the operation of order of Registrar, Trademarks, dated 30.10.1996. Detailed reasons for the same are given in the judgments both of the single judge and also of the division bench. Right upto the Supreme Court all the arguments which have been advanced on behalf of the Jaininder Group in support of the family settlement dated 10/14th April, 1995 have been considered and held that it cannot be said that the order dated 30.10.1996 recording the Arihant Group as registered proprietor of trademark registration No. 376224, 384556 463530 and 486516 was passed without giving fair opportunity to the Jaininder Group. It has also been held upto the Supreme Court that the document purported to be a family settlement is a disputed document and its legality, validity and enforceability is to be established by the Jaininder Group in accordance with law in these suits. Reference for the orders of the Single Judge, the Division Bench and of the Supreme Court may be made to 2004 (29) PTC 157, respectively. In this view of the matter, I am of the considered opinion that the alleged family settlement relied upon on behalf of the Jaininder Group cannot be acted upon at this stage for deciding the interim injunction applications in these three suits.

62. What emerges from the above discussion is that the Arihant Group as on date holds a valid registration of trademark "KANGARO" in its favour in respect of goods covered by trademark Nos. 376224, 384556, 463530 and 486516. The Arihant Group is shown to hold registration of trademark "KANGARO" in 37 countries. The Arihant Group is stated to have acquired an international reputation in the trademark "KANGARO". The foreign courts of Germany, Israel and Indonesia have recognized the trademark "KANGARO" of the Arihant Group in infringement action set up by it against third parties and in one case, before the three-Judge bench of the Frankfurt Court, the Arihant Group had brought an infringement action against the company owned by the Jaininder Group in which also the Jaininder Group in its defence had relied upon the same family settlement of 10/14th April, 1995 but the three-Judge Bench of the Frankfurt Court vide its detailed judgment delivered on 19.11.2003 declined to recognize the said family settlement and prohibited the Jaininder Group from using the trademark "KANGARO" for paper punches, staplers, staple removers

and paper pins. The judgment of the Frankfurt Court is reported in 2004 29 PTC201.

63. For the foregoing reasons, I have no hesitation in holding that the Arihant Group has made out a strong prima facie case for restraining the Jaininder Group from using the trademark "KANGARO" in relation to its business in respect of goods covered by trademark Nos. 376224, 384556, 463530 and 486516. The balance of convenience for grant of such injunction also lies in favour of the Arihant Group and against the Jaininder Group. In case, the Jaininder Group is not restrained by way of interim injunction from using the trademark "KANGARO" in relation to its business in respect of goods covered by trademark No. 376224, 384556, 463530 and 486516, the Arihant Group who has acquired an international reputation in the use of the said trademark, is likely to suffer an irreparable injury which is unlikely to be compensated in terms of money. I, therefore, restrain the Jaininder Group from using the trademark "KANGARO" for stationery items covered by trademark No. 376224, 384556, 463530 and 486516 till the final decision of these suits. Any observation made in this order will not influence the final decision of the case on merits.

64. In view of the above, IA No. 2552/2004 in CS(OS) No. 155/2004 & IA No. 2551/2004 in CS(OS) No. 156/2004 are dismissed and IA No. 2550/2004 in CS(OS) No. 157/2004 is allowed. Needless to state that the status quo order dated 07.01.1997 passed by the Ludhiana Court in CS(OS) No. 156/2004 stands vacated and that the right of the parties to the suit for use of trademark "KANGARO" will be governed in terms of injunction order passed by this Court in favour of Arihant group and this interim order will continue without prejudice to the rights and contentions of the parties on merit of the case till the suits are finally decided.