

SOORIYA ENTERPRISES (INTERNATIONAL) LIMITED
v.
MICHAEL WHITE & COMPANY LIMITED

SUPREME COURT.
G. P. S. DE SILVA, C.J.,
KULATUNGA, J. AND
RAMANATHAN, J.
S.C. (SPL.) LEAVE TO APPEAL
APPLICATION NO. 367/94
C.A. REVISION APPLICATION
D.C. COLOMBO CASE NO. 4036/SPL.
JANUARY 23, 1995.

Interim injunction – Section 54 of the Judicature Act – Application for special leave to appeal – Prayer for interim order, pending inquiry, for restoring the interim injunction granted by the District Judge.

The Court of Appeal acting in revision, set aside the interim injunction granted to the plaintiff by the District Judge.

Held:

The Court will not pending inquiry into the application for special leave to appeal against the court of appeal judgment, grant an interim order having the effect of restoring the interim injunction granted by the District Judge for the reason that (a) the facts did not show that the conduct of the defendant was such as would render the ultimate judgment ineffectual, (b) an injunction is equitable relief.

Cases referred to:

1. *Richard Perera v. Albert Perera* 67 NLR 445, 447-448.
2. *Ceylon Hotels Corporation v. Jayatunga* 76 NLR 443, 446.

Special leave to appeal against the judgment of the Court of Appeal.

S. Sivarasa, P.C. with *S. Mahenthiran* and *Sampath Udugampola* for petitioner.

Ikram Mohamed for respondent.

Cur. adv. vult.

January 27, 1995.

KULATUNGA, J.

The Court heard Counsel on the prayer (c) in the plaintiff's petition for the grant of an interim order restraining and prohibiting the defendant from using the trade mark "Badreg" till the hearing and disposal of this matter.

The District Judge by his order dated 01.06.94 granted an interim injunction to the above effect pending the hearing and determination of this action. The Court of Appeal set aside that order on the ground that this was not a case of unfair competition by the defendant in that both the plaintiff and the defendant were supplying tea to one Badreg of Jeddah, Saudi Arabia at Badreg's request in cartons with Badreg's name. Court accepted the submission that the plaintiff had failed to establish a legal right.

The District Judge had altogether failed to consider the question decided by the Court of Appeal although the defendant had clearly raised it in his objections and submissions before the District Court. The defendant in his objections not only resisted the grant of an interim injunction but also prayed that the plaint be rejected.

Notwithstanding the existence of such objection, the District Judge without considering it, held that there was a prima facie case of unfair competition, based purely on the fact that the mark used by the defendant was similar to that used by the plaintiff. Section 142(1) of the Code of Intellectual Property Act No. 52 of 1979 states –

“Any act of competition contrary to **honest practices** in industrial or commercial matters shall constitute an act of unfair competition”.

The Plaintiff has made an application for special leave to appeal against the judgment of the Court of Appeal. That application stands fixed for support on 08.02.95 pending which, the plaintiff is seeking an order for the restoration of the interim injunction which the District Judge granted. In my view, no such order should be granted.

In *Richard Perera v. Albert Perera*⁽¹⁾ the Court considered S.86 of the Courts Ordinance which corresponded to S.54 of the Judicature Act on injunctions. A condition precedent to the issue of an injunction under these sections is the commission of an act or nuisance in violation of the plaintiff's rights respecting the subject matter and tending to render the judgment ineffectual. H. N. G. Fernando J. (as he then was) said –

“It seems to me that in this context . . . there must be some apparent violation of rights to which the plaintiff appears to be entitled and not merely of rights which he claims . . . the conduct of the defendant must be such as would tend to render the ultimate judgment ineffectual”.

He also observed –

“It the material actually pleaded before the Court reveals that there is probably no right of the plaintiff which can be violated, it would be unreasonable to issue the injunction”.

In the instant case, the ultimate relief sought in the action is a permanent injunction restraining the defendant using a mark similar to the mark being used by the plaintiff. It is not a mark which has been registered in the plaintiff's name. If at the end of the trial the

District Judge were to grant such permanent injunction, it would be quite effectual even if an interim injunction is not granted.

The question also arises as to whether the grant of an interim injunction, in these circumstances, would have the effect of granting the ultimate relief itself, before adjudication.

In view of the issues involved and the fact that an injunction is equitable relief *Ceylon Hotels Corporation v. Jayatunga*⁽²⁾. I refuse the application for the interim order prayed for; no costs.

G. P. S. DE SILVA, C.J. – I agree.

RAMANATHAN, J. – I agree.

Application for interim order refused
