

**Present: Sri Srikumar Goswami (JO Code WB00714)**

**Judge, Commercial Court at Alipore.**

**Title Suit 29/2019**

**(CNR no. WBSP18-000090-2020)**

Order no. 33

09.02.2021

*In the matter of :*

*Suit for infringement of*

*copyright, passing*

*rendition of*

*delivery*

*off,*

*accounts,*

*up, damages and*

*other appropriate reliefs*

*valued at Rs.10,00,00,000/-.*

*And*

*In the matter of :*

*A. Sirkar & Co. (Jewellers)*

*Pvt. Ltd.*

*Vs.*

*In the matter of :*

*B. Sirkar Jahuree Pvt. Ltd.*

**Appearance**

*Ld. Adv. Mr. Debnath Ghosh*

*Ld. Adv. Mr. Soumya Sen*

*Ld. Adv. Ms. Suhrita Majumdar*

*Ld. Adv. Mr. Kironjit Majumdar*

*Ld. Adv. Mr. Dipro Dawn*

*.....on behalf of*

Plaintiff/Petitioner

*Ld. Adv. Mr. Reetobrata Mitra*

*Ld. Adv. Mr. Anirban Kar*

*Ld. Adv. Mr. Vedatri Bhattacharya*

*.....on behalf of*

Respondent/Defendant

**ORDERED**

**I.A. No. 221 of 2020 & 325/2020**

1. Today is for passing of order in respect of temporary injunction application as filed by the Plaintiff/petitioner being I.A. No. 221 of 2020 under Order XXXIX Rules 1 and 2 read with section 151 CPC and also for passing of Order in respect of Order XXXIX Rule 4 which is also being I.A. No.325/2020.

2. I have already heard both sides, perused and considered the application as well as other annexed documents and also written notices of argument submitted by the both sides.\_

3. i) Intellectual Property Rights are the legal rights that are granted to a person for a creative and artistic works, for any invention or discovery or for any literary works or words, phrases and symbols or designs for stipulated period of time. Under the Intellectual Property Rights, the owner of such properties has certain exclusive rights through which he uses his property without any disturbance and can prevent the misuse of his rights in the property. Intellectual property is any innovation, commercial or artistic, or any unique name, symbol logo or design used commercially. In India intellectual property is governed under the Patent Act, 1970; the Trademarks Act, 1999; Indian Copyright Act, 1957; the Designs Act, 2001, etc. The term "copyright" has not been defined under the Copyright Act, 1957 but the general connotation of the term copyright refers to the "right to copy" it is available only to the author or creator, as the case may be. Thus, any other person who copies the original works would be amount to infringement under the Copyright Act. The protection as ensured or provided by the Copyright Act to the various of writers, artists, designers musicians, architects, dramatists and producers of sound recordings, cinematograph films and computer software, creates atmosphere conducive to creativity, which induce them to create more and motivates others to create.

ii) Copyright in a work considered as infringe only if a **substantial part** is used unauthorized. What is "substantial" varies from case to case. There is no standard or unique measurement to measure what is substantial. In the case of **Campbell v. Acuff Ross Music Inc. 510 U.S. 569 (1994)**, "Oh, Pretty women" a very catching

phrase from another lyricist's song is held to be infringement of copyright.

iii) As per section 13 of the Indian Copyright Act, 1957, copyright subsists in literary works, dramatic works, musical works, artistic works cinematograph films, sound recordings. However, the Act does not define the term "originality". In absence of precise definition of the term "originality" the Indian Courts have relied upon various doctrines by the decisions of the many foreign Courts. The Privy Council, in the case of **Macmillan & Company Ltd. v. Cooper, (1924) 26 BOMLR 292** approved the principle laid down in **University of London Press Ltd. v. University Tutorial Press Ltd. (1916) 2 Ch. 601** which laid down that copyright over a work arises and subsists in that work due to the skill and labour spent on that work, rather than due to the inventive thought. This is more popularly known as the "**sweat of the brow**" theory. It has been held that originality varies merely from the fact that sufficient labour, skill and efforts (physical or otherwise) have been applied in the work. Such "**sweat of the brow**" theory was adopted in India particularly that was appeared from the Judgment of the Hon'ble High Court at Delhi in the case of **Burlington Home Shopping v. Rahnish Chibber 61 (1995) DLT 6** wherein it has been held by the Hon'ble Court that a compilation may be considered a copyright work by virtue of the fact that there was devotion of time, labour and skill in creating the said compilation from many available works.

iv) The originality can be ascertained where at least some minimal degree of creativity in the request to make it eligible for attaining originality. In view of the Judgment of the U.S. Court in the case of **Feist Publication v. Rural Telephone Services, 499 U.S. 340 (1991)** in an independence creation with certain degrees of creativity would be considered as original. The Hon'ble Supreme Court in its landmark Judgment in the case of **Eastern Book Company v. D. B. Modak, AIR 2008 Supreme Court 809** has been pleased to take a departed view and has also been pleased to establish the standard of originality which fell midway between the "**sweat of the brow**" and "**minimum modicum of creativity**". In that landmark Judgment the Hon'ble Court has referred the reasoning as given by the Canadian Supreme Court in **CCH Canadian Ltd. v. Law Society of Upper Canada, (2004) 1 SCR 339, 2004 SCC 13**. According to this midway standard "original" must be a "product of exercise of skill and Judgment" where "skill" is "the use of one's knowledge, developed aptitude or practiced ability in producing the work" and "Judgment" is "the use of one's capacity for discernment or ability to form an opinion or evaluation by comparing different possible options in producing the work". In the opinion of the Canadian Supreme Court, this exercise of the skill and Judgment must not be "so trivial that it can be characterized as a purely mechanical exercise" and must be "more than a mere copy of another work".

v) As an owner has some rights under the Copyright Act which are a) Reproduce, b) Communication, c) Adaptation and d) Translation etc.

4. In the present case, we need to give some focus on the rights of the owner for adaptation. Coming to this case the plaintiff A. Sirkar & Co. (Jewelers) Pvt. Ltd. has instituted the present suit before this Court praying for;

a) Decree of perpetual injunction restraining the defendant, B. Sirkar Johuree, Private Limited and others from infringing the plaintiff's copyright in the said original artistic works in the plaintiff's original jewelries being annexure 'D', 'E', 'G', 'H' and 'I' to the plaint, by manufacturing and/or selling and/or offering for sale and/or publishing the impugned jewelries as shown in annexure "J" to the plaint.

b) Decree of perpetual injunction restraining the defendant and others from passing off or/and attempting to pass off, falsify and/or attempting to falsify or causing or enabling, assisting others to pass off/falsify by manufacturing and/or selling and/or offering for sale and/or publishing the impugned jewelries shown in annexure "J" to the plaint.

c) Decree of perpetual injunction restraining defendant and others from passing off, or attempting to pass off, falsify and/or attempting to falsify or causing or enabling, assisting others to pass off/falsify by manufacturing and/or selling and/or offering for sale and/or publishing the impugned jewelry shown annexure "L" to the plaint and/or any other jewelry which are substantial reproduction of the plaintiff's said order original works shown in annexure "K" to the plaint, by or in any other way or manner.

d) Decree of the permanent injunction restraining the Defendant, its proprietor, partners, directors, employees, servants, agents and/or assigns in any way or manner from copying the Plaintiff's said original artistic works in the Plaintiff's said original jewellery including any substantial reproduction thereof.

e) Decree of permanent injunction restraining the Defendant, its proprietor, partners, employees, servants, agents and/or assigns and each of them from illegally using and reproducing any photographs of the original works depicted in Annexures "D", "E", "H", "I", "K" to the plaint, or any part thereof.

f) The Defendant its proprietor, partners, employees, servants, agents and/or assigns and each of them be directed to take down, remove reference of all such infringing posts available on all social media accounts and/or other internet platforms which amount to infringement of the plaintiff's intellectual property rights including the Plaintiff's copyrights.

g) The Defendant, its proprietor, partners, employees, servants, agents and/or assigns and each of them be directed to produce on oath all infringing articles and/or articles in violation of the Plaintiff's copyright and/or other rights for destruction.

h) Decree for Rs. 10 Crores.

i) Alternatively, an enquiry into the damages suffered by the Plaintiff and a decree for such sum as may be found due upon such enquiry.

j) Receiver;

k) Attachment;

l) Injunction;

m) Costs;

n) Further and/or other reliefs.

5. The case of the plaintiff is in a nutshell that:

i) The plaintiff is a reputed jeweler engaged for over 3 decades in the business of crafting and selling of innovative as well as bespoke jewelry made of precious metals and their alloys including precious and semi precious stones and the business was founded under the name and style of A. Sirkar and Sons in the year 1995, subsequently, the plaintiff's company was incorporated on October 06, 1998 by adopting the business of Mr. Rajeswar Sirkar. The hand-end jewelry of the plaintiff is known for their artistic and unique quality and their distinctiveness which is also the product of the artistic, craftsmanship, and presentation of the final adaptation in three-dimensional form of jewelries and such original artistic works are created after investing substantial amount of time, skill, labour, money and artistic craftsmanship under a combination of several distinct features with every element being distinctively put in a specific place having a unique form, shape, manner of depiction, arrangement resulting into a unique original expression.

ii) At the present case, most of the plaintiff unique creative, artistic works, jewelries conceptualized by Mrs. Brinda Ganguly Sirkar, who is a Director in the plaintiff company. The artistic works are then crafted into jewelries under the supervision of Mrs. Brinda Ganguly Sirkar by artisans who are skilled in naksha works of the highest standard and such jewelries are crafting from the original artistic works authored by Mrs. Brinda Ganguly Sirkar for the purpose of adaptation into jewelries such as gold bangles, rings, earrings chokers, necklaces and the like and by the expenditure of her creative skills, intellectual labour, which is distinctive of and exclusive to her in the plaint.

iii) Being the Director, in course of employment, said Mrs. Brinda Ganguly Sirkar has authorized several original artistic works among which are relevant in this case MOYNA BAGAN, SUHRITA ERRING, SUHRITA SITHAAR, TOTA PAKHI KAN JHUMKA, GRINLING GENDA HANSULI, MOUSHUMI ROSE CHOKER, SHRINGAR KANKAN TYPE 5, BANI BOTTU and KAKOLI (hereinafter referred collectively referred to as the "said original artistic works") and MAYURPUR ERRING AND POROMA PASHA (hereinafter referred collectively referred to as the "said other original works") which have also been adapted into the jewelry. According to the plaintiff, all the said original artistic works are combination of several distinctive features with every elements being distinctive put in a specific place having a unique form, shape, manner of depiction and addition which results into unique original expression. Among jewelries some of the products have already been registered under the Copyright Act three articles already for which application for registration has been made as it is admitted by the plaintiff. The plaintiff entered into the social media world in the year 2019 with the creation of its face book page and also promoted its jewelry through other media

including open publication, advertisement and promotion of the said original jewelries in different social and other platforms. According to plaintiff that for its constant persuasive for creation new and novel artistic works the plaintiff has acquired niche market and clientele associate such high quality jewelries solely with the plaintiff.

iv) The plaintiff/petitioner was alerted by some of his regular customers that defendant/respondent was manufacturing and offering for sell several ornaments at much lower prices underline the said original artistic works of the plaintiff which resulted to the plaintiff for further information and after searching online the plaintiff came to understand that there was infringement of the plaintiff's valuable rights of copyright in the said original jewelries and the said original artistic works of the plaintiff. It is alleged that the defendant has substantially copied the form, manner of depiction, arrangement and expression of all elements from the original artistic works of the plaintiff and according to the plaintiff/petitioner such unauthorized replication, reproduction and offering of manufacture and sell of aforesaid impugned jewelries which are nothing but colorable imitations and substantial reproductions of the plaintiff's original jewelries by the defendant, without the permission or consent of the plaintiff, such conduct is illegal, the present suit has been filed against the activity on the part of the defendant for imitation of the unauthorized original artistic works which are the original jewelries and being the exclusive domain of the plaintiff and also it is alleged that the defendant is also passing its products and business as that of the plaintiff and further getting wrongful benefit and illegal profits from the plaintiff's market name and value.

v) The plaintiff alleged that the defendant viciously copied the entire catalog of artistic works of the jewelries which happened to be the exclusive property of the plaintiff.

vii) It is alleged by the plaintiff that the defendant has substantially and materially copied the plaintiff's said original works and/or said other original works and/or essential part thereof.

viii) It is further noticed by the plaintiff that the artistic elements and other features of shape, pattern and configuration in the defendant's production impugned which are substantially reproduction of the plaintiff's said original works and/or the said other originals works. The attempt of the defendant is an act of piracy and also the defendant passes off the plaintiff's originals works and/or the said other original works.

6. The prayer of the plaintiff/petitioner for temporary injunction has been opposed on behalf of the respondent on various grounds and the gist of submission as well as the affidavit-in-opposition and the points of argument of this regard can be summarized as:

i) The plaintiff/petitioner has no independent intellectual rights as so claimed by the petitioner in this present suit. Both the petitioner and the respondent claimed lineage of jeweler from B. Sirkar and Sons which was established by the five sons and one Mr. Biseswar Sirkar on some time in 19<sup>th</sup> century, who was according to the defendant/respondent was a man of myriad interest and pursuit being extremely well known in the field of art and who had the credit to incorporate B. Sirkar Jeweler Pvt. Ltd. sometime in 1982 and the petitioner and the respondent representing two branches of the same family, though their juristic entity as incorporated company and the defendant/respondent has been also in the same business for a period for longer than the plaintiff/petitioner.

ii) Plaintiff/petitioner has only registration through one of its Directors Mrs. Brinda Ganguly Sirkar in respect of seven articles and rest of the articles have no registration in which ownership right have claimed by the petitioner without any basis. In respect of the Bani Bottu and Kakoli, the plaintiff/petitioner have applied for registration but had not yet been registered and in respect of articles namely Mayurpur Earing, Poroma Pasha no application has been filed by the plaintiff/petitioner for registration of copyright.

iii) It is further alleged by the defendant/respondent that it is imperative that the person claiming copyright will have to show that he/she has originated all the artistic works. It is the another version of the defense that in the articles for which injunction is purported to be claimed by the petitioner/plaintiff is not an original artistic works either of the petitioner or Mrs. Brinda Ganguly Sirkar as would be evident that the plaintiff has purported to show they have been selling the jewelry since 2013 whereas the Mrs. Bindra Ganguly Sirkar has claimed that she was created original artistic works (the sketches) only in 2018.

iv) The design and/or sketch which are the subject matter of the dispute presently and not the original artistic works either the petitioner or the Mrs. Brinda Ganguly Sirkar and such sketches and/or designs have been used by as motifs in the jewelry articles by the plaintiff/petitioner from various genres a) local tradition and customs, b) grandmother's jewelry box, c) craftsman's manual, d) local folklore/tribal jewelry and e) local flowers and fauna.

v) The aforesaid sources are of common sources of inspiration and adaptation not only by the plaintiff/petitioner but by all jewelers all over the country. For example, it has been referred that jewelry motifs in the western part of the India are very much distinct and distinguishable owing to their local traditions and customs and usage likewise, the jewelry of south India draws grater inspiration from temple jewelry that is very distinct and distinguishable. In craftsmen and jewelers used to get inspiration for creating the design of their jewelry even from bird pecking, fruit, tree and such absolute genres and cannot have any particular person claiming

copyright on the same. Traditionally, craftsman's manual is another source of inspiration for the jeweler and/or craftsman in which various modes/industrial process have been taken by the jeweler through die, casting, chasing.

v) It has been submitted by the Defendant that the plaintiff/petitioner admits that the Mayna Bagan was in existence for a long period of time where a bird or a parrot tale has been adapted to a "Mayan" in the present article. So far as the concerned Suhrita Earing and Suhrita Sitahaar, it is a lady by a name of Suhrita Majumdar who was designed ornaments. In case of Tota Pakhi Kan Jhumka, the plaintiff admits that the basis of this jewellery items is a nursery rhyme which is known to every Bengali household. Grinling Gena Hansuli, which is the necklace nothing more than an adaption of flowers and vines pattern which is the part of the local flower and fauna. This has also in the case of Bani Bottu, which is nothing but adaptation from tribal tradition genres. In case of Kakoli, this is not an artistic works of the Mrs. Brinda Ganguly Sirkar or the plaintiff.

vi) The actual sources of all jewellery is adaptation from the craftsman's manual and the respondent/defendant alleged that all such designs have been copied and adapted from the craftsman's manual and regarding this a comparative chat has been submitted with the written note of argument and by that which it has been tried to establish by the defendant/respondent that each and every article over which a right is claimed by the plaintiff/petitioner are all part and parcel of the craftsman's manual or the tribal customs and local folklore which has been used and prevailing for long time.

vii) It is claimed by the defendant/respondent that they have been selling its jewellery items much prior to that of the plaintiff and there is no copyright in the shape and in the design under The Copy Right Act, 1957 and the protection to right in the shape of the goods is only under the section 2(m) of the Trademark Act, 1999.

viii) Mere advertisement on the electronic media or the electronic social media as Facebook and Instagram don't not prove that the project or article is prior to the point of time in so far as that particle of the particular person is concerned. The defendant had not advertised their products on the social media but had made advertisement and sold the articles prior to 2013 as has been conclusive proved by annexing the invoices of the period prior to 2013. The Defendant also claimed that their designs are also coming from the craftsman's manual in which both the plaintiff and defendant have no copyright as being the original artistic works and in the industry all jewelers have used to use flower, twigs, birds and other natural flora and fauna and besides the designs of the craftsman manual. It is the case of the respondent that all jewelers including plaintiff and defendant have inspiration from the same sources like all others jewelers in West Bengal and in that support they also produce copies of the jewelries made by the other jewelers



in different wings along with the invoices in the written argument as being annexure “C” of the argument. There will be some similarities in view of the sources of the jewelers being the same. However, adaptation by the plaintiff and by the defendant clearly distinct and different from each and every and for which a chat has been prepared and annexed by the respondent as being marked annexure “D”.

ix) The defendant has also been manufacturing such jewelry articles which would be evident from the copies of the invoices. There is no originality in the work of the plaintiff/petitioner.

x) Since the plaintiff claims damages as claimed that they suffer damages more than Rs. 10 crore that constitute an admission by the plaintiff that articles have been manufactured in excess of 50 trials. The defendant being itself an extremely renowned reputed jeweler no need to intention or requirement to pass of the articles prepared by the defendant as that of the plaintiff.

xi) Appropriate notice has not been given to the person alleged to be suffered under The Copyright Act, 1957 before registration of the copyright by the plaintiff.

7. It is admitted condition that so far as following jewelry namely MOYNA BAGAN, SUHRITA ERRING, SUHRITA SITAHAAAR, TOTA PAKHI KAN JHUMKA, GRINLING GENDA HANSULI, MOUSHUMI ROSE CHOKER, SHRINGAR KANKAN TYPE 5, BANI BOTTU and KAKOLI in which the petitioner enjoys copyright registration over the works. So far regards BANI BOTTU and KAKOLI the petitioner claims inherent copyright in the original artistic works in which application for registration copyright has been made. So far as regards MAYURPUR ERRING AND POROMA PASHA the petitioner claims exclusive rights to the “shape of good” being original jewelry and such right are claimed on the basis of “shape of goods” that is the distinctive shape of the jewelry.

It is argued on behalf of the petitioner that registration of copyright is a prima facie evidence of the particular entered therein and the respondent has no legal entity to challenge the validity of the petitioner’s copyright registration before this Court.

8. i) Section 49 and 50 of The Copyright Act, 1957 reads as follow:

**49. Correction of entries in the Register of Copyrights.— The Registrar of Copyrights may, in the prescribed cases and subject to the prescribed conditions, amend or alter the Register of Copyrights by— (a) correcting any error in any name, address or particulars; or (b) correcting any other error which may have arisen therein by accidental slip or omission.**

**50. Rectification of Register by 1 [Appellate Board].— The [Appellate Board], on application of the Registrar of Copyrights or of any person aggrieved, shall order the rectification of the Register of Copyrights by— (a) the making of any entry wrongly omitted to be made in the register, or (b) the expunging of any entry wrongly made in, or remaining on, the register, or (c) the correction of any error or defect in the register. 2 [50A. Entries in the Register of Copyrights, etc., to be published.— Every entry made in the Register of Copyrights or the particulars of any work entered under section 45, the correction of every entry made in such**

**register under section 49, and every rectification ordered under section 50, shall be published by the Registrar of Copyrights in the Official Gazette or in such other manner as he may deem fit.]**

It is claimed that the rights of the petitioner are also protected besides under The Copyright Act as being the original artistic works used prior to others.

ii) Record shows that at this stage of prima facie determination that the respondent's impugned jewelry have been published on social media platform much subsequent to that of the petitioner. It is claimed by the petitioner that prior creation and prior publication of all the 11 original jewelries reproducing of the said original artistic works of the petitioner in three-dimensional form can be evident from the documentary evidence on record. No documentary evidence has been able to be furnished by the respondent at this stage to claim counter regarding prior user of the plaintiff/petitioner. So far as the claim by the respondent regarding rights of the plaintiff only for registration it appears that the registration is not a condition precedent to substantiate of copyright or enjoyment of such copyright under The Copyright Act.

9.i) The plaintiff has referred the Judgment of the Hon'ble Calcutta High Court in **Satsang and another v. Kiron Chandra Mukhopadhyay and others reported in 1972 SCC online CAN 88** in which the Hon'ble Court has observed in paragraphs "22" and "34"

**"22. Mr. Sen cited (1872) 14 Eq 431, (mack v. petter). In this case, the plaintiff the publisher of a work which he claimed to have originated, call "The Birthday Scripture Text Book", consisting of printed diary interleaved, with a blank space opposite each day with a text of scripture appended, and which was designed as a record of the birthdays of friends".**

**34. Mr. A.K. Sen submitted that under section 4 of the English Statute 25 and 26 Vic. C.A.P. LXVIII which was an Act amending the law relating to copyrights in works of the fine arts and for repressing the commission of fraud in the production and sale of such works."**

ii) Another decision of the Hon'ble Madras High Court has also been referred on behalf of the plaintiff in which it has been held by the Hon'ble Court that nowhere The Copyright Act, 1957 it can be seen that registration is a *sine qua non* or a condition precedent to the subsistence of copyright or acquisition of ownership thereon for relief for infraction of copyright. Under The Copyright Act, 1957 as amended under section 13 lease our work in which copyright may subsist and accordingly the Hon'ble Madras High Court held in that Judgment that copyright therefore is a creation of statute.

iii) Another Judgment has been referred by the plaintiff of the full bench of Judgment of the Hon'ble M.P. High Court as referred in **K.C. Bokadia and Anr. V. Dinesh Chandra and others reported in 1999(1) MPLJ 33** and in that Judgment the Hon'ble Court observed in paragraph "8".

**8. A careful analysis of the Scheme and the provisions of the Act does not disclose any legislative intention to make registration of copyright mandatory or to take away**

civil or criminal remedies in the event of non-registration of copyright. On the other hand, some of the provisions point a contrary conclusion. Copyright is the exclusive right, subject to the provisions of the Act, to do and authorise the doing of any of the acts enumerated in [Section 14](#) in respect of a work or a substantial part thereof. The first owner of the copyright shall be the author of the work. In other words, the ownership of the copyright is a logical consequence of the authorship. Copyright does not arise from registration of copyright. Provision regarding registration and maintenance of register is basically a provision to enable entries to be made in respect of relevant particulars including the names of owners of copyright. Unless there is an existing copyright and a person is the owner of a copyright, the question of applying for or making entries in the register of copyrights does not arise. Registration follows the copyright and not vice-versa. Certified copies of entries in the register are only prima facie evidence without further proof and they are not conclusive. A copyright when it is propounded or challenged has to be duly established in a competent Court. There is no specific provision as in the Trade and [Merchandise Marks Act](#) or the [Indian Partnership Act](#) barring institution of legal proceedings in the absence of registration. Having regard to all these circumstances, it has to be held that registration is not mandatory and for breach of copyright, civil or criminal remedy can be resorted to without registration.

iv) Another Judgment has been referred on behalf of the plaintiff **Saragama ltd. v. New Delhi Digital Media and others 2018 (1) CAL LT 190** wherein the Hon'ble Court in paragraph "16" observed

16. Mr. Chatterjee in response to the defence raised by the respondents that non payment of royalty to the producer or production houses would disentitle the petitioner to claim any relief in respect of such filmshngs has referred to in PunnetPrakashMehra(supra) and submitted that in the said decision it has been held that non payment of royalty is not at all germane for considering an issue of assignment. Saregama is the original owner of the aforesaid works and is entitled to use and exploit the same Mr. Chatterjee in particular has referred to paragraphs 67 of the said report which reads:

67. Non-payment of royalty o\as urged by Mr. Mitra in this matter is not at all germane the course issue is whether there ha been assignment of the copyright of the song "Apni to JeseTese" in the film Laawaris in favour of SARAGAMA. Lastly in view of the above findings, we hold that SARAGAMA has lawful right under the said agreement to grant license to use the said song either by reproduction in its entirety or by synchronization. Consequently the claim and contention of Eros prima facie is found to be valid as we see that there was a written documents granting license and this is permissible under the law."

v) Rajesh Masraniv. Tahiliani Design Pvt. Ltd. 2009 107 DRJ 484(DB) the Division Bench of the Hon'ble Delhi High Court it has also been referred on behalf of the petitioner and particularly paragraph "34" has been referred and for that purpose the relevant paragraphs that are paragraph "31" to "34" has been set out.

31. Last issue which needs to be considered by us is whether registration is compulsory for claiming protection under [Copyright Act](#) or not.

**OUR ANSWER IS : REGISTRATION OF COPYRIGHT IS NOT COMPULSORY**

34. It is settled law that registration of the work is not compulsory and is not a condition precedent for maintaining a suit for damages for infringement of Copyright. The plea of the plaintiff that to claim protection under [Copyright Act](#), registration is compulsory is, therefore, untenable.

vi) Therefore, all the Judgment as above referred has settled position of law that the registration of work is not compulsory and is not a condition precedent for maintaining a suit for damage for infringement of copyright. Registration is not a condition precedent for maintaining a suit for damage for infringement of copyright. All

the legislative intention as would appear from the provision under section 44 to provide for a prima facie prove of the particulars regarding the right as embodied under section 48.

vii) The main intention of The Copyright Act is to stop others from exploiting the works without the consent or assent of the owner of the copyright therefore, so far as regards the claim of the copyright for 7 articles where already the plaintiff has registration under needs not to be discussed and so far other five articles are concerned it can be said that registration is not compulsory for bringing an action for infringement in course of violation of copyright.

10. i) Next pertinent issue where the works of the plaintiff is an original artistic works an original jewelries have a unique shape, manner in depiction, motifs, surface pattern, arrangement and expression of elements creating a distinctive original identity.

ii) It is claimed by the plaintiff/petitioner that the said 9 original artistic works and original jewelries of the petitioner have a unique shape, manner in depiction, motifs, surface pattern, arrangement and expression of elements inductively creates a distinctive identity along with the originality. So far as the, concerned other articles, it is submitted their right are protected under the common law too use in respect of all its 11 original jewelries which from part of the suit on the basis of the inherited distinctiveness in their unique form, unique shape, manner in depiction, motifs, surface pattern, arrangement and expression of elements.

iii) In the decision of the Hon'ble High Court of Madras in **R. Gopalkrishnan v. M/s. Venkateshwara Camphor Works no. 14, Panner Selvam Street Puliampatti Coimbatore- 688 459 no. 14.** The decision of the Hon'ble Supreme Court of India in **Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories, AIR 1965 SC 980** has been referred wherein the Hon'ble Supreme Court while holding that the resemble can be phonetic, visual or in the basic idea. The relevant paragraph 17 as observed by the Hon'ble Supreme Court as follows:

**"In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial."**

iv) The plaintiff claims adaptation of artistic works. Generally adaptation has two meanings. Adaptation in relation to an artistic work means the conversion of the work into a dramatist work by way of performance in to be or otherwise in view of section 2(a)(ii).

Under the provision of section 2(a)(iv) adaptation also means in relation any work (including artistic work) in use of such work involving its rearrangement or alteration. To qualify for copyright protection and artistic work must be original i.e. it must originate from the author. In respect of painting, scripture, drawing, or work need not any artistic quality but author must have to store skill, judgment and efforts upon the work. The required skill, the Judgment and effort is minimum. Copyright protection is given to the work and not idea and that it is not originality of thought that has to be established to obtain copyright protection to but original skill and labour in execution.

v) Plaintiff claims copyright and further right of passing off as being actual owner of the product. The defendant raises such claims by saying that the product of the plaintiff is not original but genre. It is the defendant who has stated that nothing is original as produced by the plaintiff. The plaintiff produces gold ornaments in different shape and design by using items like trees, birds, flowers, flora and fauna etc. It is further stated by the defendant that tribal design as well as catalogue in the market in any jewellery house is used. It is the claim of the defendant that their can be no copyright in the images of nature ,trees, flower, birds, flora and fauna as such images are generic and commonly use. The defense is unique as until it is held that the owner or author has a copyright in the work then there is no violation of the copyright in case of imitation of the work, on the contrary, if the copy is substantial and material one then whether or not there are some variations, the defendant would be guilty of piracy.

vi) The decision of the Hon'ble M.P. High Court in **Pranda Jewellery Pvt. Ltd. v. in Aarya 24 KT** and other is cited on behalf of the plaintiff as the decision relates to the question of copying or piracy of copyright in gold. In that case, the Hon'ble M.P. High Court has referred the decision of the Hon'ble Supreme Court of India in case of **R. G. Anand v. M/s Delux Films** and quoted the relevant passage of the Judgment which is as follows.

**“46. Thus, on a careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge:**

**(1) There can be no copyright in an idea, subject-matter, these, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyright work.**

**(2) Whether the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the Courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.**

**(3) One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the the viewer after having read or seen both the works is clearly of the opinion and gets an Pg 4 of 17**

nms.2235.2012.doc.13.6.doc unmistakable impression that the subsequent work appears to be a copy of the original.

(4) Whether the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

(5) Whether however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case law discussed above.

(7) Whether, however, the question is of the violation of the copyright of stage play by a film producer or a Director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader perspective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and larger a copy of the original play, violation of the copyright may be said to be proved".

Therefore, if any article or product has been treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

11) i) Regarding the test of determination between the original works and imitated works the plaintiff referred the Judgment of the Hon'ble Supreme Court of India in **M/s. South India Beverage Pvt. Ltd. v. General Mills Marketing Inc. & Anr.** Although the Judgment relates to trademark but the Supreme Court in this Judgment has been observed that the comparison between the original and the imitated works shall be done keeping in mind an unwary purchaser of average intelligence and imperfect recollection by putting the decision of the Hon'ble Supreme Court of India in AIR 1963 SC 449, (**Amritdhara Pharmacy v. Satyadeo Gupta**). In the Judgment **M/s. South India Beverage Pvt. Ltd. v. General Mills Marketing Inc. & Anr. (supra)** the Hon'ble Supreme Court of India has been pleased to hold in paragraphs nos. 51, 52, 53 which are as follows:

**"50. Consumers of any product do not deliberately memorize marks. They only retain a general, indefinite, vague, or even hazy impression of a mark and so may be confused upon encountering a similar mark. Consumers may equate a new mark or experience with one that they have long experienced without making an effort to ascertain whether or not they are the same marks. The consideration therefore is whether one mark may trigger a confused recollection of another mark. Thus, if the marks give the same general impression confusion is likely to occur.**

**51. With a view to further foster our understanding of the concept of similarity and likelihood of confusion arising in trademark jurisprudence, we may profitably take cue from the analogous principle of 'observability' which is applied in the context of copyright laws.**

**52. The 'ordinary observer' test is applied to determine if two works are substantially similar. The Court will look to the response of an 'average lay observer' to ascertain whether a copyright holder's original expression is identifiable in the allegedly infringing work 274 F.2d 487 (2nd Cir. 1960) Peter Pan Fabrics Inc. v. Martin Weiner Corp. Since it is employed to determine qualitative**

and quantitative similarity in visual copyright work, the said test can also be usefully applied in the domain of trademark law as well.

**53. The Courts have reiterated that the test for substantial similarity involves viewing the product in question through the eyes of the layman. A layman is not expected to have the same 'hair-splitting' skills as an expert. A punctilious analysis is not necessary. A layman is presumed to have the cognition and experiences of a reasonable man. Therefore, if a reasonable observer is likely to get confused between the two products then a copyright violation is said to take place."**

The Hon'ble Supreme Court on India in this case observed that in the contest of trademark infringement, one may venture to access similarity and likelihood of confusion between the rival marks on the touch stone of impression gathered by reasonable observer, who is a layman as oppose to a connoisseur.

ii) Another Judgment is referred by the plaintiff regarding test of determination of infringement in trademark in **Midas Hygiene Industries Pvt. Ltd. v. Sidhir Bhatia and others reported in (2004) 3 SC 90** in which the Hon'ble Court has been pleased to observe that law on the subject is well settled. In cases of infringement either of trademark or of copyright, normally injunction must follow. The grant of injunction also becomes necessary if it prima facie appears that the adaptation of the mark was itself dishonest. In that case, the appeal has been preferred by the Hon'ble Supreme Court of India when the Hon'ble Division Bench has vacated the injunction Order as passed by the Hon'ble Single Bench merely on the ground there were delay and laches in filing the suit.

iii) Another judgment has been referred by the plaintiff of the Hon'ble Delhi High Court in **Sun Pharma Laboratories Pvt. Ltd. v. Ajanta Pharma Pvt. Ltd. 2019 (79) PTC 86 (Del)**. In this Judgment the Hon'ble Delhi High Court relates to pass infringement and passing off neutraceutical products. In this case the Hon'ble Delhi High Court has been pleased to observe in paragraph 20 of the Judgment as follows:

**"Thus, the settled law in passing off is that of probability or likelihood of confusion and not actual confusion. In Cadila, the Hon'ble Supreme Court has warned in case of products used for the same elements but the different composition, a more stringent specimen to be adopted."**

iv) It is further urged by the plaintiff that respondent has also not made out any case against the plaintiff's original artistic work or original jewellery that they have been reproduced more than 50 times by the plaintiff.

12. i) Creative design is not something that just miraculously happens; it takes fine tune of creative skills, mustering the use of a myriad different medium and technique which are the hallmark of contributor to the ever changing diversity of jewellery design.

ii) As argued by the plaintiff/petitioner against the defense of the respondent the items of generic articles that derivative work is equally recognize by the law. In order to claim right into the derivative works containing the original materials, the plaintiff is to show adaptation, abridgement, arrangement, dramatization or translation in his works entitled him to have certain rights. In order to qualify for independent right in derivative or collective works, the additional matter injected in a prior work or on the matter of rearrangement or otherwise transforming a prior works must constitute more than the mutual contribution which can be ascertained only if the prior work and the work done by the plaintiff is produced. A derivative work consists of contribution of original materials to a pre-existing work so as to the recast, transform or adapt the pre-existing work. This would include a new version of a work by way of abridgment, adaptation, arrangement etc.

iii) In many cases, the work is derived from an existing work. Whether in such derivative works, in new copyright work is created, will depend upon various factors, and would one of them be only skill, capital and labour expanded upon it to qualify for copyright protection in a derivative work created from pre-existing material and the required exercised of independent skill, labour and capital in its creation by the author qualifying for the copyright protection in the derivative work. Or it will their creativity in a derivative work in which the ferial position will depend upon the amount and value of the correction and improvement, the independent skill and labour, and the creativity in the end-product is such as to create a new copyright work to make the creator of the derivative work the author of it and it not there will be no new copyright work.



iv) In case of **Designer's Guild Ltd. v. Russell Williams (Textile Ltd.)**, the plaintiff brought proceeding claimed that the defendant caused infringement by the copyright of the plaintiff by the coping one of his fabric designs, i.e. for the fabric design Ixia. The infringement of which the plaintiff complained was that for the purpose of creating its own design Marguerite by the defendant, the defendant had copied a substantial part of Ixia, secondly, did what had been copied amount to "the whole or a substantial part" of IXIA? It was held by the House of Lords that the law copyright rests on a very clear principle that anyone who by his/her own skill and labour creates an original work of whatever character shall enjoy and exclusive right to copyright work and no one else may for a season reap what the copyright owner had sown.

13. Point of similarities and dissimilarities or the originalities of the jewelry articles in comparing of the Respondent's jewelries hence be taken up for categorical evaluation which is permissible up to the point at this stage.

I am not unmindful that at this state I am disposing of the injunction application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure.



a) So far as **the item no. 1**, MOYNA BAGAN, as it is claimed by the Defendant/Respondent that it has been incorporated from the documents which have been produced by them as the design of the same was adopted from the design of the J.K. DAS (page no. 371 pic. 1 and also page 193, pic. 8) according to the Respondent original jewelry as claimed by the petitioner titled as MOTANA BAGAN is nothing original but adaptation from the design of the J.K. DAS

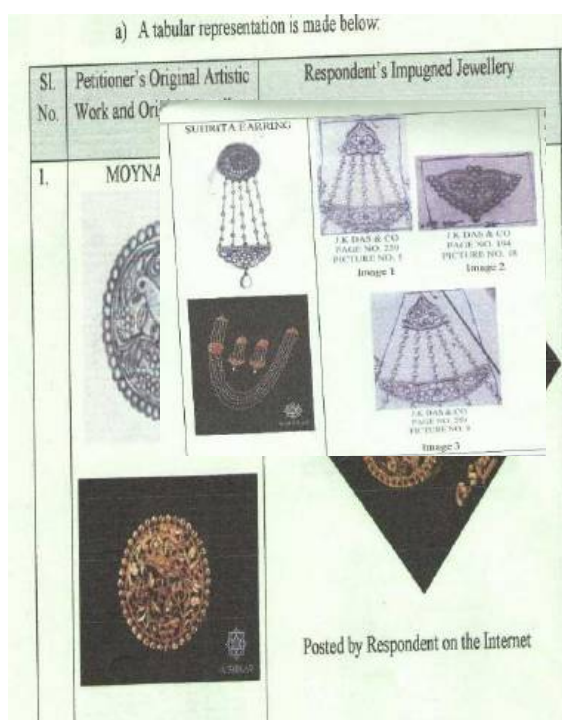
Sl. No.	Petitioner's Original Artistic Work and Original Jewellery	Respondent's Claimed Prior published works in its Annexure F to the Written Objection from Page No. 153 to 165
1.	<p>MOYNA BAGAN</p> 	 <p>J.K. DAS PAGE NO. 371 PICTURE 1 Image 1</p> <p>J.K. DAS PAGE NO. 193 PICTURE 8 Image 2</p> <p>J.K. DAS PAGE NO. 304 PICTURE NO. 2 Image 3</p> <p>J.K. DAS PAGE NO. 201 PICTURE NO. 2 Image 4</p>

But, the argument of the petitioner is otherwise. Firstly, no design as adapted as alleged from the J.K. DAS is not applicable in MAYNA BAGAN as it is designed by the petitioner and there is no similarity and it may be adapted work upon which skill, labour, intelligence have been applied to develop it and which now becomes an original. On the other hand, it is alleged by the petitioner the respondent has totally violated the Copy Right of the petitioner by advertising and sealing their product which is similar to the product of the petitioner. If we consider side by side it appears both artistic works comprise of a bird in the centre with its wings pointed downward and a similar tail feather, which is surrounded by top view of a petaled flower and leaves on all sides with a stem of a branch originating [from the right end of the image] right end of the image upwards which is rested upon by the tail feather of the bird. The exterior circle is surrounded by ball like protrusions on the

outer rim. Both jewelries are compared in ordinary view it shows similarity. I am not again unmindful that it is the test of first impression and it is the test of just an outlook to be taken into account while comparing the products of the rival products and in this stage there is no scope for microscopic research work to find out dissimilarity. If it is found apparently similar at a first look or on first impression and if similarity is found that is enough at this stage.

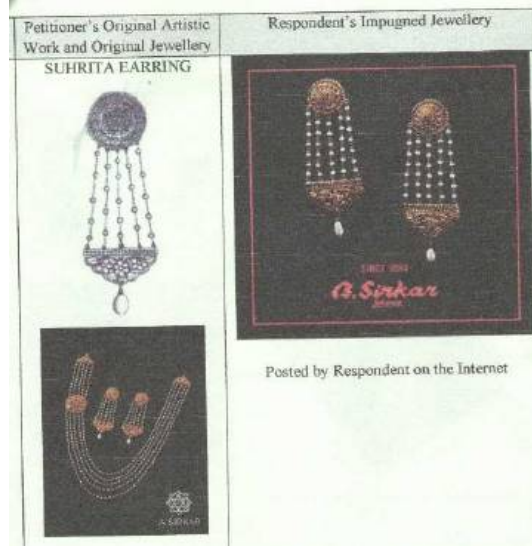
**b) Item no. 2 SUHRITA EARRING**

it is claimed by the Respondent that the design of the jewelry is adapted from the J.K. DAS & Co. (page 217, pic no. 3 and page no. 238, pic no. 2) and accordingly the product of the petitioner is nothing but an original but adaptation.



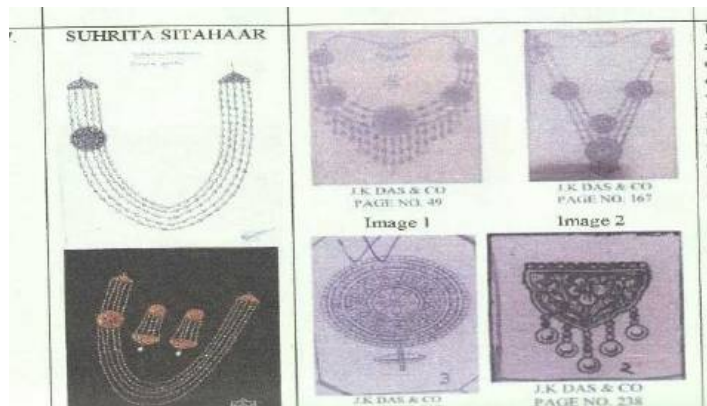
But, again we have seen that the petitioner used labour, skill, intelligence to prepare their own design which is permissible and may be treated as original but the argument of the petitioner is otherwise, accordingly to them, the jewellery as prepared and designed by them is totally violated the copy right by the Respondent. If we compared it would appear at first impression both the petitioner's and the respondent's artistic works comprise of a circular piece at the top comprising of concentric circles connected with a triangular pieces at the bottom with beaded

strings. The bottom pieces consist of the top view of a petaled flower at the centre with two more similar flowers at the sides and the wavy contoured outline with an elliptical ball hanging from the centre position at the bottom. The



similarities between the artistic works are overt and irrefutable as a whole and apparently I don't find any distinguishable outlook and the similarities between the artistic works are overt and irrefutable as a whole.

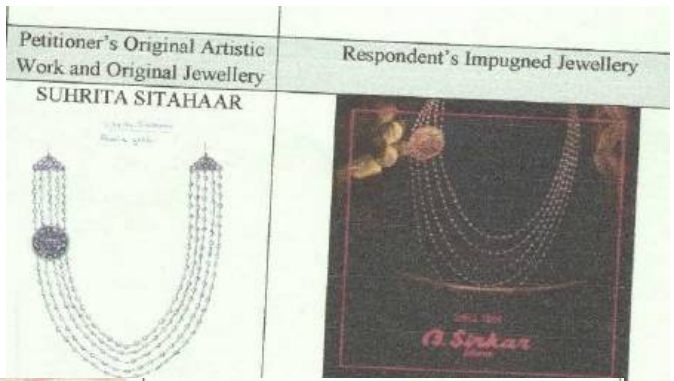
**c) Item no. 3 SUHRITA SITAHAAR** again I don't find any distinguishable similarity as alleged by the



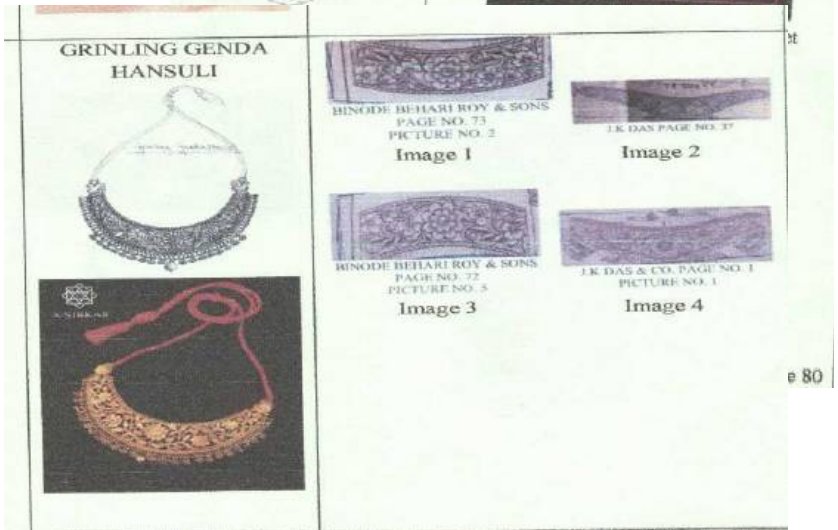
Respondent that the design adapted by the petitioner is copied from J.K. DAS & Co. but here also petitioner brought same distinguishable work designed by putting labour, skill and intelligence.

On the contrary if we compared artistic work of the respondent with the petitioner's both artistic works comprise of two triangular pieces connected by beaded string and with a circular piece [at the left side of the image] at one side. The triangular piece comprises of the top view of a petaled flower at the centre and the circular piece comprising of similar piece comprising of similar concentric circles

with similar V Shaped patterns. The similarities between the artistic works are overt and irrefutable as a whole.



**d) Item no. 4**  
 GRINGLING GENDA HANSULI here is again it is not found any distinguishable similarity as alleged by



the Respondent that the design adapted by the petitioner is copied from J.K. DAS & Co. [page no. 73, pic. 2, page no. 37 image 2, page no. 72 image 3 and page no. 1 image 4] but here also petitioner brought same distinguishable work, design by putting labour, skill and intelligence.

If we compare all artistic works of both the petitioner and respondent it would arise in normal look that both artistic works both artistic works comprise of a necklace with a similar petaled flower at the centre with S shaped wavy branches sidwards connecting similar flowers and interspaced with leaves and



bordered by spike like protrusions on both the exterior borders. The bottom border line also comprises of tassel with multiple ball like protrusions. Similarities between the artistic works are overt and irrefutable as a whole.

**e) Item no. 5, TOTA PAKHI KAAAN JHUMKA,** in this same aspect I

don't find any distinguishable similarity as alleged by the Respondent that the design adapted by the petitioner is



copied from J.K. DAS & Co. [ image no. 1 to 4] but the same thing I have to reiterate here that the petitioner brought same distinguishable work designed by putting labour, skill and intelligence.

At the comparison of the both artistic works between the petitioner and the respondent it comprises of a bird at the centre is S shape with its beak and head pointed in an U shape towards its

back [at the right hand side of the image} and with a stem arising from the bottom



interspaced with top views of petaled flowers and leaves. The

outlines are in the shape of an elongated C shape with spike like protrusions on exterior of the C shape. The inner cavity is not encased in any border and has leaves and petals protruding out. I am not again unmindful that it is the test of first impression and it is the test of just an outlook to be taken into account while comparing the products of the rival products and in this stage there is no scope for microscopic research work to find out dissimilarity. The similarities between the artistic works are overt and irrefutable as a whole.

**f) Item no. 6 MOUSHUMI ROSE CHOKER**, it is also claimed by the Defendant/Respondent

that it has been incorporated from the documents which have been produced by them as the design of the same was adopted from the design of the J.K. DAS (images 1 to 4) according



to the Respondent original jewelry as claimed by the petitioner titled as MOUSHUMI ROSE CHOKER is nothing original but adaptation from the design of the J.K. DAS.

Again if we compare both artistic works comprises of a petaled flower at the centre with a stem protruding both ways [at the right hand side of the image] and such stem ending in a three leaf

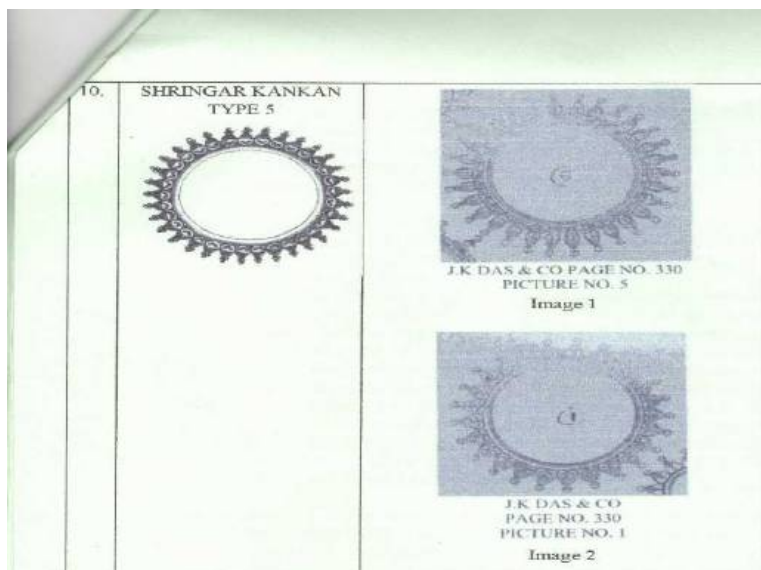
configuration at both sides. From centre convergence of the two junctions of this three leaf configuration arises stems to two sets of flowers with one [at the left hand side of the image] leading to two similar buds and the other one [at the right hand



side of the image] leading to a full bloomed flower and a smaller bud. The mesh of both is perforated with the border line being also interspaced with round balls. In normal look it is not easily distinguishable.

**g) Item no. 7, SHRINAGAR KANKAN TYPE 5, in this same aspect I**


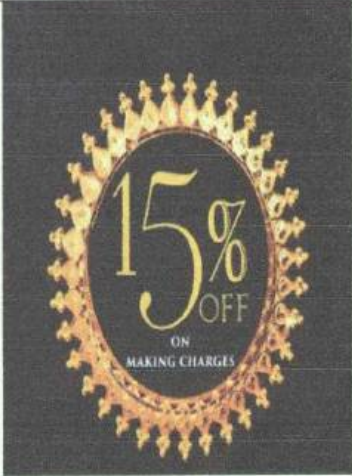
don't find any distinguishable similarity as alleged by the Respondent that the design adapted by the petitioner is copied from J.K. DAS & Co.



[page no. 330 image 1 and page no. 1, image 2]. but the same thing I have to reiterate here that the petitioner brought same distinguishable work designed by putting labour, skill and intelligence.

If we compare both the products of the respondent and the petitioner it would appear that both artistic works comprises of

bangle with tear drop shaped protrusions arising from its exterior rim and the conical side of the tear drop shape being the origination point of three balls in a triangular configuration with two at the bottom and a centre piece at

Petitioner's Original Artistic Work and Original Jewellery	Respondent's Impugned Jewellery
<p>SHRINGAR KANKAN TYPE 5</p> 	

the top. The similarities between the artistic works are overt and irrefutable as a whole at the first look and impression.

**h) Item no. 8, BANI BOTTU,** in this case no prior published works have been cited by the respondent in their written objection.

But in the similar as mentioned prior if we compare both the artistic works comprises of a ribbon with one rectangular centre

piece fastened with four plus shaped connectors to the ribbon and the round balls on each side fasted with similar plus shaped connectors to the ribbon and interspaced

Sl. No.	Petitioner's Original Artistic Work and Original Jewellery	Respondent's Impugned Jewellery
8.	<p>BANI-BOTTU</p> 	

with small solid plates of metal. Each ball on both such sides have three additional miniscule balls protruding from its surface on three



separate directions. The rectangular piece comprises of triangular patterns on its surface and beaded balls on its lower side, it looks like similar design with very minimum difference which cannot be easily distinguishable otherwise microscopic research.

**i) Item no. 9, KAKOLI,** it is also claimed by the respondent that the

design of the this particular ornament is copied by the petitioner from the jewelry design of the J.K. DAS [page no. 284, image 1, and page no. 491, image 2]. But, again we have to see that the petitioner used labour, skill,



intelligence to prepare their own design which is permissible and may be treated as original. Although, the claim of the petitioner is otherwise.

If we compare artistic work of both parties it comprises of a necklace having one broad chain in U shaped with spike like protrusions and with three thinner chains hanging below having below having beaded protrusion. The centre comprises of a massive circular device hanging from a circular device and having a cavity comprising of a separate circular device and a bell like projections at the centre bottom. Both the artistic works also have similar tassel at the bottom. The U formation at eth centre device also ends in elephant mouth shapes and body of the centre device being interspaced with top views of petaled flowers, the similarities

between the artistic works are overt and irrefutable as a whole.

Sl. No.	Petitioner's Original Artistic Work and Original Jewellery	Respondent's Impugned Jewellery
9.	KAKOLI 	

**j) Item no. 9,**

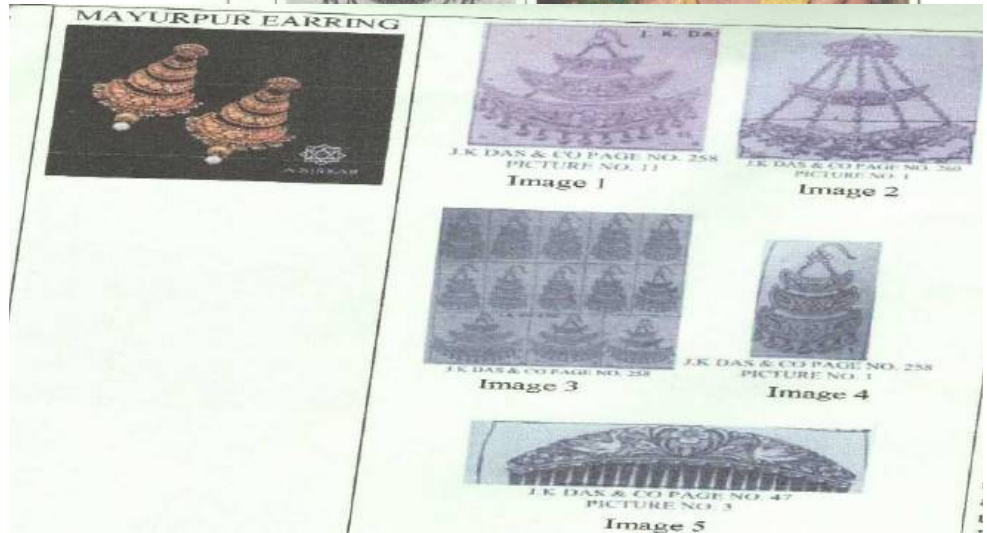
MAYURPUR

EARRING, in

this same aspect

I don't find any

distinguishable



similarity as alleged by the Respondent that the design adapted by the petitioner is copied from J.K. DAS & Co. [images 1, 2, 3, 4 and 5]. Instead of this, again we have to see that the petitioner used labour, skill, intelligence to prepare their own design which is permissible and may be treated as original. Although, the claim of the petitioner is otherwise.

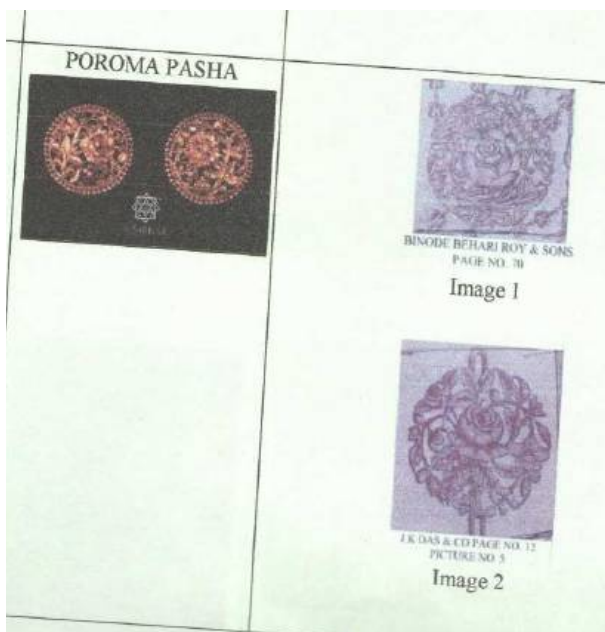
At the comparison of the both works of the respondent and the petitioner it would appear that both artistic works comprise of a four-tiered earring with each tier being in a U-shaped and with a circular device at the top and a bell-like device at the bottom, the U-shaped tiers also have a similar depiction of two

Petitioner's Original Artistic Work and Original Jewellery	Respondent's Impugned Jewellery
MAYURPUR EARRING 	

birds with wings open at the sides surrounding a centre element of a top view of a petaled flower, this kind of depiction is most prominent at the broadest tire at the bottom where the identical posture of the birds with beaks positioned towards each other resting close to two petals can be seen. The bottom border is further surrounded by similar tassel with multiple balls hanging from a circular ring. The similarities between the artistic works are overt and irrefutable as a whole in the first look and impression.

**k) Item no. 10, PAROMA PASHA**, it is claimed by the Respondent that the design of the jewelry is adapted from the BINODE BIHARI ROY & SONS (page 70, image

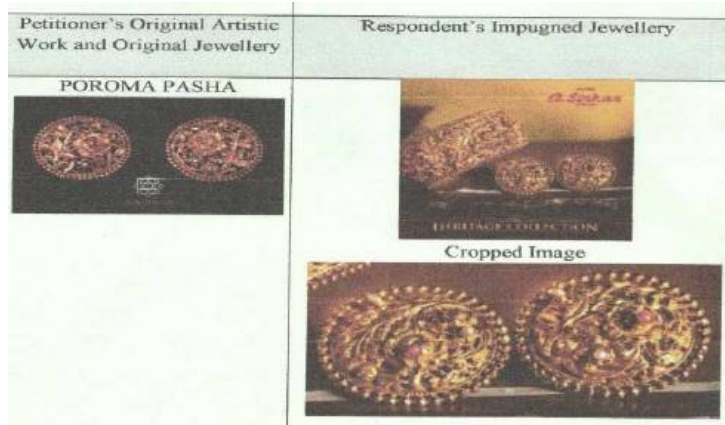
no. 1 and page no. 5, image no. 2 and accordingly the product of the petitioner is nothing but an original but adaptation. But, again we have to see that the petitioner used labour, skill, intelligence



to prepare their own design which is permissible and may be treated as original but the argument of the petitioner is otherwise, accordingly to them, the jewellery as prepared and designed by them is totally violated the copy right by the Respondent.

If we compared it would appear at first impression both the petitioner's and the respondent's artistic works comprise of circular device with beaded balls at the outer rim. The central theme is a

similar looking flower with a red stone at its centre. There is also a similar main stem with leaves arising from the



bottom to the top at one side of the flower, even all other prominent flowers apart from the central flower have a white stone in centre.

The similarities between the artistic works are overt and irrefutable as a whole.

### CONCLUSION

1. Before parting with the discussion it can be concluded that at this stage of hearing of temporary injunction application the petitioner/plaintiff has been able to prove that there is prima facie material to go to the trial and balance of convenience also in favour of the petitioner/plaintiff.
2. In case of infringement and passing off, the Court is required to pass injunction. In previous discussion I have elaborately discussed the case of the petitioner as well as the case of the respondent and I find there is a prima facie material for trial and also irreparable loss or injury would cause if the temporary injunction Order has not been passed since the jewellery of the petitioner is apparently similar to that of the respondent which is seen at this stage. The purpose of the Act is to prevent misuse.
3. **Hence the petition being I.A. No. 221 of 2020 under Order 39 Rule 1 and 2 read with section 151 of the CPC filed by the petitioner is allowed and the *ad interim* Order of injunction as passed by this Court on 14.10.2020 is made absolute till disposal of the suit.**

**Another application as filed by the Respondent/Defendant under Order 39 Rule 4 being and I.A. No.325/2020 is rejected.**

**Both the petitions are disposed of on contest. It appears that no written statement has been submitted.**

**To 6<sup>th</sup> March, 2021 for passing necessary order in respect of written statement and first case management hearing.**

*Dictated & corrected by,*

*Sd/-*

*Judge, Commercial Court at Alipore*

*For South 24 Parganas, Purba Medinipore*

*& Paschim Medinipore*

*Sd/-*

*Judge, Commercial Court at Alipore*

*For South 24 Parganas, Purba Medinipore*

*& Paschim Medinipore*

**Misc Case05/2020**

Order no. 34

09.02.2021

*Today is fixed for further order along with T.S.-29/2020.*

*Both sides file their respective haziras.*

*Fix **06.03.2021 at 12.30 P.M.** for hearing.*

*Dictated & corrected by me,*

*Sd/-*

*Judge, Commercial Court at Alipore  
For South 24 Parganas, Purba Medinipore  
& Paschim Medinipore*

*Sd/-*

*Judge, Commercial Court at Alipore  
For South 24 Parganas, Purba Medinipore  
& Paschim Medinipore*