



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

TUESDAY, THE 30TH DAY OF JUNE 2026 / 9TH ASHADHA, 1948

OP(C) NO. 147 OF 2026

**AGAINST THE ORDER DATED 10.12.2025 IN IA 1/2025 IN CS NO.98
OF 2025 OF III ADDITIONAL SUB COURT, ERNAKULAM**

PETITIONERS/RESPONDENTS/DEFENDANTS:

- 1 AINES FOOD & BEVERAGES
INDUSTRIAL ESTATE, SOUTH KALAMASSERY,
ERNAKULAM, KOCHI,
REPRESENTED BY ITS MANAGING PARTNER
ALPHIN CYRIAC., PIN - 683 109**

- 2 ALPHIN CYRIAC
AGED 36 YEARS
S/O CYRIAC, RESIDING AT CHEMBUMUKKU DESOM
TRIKKAKARA POST, MANAGING PARTNER
AINES FOOD AND BEVERAGES,
INDUSTRIAL ESTATE KALAMASSERY,
ERNAKULAM, KOCHI., PIN - 683 109**

- 3 MANJU ALPHIN
AGED 33 YEARS
W/O ALPHIN CYRIAC, PARTNER
AINES FOOD AND BEVERAGES, INDUSTRIAL ESTATE
KALAMASSERY,
ERNAKULAM, KOCHI., PIN - 683 109**



BY ADVS.
SHRI.R.SUDHEER
SRI.SAJEN THAMPAN
SMT. JINU SAMYUKTHA PADMAKUMAR
SMT.AYOONA P. M.
SMT.T.U.ANUKRISHNA
SMT.K.N.RAJANI

RESPONDENT/PETITIONER/PLAINTIFF:

ABDULLA MUHAMMED SALI
AGED 44 YEARS
S/O MUHAMMED SALI, FOUNDER & CEO OF B2B TRADERS,
AN INDIAN SOLE PROPRIETOR FIRM HAVING
REGISTERED OFFICE AT B2B TRADERS,
1581 GOVINDA MANGALAM, OORUTTAMBALAM,
THIRUVANANTHAPURAM, KERALA., PIN - 695 507

BY ADVS.
SMT.S.AMINA
SMT.MATHEWS ELIZABETH S.
SMT.PARVATHY PRASANNAN
SMT.S.LAKSHMY
SMT.FASEELAMOL K.R.
SMT.ANINA VARGHESE
SMT.ANANYA REGHU
SMT.ANJALI SONY

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 13.2.2026
THE COURT ON 30.6.2026 DELIVERED THE FOLLOWING:



T.R.RAVI, J.

OPC No.147 of 2026

Dated this the 30th day of June, 2026

JUDGMENT

The prayer in the original petition is to set aside Ext.P5 order and to direct the Commercial Court to dispose of Ext.P9 application expeditiously, keeping in abeyance Ext.P8 interlocutory application till disposal of Ext.P9. Short facts required for deciding the original petition are as follows;

2. The petitioners are the defendants in a suit filed by the respondent alleging infringement and passing off, of the allegedly original design of a bottle. The copy of the plaint has been produced as Ext.P1. The petitioners filed written statement, copy of which has been produced as Ext.P4. In Ext.P4, the petitioner has in paragraph No.1 pleaded that the design on which the respondent claimed exclusiveness, has



been disclosed to the public in India as well as in other countries in a tangible form, and, cannot be treated as an exclusive design. It is further contended that in view of the specific provisions contained in clauses (a), (b), (c) and (d) to sub-section (1) of Section 19 read with Section 22(4) of the Designs Act, 2000 (hereinafter referred to as 'the Act'), the suit is liable to be transferred to the High Court of Kerala for further proceedings. The written statement goes on to explain the manner in which the design cannot be treated as exclusive etc.

3. The petitioner relies on the decision of the Hon'ble Supreme Court in **S.D. Containers Indore vs. Mold-Tek packaging Ltd [2021 (3) SCC 289]**, wherein it was held that Section 22 and Section 19 of the Act operate in two different fields, that Section 19 entitles the parties to move the Controller for cancellation of a design, even when the registered proprietor is not using the design, and that Section



22 is available where the impugned design is being used. The question that hence arises for decision is whether, once a defence is taken against the validity of the design, Section 22(4) of the Act has to be applied and the suit transferred to the High Court, or, whether the Court should first decide on merits that there is a prima facie issue regarding the validity of the design, and thereafter transfer the suit.

4. Sections 19 and 22 of the Act are extracted below for reference;

“19. Cancellation of registration.-(1) Any person interested may present a petition for the cancellation of the registration of a design at any time after the registration of the design, to the Controller on any of the following grounds, namely:-

- (a) that the design has been previously registered in India; or
- (b) that it has been published in India or in any other country prior to the date of registration; or
- (c) that the design is not a new or original design; or
- (d) that the design is not registrable under this Act; or
- (e) that it is not a design as defined under clause (d) of section

(2) An appeal shall lie from any order of the Controller under this section to the High Court, and the Controller may at any time refer any such petition to the High Court, and the High Court shall decide any petition so referred.



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22. Piracy of registered design.-(1) During the existence of copyright in any design it shall not be lawful for any person-

(a) for the purpose of sale to apply or cause to be applied to any article in any class of articles in which the design is registered, the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or

(b) to import for the purposes of sale, without the consent of the registered proprietor, any article belonging to the class in which the design has been registered, and having applied to it the design or any fraudulent or obvious imitation thereof; or

(c) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article in any class of articles in which the design is registered without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section, he shall be liable for every contravention-

(a) to pay to the registered proprietor of the design a sum not exceeding twenty-five thousand rupees recoverable as a contract debt, or

(b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly:



Provided that the total sum recoverable in respect of any one design under clause (a) shall not exceed fifty thousand rupees:

Provided further that no suit or any other proceeding for relief under this sub-section shall be instituted in any Court below the Court of District Judge.

(3) In any suit or any other proceeding for relief under sub-section (2), every ground on which the registration of a design may be cancelled under section 19 shall be available as a ground of defence.

(4) Notwithstanding anything contained in the second proviso to sub-section (2), where any ground on which the registration of a design may be cancelled under section 19 has been availed of as a ground of defence and sub-section (3) in any suit or other proceeding for relief under sub-section (2), the suit or such other proceeding shall be transferred by the Court, in which the suit or such other proceeding is pending, to the High Court for decision.

(5) When the Court makes a decree in a suit under sub-section (2), it shall send a copy of the decree to the Controller, who shall cause an entry thereof to be made in the register of designs.”

5. In **M/s.Kadambukattil Exports vs. M/s.Nilkamal Ltd [ILR 2013 (2) Kerala 545]**, a learned Single Judge of this Court considered a similar issue and held that ouster of jurisdiction cannot be readily inferred and the Court should be prima facie satisfied that its jurisdiction is ousted. This Court



was of the view that if some materials are produced, which will enable the District Judge to arrive at a prima facie satisfaction as to the existence of the grounds pleaded under Section 19 of the Act, the suit has to be transferred. A learned Single Judge of the Allahabad High Court in the decision in **R.N.Gupta & Co.Ltd. Jasola vs. Action Construction Equipments Ltd.Dudhola & Ors. [2016 SCC OnLine Allahabad 975]** considered a similar issue. The Court referred to **M/s.Kadambukattil Exports** (supra) in extenso and finally held that the finding that there should be a prima faice satisfaction before transferring the case to the High Court cannot be accepted. The Court relied on a Division Bench judgment of the Allahabad High Court in **Standard Glass Beads Factory vs. Dhar [AIR 1961 Allahabad 101]**, which was rendered under the Patents and Designs Act, wherein it was held that the District Judge is left with no jurisdiction when a defence is taken challenging the validity of the design.



6. In **S.D. Containers** (supra), the Hon'ble Supreme Court has referred to **R.N.Gupta** (supra) while rendering its decision. The Hon'ble Supreme Court in that case was considering a challenge to an order passed by the Madhya Pradesh High Court, setting aside an order transferring a suit under Section 22(4) of the Act, to the Calcutta High Court. That was a case in which the defendant had filed a written statement along with a counter claim seeking cancellation of the registered designs on grounds available under Section 19 of the Act. The Madhya Pradesh High Court held that the Commercial Court was competent to decide the suit and there was no necessity for a transfer to the High Court. The Hon'ble Supreme Court considered the Division Bench judgment of the Allahabad High Court in **Standard Glass Beads Factory** (supra), **R.N.Gupta** (supra), the judgment of a learned Single Judge of the Karnataka High Court in **Astral Polytechnik Ltd vs. Ashirvad Pipes (P) Ltd [2008 SCC OnLine Karnataka**



175], the judgment of the Jammu and Kashmir High Court in **Escorts Construction Equipments Ltd vs. Goutham Engineering Company [2009 SCC OnLine J&K 36]** and the judgment of the Bombay High Court in **Whirlpool of India Ltd. vs. Videocon Industries Ltd. [2014 SCC OnLine Bombay 565]** and approved the same. The different High Courts had taken a view that once a defence is taken as contemplated in Section 22(4) of the Act, the case has to be transferred to the High Court. The said view also appears to be the clear intention of the Statute since the words used are “notwithstanding anything contained in the second proviso to sub-section (2), where any ground on which the registration of a design may be cancelled under Section 19 has been availed of as a ground of defence.”

7. In the above circumstances, this Court is of the view that on filing of the written statement clearly taking such a defence, it was not open for the Commercial Court to deal with



the case any further and the Court was bound to transfer the case to the High Court for its decision.

8. The original petition is hence allowed. Ext.P5 order is set aside as without jurisdiction since it has been rendered after the filing of the written statement raising a defence against the validity of the design. There will be a direction to the Court below to transfer CS.No.98 of 2025 to the High Court of Kerala immediately.

Sd/-

T.R.RAVI
JUDGE

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APPENDIX OF OP(C) NO. 147 OF 2026

PETITIONERS' EXHIBITS

- Exhibit P1 TRUE COPY OF THE PLAINT FILED BY THE RESPONDENTS HEREIN BEFORE THE COMMERCIAL COURT/ ADDL. SUB COURT III AT ERNAKULAM, DATED 22.08.2025
- Exhibit P2 TRUE COPY OF THE INTERLOCUTORY APPLICATION FILED BY THE RESPONDENTS HEREIN BEFORE THE COMMERCIAL COURT/ ADDL SUB COURT -III AT ERNAKULAM, DATED 22.08.2025
- Exhibit P3 TRUE COPY OF THE COUNTER AFFIDAVIT IN I.A. NO.1 OF 2025 IN C.S. NO.98 OF 2025, DATED 17.09.2025
- Exhibit P4 TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS THEREIN IN C.S. NO.98 OF 2025 BEFORE THE COMMERCIAL COURT/ ADDL. SUB COURT AT ERNAKULAM, DATED 10.11.2025
- Exhibit P5 TRUE COPY OF THE ORDER IN I.A. NO.1 OF 2025 IN C.S. NO.98 OF 2025, DATED 10.12.2025
- Exhibit P6 TRUE COPY OF THE APPEAL FILED BEFORE THE COMMERCIAL APPELLATE COURT/ DISTRICT COURT, ERNAKULAM, DATED 29.12.2025
- Exhibit P7 TRUE COPY OF THE NOT PRESS MEMO FILED BY THE PETITIONERS HEREIN BEFORE THE COMMERCIAL APPELLATE COURT/ DISTRICT COURT, ERNAKULAM, DATED 07.01.2026
- Exhibit P8 TRUE COPY OF THE I.A. NO.7/2025 FILED BY THE RESPONDENT HEREIN BEFORE THE COMMERCIAL COURT/ ADDL SUB COURT AT ERNAKULAM, DATED 19.12.2025
- Exhibit P9 TRUE COPY OF THE I.A. NO.1/2026 FILED BY THE PETITIONERS HEREIN BEFORE THE COMMERCIAL COURT/ ADDL SUB COURT III AT ERNAKULAM, DATED 09.01.2026
- Exhibit P10 TRUE COPY OF THE CASE HISTORY OF C.S. NO.98 OF 2025 ON THE FILES OF THE COMMERCIAL COURT III



Exhibit P11 THE TRUE COPY OF THE PETITION FOR CANCELLATION FOR THE REGISTRATION OF A DESIGN PREFERRED BY THE PETITIONER, DATED 25.11.2025.

RESPONDENT'S EXHIBITS

Exhibit R1A TRUE COPY OF THE DESIGN APPLICATION AS DOCUMENT NO.10 ALONG WITH THE COUNTER AFFIDAVIT TO I.A.NO.1/2025 IN C.S. N.O.98/2025

Exhibit R1B TRUE COPY OF THE DOCUMENT NO.2 ALONG WITH C.S.98/2025 BEFORE THE COMMERCIAL COURT ERNAKULAM

Exhibit R1C (III) TRUE COPIES OF DOCUMENTS INDICATING THE USE, EXTENSIVE SALES, WIDE DISTRIBUTION NETWORK, AND POPULARITY, AWARDS AND RECOGNITION OBTAINED IN RESPECT OF THE RESPONDENT'S PRODUCTS IN THE REGISTERED IYO BOTTLE SHAPE, AS FILED AS DOCUMENTS NO. 1, 3 TO 8 ALONG WITH THE SUIT

Exhibit R1D TRUE COPY OF THE PETITIONERS PRODUCTS WERE COEXISTING IN OTHER BOTTLE SHAPE ON THE SAME SHELVES AND SALES POINTS WITH THE RESPONDENT'S PRODUCTS TILL OCTOBER 2024, AS CAN BE SEEN FROM THE IMAGES FILED AS DOCUMENT NO. 9 ALONG WITH THE SUIT, AND DOCUMENT NO.1 TO 3 IN IA NO. 4 OF 2025 - PETITION TO ACCEPT ADDITIONAL DOCUMENT FILED BY THE RESPONDENT

Exhibit R1E TRUE COPY OF THE 12 DOCUMENTS ALONG WITH THE COUNTER AFFIDAVIT TO INJUNCTION PETITION,

Exhibit R1F TRUE COPY OF THE DOCUMENTS EVIDENCING THE SAME WAS FILED AS ADDITIONAL DOCUMENTS UNDER IA NO. 6 OF 2025 IN THE SUIT,

Exhibit R1G TRUE COPIES OF THE DOCUMENTS FILED BY THE RESPONDENT ALONG WITH EXT.P8 PETITION BEFORE THE COURT BELOW