



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**  
**DATED THIS THE 11<sup>TH</sup> DAY OF JUNE, 2026**  
**BEFORE**  
**THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR**  
**MISCELLANEOUS FIRST APPEAL NO. 2946 OF 2015 (IPR)**

**BETWEEN:**

1. M/S MI MARBO ITALIA  
NO. 30/3-2,  
BANNERGHATTA ROAD  
MARBLE MARKET  
BANGALORE – 560 030.  
REP. BY ITS PROPRIETOR  
BHANWARILALMAHESHWARI

...APPELLANT

(BY SRI. HARIKRISHNA S HOLLA, ADVOCATE)

**AND:**

1. M/S M MARBLE ITALIA  
TILE ITALIA MOSAICS PVT LTD  
A COMPANY INCORPORATED UNDER  
THE COMPANIES ACT, 1956  
HAVING ITS OFFICE AT NO.37  
BRAHMANANDA COURT  
LALBAGH ROAD  
BANGALORE – 560 027.  
REP. BY ITS AUTHORISED  
REPRESENTATIVE MAYUR PATIL

...RESPONDENT

(BY MS. KALYANI S, ADVOCATE FOR  
SRI. ADITYA NARAYAN, ADVOCATE)





THIS MFA IS FILED U/O 43 RULE 1(r) OF CPC, AGAINST THE ORDER DATED 31.03.2015 PASSED ON IA NO.1 IN O.S NO.7026/2014 ON THE FILE OF THE XVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE CITY AND ETC.,

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

### **ORAL JUDGMENT**

This Memorandum of First Appeal is filed by the appellant/defendant questioning the order dated 31.03.2015 passed on I.A No.1 in O.S No.7026/2014 by the XVIII Additional City Civil Judge, Bengaluru City<sup>1</sup>, whereby, the application-I.A No.1 filed by the plaintiff under Order 39 Rule 1 and 2 read with Section 151 of CPC for temporary injunction is allowed.

2. For the sake of convenience and easy reference, the parties are referred to as per their rankings before the Trial Court.

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<sup>1</sup> hereinafter referred to as 'the Trial Court' for short.



3. The plaintiff has filed a suit for permanent injunction seeking to restrain the defendant from using and running a business in the name resembling to that of the plaintiff's business entity. The plaintiff has filed the documents in order to show their prima facie case and balance of convenience and if an order of temporary injunction is not granted, what injury would be happened to the plaintiff and considering the same, the trial Court has granted an order of temporary injunction against the defendant.

4. It is the contention of the appellant/defendant that, while considering the application for temporary injunction, the trade name used by the defendant is not deceptive one and not similar to that of the plaintiff, as the words '*MARBLE* and *ITALIA*' used by the plaintiff are generic terms. Therefore, using generic term on the product cannot become a deceptive one. Therefore, the defendant prays to reject the application.



5. The trial Court allowed the application and granted an order of temporary injunction by relying on the several documents placed on record by both the parties.

6. Being aggrieved by the order of temporary injunction, the appellant/defendant has preferred the present appeal by raising various grounds and learned counsel for the appellant/defendant in consonance with the grounds urged in the memorandum of appeal submitted that, the plaintiff has not acquired any distinctiveness in the alleged trademark, which is merely a combination of the words '*MARBLE* and '*ITALIA*' and therefore, the trial Court failed to correctly appreciate this aspect while granting the order of temporary injunction.

7. Further, it is submitted that the trademark adopted by the plaintiff is a combination of a product name and geographical name, hence, the plaintiff cannot claim a monopoly over the same. It is argued that the words '*MARBLE* and '*ITALIA*' is a noun and a generic term



and no one can claim monopoly over the name and place of geographical name. Further, it is argued that the trade names adopted by the plaintiff and the defendant are entirely different and distinct and that the trademark used by the defendant is not deceptively similar to that of the plaintiff.

8. It is also submitted that the defendant has produced documents prima facie proving that the trademark names of the plaintiff and defendant are different. Therefore, the learned counsel prays to allow the appeal and vacate the order of temporary injunction granted by the trial Court.

9. On the other hand, learned counsel for the respondent/plaintiff submitted that upon bare perusal of the trade names used by the plaintiff and defendant are found to be one and the same and the trade name adopted by the defendant is not a deceptive one. The learned counsel pointed out that the name with reference



to the trademark is being used by both the plaintiff and defendant and that the trademark was registered prior to the defendant's use. The plaintiff has been using the trade mark since 15.05.2010.

10. It is further submitted that the defendant has not produced any material to show that he has been using the trademark since 1985. Considering the material produced by both the parties, the trial Court has properly found that the plaintiff has shown a prima facie case and balance of convenience lies in its favour and accordingly granted an order of temporary injunction after convincing the fact that if an order of temporary injunction is not granted, then it would cause irreparable, loss and injury. Therefore, the respondent/plaintiff submits that the order passed by the trial Court is fully justified and hence, prays for the dismissal of the appeal.

11. Upon hearing the learned counsel for both the parties, the following points arise for my consideration:



- (i) *Whether, under the facts and circumstances of the case, the defendant demonstrates that the plaintiff has not made out prima facie case so as not to grant an ad-interim injunction?*
- (ii) *Whether, under the facts and circumstances of the case, the defendant demonstrates that the plaintiff has not made out balance of convenience on the basis of the materials produced before the trial court so as not to grant an ad-interim injunction?*
- (iii) *Whether, under the facts and circumstances of the case, the defendant demonstrates that the plaintiff would not suffer any irreparable loss or injury, if ad-interim injunction is not granted?*
- (iv) *Whether the order passed by the trial Court granting temporary injunction requires interference by this Court?*

12. The plaintiff has filed a suit for permanent injunction seeking to restrain the defendant from using the trademark "MI Marbo Italia" on the ground that it is



deceptively similar to the trademark used by the plaintiff. The plaintiff has been using the trademark as "*M Marble Italia*" while the defendant has been using the trademark as "*MI Marbo Italia*". Though, the words '*Marble* and '*Italia*' are found to be the geographical and product names in generic, but, the plaintiff has got registered the trademark by filing an application with the competent authorities. The plaintiff has been using the trademark as "*M Marble Italia*" since 15.05.2010. The plaintiff has produced certain documents such as incorporation certificate issued by the competent authority and they are marked as Exs.P18 to 26. All the documents produced *prima-facie* show the fact that the plaintiff has been using the said trade name from the month of May 2010.

13. On the other hand, the defendant has not produced any documents to support his claim that he has been using the trade name as "*MI Marbo Italia*" from the year 1985. Therefore, upon considering the materials made available to the Court, the trial Court was correct in



holding that the plaintiff has shown prima facie case and the balance of convenience lies in its favour and if an order of temporary injunction is not granted, then it would cause irreparable loss and injury to the plaintiff's business. Therefore, after convincing the case, the trial Court granted an order of temporary injunction.

14. Upon re-appreciating the findings given by the trial Court, there is no perversity and there is no need to cause interference with the findings given by the trial Court in allowing the application. Therefore, there is no error found in the order passed by the trial Court in granting temporary injunction. Accordingly, I answer points No.(i) to (iv) in the **Negative**. Hence, the appeal is liable to be dismissed.

Accordingly, the appeal is dismissed.

**Sd/-**  
**(HANCHATE SANJEEVKUMAR)**  
**JUDGE**