

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2018

DATE OF DECISION : 14.03.2018

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

A.No.682 of 2018

in

C.S.No.344 of 2017

1.Parthasarathy Seniammal Educational Trust,  
rep by its Managing Trustee,  
HIG 34, Raja Mannar Street,  
3<sup>rd</sup> Main, Nulambur,  
Chennai-600 037.

2.Chennai Institute of Technology,  
rep by its Correspondent/Director/Principal,  
Sarathy Nagar,  
SH-113, Nandambakkam Post,  
Pudupedu, near Kundrathur,  
Chennai-600 069.

3.P.Sriram,  
Managing Trustee,  
Parthasarathy Seniammal Educational Trust,  
HIG 34, Raja Mannar Street,  
3<sup>rd</sup> Main, Nulambur,  
Chennai-600 037.

.. Applicants

Vs.

V.Rangasamy Naidu Educational Trust,  
(a Trust registered under the Indian Trusts Act, 1882),  
rep by its Managing Trustee Dr.SRK Prasad  
No.48, 2<sup>nd</sup> Floor, B.N.Road, T.Nagar,  
Chennai-600 017.

.. Respondent

This application has been preferred under Order XIV Rule 8 of  
O.S. Rules read with Order VII Rule 11 and Section 151 of CPC

seeking to dismiss the suit in C.S.No.344 of 2017 as not maintainable on the preliminary issue of maintainability that an abbreviation simplicitor of a name is not a trademark.

|                 |                                                |
|-----------------|------------------------------------------------|
| For Applicant   | : Mr.T.Sundaranathan<br>Mr.G.V.Subramaniam     |
| For Respondents | : Mr.S.Silambanan, SC<br>for Mr.G.K.Muthukumar |
|                 | - - - -                                        |

#### ORDER

There are three defendants in all in the main suit. Defendants 1,2 and 3 in the main suit are applicants 1,2 and 3 respectively in the instant application. There is one plaintiff in the main suit. Sole plaintiff in the main suit is the lone respondent in this application. The parties in this application, i.e., A.No.682 of 2017, are referred to by their respective ranks in the main suit for the sake of convenience and clarity.

2 The nucleus of the main suit is a registered Trademark of the plaintiff bearing Trademark No.2149954 dated 25.5.2011 registered in Class 41 with regard to education, research, related consultancy, providing of training, entertainment, sporting and cultural activities all being services falling under class 41. The Mark is 'CIT'. This registered trademark of the plaintiff is hereinafter referred to as 'said trademark' for the sake of convenience and clarity.

3 To be noted, besides the said trademark, plaintiff has three more trademarks registrations, details of which are as follows:

| <b>Sl. No.</b> | <b>Trademark No.</b> | <b>Date</b> | <b>Class</b> | <b>Mark</b>                                                                         |
|----------------|----------------------|-------------|--------------|-------------------------------------------------------------------------------------|
| 1              | 2149953              | 25.05.2011  | 41           |   |
| 2              | 2149956              | 25.05.2011  | 41           |   |
| 3              | 2149957              | 25.05.2011  | 41           |  |

4 Plaintiff has filed the main suit claiming that it is a trust which was established in the year 1956, that plaintiff trust has envisioned a unique learning order with special emphasis on industrial training for the decimation of knowledge to the student community in the fields of science, engineering and technology, that plaintiff has established an engineering college under the name and style 'Coimbatore Institute of Technology' in the year 1956 at Coimbatore, that 'CIT' was coined, adopted and simultaneously used as abbreviation of the said name of the institute along with name of the institute, i.e., 'Coimbatore Institute of Technology'.

5 It is the further emphatic say of plaintiff that CIT, i.e., said trademark refers only to plaintiff's aforesaid institute ever since its inception in 1956. It is also the say of plaintiff that

CIT being the abbreviated form of the name of the institute became very popular and reputed that every one refer to the said institute more commonly and popularly as 'CIT' rather than 'Coimbatore Institute of Technology'. Plaintiff has also averred that since its inception, till now, it is more commonly and popularly referred to as 'CIT' rather than 'Coimbatore Institute of Technology' not only by students, staff and alumni, but by general public also. On this basis, plaintiff has laid the suit claim that the said trademark, i.e., 'CIT' is associated with the plaintiff and its institute only.

6 Plaintiff has also given details that CIT was affiliated to Madras University from 1956 to 1980, thereafter, it was affiliated to Bharathiar University, Coimbatore and subsequently to Anna University, Chennai in the year 2001. It is also averred that CIT has attained autonomous status in the year 1987. It is the further say of the plaintiff that CIT is recognized by All India Council for Technical Education and is accredited by the National Board of Accreditation. Plaintiff has predicated the main suit on the ground that it was shocked to come to know that defendants 1 to 3 are prominently using the said trademark, the details of which are as under :

“(a)in their Institute building, name board and signage, located at the address of the 2<sup>nd</sup> Defendant,

(b)In their application form, prospectus fee receipts and stationary,

(c)In their buses plying in and around the City of Chennai, and

(d)In their domain name as [www.citchennai.edu.in](http://www.citchennai.edu.in), which is accessible in Chennai and the rest of the world, and in their webpage's where the word “CIT” is prominently used.”

7 It is the specific case of plaintiff that second defendant institute itself was established only around the year 2012. It is also plaintiff's complaint that defendants by using 'CIT' in their website as their domain name are misrepresenting to students' community, public and trade as if they are associated and related with the plaintiff. According to plaintiff, defendants' adoption and usage of CIT is dishonest and is with the intention to trade on the goodwill, reputation and popularity of said trademark. Prayers in the suit include injunction qua infringement of said trademark, injunction against passing off, besides regular prayers for accounts, direction for delivery of offending materials for destruction and Rs.25,00,000/- damages. To be noted, there is also a prayer for costs besides the usual residuary prayer limb.

8 At the time of institution of the suit, plaintiff sought interlocutory orders qua infringement of said trademark and passing off. Interim orders were granted and they are operating. There is no complaint of breach.

9 Defendants who have entered appearance have filed counter affidavits in the aforesaid interlocutory applications and are contesting the same.

10 Defendants are disputing the aforesaid claims made by the plaintiff saying that they are all self serving tall claims. Defendants also stoutly deny the allegation that they are riding on popularity of said trademark. It is also the further case of defendants that their adoption of CIT is not dishonest, that this is an abbreviation of their institute, which goes by the name 'Chennai Institute of Technology'. Defendants strongly urge that plaintiff

cannot claim monopoly over the said trademark i.e., 'CIT'. In other words, defendants contend that they are entitled to use 'CIT' as abbreviation to refer to their institution, namely, 'Chennai Institute of Technology'.

11 In the aforesaid background, when interlocutory applications were being heard, defendants have come up with the instant application with a prayer to reject the plaint. The instant application has been filed inter-alia under Order VII Rule 11 of Code of Civil Procedure, 1908 ('CPC' for brevity).

12 As any rejection of plaint application goes to the root of the matter, I deem it appropriate to hear out the rejection of plaint application first and thereafter proceed or not proceed further with the suit and aforesaid interlocutory applications would depend on the outcome of the instant reject the plaint application.

13 It was pointed out to learned counsel for defendants that there are four sub clauses in Rule 11 of Order VII of CPC and the Judge's Summons does not specify the clause/s under which this application has been filed. Learned counsel for defendants submitted that this can be treated as an application under sub-clause (d) of Rule 11 of Order VII of CP. This means that it is the specific case of defendants that the suit is barred by law.

14 Before proceeding further with this application, I deem it appropriate to notice that sub clauses (b) and (c) of Rule 11 of Order VII of CPC are not available for a litigant on the Original Side of this High Court owing to Order XLIX Rule 3 of CPC. I deem it appropriate to extract Order XLIX Rule 3 of CPC, which is as follows:

**"3.Application of rules.--** The following rules shall not apply

to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely:--

- (1) rule 10 and rule 11, clauses (b) and (c) of Order VII;
  - (2) rule 3 of Order X;
  - (3) rule 2 of Order XVI;
  - (4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII;
  - (5) rules 1 to 8 of Order XX; and
  - (6) rule 7 of Order XXXIII (so far as relates to the making of a memorandum);
- and rule 35 of Order XLI shall not apply to any such High Court in the exercise of its appellate jurisdiction."

15 In other words, sub clauses (a) and (d) of Rule 11 of Order VII of CPC are available. I also deem it appropriate to extract sub clause (d) of Rule 11 of Order VII of CPC, which reads as follows :

**"11.Rejection of plaint.--**The plaint shall be rejected in the following cases:--

- (a) .....
- (b) .....
- (c) .....
- (d) Where the suit appears from the statement in the plaint to be barred by any law;"

16 I thought it appropriate to extract sub clause (d) of Rule 11 of Order VII of CPC because in such cases, defendants should be able to show that the suit is barred by law from the statements in the plaint. This in addition to the fundamental principle that in testing on application under Order VII Rule 11 of CPC, the court will look at the plaint with a 'hood'. When I say with a hood, it means that the court will not look at anything other than uncontroverted

averments in the plaint. In other words, the court will look at only plaint averments without any addition or subtraction. The only addition to this is, admitted documents if any.

17 In the above backdrop, I now proceed to examine the grounds on which the instant reject the plaint application was pursued.

18 Grounds on which this reject the plaint application was argued by defendants is threefold and they are :

(a) Said trademark, i.e., 'CIT' being an abbreviation does not qualify as a mark within the meaning of Section 2(1)(m) of Trade Marks Act, 1999 (hereinafter referred to as 'TM Act' for brevity);

(b) Plaint is hit by Section 33(1)(b) of TM Act owing to acquiescence;

(c) Registration of said trademark is nullity.

19 In response to the aforesaid threefold attack by Mr.T.Sundaranathan, Mr.S.Silambanan, learned Senior Counsel leading Mr.G.K.Muthukumar, learned counsel on record for plaintiff submitted as follows :

(a) Said trademark, i.e., CIT does qualify as a mark in the light of Section 2(1)(o) of TM Act;

(b) Without admitting that plaintiff is guilty of acquiescence, it was submitted that this is a matter for trial and cannot be decided on affidavits and counter affidavits more so in an application for rejection of plaint.

(c) Again on a demurrer without admitting that registration of said trademark is nullity, it was submitted that such a plea cannot be raised even in the main suit and that it can, if at all be raised only before the Intellectual Property Appellate Board ('IPAB' for brevity).

20 I now proceed to examine the rival submissions qua the

aforesaid threefold attack and defence for the same.

21 Before doing so, I deem it necessary to make an enumeration of case laws, which were pressed into service by Mr.T.Sundaranathan, learned counsel for defendants. The enumeration is as follows :

(i) *Shri Udhav Singh Vs. Madhav Rao Scindia* [(1977) 1 SCC 511];

(ii) *South Gujarat Roofing Tiles Manufacturers Association and another Vs. State of Gujarat and another* [DJ 1976 SC 145 : (1976) 4 SCC 601];

(iii) *York Trade Mark [In the High Court of Justice Chancery Division]* ([1984] R.P.C. 231 : [1981] F.S.R. 33 (Ch.D));

(iv) *Azhar Hussain Vs. Rajiv Gandhi* [(1986) Supp SCC 315];

(v) *Sushil Kumar Mehta Vs. Gobind Ram Bohra (dead) through his LRs.* [(1990) 1 SCC 193];

(vi) *Godfrey Phillips India Ltd. And another Vs. State of U.P. And others* [(2005) 2 SCC 515].

(vii) *ITC Limited Vs. Rakesh Behari Srivastava* [1998 (33) AllLR 11] (Allahabad High Court);

(viii) *Indo-Pharma Pharmaceutical Works Limited, Mumbai Vs. Citadel Fine Pharmaceuticals Limited, Madras* [CDJ 1998 MHC 439 : 1998 (3) MLJ 214] (Madras High Court);

(ix) *Nesammal and another Vs. Edward and another* [CDJ 1998 MHC 1129 : 1998 (2) CTC 537] (Madras High Court);

(x) *Financial Systems Software (UK) Ltd's Trade Mark Application* [2001] R.P.C. 41 [Court of Appeal];

(xi) *Astrazeneca UK Limited and another Vs. Orchid Chemicals & Pharmaceuticals Ltd.* [CDJ 2007 DHC 1265 : 2007 (141) DLT 565] (Delhi High Court).

22 With regard to the first ground that said trademark does not qualify as a mark within the meaning of Section 2(1)(m) of TM Act, none of the case laws pressed into service in this regard help the defendants. Primary reason is, none of these case laws have laid

down a principle or proposition that abbreviations do not qualify as a mark within the meaning of Section 2(1)(m) of TM Act. More over, there appears to be a direct answer to this argument in Section 2(1)(o) of TM Act. I deem it appropriate to extract Section 2(1)(m) and (o) of TM Act one after other, which read as follows :

**"2.Definitions and interpretation.---**(1)In this Act, unless the context otherwise requires,--

x x x x x x x x x x x x x x x

(m)"mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof;

x x x x x x x x x x

(o)"name" includes any abbreviation of a name;"

23 The aforesaid two provisions make it clear that a mark can be any one of the following 13.

"device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof"

A mark includes a name. Name has been defined to say that it includes abbreviation of a name, which can be seen in Section 2(1)(o) of TM Act. None of the case laws pressed into service before me have laid down as a proposition or as a principle that abbreviation of a name will not qualify as a mark under Section 2(1)(m) of TM Act. None of these judgments have read down Section 2(1)(m) or Section 2(1)(o) of TM Act. Therefore, I have to necessarily go by the plain knowledge and scheme of the statute. However, I have discussed all the case laws placed before me in this order, elsewhere infra.

24 With regard to acquiescence, defendants' counsel took me

through paragraphs 28 and 29 of the plaint and argued that the date of knowledge, i.e., the date on which the plaintiff came to know about the use of the said trademark by the plaintiff has not been given clearly. It is their submission that it has been vaguely mentioned as 'recently'. On the above basis, learned counsel submitted that the suit is hit by Section 33(1)(b) of TM Act .

25 It is seen from the case file before me that the suit was presented on 20.04.2017. For whatever it is worth, there is an averment that the plaintiff came to know recently about defendants using the said trademark 'CIT'. As this is a reject the plaint application, I have to go by the uncontroverted averments in the plaint. Going by the uncontroverted averments in the plaint, how recently it was will become the matter for trial. Recently is qua point of time. Therefore, I am inclined to accept the submission of learned senior counsel Mr.S.Silambanan that this is a matter for trial. More over, with regard to clause (d) of Rule 11 of Order VII of CPC, defendants should be able to demonstrate from the averments in the plaint that it is barred by law. In other words, only if there are some averments in the plaint which go to show even according to the plaintiff, it was aware of the use of alleged offending mark of defendants more than five years prior to the date of presentation of the suit, such a plea cannot be sustained in a reject plaint application.

26 With regard to registration of said mark being a nullity, in the IPR regime unlike the Patents Act, 1970 or the Designs Act, 2000, a defendant in an infringement action / suit does not have a statutory right to challenge the very registration of the plaintiff

under the Trade Marks Act, 1999, the Copyright Act, 1957 and Geographical Indications of Goods (Registration and Protection) Act, 1999. If defendants were to take such a stand, defendants have to go only to IPAB. In this regard, it is necessary to extract Section 124 of TM Act, which reads as follows :

**"124.Stay of proceedings where the validity of registration of the trade mark is questioned, etc.-(1)**

Where in any suit for infringement of a trade mark-

(a)the defendant pleads that registration of the plaintiff's trade mark is invalid; or

(b)the defendant raises a defence under clause (e) of sub-section (2) of section 30 and the plaintiff pleads the invalidity of registration of the defendant's trade mark,

the Court trying the suit (hereinafter referred to as the Court) shall,-

(i)if any proceedings for rectification of the register in relation to the plaintiff's or defendant's trade mark are pending before the Registrar or the Appellate Board, stay the suit pending the final disposal of such proceedings;

(ii) if no such proceedings are pending and the Court is satisfied that the plea regarding the invalidity of the registration of the plaintiff's or defendant's trade mark is prima facie tenable, raise an issue regarding the same and adjourn the case for a period of three months from the date of the framing of the issue in order to enable the party concerned to apply to the Appellate Board for rectification of the register.

(2)If the party concerned proves to the Court that he has made any such application as is referred to in clause (b) (ii) of sub-section (1) within the time specified therein or within such extended time as the Court may for sufficient cause allow, the trial of the suit shall stand stayed until the final disposal of the rectification proceedings.

(3)If no such application as aforesaid has been

made within the time so specified or within such extended time as the Court may allow, the issue as to the validity of the registration of the trade mark concerned shall be deemed to have been abandoned and the Court shall proceed with the suit in regard to the other issues in the case.

(4) The final order made in any rectification proceedings referred to in sub-section (1) or sub-section (2) shall be binding upon the parties and the Court shall dispose of the suit conformably to such order insofar as it relates to the issue as to the validity of the registration of the trade mark.

(5) The stay of a suit for the infringement of a trade mark under this section shall not preclude the Court from making any interlocutory order (including any order granting an injunction, directing account to be kept, appointing a receiver or attaching any property), during the period of the stay of the suit."

27 Section 124 of TM Act was elucidatively explained by Hon'ble Supreme Court recently in **Patel Field Marshal Agencies and another Vs. P.M. Diesels Limited and others [(2018) 2 SCC 112]** (hereinafter referred to as '**Patel Field Marshal** judgment' for brevity).

28 As far as **Sushil Kumar Mehta's** case reported in (1990) 1 **SCC 193** is concerned, there can be no quarrel over the proposition or there can be no two opinions about the proposition that any decree passed by a Court or Tribunal without authority is a nullity, but that does not help the defendants in the instant case as remedy if any is only in IPAB. I shall refer to **Patel Field Marshal's** case in this regard infra elsewhere in this order.

29 In **Indo-Pharma Pharmaceutical Works Limited, Mumbai Vs. Citadel Fine Pharmaceuticals Limited, Madras [CDJ 1998 MHC 439]**, the

plaintiff's registered trademark was 'ENERJEX'. Defendant's mark (unregistered mark) was 'ENERJASE'. Plaintiff's product was syrup in a bottle and defendant's product was Ayurvedic capsules. The issue before the Court was whether defendant was guilty of infringement. Hon'ble Court held that there is no infringement primarily on the ground that the word 'Energy' is a commonly used word and is descriptive of the product. The Court also held that the generic name of a product cannot be treated as a trademark to indicate the origin. While holding so, Hon'ble Court referred to first five letters of both marks which are common, i.e., 'Enerj'. While referring to this 'Enerj', which are the first five letters in both marks, the Court held that both are relatable to the generic word 'Energy'. While saying this, the Hon'ble Court has referred to 'ENERJ' as an abbreviation of 'Energy'. Definition of abbreviation as per New 9<sup>th</sup> Edition of Oxford Advanced Learner's Dictionary is as follows :

"a short form of a word, etc."

'American Broadcasting Company' and 'Australian Broadcasting Corporation' being referred to as 'ABC' are illustrations in Oxford Dictionary. Term 'abbreviation' is not defined in TM Act and is therefore not a word of art. Therefore, this case law can at the best be cited as an authority for the principle that a generic word which is descriptive of a product cannot cause infringement. It is certainly not an authority for the principle that an abbreviation is not a mark within the meaning of TM Act. In fact, no such argument was advanced in **Citadel Fine Pharmaceuticals Limited** that an abbreviation does not qualify as a mark under the statute and hence, there was no occasion for the Court to address that as an issue.

Therefore, this case law is neither relevant to the instant application nor is it helpful to the applicant.

30 To be noted, this ***Citadel Fine Pharmaceuticals Limited*** was under the Trade and Merchandise Marks Act, 1958 and not under the TM Act. This is said only to complete the facts. To be further noted, the conclusions of the court have been summarised in paragraph 48 of the aforesaid judgment. I deem it appropriate to extract entire paragraph 48 of ***Citadel Fine Pharmaceuticals Limited*** case, which reads as follows :

"48. Under these circumstances, we are constrained to come to the following conclusions:

(a) The discretion exercised by the learned single Judge in the impugned order vacating the interim injunction cannot be said to have been exercised arbitrary, capriciously or perversely, by ignoring the settled principles of law.

(b) In the facts and circumstances of the case and on the basis of the materials available as on date, we are not able to take a different view from that of the learned single Judge, as in our opinion, the trial court has exercised its discretion in a reasonable and judicial manner.

(c) The word 'ENERJ' is an abbreviation of a generic name 'energy'. The word 'energy' is a commonly used word and would be the description of energising product. A generic name of a product cannot be treated as a trade mark to indicate the origin. The prefix for both the marks, viz., 'ENERJ' is common to the trade and cannot be a proprietary name. Nobody can claim exclusive right to use such an abbreviation.

(d) As per the suffix phonetically, the words 'JEX' and 'JASE' are totally dissimilar and are not going to create any confusion in the mind of the users,

especially, in this case, when the visual impression of the said two trade names is completely different.

(e) In fact, we have compared the two words as a whole with the eyes of the public. We think *prima facie* that the total sound effect of these two words lacks any similarity. So also, when these words are written down and compared, they do not have any similarity which can deceive the eye of the layman."

(Underlining is done by me to supply emphasis and highlight)

31 With regard to 11 judgments pressed into service and placed before me by defendants, I have made an enumeration of the same in paragraph 21 *supra*.

32 Out of the 11 judgments placed before me, I have already dealt with ***Citadel Fine Pharmaceuticals Limited*** and ***Sushil Kumar Mehta's*** cases *supra*. Besides ***Citadel Fine Pharmaceutical Limited*** case, 3 other judgments (in the list of 11) being ***York Trade Mark*** case reported in ***[(1984) R.P.C. 231]***, ***Financial Systems Software (UK) Ltd's Trade Mark Application*** reported in ***[2001] R.P.C. 41*** ('FSS case' for brevity) and ***Astrazeneca UK Limited*** case reported in ***2007 (141) DLT 565*** were pressed into service to say that an abbreviation cannot be registered as a trademark.

33 As far as ***York Trade Mark*** case and ***FSS case*** are concerned, they are English case laws. They have only persuasive value and one may have to look at those case laws either when Indian case laws are not available or when the ratio laid down in the English case laws have been adopted and followed in a line of authorities in the Indian case laws. Notwithstanding this position, I look into the same.

34 In ***York Trade Mark*** case, the English Trade Mark Registry

refused registration for York inter-alia on the ground that it may have to be protected for use in future.

35 In **FSS case**, the principle laid down by the English Court was to the effect that when an abbreviation is capable of multiple kinds of expansions, it is not desirable to protect such abbreviations by way of trademark registrations.

36 In **Astrazeneca UK Limited** case, a Division Bench of Delhi High Court expressed a view that no one can claim monopoly or exclusive right to use an abbreviatin or acronym which has become part of public juris. To be noted, **Astrazeneca UK Limited** is a case which was dealing with a pharmaceutical product.

37 Though all these three cases, namely, **York Trade Mark**, **FSS case** and **Astrazeneca UK Limited** are clearly distinguishable on facts owing to what I have set out supra and not applicable to the instant case, I refrain from expressing further opinion in this aspect of the mater as it can have some impact if defendants ultimately go before IPAB and assail the registration of the mark.

38 This opinion of mine is fortified by the principle laid down by Hon'ble Supreme Court in a recent **Patel Field Marshal judgment**, to which I have alluded to supra briefly. In the **Patel Field Marshal judgment**, Hon'ble Supreme Court recently held that when there is objection to registration of a trademark in an action for infringement, the Court will examine whether such an objection is tenable and thereafter, relegate the parties to IPAB. It is still open to the defendants to adopt such a course. To be noted, I have already extracted Section 124 of TM Act supra. Therefore, it does not help the defendants' to further their case in the instant reject the

plaint application.

39 The next judgment that was pressed into service by the defendants which touch upon the said trademark is **Godfrey Phillips India Ltd** case, where the principle of '*noscitur a sociis*' has been dealt with by the Constitution Bench of Supreme Court. **Godfrey Phillips India Ltd** arose out of proceedings in a writ petition under Article 32 of the Constitution of India ('COI' for brevity), where the assessee challenged the imposition of levy of luxury tax on tobacco and tobacco products. Hon'ble Constitution Bench has examined the ambit of area of legislation vide Entry 62 in List II. In this regard, Supreme Court laid down the principle that words should be read in a restricted sense having regard to the other items / words / terms included in the definition.

40 Learned counsel for defendants Mr.T.Sundaranathan attempted to say that the word or expression 'name' appearing in Section 2(1)(m) of TM Act should be given a very restricted meaning in the light of the other items contained in the definition in Section 2(1)(m) of TM Act. To be noted, other items in Section 2(1)(m) are device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, etc. This does not help the defendants in any manner in the instant application because of Section 2(1)(o) of TM Act. Section 2(1)(o) of TM Act is definition of 'name'. To be noted, Section 2(1)(m) is a definition of 'mark'. While defining 'name', in Section 2(1)(o) of TM Act, it has been clearly laid down that a 'name' includes abbreviation of a name. In other words, 'name' is not just an expression or word occurring in Section 2(1)(m), which has to be interpreted depending on other words and items in company

of which it has been put in. The reason is 'name' itself is a word of art qua TM Act. When 'name' itself is a word of art qua TM Act, in the light of Section 2(1)(o) of TM Act, the question of examining the meaning that has to be given to 'name' as occurring in Section 2(1)(m) of TM Act does not arise, because the Parliament in its wisdom has considered it necessary to make 'name' occurring in Section 2(1)(m) of TM Act also a word of art for eliminating ambivalence or ambiguity in this regard. To apply '*noscitur a sociis*' doctrine to such a word of art in the light of the scheme of the statute would tantamount to not only doing violence to the doctrine, but would also tantamount to begging the question. Therefore, I am unable to accept the submission of Mr. Sundaranathan that 'name' occurring in Section 2(1)(m) of TM Act should be given a very restricted meaning on the basis of the other terms in whose company it occurs.

41 For this very reason, **South Gujarat Roofing Tiles Manufacturers Association** case does not help the defendants. **South Gujarat Roofing Tiles Manufacturers Association** is a case pertaining to interpretation of Entry 22. While dealing with interpretation of Entry 22, Hon'ble Supreme Court held that the word 'includes' will normally have an extending force, but it is not so qua Entry 22. However, as alluded to supra, this judgment also does not help the defendants for the same set of reasons owing to which **Godfrey Phillips India Ltd** case does not help the defendants about which I have alluded to supra.

42 The remaining four judgments in the enumeration were pressed into service by defendants to highlight dealt with the scope

of Order VII Rule 11 of CPC. I shall deal with the same one by one.

43 **Shri Udhav Singh** case which arose out of a Election Petition laid down the principle that pure question of law can be raised at any time even without formal amendment to pleadings.

44 **Azhar Hussain** also arose out of a Election petition. Supreme Court laid down the principle that even the entire suit can be dismissed in Order VII Rule 11 proceedings, though Order VII Rule 11 of CPC deals only with rejection of plaint.

45 In **ITC Limited**, a learned Single Judge of Allahabad High Court, laid down the proposition that it is the duty of the Court to examine a plaint under Order VII Rule 11 of CPC even if an objection is not taken by the defendant.

46 In **Nesammal** case, a learned Single Judge of this Court reiterated the principle that provisions of Order VII Rule 11 of CPC are not exhaustive and that the Court has inherent powers to see that vexatious litigations are not allowed to consume the time of the Court.

47 With regard to all the aforesaid four cases touching upon Order VII Rule 11 of CPC, there can be no dispute or disagreement about the propositions that have been laid down or principles that have been culled down in the judgments. To be noted, I have very briefly brought out the propositions laid down and principles culled out in each of five cases supra. This Order VII Rule 11 of CPC application moved by defendants has been tested in the light of these principles, but it does not help the defendants in any manner as the question of validity of the said trademark has to be tested only in IPAB under Section 124 of TM Act.

48 Owing to all that have been stated supra, the instant application for rejection of plaint fails as bereft of merits. It deserves to be dismissed and I do so. Accordingly, the application is dismissed, however without costs.

49 Before parting with the case, it is made clear that many of the grounds raised by the defendants touch upon the merits of the matter which will have a bearing in other interlocutory applications, main suit as well as before IPAB if defendants decide to go there. Therefore, it is made clear that all views and opinions expressed here by me are for the limited purpose of disposal of the instant reject the plaint application and that the other interlocutory applications, main suit and IPAB (if defendants choose to move IPAB) will be decided without being swayed one way or the other by this order.

Sd/- M.S.J.

14.03.2018

vvk

//Certified to be a true copy//

Dated this the            day of            2018.

TR/20.03.2018

COURT OFFICER

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