

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.37345 of 2004 and
W.P.M.P.No.44813 of 2004

Karnataka Soaps and Detergents Limited,
Represented by its Director (Marketing)
Mr.K.Anjinappa
Bangalore Pune Highway,
Post Box.No.5531,
Bangalore - 560 055,
Karnataka State. Petitioner

Vs

1. The Registrar of Trade Mark
Office of the Trade Mark Registry Mumbai,
Central Building,
M.Karve Road,
Mumbai - 400 020.
2. The Deputy Registrar,
Intellectual Property Appellate Board,
Annexe -1, 2nd Floor,
Guna Complex,
443 Anna Salai,
Teynampet,
Chennai - 600 018.
3. Three N Products Pvt. Ltd.,
3030 Street No.4,
Ranjith Nagar,
New Delhi - 110 008. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to pass an order of Writ of Mandamus, directing the 1st and 2nd respondents to impose the condition of disclaimer for cosmetic and medicinal preparation for which registrations have been granted in favour of the 3rd respondent for the expression "Ayur" under Nos.421916 to 421919; 463797, 548523, 527495, 426242, 527495, 565582, 691956 to 691958; 678344, 688977 to 688980 all in Class 3 & 504095 in Class 5.

For Petitioner : M/s.C.Daniel & Gladys Daniel
For Respondents: Mr.A.Prabhakara Reddy for R3
Mr.J.Madana Gopal Rao
Senior Central Government
Standing Counsel

O R D E R

The prayer sought for in the present writ petition is for a direction to the respondents to impose the condition of disclaimer for Cosmetic and medicinal preparation for which the registration granted in favour of the third respondent herein for the expression "Ayur", in classes 3 and 5.

2. The power to cancel or vary the registration could be exercised under Section 31 of the Trade Marks Act and the prayer sought for in the present writ petition, is almost in the nature of an application under Section 57 of the Trade Marks Act. This Court, exercising its powers under Article 226 of the Constitution of India, may not be justified in assuming the role of such Statutory Authority, for granting the relief under Section 31 of the Trade Marks Act. Further more, Section 31 of the Trade Marks Act provides that in all legal proceedings relating to a Trade Mark registered under this Act (including applications under Section 57), the original registration of Trade Mark shall be prima facie of the evidence of the validity thereof.

3. In this connection, it is brought to the notice of this Court that the third respondent herein had already initiated a suit in C.S.No.271 of 2004 before the Calcutta High Court for an incidental relief and hence, it would not be appropriate for this Court to extend the relief sought for by the petitioner in the present writ petition. If at all the petitioner is aggrieved, it is always open to them to work out their remedy in a manner known to law. सत्यमेव जयते

4. In the background of the above observations, the relief sought for in the present writ petition does not deserve consideration. Hence, the writ petition stands closed. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vum

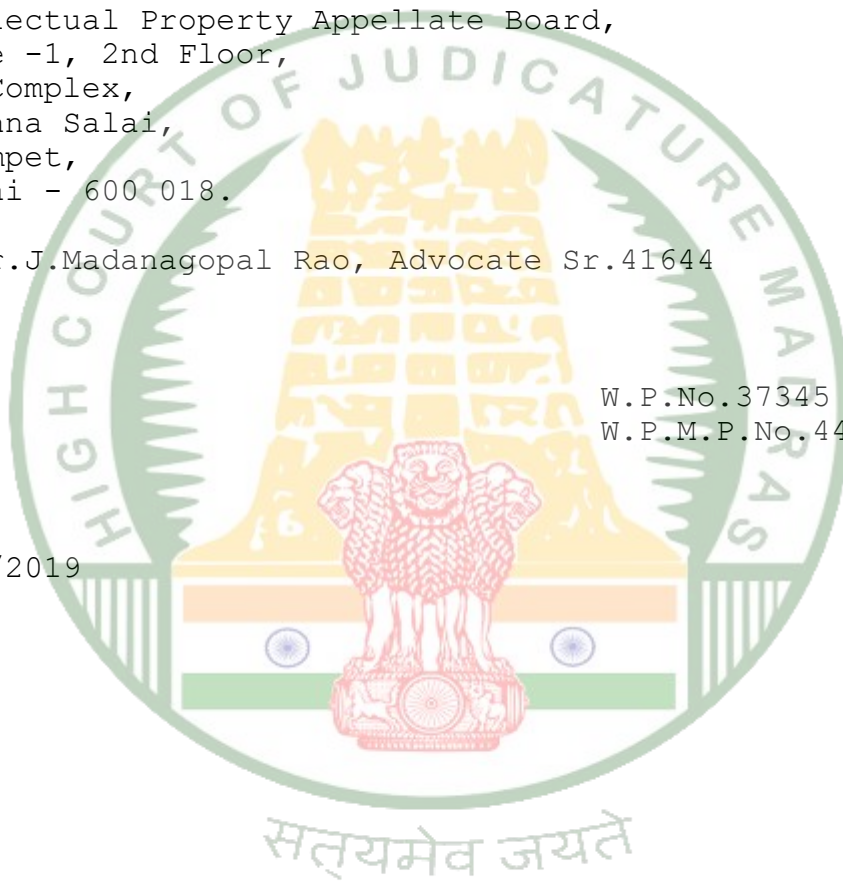
To

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+1cc to Mr.J.Madanagopal Rao, Advocate Sr.41644

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srg 04/07/2019



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