



O.A.Nos.767 to 769 of 2020
and C.S.No.410 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 26.07.2021

Pronounced on : 03 .08.2021

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

O.A.Nos.767 to 769 of 2020
in C.S.No.410 of 2020

M/s.Y.V.Seshachalam & Co.,
A partnership firm represented by its
Partner Mr.Y.V.Niranjana Krishna,
No.138, Audiappa Street,
Chennai – 600 001.

... Plaintiff/Applicant
in all applications

/versus/

1. M/s.Sathyam Agro Products,
Sennimalaipalayam, Kangeyam Road,
Tirupur

2. M/s.Rasi Stores,
No.46-A, Old Market Street,
Tirupur – 641 604,
Coimbatore District.

... Defendants/Respondents

Prayer in A.No.767 of 2020:- This application is filed under order XIV and Rule 8 of Original Side Rules read with Order XXXIX Rule 1 & 2 and Section 151 of C.P.C.,

a). Why the above application should not be treated as urgent?

b). Why this Hon'ble Court should not be pleased to grant an order of interim injunction restraining the defendants by themselves, their agents, servants or any one claiming through them from in any manner infringing the



plaintiff's Registered Trademark "GOPURAM" along with the device of temple tower as described in the Schedule hereunder by using the offending Trademark "TANGA GOPURAM" along with the device of temple tower or any other mark, label or device, either separately or as a combination thereof, which is identical or deceptively similar to or a colourable imitation of the plaintiff's trademark "GOPURAM" and/or the device of temple tower?

Prayer in A.No.768 of 2020:- This application is filed under order XIV and Rule 8 of Original Side Rules read with Order XXXIX Rule 1 & 2 and Section 151 of C.P.C.,

a). Why the above application should not be treated as urgent?

b). Why this Hon'ble Court should not be pleased to grant an order of interim injunction restraining the defendants their men, agents, servants or anyone claiming through them from in any manner infringing the plaintiff's copyright over the artistic work in the trademark label GOPURAM by using the offending trade mark label/trade dress or any other trade mark label/trade dress, which is identical or substantial reproduction of the first plaintiff's artistic work in the trade mark label/trade dress GOPURAM?

Prayer in A.No.769 of 2020:- This application is filed under order XIV and Rule 8 of Original Side Rules read with Order XXXIX Rule 1 & 2 and Section 151 of C.P.C.,

a). Why the above application should not be treated as urgent?

b). Why this Hon'ble Court should not be pleased to grant an order of interim injunction restraining the defendants by themselves, their servants or agents or anyone claiming through them from in any manner passing off its



products as that of the plaintiff by using the offending trademark “TANGA GOPURAM” and the device of temple tower, either separately or as a combination thereof or any other trademark which is identical or deceptively similar to that of the plaintiff's trademark “GOPURAM”?

For Applicant : Mr.A.Prabhakara Reddy,
for M/s.APR Associates

For Respondents : Mr.P.H.Arvind Pandian, Senior Counsel
& Mr.A.K.Rajaraman

COMMON ORDER

This Suit is filed for permanent injunction alleging the defendants by using the mark “**THANGA GOPURAM**” and the device ‘**Temple**’ dishonestly use the registered trademark of the plaintiff “**GOPURAM**” thereby causing infringement of trademark, infringement of copyright and passing off besides damages to the reputation and goodwill of the plaintiff.

2. These three applications are filed for interim injunction stating that, interim injunction restraining the respondents/defendants is necessary to prevent infringement of trademark, infringement of copyright and to prevent of money and reputation likely to cause due to the passing off of respondents goods as that of the applicants goods.



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3. According to the applicant, it is a registered Partnership Firm carrying on business, since 1945. They are leading manufacturer and marketer of puja products such as turmeric powder (manjal), kum-kum, benzoin (sambrani), incense sticks/powders and other related products made out of turmeric powder, ghee lamps, sambrani sticks etc. The products of the applicant Company are exported to various Countries. Their products are known for its high quality. The Trademark “GOPURAM” with the device of a Gopuram/Temple Tower was adopted by the applicants in the year 1945 and well received by the members of the public. It has attained reputation and goodwill among the public. Apart from household products used in puja and in daily life, the plaintiffs also manufacture and market spices and condiments falling under class 30 since the year 2010, under the well known and highly celebrated mark “GOPURAM” with the device of temple tower. By virtue of high standards of quality, the products under the applicants trademark “GOPURAM” have become household names among the members of the trade and general public. The trademark GOPURAM has been used by the applicant/plaintiff ever since the year 1945 and as such the trademark “GOPURAM” has acquired distinctiveness by virtue of the long and continuous use by the applicant.



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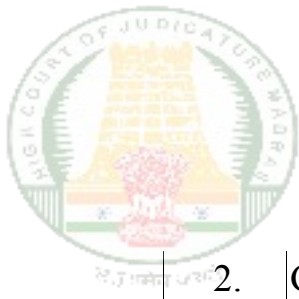
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4. For some of their products, the applicant use the trademark “SIKHARAM” with their distinctive features. The Trademark “SIKHARAM” was adopted in the year 2000 as the same is very closely related and synonymous with the trademark GOPURAM which the applicant has been using for more than 50 years. The applicant’s trademark has received high acceptance among the trade and public and enjoys exceptionally good market all over India as well as in various foreign countries. Hence, the trademark has become distinctive and is capable of distinguishing their products from that of the others. Considering the success in marketing spices and condiments under the trademark “GOPURAM”, the applicant is planning to launch other products under class 30.

5. For the various products marketed by the applicant, to get statutory protection, the applicant has obtained registration for series of trademark with the umbrella mark “GOPURAM” along with the device of “GOPURAM”. The details of the trademark registration obtained by the applicant are :-

S.N O	TRADEMARK	CLASS	FILING DATE	NUMBER
1	Gopuram	3	09.04.1991	548622

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2.	Gopuram	3	09.04.1991	548623
3.	Gopuram	30	07.12.1992	586262
4.	Gopuram Kumkum	3	20.01.1995	652770
5.	Gopuram Vasakkal Kumkum	3	20.01.1995	652771
6.	Gopuram Kumkum	3	20.01.1995	652774
7.	Gopuram Meenakshi Kumkum	3	01.02.1995	654044
8.	Gopuram	3	01.02.1995	654067
9.	Standard Grade "Gopuram Turmeric Powder"	30	02.12.1999	889497
10.	Gopuram Turmeric Powder	30	02.12.1999	889498
11.	Gopuram Agarbathis	3	07.05.2002	1102875
12.	Gopuram Manjal	30	05.03.2004	1270901
13.	Gopuram Sambrani	3	13.04.2006	1447031
14.	Gopuram Sambrani	3	13.04.2006	1447032
15.	Gopuram Kumkum	3	23.06.2006	1464320
16.	Gopuram Aacharya Sambrani Cups	3	15.06.2009	1828687
17.	Gopuram Agmark Turmeric Powder	30	15.06.2009	1828688
18.	Gopuram Pooja Products	3	23.09.2011	2209684
19.	Gopuram Herbal	3	23.09.2011	2209685
20.	Gopuram Turmeri Powder	3	09.02.2019	4082382
21.	Gopuram Ghee	29	20.03.2019	4123849

6. The applicant, earlier obtained the following trademarks, but due to inadvertence failed to renew the same however, continue to use it uninterruptedly and had obtained fresh registration.

<i>Sl.No.</i>	<i>Trademark</i>	<i>Class</i>	<i>Filing Date</i>	<i>Number</i>
1.	Gopuram	3	19.02.1948	132610



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<i>Sl.No.</i>	<i>Trademark</i>	<i>Class</i>	<i>Filing Date</i>	<i>Number</i>
2.	Gopuram	2	20.12.1969	261424
3.	Gopuram Turmeric	3	04.03.1988	450092
4.	Gopuram Turmeric	3	04.03.1988	450093

7. The following applications for trademark is pending with the Registrar of Trademark, Chennai.

<i>Sl.No</i>	<i>Trademark</i>	<i>Class</i>	<i>Filing Date</i>	<i>Number</i>
.				
1.	Gopuram Kumkum	3	30.03.2015	2931942
2.	Gopuram Panchadeepam Oil	3	09.02.2019	4082383
3.	Gopuram Thalampo Kumkumam Round Sticker	3	09.02.2019	4082384
4.	Gopuram Thalampoo Kumkumam	3	09.02.2019	4082385
5.	Gopuram Thalampoo Kumkumam	3	09.02.2019	4082386
6.	Gopuram	29	20.03.2019	4123850
7.	Gopuram	29	30.09.2020	4680075
8.	Gopuram	30	30.09.2020	4680076
9.	Gopuram Haldi Kumkum	3	30.09.2020	4680077
10.	Gopuram Natural Jaggery Powder	30	30.09.2020	4680078
11.	Gopuram Rangoli Powder	2	31.08.2016	3350225

8. Thus, the applicant is the sole and exclusive owner of the Trademark “GOPURAM” using and vigilantly protecting it. A huge amount is spent on engaging experts in artistic work, designing to create the trademark



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“GOPURAM” along with the device of “GOPURAM” in all sachets/packing cartons. The Temple Tower device in whatever form and shape is associated with the applicant and none else. Thus, the trademark “GOPURAM” and the device of “GOPURAM” has become distinctive of the applicant. It has achieved secondary meaning in relation to their business and products. For the year 2019-2020, the sales turnover of the applicant is about Rs.3,51,04,736/- and the sales expenses for the corresponding year is Rs.1,87,600/-. The plaintiff has promoted two other partnership firm namely YVS Kumkumam Company and YVS Spices and Company. These two firms are permitted to use the trademark “GOPURAM”. The combined turnover of these two sister concern is more than Rs.90 crores.

9. To take advantage of the goodwill and reputation of the applicant, during the first week of February 2020, the first defendant advertised for marketing its product under the same trademark label GOPURAM as well the device of temple tower. This was slavishly adopted by the respondents with dishonest intention to create confusion and deception in the market so that the first respondent will be in a position to market its products using the goodwill and reputation earned by the applicant. The first respondent cannot have any other explanation whatsoever except to make dishonest profits by exploiting the



reputation, goodwill and the huge demand of the products under celebrated trade mark GOPURAM and the device of Temple Tower command in the market.

10. To the cease and desist notice issued by the applicant, the first respondent received it and caused reply notice dated 16.04.2019 informing the applicant that the first respondent is using the said trademark under the license from the second respondent M/s.Rasi Stores, Tirupur, who has registered the trademark under No.1287774. Also informed several others have registered the mark and device temple tower for various goods and services therefore the mark is a common available in public domain. Thereafter, a separate cease and desist notice was sent to the second respondent demanding the removal of the offending trademark from the register of trademarks relating to the registration no.1287774, but the second defendant did not respond to the notice.

11. Respondents has no right to adopt the offending trademark. The said adoption is done with the sole purpose of passing off their goods by banking on the goodwill and reputation of the applicant and the said use of identical mark is infringing in nature. The imitation of the temple tower device by the respondent is to deceive and confuse the customers. Hence, restrain order



is necessary to protect the well known mark of the applicant from being diluted.

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12. The gist of the counter affidavit filed by the first and second respondent:

The second respondent adopted the brand name '**Thanga Gopuram**' with the device of distinctive form of temple tower in the year 1994 and has been using the same in respect of products namely cereal preparations, broken wheat and Rawa. In the course of trade, the first respondent was licensed by the second respondent to use the mark. Recently, the mark Thanga Gopuram, is duly assigned to the first respondent. The suit is hit by delay and latches. The suit filed to harass the defendants with ulterior motive suppressing material facts. The applicants registration is restricted to puja products like sambarani, agarpathi, kumkum and turmeric power. It has allowed the respondents to coexist for several years without any protest. There are innumerable entries in the Trademark register under the name Gopuram with or without the device of temple tower. To the cease and desist notice issued two years ago, the applicant was suitable replied placing all the facts. The present suit is filed with enormous delay with an ulterior motive. The second defendant is the adaptor of the mark '**Thanga Gopuram**' for more than 25 years. In the year 2004, it was



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duly registered under class 30 specifically in respect of food products Atta, Samba, broken wheat, cereals preparation and Dhal varieties all fall under class 30. The applicant never protested when pre-grant advertisement placed in journal on 15.05.2005 for the mark Thanga Gopuram along with the device. For the past 15 years, the defendant is marketing its product all over the Tamil Nadu using the mark along with the device of temple tower well within the knowledge of the applicant. The advertisements of the applicant and the respondents have appeared in the very same magazine on the same page. Therefore, the applicant cannot feign ignorance. Hence, the suit for infringement is not maintainable on the ground of acquiescence.

13. The applicants are trading only kumkum, turmeric powder and other poja products. There is no evidence to show they are using the mark since 1945. The applicant claim their use of the mark Gopuram with the device temple tower only in association with turmeric and kumkum. However, in the suit the applicant claims exclusive right over all the goods covered under Class 30 contrary to the admission before the statutory authorities.

14. The device temple tower in the applicant trade mark is not



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distinctive but replica of the Tamilnadu State symbol. It is descriptive. The claim of the applicant that they are in the trade of spices and condiments since 2010 is false. They have applied for registration with the user claim “Proposed to be used”. The claim of the applicant regarding the reputation of the trademark and device is to be confined to poja products kumkum and turmeric powder. The applicant mark is associated to religious and auspicious functions and not for any other products. The respondents are the proprietor of the mark “Thanga Gopuram” in respect of wheat, atta and other cereals preparations. Therefore, the allegation of infringement and passing off is unfound.

15. The Learned Counsel for the Applicant submitted that the mark of the respondent is deceptively similar and the products they trade are cognate goods under the same class 30. The fact that the applicant are in the business since 1945 is well found from the grant of trademark Gopuram under class 3 for the applicant in the year 1948. The quantum of business in rise each year is proof of reputation and acquiring secondary meaning in respect of poja products. Mere addition of a word ‘Thanga’ to the celebrated trade mark of the applicant ‘Gopuram’ will not make it distinct and dissimilar. The respondents have not come out with any tenable explanation for adopting the mark “Thanga



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Gopuram”. The respondents, after receipt of the cease and desist notice have manipulated documents as though the first respondent was permitted to use the mark by the second respondent. The respondents are retailers and have no proof to show they have any manufacturing unit to process and pack the food products. They could have not applied for trademark registration for the goods but ought to have applied for services.

16. Per contra, the Learned Counsel for the respondent submitted that, for the applicants the certificate of registration No.586262 dated 07.12.1992 in respect of the trademark GOPURAM is specifically **for turmeric power included in class 30**. The disclaimer clause in this certificate says, ‘**the registration of this trade mark shall give no right to the exclusive use of the device of temple and words turmeric powder**’. The trademark registration of the device Thanga Gopuram (label) in TM application No.1287774 dated 01.06.2004 was granted to the second respondent **for the goods, Atta, samba wheat broken mesh (Rawa) and cereals preparations and dhal in class 30**. Hence pleaded that, the claim of the applicant is untenable.

17. The Learned Counsels on either side relied upon catena of citations to buttress their respective submissions.



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On the side of Applicant/Plaintiff:-

- (i). *The Andhra Perfumery Works Joint Family Concerns -vs- Karupakula Suryanarayaniah & other* reported in *1967 SCC Online Mad 177*.
- (ii). *B.K.Engineering Company -vs- UBHI Enterprise (Regd & another* reported in *ILR (1985) 1 Del*.
- (iii). *Indian Shaving Products Ltd & another -vs- Gift Pack & another* reported in *1998 SCC Online Del 829*.
- (iv). *T.V.Venugopal -vs- Ushodaya Enterprise Limited and another* reported in *(2011) 4 SCC 85*.
- (v). *The Gillette Company LLC -vs- Tigaksha Metallica Private Limited* reported in *2018 SCC Online Del 9749*.

On the side of the Respondents/Defendants:-

- (i). *Vishnudas Trading -vs- Vazir Sultan Tobacco Ltd.,* reported in *(1997) 4 SCC 201*.
- (ii). *Honda Motor Company Limited -vs- Kewal Brothers* reported in *(2005) 25 PTC 763*.
- (iii). *HM Saraiya & other -vs- Ajantha India Pvt Limited* reported in *(2006) 33 PTC 4*.
- (iv). *Canon Kabushiki Kaisha -vs- B.Mahajan* reported in *(2007)*

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(v). ***Rani Food Products -vs- Stine Food Products*** reported in ***(2013) 56 PTC 548***.

(vi). ***Jsb Cement Llp -vs- Assam Roofing Limited and others*** reported in ***AIR 2017 CAL 226***.

(vii). ***Relish Snacks Pvt Ltd -vs- M/s.Virchow Biotech Pvt Ltd.,*** in C.S.No.781 of 2010 dated 06.12.2019.

(viii). ***M/s.Pathanjali Ayurved Limited & another -vs- Arudra Engineers Private Limited*** reported in ***(2021) 2 MLJ 180***.

18. The Broad Principles laid in these judgments while deciding an Application for injunction in a Trademark or Copyright suit are:-

- 1). Classification of the goods for which trademark granted.
- 2). Respective uses of the goods.
- 3). The trade channel through which the products are made available to the public.
- 4). The similarity/dissimilarity to test the strength and weakness of imitation in the objectionable mark.
- 5). Whether, the objectionable mark of the respondent is identical or similar or deceptively similar to the registered trademark of the applicant for any man of ordinary prudence and average recollection to be deceived.



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6). Likelihood of damages if the objected mark allowed to be traded.

19. The documents placed before this Court, clearly show that both ‘Gopuram’ and ‘Thanga gopuram’ (label) are duly registered trademarks. The contention of the applicant that they have intention to expand their business in other goods mentioned in class 30 will not be a reason to restrain the respondents from using the mark ‘Thanga Gopuram’ for which, the first respondent have valid assignment from the second respondent who is the Proprietor of the mark since 2004. The Trademark certificate of the respective parties clearly indicates that the applicant has obtained trademark for turmeric in class 30 and the respondent has obtained trademark for Atta, Samba Wheat broken mesh (Rawa) and cereals preparations and dhal in class 30. When there are two or more trademark holders for different goods under same class, they have to co-exist. The principle of ‘nice classification’ has to be applied.

20. Interim injunctions in infringement suits are granted to mitigate the injustice. For that, the applicant should place strong *prima facie* evidence to show the obvious imitation of the registered trademark and malafide intention to exploit the reputation of the applicant’s trademark. In this case, the



applicant admits that, he has not obtained any registration for the Trademark “Gopuram” for goods under 30 except for Turmeric. His application for grant of trademark for other goods in class 30 is pending. Whereas, the respondents have a valid registration since 2004 for goods like Atta, Samba Wheat Broken Mesh (Rawa) and cereals preparations and dhal in class 30. So, whether the applicants are trading Atta, Samba Wheat Broken Mesh (Rawa) and Cereals preparations and Dhal under the mark “Gopuram”, is a fact to be proved during trial and not a matter of inference without trial. Therefore, this Court holds that there is no likelihood of loss of reputation or any injustice to occur if the respondents are not restrained.

21. Further, this Court, on considering the *prima facie* case and balance of convenience, find that, the applicant claim of exclusive right over the device “Gopuram” itself not tenable in view of the disclaimer clause in their trademark certificate. As said earlier, the registration of “Gopuram” for the applicant under class 30 is in respect of turmeric. Whereas, the Registration Certificate of the respondent reveals, he is not given trademark for turmeric, but for few other goods found in class 30. There is no overlapping of goods. In such circumstances, the principle propounded in *Visnudas Trading -vs- Vazir*

Sultan Tobacco Ltd reported in (1997 (4) SCC 201 has to be applied. The



application of the applicant for the trademark “Gopuram” in respect of other goods under class 30 claiming proposed to use, should not be a reason to restrain the respondent, who are using the mark for atleast 15 years, within the knowledge of the applicant.

22. The applicant submits that there is no proof to show the respondents are manufacturer of the goods and were in trade since 1994. These facts are to be proved during the trial. For deciding the interlocutory application, the Trademark Certificate issued during the year 1994 to second defendant to use the mark ‘Thanga Gopuram’ is sufficient evidence to hold the respondent is the prior user of the mark ‘Thanga Gopuram’ for the goods mentioned in the certificate. It is also to be noted when, the advertisement of the applicant and the respondent appeared on the same page of the local magazine, the silence of the applicant and not objecting the respondents using the mark “Thanga Gopuram” and the delay of more than a year to institute the suit after receiving the reply to the cease and desist notice, lend force to the respondent’s defence of delay, laches and acquiescence.

23. This Court, while holding, no *prima facie* case made out, also make it clear that, for deciding the balance of convenience, the delay in



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instituting the suit is taken for consideration without causing any prejudice to the applicant/plaintiff case in the trial to prove his alacrity in protecting its right. As a result, ***Original Application Nos.767 to 769 are dismissed.*** No costs.

Sd./-(G.J.J.)
03.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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