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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 30TH DAY OF NOVEMBER 2021

THE HON'BLE JUSTICE N. ANAND VENKATESH

A.Nos. 4279 & 2628 of 2021

in

C.S. No.355 of 2020

M/s Apex Laboratories Pvt. Ltd.,
29, III Floor, SIDCO Garment Complex,
Guindy, Chennai 600 032,
rep.by its Authorised Signatory,
D.Jude F.L.S.Durai Pandian.

...Plaintiff

/versus/

M/s. Knoll Healthcare Pvt. Ltd.,
M-17, Pharma Tower, Badli Industrial Area,
New Delhi 110 042.

...Defendant

A.Nos. 4279 & 2628 of 2021

M/s. Knoll Healthcare Pvt.Ltd.,
M-17, Pharma Tower, Badli Industrial Area,
New Delhi 110 042.

...Applicant/Defendant in
both the Applications

/Versus/

M/s Apex Laboratories Pvt. Ltd.,
29, III Floor, SIDCO Garment Complex,
Guindy, Chennai 600 032,
rep.by its Authorised Signatory,
D.Jude F.L.S.Durai Pandian.

...Respondent/Plaintiff in both the
Applications



A.No. 4279 of 2021

Application praying that this Hon'ble Court be pleased to grant leave to cancel/rectify the Plaintiff Trade Mark Registration No. 487453 in class 5 for the trade mark ZINCOVIT by imposing a condition or limitation regarding exclusive right to the word ZINC as held by the Division Bench of this Hon'ble Court in the case titled as APEX LABORATORIES LTD., -VS- ZUVENTUS HEALTH CARE LTD., reported in MANU/TN/9346/2006 and Section 13 of the Trademarks Act, 1999.

A.No. 2628 of 2021

Application praying that this Hon'ble Court be pleased to frame a preliminary issue regarding invalidity of the Plaintiff's registration under No. 487453 for the mark ZINCOVIT in C.S. (Comm. Div) No. 355 of 2020.

These Applications coming on this day before this court for hearing, the Court made the following order:-

These applications have been filed by the applicant / defendant seeking for the leave of this Court to file an application for cancellation / rectification of the respondent/plaintiff's trade mark and for framing a preliminary issue regarding the invalidity of the plaintiff's registration.



2. These applications have been opposed by the respondent / plaintiff on various grounds.

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3. Heard Mrs. Gladys Daniel, learned counsel appearing on behalf of the applicant and Mr. R. Sathish Kumar, learned Counsel appearing on behalf of the respondent.

4. It is seen from records that the respondent / plaintiff filed an application in A.No.415 of 2021 seeking for grant of permission to the respondent to file cancellation / rectification of the applicant's trade mark. This Court considered the issue in detail and disposed of the application by an order dated 09.07.2021. The relevant portions in the order are extracted hereunder :-

14. In the instant case, both the plaintiff as well as the defendant claim that the registration granted to the other party is invalid. The plaintiff has initiated suit for infringement of trademark, infringement of copyright and passing off. From the pleadings, the sparring parties have recorded their intention to challenge the validity of the registration granted to the other party through rectification application. The plaintiff's trademark "ZINCOVIT" is registered at the Office of Trademark Registrar, Chennai. The defendant's trademark "ZINOLVITA" is registered at the Office of the



decide about infringement of trademark, copyright and passing off, it may be forum inconvenience for the parties to agitate one rectification application before the Delhi High Court and the other application at Madras High Court for the same rival trademarks.

15. In the result, Application No.415/2021 seeking leave to file rectification application is allowed. The suit as well as the application for rectification are to be heard and decided by the same forum viz, High Court of Madras, where the suit for infringement is pending. Therefore, the need to stay the suit proceedings does not arise. Hence, Application No.416/2021 is closed. No order as to costs.

5. When the above application was taken up for consideration, this Court found that both the parties were claiming that the registration granted in favour of other is invalid. Therefore, this Court expected both the parties to file an application seeking for leave to cancel/ rectify the trade mark of either side. Already, the application filed by the respondent was allowed and leave was granted. Similarly, the application filed by the applicant / defendant can also be allowed. The objections that were raised by the learned counsel for the respondent with regard to the ground raised

~~for cancellation/rectification~~ of the trade mark, are matters which can be gone into



only at the time of considering the rectification application .This Court need not go into that issue for the present. Ultimately, this Court will have to consider the application made both by the applicant as well as the respondent who are seeking for rectification / cancellation of the respective trade marks. No prejudice will be caused to the respondent, if leave is granted to the applicant to file the rectification.

6. In the result, these applications are disposed of and leave is granted to the applicant / defendant to file and proceed further with the rectification application. These applications will be heard along with the rectification application filed by the respondent.

Sd/- NAVJ
30/11/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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PS 07/12/2021