



(T)OP(TM)/164/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

(T)OP(TM)/164/2023
(ORA/15/2015/TM/CH)

Virendra Kumar Gupta,
Sole Proprietor M/s. Burger King
19/1-K, Mint House, Cantt, Varanasi-221002 (U.P.)

... Petitioner

-VS-

1.Burger King Corporation
5505 Blue Lagoon Drive,
Miami Florida - 33126,
United States of America

2.The Registrar of Trade Marks,
Intellectual Property Rights Building,
Industrial Estate, Sidco RMD Godown Area,
G.S.T.Road, Guindy,
Chennai - 600 032.

... Respondents

PRAYER: Transfer Original Petitions (Trademarks) filed under Sections 92, 95 of the Trademarks Act, 1999, pleased to rectify the impugned registration No. 927122 in class 30 and cancel the registration and /or impose a disclaimer over the words Burger and



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For Petitioner : Mrs.Gladys Daniel

For Respondent 2 : Mr.S.Janarthanam, CGSC

ORDER

Ms.Gladys Daniel, learned counsel, appears on behalf of Mr.Shailen Bhatia, learned counsel for the petitioner. She has placed on record the Judgment dated 06.03.2023 in C.S.(Commercial) No.229 of 2018 of the Delhi High Court. In the said Judgment, the Delhi High Court concluded that the plea of invalidity of registrations granted in favour of the plaintiff in respect of Trademark BURGER KING and other formative marks is *prima facie* not tenable. Orders in rectification petitions concluding that the rectification petitions are liable to be dismissed in view of the failure to obtain leave of the civil court were also placed before me. Learned counsel for the first respondent places reliance on these orders to contend that the



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rectification petition is liable to be rejected.

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2. Upon considering the above orders and, in particular, the order of the Supreme Court in *Patel Field Marshal Agencies -vs- P.M.Diesels Ltd., (2018)2 SCC 112*, this petition is not maintainable.

3. Hence, (T)OP(TM)/164/2023 is dismissed without any order as to costs.

24.07.2023

rna

Index : Yes / No

Internet : Yes / No

SENTHILKUMAR RAMAMOORTHY,J

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