



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

(T)OP(TM)/232/2023
(ORA/1/2017/TM/CH)

M/s.Sree Krishna Pipes,
Represented by its Partner
A.K.C.Thiyagarajan
No.-31/1, Sri Krishna Rice Mill Compound,
Kaithamalai Road, Uttukuli - 638 751.

... Petitioner

-vs-

1.M/s.Premier PVC Industry, A Partnership firm,
S.F.No.337/3R, Cinema Theatre Thottam,
Trichy Road, West Palladam,
Palladam 641 664, Tamil Nadu.

2.The Registrar of Trade Marks,
Chennai.

... Respondents

PRAYER: Transfer Original Petition (Trademarks) filed under Sections 47 and 57 of the Trade Marks Act, 1999, praying to exercise its discretion in favour of the applicant and against the respondent, and to remove/expunge/rectify the entry relating to registration no.1120546 in class 17 and award costs in favour of the applicant.



WEB COPY



For Petitioner : Mr.R.Sathish Kumar
for M/s.Ramji.G

For Respondent 1 : No appearance

For Respondent 2 : Mr.M.Karthikeyan, SPC

ORDER

The first respondent was served notice privately on 23.06.2023 and through Court on 28.06.2023. Thereafter, the name of the first respondent was printed in the cause list and the matter was posted for arguments on 03.08.2023. Since the first respondent failed to appear at the hearing on 03.08.2023, learned counsel for the petitioner was permitted to proceed with arguments. However, in order to provide a final opportunity to the first respondent, learned counsel for the petitioner was directed to serve notice, once again, on the first respondent. Learned counsel for the petitioner has placed on record an affidavit of service dated 09.08.2023 enclosing the acknowledgment card. Such acknowledgment card indicates that



notice was served on the first respondent on 07.08.2023. Once again, the first respondent has chosen not to appear at the hearing today.

2. Learned counsel for the petitioner submits that the predecessor in-interest of the petitioner was a partnership firm under the name and style of M/s.Premier Extrusion Industries. The said partnership firm was constituted on 11.09.1985 and the mark 'PREMIER' was used in relation to PVC pipes since then. Learned counsel has also placed on record invoices issued by Premier Extrusion Industries for the sale of PVC pipes, registration certificates issued by the Department of Industries and Commerce, the importers code number and the like. Upon re-constitution of the firm under the name and style of Sree Krishna Pipes with effect from 01.04.2002, the petitioner has also placed on record invoices issued by Sree Krishna Pipes for Popular Premier R PVC pipes. The invoices issued on 25.03.2003, 22.03.2004, 23.06.2005 and 10.02.2006 are on record. The assessment order of the Commercial Taxes Department



WEB COPY

in respect of Sree Krishna Pipes in the assessment period 2003 - 2004

is also on record.

3. Learned counsel also placed for consideration the advertisement in respect of the impugned mark in the Trade Mark Journal on 01.10.2007. The impugned mark is



The advertisement specifies that the first respondent claims use from 13.10.1999. The impugned mark has been applied to identical goods, namely, PVC pipes in class 17. The advertisement also contains a limitation to the effect that no exclusive rights are granted in respect of the words "Classic PVC pipes". Effectively, exclusive use was granted only in respect of the word 'PREMIER'.

4. When the impugned mark is compared with the petitioner's mark, as regards the prominent feature, namely, 'PREMIER', the only



difference is the use of an additional "e" in the word 'Preemier' by the petitioner. Without doubt, both marks are used in respect of PVC pipes and, therefore, it is probable that the use of a near-identical mark would cause confusion and deception among consumers. When all these circumstances are considered, the impugned mark is liable to be removed from the Register.

5. For reasons set out above, this petition is allowed by directing the second respondent to remove the entry relating to Trademark No.1120546 in class 17 from the Register of Trademarks and take necessary consequential actions. This exercise shall be completed within a period of *four weeks* from the date of receipt of a copy of this order.

18.08.2023

rna

Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No



WEB COPY



SENTHILKUMAR RAMAMOORTHY,J

rna

(T)OP(TM)/232/2023
(ORA/1/2017/TM/CH)

18.08.2023