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P.VELMURUGAN,J.

The present suit has been filed by the plaintiff for permanent injunction restraining the defendant from in any manner passing-off the plaintiff's trademark and trading style "MANJAL RESTAURANT" by using the offending trademark and trading style "MANJAL RESTAURANTS" or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff's trademark "MANJAL RESTAURANT" in any mode and to direct the defendant to render a true and faithful account of the profits earned by them through the sale of food products bearing the offending trademark "MANJAL RESTAURANTS" and directing the payment of such profits to the plaintiff by way of damages for infringement committed by the defendant and also for the costs of the suit.

2. The plaintiff has also filed the present application seeking an order of interim injunction restraining the respondent/defendant, their men, servants, agents, or anyone claiming through or under them from in any



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manner passing-off the applicant's/plaintiff's trademark and trading style “MANJAL RESTAURANT” by using the offending trademark and trading style “MANJAL RESTAURANTS” or any other mark or marks which are similar or in any way deceptively similar to or a colorable imitation of the applicant's/plaintiff's trademark “MANJAL RESTAURANT” in any mode pending disposal of the above suit.

3. The case of the applicant is that the applicant is the sole proprietor of “MANJAL”. The applicant commenced the restaurant business on 05.06.2020 under the trade name “MANJAL” at Poes Garden, Chennai. The applicant entered in to an Agreement to Lease dated 05.06.2020 with the landlords of the property situated at Old No.17, New No.4, Kasturi Estate 1st Street, Poes Garden, Chennai-600 018. The applicant had obtained the GST registration certificate (Registration No.33ADFPV3540C1ZV) on 05.08.2020.

3.1. The landlords of the said property wanted the applicant to vacate the property as they wanted the property for their own usage. The applicant vacated the property during March 2022. Thereafter, the applicant immediately entered into a Rental Agreement dated 01.04.2022 to run the restaurant named "MANJAL" at No.6/9, Kasturi Estate 3rd Street, Poes



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Garden, Chennai - 600 018. The applicant obtained GST registration certificate (Registration No.33ADFPV3540C2ZU) on 01.04.2022.

3.2. Except the applicant, no one had used the trade mark "MANJAL" or any other mark nearly resembling the said trade mark prior to the applicant's usage of the mark "MANJAL" in restaurant business. The "MANJAL RESTAURANT" run by them has been the subject matter of several articles published in a wide variety of magazines in circulation in the State of Tamil Nadu. Several newspapers/magazines have carried articles about the applicant's restaurant "MANJAL" at Poes Garden which state that several Businessmen, political leaders and celebrities have patronized the restaurant.

3.3. The applicant's trade mark "MANJAL RESTAURANT" used in conjunction with the restaurant business was widely known. Due to the tireless efforts of the applicant and the quality of food served at the restaurant, "MANJAL" has become very popular among the public. The applicant have invested a substantial sum of money in order to create the awareness among the public with regard to the high-quality restaurant "MANJAL". Due to the long, continuous and uninterrupted use of the trade mark "MANJAL", it has come to be associated exclusively with the



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applicant. The applicant focuses on providing quality, fresh, affordable food of supreme taste to its wide-ranging customers those visit the applicant's restaurant. Furthermore, the applicant prides itself on it being a family restaurant with an elaborate menu coupled with customizable food in niche cuisines. Due to the growing demand, the applicant is in the process of opening branches at Anna Nagar and East Coast Road (ECR).

3.4. The applicant's goods and services bearing the trademark "MANJAL RESTAURANT" are advertised widely and extensively in media including various newspapers and magazines and other media to reach every corner of the country. The applicant also owns the website www.manjalpoesgarden.com since 2022. The website is also accessible throughout the world and numerous potential and existing customers visiting the same over the years and presently.

3.5. The applicant's trademark "MANJAL RESTAURANT" is distinctive and exclusively associated with the goods and services offered by the applicant in restaurant business. By virtue of prior adoption, long, continuous, open, substantial, uninterrupted and extensive use, coupled with extensive adverting and superior quality of goods and services, the applicant's trademark has attained secondary meaning and it is solely



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associated with the applicant. As a result of such painstaking efforts taken by the applicant, the trademark "MANJAL RESTAURANT" is well-known among the public. The applicant's trademark "MANJAL RESTAURANT" and the logo have become synonymous with the applicant alone. The applicant has successfully built a vast reputation in the industry.

3.6. The applicant has regularly and continuously been promoting their trademark "MANJAL RESTAURANT" and the logo to the extent permissible, through permitted channels of advertisements, publicities, promotions and marketing research and the applicant has been spending enormous amounts of money, efforts, skills, and time thereon. The applicant has been doing so through various means and modes including the use of the trademark on their business cards, letter heads, invoices, advertisement, and promotional material inter alia including catalogues, all of which have tremendous reach, availability and circulation across Tamil Nadu and which are widely read and patronized in the Food industry.

3.7. The applicant's trademark "MANJAL RESTAURANT" and the logo garnered immense goodwill and reputation *in lieu* of widespread promotion and use of the mark by the applicant. The applicant's trademark has received positive and encouraging reviews across several platforms such



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as Zomato, Swiggy. Just Dial, YouTube, Twitter, etc. The applicant also promotes its trademark "MANJAL RESTAURANT" through various social media channels such as Facebook, Instagram, YouTube, X (Twitter) etc. Such online presence is accessible throughout India with numerous potential and existing customers visiting the restaurant till date.

3.8. By virtue of the quality of goods and services made available as well as continuous promotional and publicity measures undertaken by the applicant, the applicant's mark "MANJAL RESTAURANT" has acquired tremendous goodwill and reputation, traceable only to the applicant and no one else. Due to quality of foods and services provided by the applicant under the mark "MANJAL RESTAURANT", the applicant has bagged a huge clientele, recognition, awards and accolades. The applicant has obtained "The Best South Indian Restaurant" award on 27.03.2024. The applicant has obtained the award "Restaurant of the Year" on 27.03.2024.

3.9. On 15.06.2023, the applicant applied for registration of the trademark "MANJAL RESTAURANT" under trademark application No.5982440 in class 43 for the services relating to services providing for vegetarian and non-vegetarian restaurant, catering services indoor and outdoor, hotels, food and drinks, boarding and lodging. Apart from the



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above, the applicant also applied registration of trademark under classes 16, 29, 30, 32 and 35.

3.10. The respondent company's directors are well aware about the applicant Mr.R.V.Vinothkumar. The respondent's Instagram account named “manjalchennai” mentions their restaurant address as 17/4, Kasturi Estate 1st Street, Poes Garden, Chennai-600 018. The respondent has used the applicant's restaurant original address namely Manjal, 17/4, Kasturi Estate 1st Street, Poes Garden, Chennai-600 018 as their restaurant address which would clearly show the conduct of the respondent and the knowledge of the applicant's restaurant “MANJAL”. The promotion video posted in the respondent's Instagram id is nothing but the video of the applicant's restaurant “MANJAL”. The respondent has posted several pictures of restaurant exteriors and picture of the celebrities in the said Instagram id “manjalchennai”. The respondent has also posted pictures in their Instagram id containing the photograph of the applicant with celebrities and thereby, the respondent has been trying to mislead the public that the restaurant run by the respondent is of the applicant.

3.11. Further, it was shocked to know that the respondent has



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obtained the registration of the trademark 'MANJAL RESTAURANTS' under class 43. The respondent applied for the registration of this trademark 'MANJAL RESTAURANT" (Device Mark) under class 43 for the restaurant services on 02.12.2021, as "proposed to be used" and registration was granted on 31.08.2022 by the Trademark Registry. Upon discovering the information during November 2022, the applicant immediately filed a rectification petition on 14.11.2022 against the respondent's registered device mark "MANJAL RESTAURANTS" under class 43. The rectification petition filed by the applicant is in the stage of final hearing before the Registry. The respondent has copied the entire trademark of the applicant for identical goods/services and that the said mark was registered in bad faith. The respondent's mark which is the replica of the applicant's trademark "MANJAL RESTAURANT", causing potential confusion among consumers and the public in general.

3.12. The respondent has no connection with the applicant's trademark "MANJAL RESTAURANT" in any manner. However, the respondent, with *mala fide* intentions to seize the goodwill and reputation of the brand "MANJAL RESTAURANT", used the opportunity by applying before the Trademark Registry and obtained the trademark or the Device



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mark "MANJAL RESTAURANTS" under class 43. Apart from filing oppositions to all other applications filed by the respondent for the trademark "MANJAL". the applicant has also filed various applications before the Trademark Registry to register the word mark and device mark of the applicant's trademark "MANJAL RESTAURANT".

3.13. The respondent has used the documents of the applicant to claim usage of the mark "MANJAL RESTAURANTS" and has fabricated other documents and filed before the Registry under Class 36 & 39 illegally and obtained the registration of the trademark "MANJAL RESTAURANTS". The following documents are filed by the respondent before the Trademark Registry;

1. First Document: Bills and invoices in the name of 'MANJAL RESTAURANTS' and "MANJAL".

2. Second Document: The respondent has submitted Tax Invoices issued by one Pranav Air Con to MANJAL to prove the long and continuous usage of the mark "MANJAL RESTAURANT" by them. But the said tax invoice is not issued to the respondent and it was issued to the applicant. Further, the GST No.33ADFPV3540C1ZV mentioned in the Tax invoice belongs to the applicant. The address mentioned in the Tax Invoices is Old No.17, New



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No.4, Kasthuri Estate 1st Street, Chennai but the said premises are under the possession of the applicant.

3. Third Document: The respondent has filed a screenshot of the search page of the GST portal and the said screenshot clearly shows that (a). the legal name of the business is "Rajagopal Vinayagamoorthy Vinothkumar". The trade name is "MANJAL" and the effective date is 05.08.2020 which belongs to the plaintiff. (b). The principal place of business is Old No.17, New No.4, Kasthuri Estate 1st Street, Poes Garden, Chennai – 600 018. The respondent has filed the said documents before the Registry as supporting evidence to suggest that they are the bonafide user of the impugned mark MANJAL RESTAURANTS. The documents itself would prove that the trademark “MANJAL” belongs to the applicant.

4. Fourth Document: GST Certificate of Kallal Hospitalities Private Limited. The GST certificate filed by the respondent before the Registry is fabricated evidence. The respondent has intentionally cropped the emblem of the Government of India along with the GST Number. Further, the date of liability is 27.11.2020, whereas, in Row 9, it is mentioned that the date of issuance of the certificate was 05.01.2022. But the liability of the tax payer commences from the date of issuance of the certificate and not on a prior date Therefore, Therefore, it



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is evident that the respondent while editing the GST certificate ignored the date of issuance and submitted false and half-baked fabricated evidence, which now proves the fabrication of the evidence by the respondent.

5. Fifth document: Bill for the food submitted by the defendant. The said bill does not bear (i). the name of the restaurant and the address of the restaurant or (ii). the date of issuing the bill or (iii). the GST number of the taxpayer or any other required details. The bill was also cropped intentionally by the respondent to hide the name of the restaurant and filed an unnamed bill to unlawfully obtain the registration of the impugned mark MANJAL RESTAURANTS.

3.14. The respondent has commenced a restaurant under the name "MANJAL RESTAURANTS" at No.3/9/3, Ladies Street Road, Ondikadai, Yercaud -636 601 during January 2024. Immediately, the plaintiff sent a legal notice dated 23.01.2024 to cease and desist from using the trademark "MANJAL" for their restaurant business. The respondent sent reply notice dated 11.02.2024 stating the respondent started the restaurant named "MANJAL" on 25.12.2020 and the applicant namely Vinoth Kumar Vinayagamurthy was being requested to act as a Manager of the respondent



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and the respondent has admitted all the statutory certificates were issued in the applicant's name. The reply notice dated 11.02.2024 sent by the respondent is contrary to the statements made by them before the trademark Registry and the documents filed by the respondent will establish that the reply notice dated 11.02.2024 is a clear case of afterthought.

3.15. To the shock and surprise, the applicant recently been brought to the attention that the respondent is in the process of opening a restaurant under the name "MANJAL RESTAURANTS" at No.2/256, East Coast Road, Chennai-600 041 on 28.06.2024 and the name board of the respondent named "MANJAL RESTAURANTS" was installed on 22.06.2024. Since there was urgency to get an order of injunction against the respondent from commencing the restaurant under the name "MANJAL RESTAURANTS" the applicant could not take notice under Section 12A of the commercial Courts Act, 2015. The use of the applicant's trademark "MANJAL RESTAURANT" is bound to cause grave prejudice and imminent danger to the enviable goodwill and reputation garnered by the applicant. The respondent's impugned mark and labels not only infringes the trademark rights of the applicant in the mark "MANJAL" but the respondent also passing off their products as that of the applicant, thereby, cashing upon the



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applicant's goodwill and reputation and tarnishing the rights of the applicant's trademark. Hence, the present applicant is filed seeking an order of injunction.

4. The Director of the respondent company has filed counter stating that the registered ownership of the mark and style of its logo "MANJAL RESTAURANTS" is in the name of M/s.Kallal Hospitalities Private Limited. As a registered trademark proprietor of the mark "MANJAL RESTAURANTS", the respondent is entitled to start and operate any number of restaurants in the name and style of "MANJAL RESTAURANTS" anywhere within territory of India. Even the document filed by the applicant i.e. Certificate of Registration of Trademark "MANJAL RESTAURANTS" is in the name of the respondent namely M/s. Kallal Hospitalities Private Limited which would clearly show that the respondent is the owner of the registered trade mark. The applicant seems to be at the first place, totally confused as he uses "Manjal" alone in some paras and "Manjal Restaurant" in some places whereas, the registered mark of the respondent is in the name and style "MANJAL RESTAURANTS". The applicant does not properly know what is the relief he has sought for from this Court and hence, the present application is vexatious, ill spirited



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only to jeopardise the rights of the respondent with malafide intention and hence, the same has to be dismissed in limine.

4.1. The applicant does not have any locus to question the respondent in using its registered mark. The respondent denies that the applicant is the prior user of the mark "MANJAL" and the applicant has invested substantial sum of money whatsoever in the restaurant. On the contrary it is the respondent who has invested substantial sum of money in starting the brand, spending for its reputation, goodwill, publicity. The applicant is riding on the reputation and goodwill earned by the respondent's mark "MANJAL RESTAURANTS". The respondent nowhere uses the mark "MANJAL" alone in its isolation, but it uses in the name and style of "MANJAL RESTAURANTS". The applicant does not have any iota of right or knowledge about the registered trademark of the respondent. Further, it is the respondent who owns a domain name <http://www.manjalresturants.com/> and hosts an active website there at, wherein the respondent extensively and prominently uses the mark "Manjal" in disseminating, marketing, advertising and offering for sale of their said services. It is also disputed that the applicant owns the website domain since 2022. The website as alleged is in the name of <http://www.manjal>



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poesgarden.com/ is no way relevant to the current proceedings since the domain in no way the same for Manjal Restaurants. Therefore, it clearly establishes that the the applicant is trying to adopt the respondent's mark bringing in different variation. Hence, the domain registration plays no significant role to establish their prior use or adoption. The document adduced to reiterate the date of use is that of the Mark "Manjal" and nowhere it refers to the mark "Manjal Restaurant".

4.2. The learned counsel submitted that the applicant Vinoth Kumar Vinayagamurthy acted as a Manager of the respondent and by misusing the statutory certificates issued in his name, has filed present suit and application suppressing of materials facts. The applicant has not fully revealed the registration and ownership of the mark of the respondent. As fatally admitted by the applicant, the respondent applied for the registration of the trademark under TM No.5231371 "MANJAL RESTAURANTS" and was granted the registration of the same on 31.08.2022 by the Trademarks Registry without any objections raised under Section 9 or 11 of the Trademark Act 1999. Hence, it is clear beyond any reasonable doubt that the respondent is the prior adopter and user who has coined the term "MANJAL RESTAURANTS" and is the legal user of the same. The respondent has got



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every statutory entitlement to use and exploit its registered trademark “Manjal Restaurants”. The applicant has not made out any case much less a prima facie case before this Court for any order whatsoever. The balance of convenience is in favour of the respondent and the respondent will be put to grave and irreparable hardship if any order whatsoever is granted in favour of the applicant.

5. The learned Senior counsel appearing for the applicant submitted that the applicant has annexed 71 documents in the typed set of papers in which, Doc. No.1 is the Agreement entered into on 05.06.2020 between the applicant and the landlords of the property situated at Old No.17, New No.4, Kasturi Estate 1st Street, Poes Garden, Chennai-600 018. Doc. No.2 is the invoice dated 10.06.2020 raised in the name of the applicant for civil work. Doc. No.3 is the invoice issued in the name of the applicant dated 18.06.2020 by Classic designs. Doc.No.4 is the Pan Card of the applicant. Doc.No.5 is the GST Registration Certificate in the name of the applicant. Doc.No.6 is the GST Returns filed by the applicant for the restaurant “MANJAL” from 2020 – 2024. Doc.No.7 is the Income Tax filed by the applicant for the restaurant “MANJAL” from 2021-2024. Doc. No.8 is the Fire Service License dated 18.11.2020 obtained in the name of the applicant.



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Doc. No.9 is the receipt for applying Food Safety License in the name of the applicant dated 19.11.2020. Doc. No.10 is the article published in Deccan Chronicle about the applicant's restaurant “MANJAL”. The applicant has also filed all other documents from 2021 till 2024. Doc.No.11 is the billing commencement report dated 11.12.2020 issued in the name of the applicant by Bharati Airtel Limited. Doc.No.12 is the e-mail sent by Airtel to the applicant's e-mail id manjalthospitality@gmail.com dated 19.01.2021. The application filed by the respondent to register the device mark “MANJAL RESTAURANTS” under class 36 dated 16.07.2022 is filed as Doc. No.54. The reply to examination report filed by the respondent under class 36 dated 07.03.2023 is filed as Doc. No.55. Doc. No.56 is the invoice dated 31.07.2020 filed by the respondent to establish the user claim of the restaurant under the name “MANJAL”. Doc. No.57 is the tax invoice dated 02.11.2020 filed by the respondent before the Trademark Registry. Further, the GST Certificate filed by the respondent, legal notice and reply notice exchanged between the parties have also been annexed.

5.1. The learned Senior Counsel submitted that the documents would clearly shows that the applicant is using the trademark “MANJAL” even from the year 2020 onwards. The lease agreement between the applicant and



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the landlords of the property, the invoices, GST Registration Certificate, the income tax particulars and other documents would clearly show that the applicant is running the restaurant under the mark “MANJAL” from the year 2020 and the applicant is the prior user of the mark. Even assuming that the respondent is the registered owner of the device mark under Class 36, it is registered only in the year 2022. But the applicant is the prior user of the said mark even from the year 2020. The learned Senior counsel further submitted that the prior user of the trade mark has got superior rights over the rights of the registered owner and such a registered owner is not entitled to interfere with or restrain the use of trademark by a person who is the honest prior user. In support of his contention, the learned Senior counsel placed reliance on the following judgments;

- 1. Civil Appeal No.2758 of 2018 (Arising out of SLP (C) No.12671 of 2014) dated 17.03.2015.*
- 2. O.A.Nos.12 & 13 of 2023 in C.S.(Comm. Div.) No.2 of 2023 dated 15.06.2023.*
- 3. O.S.A.(CAD) Nos.120 & 121 of 2023 dated 29.09.2023.*



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5.2. The learned Senior Counsel submitted that the respondent has used the documents of the applicant to claim usage of the mark "MANJAL RESTAURANTS" and has fabricated other documents and filed before the Trademark Registry under Class 36 & 39 illegally and obtained the registration of the trademark "MANJAL RESTAURANTS". Even the GST number has been misused by the respondent. Soon after coming to know about the same, the applicant moved the Registry for rectification on 14.11.2022 which is now at the final stage. Meanwhile the respondent commenced a restaurant under the name "MANJAL RESTAURANTS" at No.3/9/3, Ladies Street Road, Ondikadai, Yercaud-636 601 during January 2024. Immediately, the applicant sent a legal notice dated 23.01.2024 to cease and desist from using the trademark "MANJAL" for their restaurant business for which, the respondent also sent reply dated 11.02.2024.

5.3. The respondent through common friends approached the applicant during March 2024 and April 2024 and agreed to settled the dispute amicably by changing the name "MANJAL". To the shock and surprise, the applicant came to know that the respondent is in the process of opening a restaurant under the name "MANJAL RESTAURANTS" at No.2/256, East Coast Road, Chennai – 600 014 on 28.06.2024 and its name



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board was installed on 22.06.2024. Hence, to get an order of injunction as urgent relief, the plaintiff filed the present suit along with the present application. This Court by order dated 01.07.2024, suo motu appointed an Advocate Commissioner to ascertain the necessity of filing this suit without complying with the mandatory provisions under Section 12A of the Commercial Courts Act and to note down the physical features of the suit property and to collect the name, GST number of the Taxpayer of the suit property and the name of the registered owner of the said property. Accordingly, the Advocate Commissioner inspected the said restaurant and filed report whereby, the Advocate Commissioner has confirmed that the respondent has made arrangements to open the restaurant.

5.4. The applicant has spent lot of money in promoting the business/restaurant every nook and corner of India especially in Tamil Nadu including social media and other modes. The total turn over of the applicant from the year 2020 to 2024 is Rs.20,24,55,649/-. The applicant has also bagged “The Best South Indian Restaurant” award on 27.03.2024. With the short span of time, the applicant's trademark has earned reputation and goodwill from the public. The respondent has no connection with the applicant's trademark “MANJAL RESTAURANT” in any manner. Despite



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this, the respondent, with mala fide intention to seize the goodwill and reputation of the brand “MANJAL RESTAURANT” fabricated the documents and filed before the Registry under Class 36 & 39 illegally and obtained the registration of the trademark “MANJAL RESTAURANTS”.

5.5. The learned Senior Counsel for the applicant submitted that the applicant has proved the prima facie case and the balance of convenience is in favour of the applicant. If the respondent is not restrained, irreparable loss and hardship would be caused to the applicant. Hence, the learned Senior Counsel prayed for grant of interim injunction.

6. The learned counsel for the respondent submitted that the suit itself is liable to be dismissed in limine as not maintainable since the mandatory provisions under Section 12A of the Commercial Courts Act 2015, was not duly complied with by the applicant/plaintiff. He also placed reliance on the the decisions of the Hon'ble Supreme Court in the case of ***Patil Automation Private Limited and Others Vs. Rakheja Engineers Private Limited*** reported in ***AIR 2022 SC 3848*** wherein, the Hon'ble Supreme Court has held that Section 12A of the Act is mandatory and any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule II of CPC.



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6.1. The learned counsel for the respondent stoutly denied that the applicant commenced the hotel business under the name "MANJAL" and engaged in the business of running the hotel. The applicant has deliberately avoided to disclose the person who started the restaurant as the applicant is well aware that disclosing the background of the person behind it, would in itself be fatal to the case of the applicant. The learned counsel submitted that it is the defendant who started the restaurant under the trade name and style "MANJAL". The restaurant business commenced commercially on 25.12.2020 under the name of "MANJAL" registered as a proprietorship concern with one Vinothkumar Vinyagamoorthy/the applicant who was being requested by the defendant to act as a Manager cum proprietor to manage the day to day business on behalf of Kallal Group of Companies. "Manjal" is run under the absolute financial support of Kallal Group of Companies. To comply with the regulations of various Government Authorities, the defendant had applied GST, FSSAI, sanitary licenses in the name of Mr.Vinothkumar Vinyagamoorthy/the applicant and a bank account was also opened in the name of Manjal and appointed him as its authorized signatory. All the banking transactions including capital expenses like rental



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advance, interiors, staff salary includes Mr.Vinothkumar's Salary were all handled by the defendant through bank accounts of "Manjal" funded by Sindhulakshmi Impex, owned by Kallal Group of Companies wherein one Mr.Saravanan Palaniappan and Mrs.Lakshmi Muthuraman are partners. Such being the case, the applicant/mr.Vinothkumar Vinayagamoorthy, started claiming ownership of the restaurant in late November 2021 not understanding the fact that he is not more than any common staff and labour working under the Kallak Group of Companies. Further, he started transacting the bank accounts of "Manjal" without the defendant's knowledge. Upon noticing the same, all banking transactions were route through Kallal Hospitalities Private Limited from 28.12.2021.

6.2. The respondent is the registered ownership of the mark and style of its logo "MANJAL RESTAURANTS". As a registered trade mark proprietor of the mark "MANJAL RESTAURANTS", the respondent is entitled to start and operate any number of restaurants in the name and style "Manjal Restaurants" anywhere within the territory of India. In pursuit of the same, the current project was launched at the Hill station of Yercaud recently in the name and style of "MANJAL RESTAURANTS". Even the document filed by the plaintiff i.e. Certificate of Registration of Trademark



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"MANJAL RESTAURANTS" is in the name of the respondent namely M/s.Kallal Hospitalities Private Limited which would clearly show that the respondent is the owner of the registered trade mark. The applicant has no *locus standi* to restrain the respondent from starting the restaurant and commencing the business. The applicant is the one who is misusing the respondent's trade mark with *mala fide* intention and to restrain the registered owner from using the mark, the applicant has come before this Court. Except the owner, no other person is entitled to claim any right and they cannot prevent the real owner from doing their business and using their registered trademark.

6.3. The learned counsel for the respondent further submitted the website as alleged by the applicant in the name of <http://www.manjalpoesgarden.com/> is no way relevant to the current proceedings since the domain in no way the same for Manjal Restaurants. The applicant is trying to adopt the respondent's mark bringing in different variation. The applicant's averments of exercising hard work, investments of time, effort and money to develop the brand and establish reputation and good will are totally false and that no amount of investments of time and money will protect an already adopted and registered mark. It is the applicant who is



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using the prior adopted mark coined, designed and put to used by the respondent and the same is in absolute violation of the respondent's statutory rights.

6.4. The learned counsel further submitted that the respondent applied for the registration of the trademark under TM No.5231371 "MANJAL RESTAURANTS" and was granted the registration of the same on 31.08.2022 by the Trademarks Registry without any objections raised under Section 9 or 11 of the Trademark Act 1999 which itself would show that the respondent is the prior adopter and user who has coined the term "MANJAL RESTAURANTS" and is the legal user of the same and that the respondent has got every statutory entitlement to use and exploit its registered trademark "Manjal Restaurants". The applicant is trying to take the entire goodwill, reputation and also mark belonging to the respondent and pass off the goods and services as that of his own. The applicant has not made out any case much less a prima facie case before this Court for any order whatsoever. The balance of convenience is in favour of the respondent. Therefore, this application is liable to the dismissed.

7. Heard the learned Senior counsel for the applicant and the learned counsel for the respondent and perused the materials available on record.



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8. In order to establish their case, the applicant/plaintiff has filed list of documents including the Agreement to Lease entered by the applicant with the landlord dated 05.06.2020, invoice raised in the name of applicant for civil work dated 10.06.2020, invoice issued in the name of applicant by classic designs dated 18.06.2020, Pan Card of the applicant, GST Registration certificate in the name of the applicant dated 05.08.2020, GST Returns filed by the applicant for the restaurant MANJAL from 2020-2024, Income Tax filed by the applicant for the restaurant MANJAL from 2021-2024, Fire Service License in the name of the applicant dated 18.11.2020, Income Tax filed by the plaintiff for the restaurant MANJAL from 2021-2024, Receipt for applying Food Safety License in the name of the applicant dated 19.11.2020, Article published in Deccan Chronicle about the applicant's restaurant MANJAL, application filed by the respondent to register the device mark MANJAL RESTAURANTS under class 36 dated 16.07.2022 and the invoice filed by the respondent to establish the user claim of the restaurant under the MANJAL dated 31.07.2020.

9. The respondent admitted the commencement of the business/restaurant and its registered trade mark “MANJAL RESTAURANTS”. Prior to filing of the present suit, the applicant/plaintiff



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has sent notice to the respondent/defendant and the respondent/defendant has also sent reply for the same. It is is also admitted fact that the applicant is doing restaurant business in the name and style of “MANJAL”. The Document No.1/Agreement to Lease annexed by the applicant/plaintiff shows that the applicant commenced the restaurant business on 05.06.2020 in the name and style of “MANJAL”. The applicant/plaintiff has also filed the GST Returns for the restaurant “MANJAL” from 2020-2024. But the Document No.54 filed by the applicant/plaintiff shows that the respondent/defendant has made an application only on 16.07.2022 to register the device mark “MANJAL RESTAURANTS” under Class 36 and subsequently got it registered.

10. Section 27 of the Trademarks Act clearly says that the enactment of Trademarks Act, 1999 which gives exclusive rights to the registered owner of the trademark. It is also important to note that the exclusive right and protection under the said Act is not an absolute right but subject to certain restrictions. The Trademark Act 1999 has been enacted to predominant notion and seminal theme on the basis of "first user of the trade mark" and this can be seen from the basic structure of the Act itself. Even



though the exclusive right of infringement was given only to the registered trademark owner and same cannot be taken as sole purpose of the Act, as Section 27(2) of the Act would allow and also give rights to the unregistered owner of the trademark to claim passing-off as common law remedy. Hence, by a plain reading of the said Act shall prove the primary motive of the legislature to guard the unregistered prior user of the trademark as well.

11. Section 34 of the Act clearly says that nothing in this Act shall entitle the registered owner of the trademark to interfere with the rights of the prior user. This shall prove that the Act recognises and protects the rights of the prior user as superior to that of registered user. Section 34 of the Act is extracted hereunder;

34. Saving for vested rights- Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods or services in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior.

(a) to the use of the first-mentioned trade mark in relation to those goods or services by the proprietor



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or a predecessor in title of his; or

(b) to the date of registration of the first-mentioned trademark in respect of those goods or services in the name of the proprietor of a predecessor in title of his; whichever is the earlier, and the Registrar shall not refuse (on such use being proved) to register the second mentioned trade mark by reason only of the registration of the first-mentioned trade mark.

12. The above principle has been reiterated several times by the Hon'ble Supreme Court in various judgments and upheld the doctrine of prior use. Especially taking a view that prior users right will override those of a subsequent user even though it had been accorded the registration of its trademark. A perusal of the affidavit and documents produced by the applicant, this Court finds that that the applicant is the prior user of the trademark "MANJAL". Eventhough the documents show that the respondent is the registered owner of the trademark "MANJAL RESTAURANTS", it is only subsequent to the use of the applicant's trademark. Therefore, the decision referred to by the learned Senior Court for the applicant is squarely applicable to the present case on hand.



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13. Though the learned counsel for the respondent submitted that the applicant Vinothkumar Vinyagamoorthy only acted as a Manager cum proprietor to manage the day to day business on behalf of Kallal Group of Companies and to comply with the regulations of various Government Authorities, the defendant had applied GST, FSSAI, sanitary licenses in his name and by misusing the statutory certificates issued in his name, he has filed the present suit and application suppressing all the materials facts, the respondent has not produced relevant documents to prove the same.

14. The learned counsel for the respondent further contended that Section 12A of the Commercial Courts Act has not been complied with. No doubt Section 12A of the Act is mandatory and the one who is filing the suit, should have exhausted the remedy of pre-institution mediation in accordance with the Act prior to filing of the suit. However, in case of urgent interim relief, the procedure under Section 12A of the Act can be dispensed with. In the present case, the applicant has clearly established that he could not comply with Section 12A of the Act since the applicant came to know that the respondent was going to start a restaurant in East Cost Road, Chennai on 28.06.2024, he filed the plaint immediately along with this application seeking urgent relief of interim injunction without



exhausting the remedy under Section 12A of the Act.

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15. Further, on the date of admission of this suit, this Court, in order to ascertain the necessity of filing this suit without complying with the mandatory provision under Section 12A of the Commercial Courts Act, had suo motu appointed an Advocate Commissioner to note down the physical features of the suit property and to collect the name, GST number of the Taxpayer of the suit property and also the name of the registered owner of the said property. Accordingly, the Advocate Commissioner inspected the restaurant of the respondent proposed to be opened and also filed a report and the relevant portions of the report is extracted as follows;

2. On 01/07/2024, I received the warrant from the Registry at around 6.15 pm and immediately set out for the premises at No. 2/256, East Coast Road, Chennai 600 041, where I reached around at 8.00 pm.

3. On the ground floor, at the entrance that led up to the premises, was a banner hanging with the brand/restaurant name and on the first floor, a large signboard, also of the brand/restaurant name written in English and Tamil, side by side. Thereafter, I proceeded to the premises situated on the first floor and I met Mr. Karuthalagin, a member of staff, to whom I explained regarding the warrant of my commission. After perusing the papers, there were two other staff members who had come to the premises upon Mr. Karuthalagin informing them about my inspection and I requested them to cooperate in carrying out the same.



4. *As I reached the first floor and through the entrance is the waiting room/ reception area situated, with seating for 4-6 people. After the entrance door, on the left hand-side is a room around 41/18 ft wide. The said room has a seating capacity for 32 people. At the end of this room is what seems to be an area cordoned off for the staff by some furniture which gives access to the staff from the cash/billing area to the said room. Straight from the entrance of the door is the cash/billing counter behind which is a cooler full of aerated drinks/juices.*

5. *In the next room, which is the main seating area, approximately 35/24 ft wide, there is a seating capacity for 44 people. On the right-hand side of this main seating area is a private room which can seat 12 people, which is around 18/14 ft wide. At the extreme right of the main area is the kitchen which has counters, equipment, utensils, electrical and large machinery. Also found are some vegetables, spices, pulses, grains, left open, while some are stored in large containers. On the left-hand side of the kitchen door is a latched door which leads to the next property and is not a part of the suit premises, I was told by the staff there. Before the kitchen door, on the right, there is a hand wash area with two basins and further in through a door, is one water closet along with a wash basin for patrons to use.*

6. *At the end of the kitchen is a flight of stairs that leads up to a storage room alongside a bathroom. Inside the storage room are large containers and gunny bags containing of pulses, grains, rice and flour. There is one water closet and a tap in the said bathroom.*

7. *The interiors of the suit premises are adorned with either printed wallpaper or yellow paint. There are many lights/ light fittings, either propped on the walls or*



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hanging from the ceiling as well as decorative pieces. Photographs of the suit premises, including the exterior view, signboard, entrance, interiors, rooms, kitchen area, bathrooms and storage room are collectively attached herewith as Annexure B.

8. When I enquired about the GST Number and the name of the registered owner, the staff had shared a scanned copy of the acknowledgment form under Form GST REG-02 of GSTIN bearing No. 33AAPCM9984R1Z4 dated 28/06/2024 in the name of MANJAL RESTAURANTS PRIVATE. A copy of the said GST form is attached herewith as Annexure C. I was informed that the owner is one Mr. Arun Prasad Mahalingam, but they did not possess any documents pertaining to his ownership. I was informed that only the GST form was what they had in their possession and that no other documents for proof of ownership were available with them for me to inspect. The inspection concluded around 8.35pm.

9. With the above, the warrant of commission as issued by the Hon'ble Court in the above matter, i.e., to visit the suit property at No. 2/256, East Coast Road, Chennai 600 041 to note down the physical features of the property and the GST Number of the Taxpayer as well as the name of the Registered owner of the property stands completed successfully.

16. The report of the Advocate Commissioner clearly shows that the respondent has made arrangements to open the restaurant which clearly shows that the applicant requires urgent/emergency interim relief. Even the



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legal notice sent by the applicant and the reply sent by the respondent clearly show that the respondent taking efforts to open the restaurant.

17. Under these circumstances, the suit filed by the applicant/plaintiff and the provisions under Section 12A of the Commercial Courts Act is satisfied.

18. The respondent also admitted that the applicant is running the restaurant under the trademark “MANJAL” but, the main contention of the respondent is that he is the registered owner of the trademark “MANJAL RESTAURANTS” whereas, the applicant has established that he is using the trade mark “MANJAL” from 05.06.2020 and the respondent registered the trademark only in the year 2022.

19. Further, admittedly the applicant has filed an application before the Trademark Registry for rectification and the same is also pending and now at the final stage. Therefore, the rights of the parties can be decided only after trial. Now at this stage, the Court has to see as to whether the applicant has established prima facie case, balance of convenience and irreparable loss.

20. A reading of the entire materials available on record and the affidavit, counter affidavit, reply to the counter affidavit and the



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submissions made by the learned counsel on either side, this Court finds that the applicant has made out prima facie case and the balance of convenience is in favour of the applicant and if the respondent is not restrained/prevented by an order of interim injunction, certainly the applicant would suffer with irreparable loss/damages.

21. Therefore, this Court finds that the applicant is entitled to the an order of interim injunction.

22. Therefore, this application is allowed. There shall be an order of interim injunction and the respondent is restrained from running the restaurant under the name of “Manjal” at Yercadu and also restrained from opening in any other places in the same name, till the disposal of the present suit.

23. Post the main suit on 13.08.2024.

15.07.2024

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P.VELMURUGAN,J.

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