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(T)CMA(TM) No.181 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.03.2024

Pronounced on : 08.11.2024

CORAM : JUSTICE N.SESHASAYEE

(T)CMA(TM) No.181 of 2023
(ORA/SR.No.149/2020/TM/CHN)

Neetha Madala
Proprietor of M/s.Harsha Hospitals
4-32-1/141, Plot No.141 & 144/1
Saptagiri Colony, Harsha Hospital
Kukatpally, Hyderabad
Telangana – 500 072

... Appellant

Vs

The Registrar of Trade Marks
The Trademarks Registry
IP Building, GST Road
Guindy, Chennai – 600 032.

... Respondent

PRAYER : Appeal filed under Section 91 of the Trade Marks Act, 1999, praying to set aside the impugned order and direct the respondent to reinstate the application bearing Application No.2767620 dated 03.07.2014 and advertise the same in the Trade Marks Journal.



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For Petitioner : Mr.V.Abilash Viswanathan
for M/s.Assentio Legal

For Respondent : Ms.A.Anuradha
Central Govt Standing Counsel

ORDER

Having lost his application No:2767620, dated 03.07.2014, for registration of its device mark under Section 9 and 11 of the Trade Marks Act, the applicant before the Trade Marks Registry is now before this Court with this appeal.

1.2. The said application was examined and a report on it was issued on 09.11.2015. According to the appellant, the copy of said report was not received by the appellant or her agents. However, she was given an opportunity to file her explanation to the said report. After post hearing on the application of the appellant, the respondent, vide its order dated 17.09.2018, refused to register the appellant's mark, as according to the Registrar the appellant's device mark offends Section 9 and 11 of the Trade Marks Act. The appellant would now make a request under Rule 36(1) of the Trade Marks Rules, seeking the grounds of the decision and also the



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details of the material relied on by him to arrive at his conclusion.

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3. Heard both sides. Mr.Abilash Viswanathan, the learned counsel for the appellant submitted:

- a) the respondent has made a cryptic non speaking order without explaining as to how the device mark of the appellant will fall foul of Section 9 and 11. The appellant's device mark taken as a whole has a device, words, a tag line with a colour scheme, which provide adequate distinctiveness to it. So far as objection under Section 11 is concerned, again the impugned order does not make an explicit statement whether the appellant's device mark falls within 11(1)(a) or 11(1)(b).
- b) The appellant is therefore, has to make her own conclusion based on the examination report. This report shows four different marks with a name HARSHA. However, no exclusivity could be attached to use to the word 'Harsha', for its use as a trade mark, more so when there are other distinctive features. Indeed, of the four marks which were supposed to have passed the consideration of the respondent, three



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are registered in Class 42 whereas the appellant seeks registration under Class 44. Indeed, after the passing of the impugned order the appellant had registered another device mark and also registered a word mark "HARSHA HOSPITALS" on an application filed by the appellant.

4. The learned counsel for the respondent submitted that HARSHA and HOSPITALS are common words and they do not provide any distinctiveness. This apart, the other three marks, all of which has the word 'HARSHA' as a dominant word, bear similarity to the mark of the appellant.

5. This Court finds considerable merit in the submissions of the learned counsel for the appellant. A Trade Mark is used in relation to goods or services and unless a mark is notified as a well known mark, it may not have the effect to affect a similar mark in other classes. Secondly, the appellant is not seeking any exclusive right either to the word 'HARSHA' or to the word 'HOSPITAL', but seeks registration as a device mark 'HARSHA HOSPITALS'. This Court cannot overlook the fact that since the passing of the impugned order, the respondent has registered another device mark of



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the appellant as well as the word mark 'HARSHA HOSPITALS'.

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6. To conclude, the appeal is allowed and the impugned Order of the respondent, dated 17.09.2018 is set aside, and the respondent is hereby directed to restore Application No 2767620, dated 03.07.2014 to its file, and further directed to proceed with the further procedure of advertising the said mark in the Trademark journal. No costs.

08.11.2024

Index : Yes / No

Neutral Citation : Yes / No
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To:

The Registrar of Trade Marks
The Trademarks Registry
IP Building, GST Road
Guindy, Chennai – 600 032.



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N.SESHASAYEE.J.,

ds

Pre-delivery Judgment
in (T)CMA(TM) No.181 of 2023

08.11.2024