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(TM) A.Nos.29 & 30 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.11.2024

Pronounced on : 06.12.2024

CORAM : JUSTICE N.SESHASAYEE

(TM) A.No.29 of 2023
in (T)OP(TM) No.333 of 2023
(ORA/8/2018/TM/CHN)
and
(TM) A.No.30 of 2023
in (T)OP(TM) No.254 of 2023

Mandra Usha Reddy Trading as Kritunga Restaurants
Allur (Village)
Nandikotkur (Mandal)
Kurnool District - 518 432

... Applicant in (TM) A.Nos.29 & 30 of 2023

Vs

1.M/.Kritunga Restaurant Private Limited
6-3-658/16/A,
Opp: Civil Supplies Bhavan
Somajiguda, Hyderabad
Telangana - 500 082.

2.The Registrar of Trade Marks
Office of the Trade Marks Registry
Chennai.

... Respondents in both applications



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Common Prayer : Applications filed under Original Civil Jurisdiction praying to permit the applicant to file the Schedule A to the present application in the rectification petition in (T)OP(TM) Nos.333 and 254 of 2023.

For Applicant : Mr.M.S.Bharath

For Respondents : Mr.Arun C.Mohan for R1

COMMON ORDER

These applications are taken out by the petitioner in (T) OP(TM) No.333 of 2023, to permit them to file list of documents annexed in Schedule-A of the application, in both the petitions in (T)OP(TM) No.333 of 2023 and (T)OP(TM) NO.254 of 2023.

2. The applicant / petitioner in (T)OP(TM) No.333 of 2023 herein had filed the present petition, which was originally pending as ORA/8/2020/TM/CHN on the file of Intellectual Property Appellate Board, seeking rectification of the Registrar of Trade Marks by rectifying the mark 'KRITUNGA' which the respondent has been using.



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3. Broadly, the case of the petitioner is that :

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- a) Since 2002, the petitioner is running a restaurant under the name of 'KRITUNGA RESTAURANTS', in several places in Andhra Pradesh. According to the petitioner, the word 'KRITUNGA' along with a logo Hampi Chariot is designed with a definite conceptual basis signifying the heritage of Vijayanagar empire and also sorghum plant associated which the staple diet of the people of Krishna and Tungabhadra region. And the petitioner herein had obtained registration for its word mark 'KRITUNGA' under Class 16, 35 and 43 on 20.11.2016, and registered its logo under Class 42, 16 and 35, of which the one registered under Class 42 was in 2006 and the other two were registered in March 2016.
- b) According to the petitioner, it was granted franchise / licence to a certain Vijay Reddy and allowed him to use the mark for a period of 10 years from 05.01.2006 to 05.01.2016. Based on this agreement, Vijay Reddy began using the word 'KRITUNGA' for the business he ran in partnership with two others namely Indira Reddy and Narendra Kumar Reddy in the name and style of 'New Kritunga Restaurant'. Later Vijay Reddy and one of his partner



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Ms.Indira Reddy retired from the partnership firm and it was reconstituted.

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The long and short of the petitioner's contention is that the respondent has no right to use the word 'KRITUNGA' as well as the logo that she had used for her business and hence, seeks rectification.

4. Be that at it may the first respondent herein has filed its independent petition in (T)(OP(TM) No.254 of 2023 seeking to cancel the entry relating to Trademark 'KRITUNGA' under Registration No.1452730 in Class 42 used by the petitioner.

5. It is in this scenario, the petitioner has taken out the present two applications viz., (TM) A.No.29 of 2023 and (TM) A.No.30 of 2023 seeking leave of the Court to produce 98 documents and 50 documents respectively to support its case. Of the 98 documents produced, document Nos.1 to 37, 50 to 86 are the franchise agreement that the petitioner herein had entered into with third parties; that document Nos.38 to 42 and 87 to 91 are the bank statements, which according to the applicant herein reflects the royalty paid by the franchise holder, and document Nos.44 to 49 are the



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income tax returns which are again repeated as document Nos.93 to 98.

And insofar as the 50 documents produced in (TM) A.No.30 of 2023, document Nos.1 to 38 are franchise agreements; 39 to 43 are banks statements; document No.44 is a judgment copy in I.A.No.105 of 2022 in COS. No.26 of 2019 and document Nos.45 to 50 are income tax returns filed by the petitioner.

6. These applications are resisted by the respondent solely on the ground that these are all the documents relating to third parties and does not have a bearing vis-a-vis the right asserted and disputed in this case. Reliance was placed on the authority in *Bennett Coleman and Company Ltd Vs Entertainment Television LLC and another* [2023 SCC OnLine Del 7347].

7. On appreciating the rival submissions, this Court considers that all the documents, can be allowed to be produced. And, at this stage, one may have to go by the assertion of the petitioner that she had been using the word mark 'KRITUNGA' and logo since 2002. It may be that the franchise agreement which the petitioner now intends to produce might be with the third parties but it may throw some light on the ownership of the mark.



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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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N.SESHASAYEE.J.,

ds

Pre-delivery order
in (TM) A.Nos.29 & 30 of 2023

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