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CMA (TM) No.22 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **05.12.2024**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA (TM) No.22 of 2024

Aachi Spices and Foods

Old No.4, New No.181/1, 6th Avenue,
Thangam Colony, Anna Nagar West,
Chennai - 600 040,
Tamil Nadu.

.. Appellant

-VS-

1.Mr.Vijay Kumar Mandhwani

Proprietor,
Indus Healthcare,
No.1, Jagjeevan Ram Mohalla,
Indore - 452 007, Madhya Pradesh,
and also at
Sector A, 25 A, Sanwer Road,
Industrial Area,
Indore - 452 007, Madhya Pradesh
and also at
Shop No.32, Devshri Complex,
New Loha Mandi,
Near Devshri Talkies,
Indore - 452 002, Madhya Pradesh

2. Deputy Registrar of Trade Marks,
Trade Mark Registry Mumbai,
Intellectual Property Bhawan,
Beside Antop Hill Post Office,
S.M. Road,
Antop Hill,
Mumbai - 400 037.

.. Respondents



Prayer: This Civil Miscellaneous Appeal filed under Section 91 of the Trade Marks Act, 1999 to allow the appeal against the order of the 2nd respondent dated 20.11.2023 and set aside the same and to conduct a fresh hearing to allow the appellant / opponent to submit its side of arguments against the Trade Mark Application No.1758268 filed on 31.12.2018.

For appellant : Ms. Gladys Daniel

For respondents : Mr.B.Karthik,
for R1

Mr. S. Janarthanam,
SPCGC for R2

JUDGMENT

This appeal has been filed, aggrieved by an order passed by the Trade Mark registry at Mumbai, rejecting the opposition filed by the appellant to the Trade Mark application submitted by the first respondent before the Trade Mark Registry at Mumbai, seeking for registration of a Trade Mark "ARCHI HERBALS".

2. The appellant is having registered Trade Marks in the name of "AACHI", series of marks, in respect of the same class for which the respondent / defendant had applied for Trade Mark registration.



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3. Earlier, the appellant had filed an application, seeking to condone the delay in filing this appeal. On receiving notice in the said application, the respondents had raised a preliminary issue of jurisdiction and had submitted that this Court does not have power to exercise jurisdiction over this appeal, since the impugned order has been passed by the Trade Mark Registry at Mumbai and the appellant had also filed an opposition petition only before the Trade Mark Registry at Mumbai.

4. This Court, while allowing the condone delay application, had made it clear that the jurisdiction issue as raised by the respondents in the condone delay application can very well be raised when the appeal gets numbered and listed for admission. Thereafter, the appeal has been numbered and the same is listed for hearing today. The learned counsels for the respondents has once again raised the jurisdiction issue.

5. The following are the undisputed facts:

a) The first respondent has applied for Trade Mark registration for its Trade Mark "ARCHI HERBALS" only from the Mumbai Trade Mark Registry;



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b) The opposition petition was filed by the appellant, opposing the Trade Mark registration applied for by the respondent, only before the Trade Mark Registry at Mumbai;

c) The impugned order, rejecting the opposition petition filed by the appellant is also passed only by the Mumbai Trade Mark Registry.

6. As seen from the undisputed facts, no part of cause of action arose within the jurisdiction of this Court eventhough, the appellant has its principal place of business at Chennai and the Trade Marks registered in favour of the appellant, may also have been registered only before the Trade Mark Registry at Chennai. However, that will not give a ground for cause of action, that too when the appellant themselves have approached only the Mumbai Trade Mark Registry by filing an opposition petition, opposing the grant of Trade Mark registration in respect of the Trade Mark "ARCHI HERBALS".

7. This Court, after giving due consideration to the aforementioned undisputed facts, is of the considered view that since no part of cause of action has arisen within the jurisdiction of this Court, necessarily, the



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appellant will have to approach the Bombay High Court for redressing its grievance as against the impugned order. However, since the appellant has approached this Court inadvertently, Section 14 of the Limitation Act will get attracted. Therefore, the period spent by the appellant for prosecuting this appeal before this Court will have to be excluded for the purpose of calculating limitation for filing the appeal by the appellant before the Bombay High Court as against the impugned order.

8. Accordingly, this appeal is disposed of, by directing the appellant to approach the Bombay High Court, if aggrieved by the impugned order passed by the second respondent dated 20.11.2023 and it is made clear that the period spent by the appellant before this Court for prosecuting this appeal shall stand excluded for the purpose of saving the limitation as per Section 14 of the Limitation Act. The Registry is directed to return the original impugned order to the appellant's counsel to enable the appellant to file an appeal before the Bombay High Court. No Costs.

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Index: Yes/No

Speaking/Non Speaking Order

Neutral Citation Case: Yes/No



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ABDUL QUDDHOSE,J.

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To

Deputy Registrar of Trade Marks,
Trade Mark Registry Mumbai,
Intellectual Property Bhawan,
Beside Antop Hill Post Office,
S.M. Road,
Antop Hill,
Mumbai - 400 037.

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