



CMA(TM) No.15 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 15.07.2025

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

CMA(TM) No.15 of 2024

M/s. Flic Farm Private Limited,
H.No.1-116/1A, Beside Church, Chandanagar,
Hyderabad-500 050
Represented by its Authorised Signatory
Mr.Trivikram Kumar Dogga.

... Appellant

-VS-

1. Registrar of Trade Marks,
Intellectual Property Building, G.S.T. Road,
Guindy, Chennai-600 032.

2. M/s.Vikas Welding and Co.,
No.28, Nishant Kunj,
Pitampura, New Delhi – 110 034.

... Respondents

(2nd Respondent impleaded vide Court order
dated 12.06.2025 made in CMP.No.2336 of 2025
in CMA(TM)No.15 of 2024)

Prayer : Civil Miscellaneous Appeal (Trade Mark) is filed under Section 91
of the Trade Marks Act, 1999, to allow the appeal against the order of the



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respondent dated 26.05.2023 and set aside the same and direct the respondent to allow the Trade Mark Application No.3962110 filed on 02.10.2018.

For Appellant : Mr.Leelesh Sundaram
for M/s.Nathan and Associates

For R1 : Dr.S.Padma, SPC

For R2 : Mr.R.Sathish Kumar

JUDGMENT

This appeal is directed against order dated 26.05.2023 rejecting Trade Mark Application No.3962110 in Class 7 as deemed to be abandoned under Section 21(2) of the Trade Marks Act, 1999 (the TM Act).

2. The petitioner had applied for registration of the following device mark





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on a 'proposed-to-be-used' basis on 29.09.2018. The said mark was accepted for advertisement and advertised in Trade Mark Journal No.2004 on 14.06.2021. Pursuant thereto, an opposition was lodged by the 2nd respondent herein. The notice of opposition was served on the appellant through its agent, Unimarks Legal Solutions, on 01.10.2021. The order impugned herein was issued thereafter on 26.05.2023 on the ground that the appellant did not file a counter statement in response to the notice of opposition within the time specified.

3. Learned counsel for the appellant submits that the counter statement could not be filed because the agent did not inform the appellant about the receipt of the notice of opposition. He relies upon the earlier orders of this Court in *Ramya S. Moorthy v. Registrar of Trade Marks and another*, order dated 10.08.2023 in *W.P.(IPD)Nos.3 & 4 of 2023* and *Vignesh Kumar Sivakumar v. The Assistant Registrar of Trade Marks and another*, 2025:MHC:903. Learned counsel submits that the appellant herein is in a substantially similar position and is, therefore, entitled to similar relief. He also submits that no prejudice would be caused if both the



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application and the opposition were to be restored to the file of the Registrar of Trade Marks.

4. Mr.R.Sathish Kumar, learned counsel for the 2nd respondent, made submissions to the contrary. He points out that the admitted position in this case is that service was effected on the agent of the appellant. By referring to Section 143 of the TM Act, learned counsel submits that the provision provides for the address for service to be mentioned in the application and for service of all notices to such address. In the admitted factual context of notice having been served to the agent at the specified address for service, he contends that the judgments relied on by the appellant are distinguishable.

5. On perusal of the application for registration of the appellant, it is noticeable that the said application was lodged on 'proposed-to-be used' basis on 29.09.2018. Learned counsel for the appellant submits that the appellant commenced use of the relevant device mark shortly thereafter in the year 2018. No evidence of use has been filed along with this appeal. The



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rejection of the application for non filing of a counter statement in response

to the notice of opposition will not stand in the way of the appellant

applying for a fresh registration by asserting use from the actual date of use.

As correctly pointed out by learned counsel for the contesting respondent,

this case is distinguishable from earlier cases inasmuch as receipt of the

notice of opposition by the agent is admitted. By taking this fact into

account as also that the earlier application was on a “proposed-to-be-used”

basis, no case is made out to interfere with the impugned order.

6. Therefore, C.M.A.(TM)No.15 of 2024 is disposed of by leaving it open to the appellant to lodge a fresh application for registration of the relevant device mark by asserting use from the date of actual use. In such event, it will also be open to the contesting respondent to raise objections thereto. There shall be no order as to costs.

15.07.2025

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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SENTHILKUMAR RAMAMOORTHY,J.

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To

The Registrar of Trade Marks,
Intellectual Property Building, G.S.T. Road,
Guindy, Chennai-600 032.

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