



LPA Nos.27 & 28 of

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.10.2025

Pronounced on : 12.12.2025

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CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
and

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

LPA Nos.27 & 28 of 2024
and
C.M.P.Nos.29567, 29573, 29574 of 2024

M/s.Shambhunath & Bros,
a registered partnership firm having its
principal place of business at
47, Biplabi Anukul Chandra Street,
Kolkata – 700072

... Appellant in both appeals

Vs.

1.Jai Rajendra Impex Pvt. Ltd.,
a company incorporated under the
Companies Act, 1956, having its registered office at
Plot No.60 CIE,
Gandhinagar, IDA,
Hyderabad – 500037, Andhra Pradesh.

2.The Deputy Registrar,
Trade Marks Registry, Chennai,
Intellectual Property Rights Bldg,
Industrial Estate SIDCO RMD,
Godown Area, G.S.T. Road,
Guindy, Chennai – 600 032.

... Respondents in both appeals

Prayer in LPA No.27 of 2024: Appeal filed under Clause 15 of the Letters

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Patent to set aside the impugned order passed by the learned Judge in (T)OP(TM) No.06 of 2023 (ORA/17/2009/TM/CHN), dated 07.02.2024 and consequentially direct removal of Registration in the Trade Marks register towards the Trade Mark No.1505280.

Prayer in LPA No.28 of 2024: Appeal filed under Clause 15 of the Letters Patent to set aside the impugned order passed by the learned Judge in (T)OP(TM) No.20 of 2023 (ORA/137/2011/TM/CHN), dated 07.02.2024 and consequentially direct removal of Registration in the Trade Marks register towards the Trade Mark No.1506140.

In both appeals:

For Appellant : Mr.Sathish Parasaran, Senior Counsel
Mr.Debnath Gosh, Senior Counsel
Mr.Gautam Ray
Mr.Jayesh Kumar Daga
Mr.Saurav Jana
Mr.Ashok Kumr J.Daga

For Respondents : Mr.Rudraman Bhattacharya,
Senior Counsel
Mr.Atish Ghosh
Mr.Hemant Daswani
Mr.Arindam Chandra
Ms.S.Manjula

J U D G M E N T

MUMMINENI SUDHEER KUMAR, J

These two Letter Patent appeals filed under clause 15 of Letters Patent

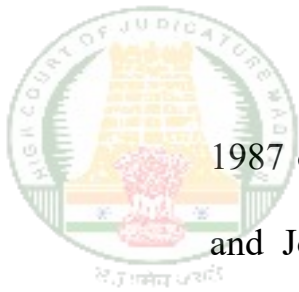


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are directed against a common order dated 07.02.2024 of a learned Single Judge of this Court in (T)OP(TM) No.6 of 2023 and (T)OP(TM) No.20 of 2023.

2. The said petitions were originally filed by the appellant herein before the Intellectual Property Appeal Board (IPAB) under Section 47, 57 and 125 of the Trade Marks Act, 1999 seeking cancellation of the registration of Trademark “THUFAN” in 'Telugu' and 'Tamil' languages under application Nos.1505280 & 1506140 in class 11 and also seeking rectification of the records of the Registrar by expunging the same from the Registrar of Trademarks. On abolition of the IPAB, the said rectification petitions were transferred to this Court and were accordingly, renumbered and were disposed of by learned Single Judge by common order dated 07.02.2024 dismissing both the petitions. It is aggrieved by the said common order, the appellant is before us.

3. The case of the appellant before us is that the appellant adopted the Trademark “TOOFAN” in respect of the fans manufacturing and marketing and the said word "TOOFAN" is said to have been adopted in an artistic manner and have been selling the fans in various states from the year



1987 onwards and the same also been advertised in Newspapers, Magazines and Journals, etc. It is also the further case that, the appellant filed an application No.605175 for registration of the Trademark “TOOFAN” for the fans in class 11 under the Trade and Merchandise Act, 1958 and the same was accordingly registered on 26.08.1993. It is also the further case of the appellant that the M/s.Rajendra Electrical Corporation a partnership firm of Shanthilal Jain and Lal Chand Jain was appointed as a distributor for selling “TOOFAN” brand fans in Andhra Pradesh in the year 1993 and the same was continued till the year 1994. It is the further case of the appellant that one Mr.Lal Chand Jain who was a partner of M/s.Rajendra Electrical Corporation and also being proprietor of 'Aman Marketing Company', while acting as distributor of the appellant filed three applications being Nos.657635 to 657637 for registration of the mark “TOOFAN” in English in the same artistic manner as that of the appellant in Class 7, 9 and 11 and the same on being advertised, the appellant filed notice of opposition and accordingly, the said applications were rejected by order dated 28.01.2010.

4. In the meanwhile, during the month of October 2008, the appellant on making a official search came to know that the respondent No.1 herein obtained registration of a deceptively similar trademark “THUFAN”



for the fans and other electrical goods claiming the user thereof since 01.01.1976. Hence, the appellant filed rectification application

No.ORA/17/2009/TM/CH and ORA/137/2011/TM/CH in respect of the registration of trademark “THUFAN” in 'Telugu' and 'Tamil' languages before the IPAB. The said rectification applications were transferred to this Court as noted above and were dismissed by the order under appeal. The validity of the registration of trademarks of the respondent No.1 vide application Nos.1505280 & 1506140 in clause 11 for the trademark “THUFAN” in

'Telugu' and 'Tamil' languages obtained by the 1st respondent are under contest. The learned Single Judge, taken note of the rival contentions as well as the provision contained in Section 57 of the Trademarks Act, 1999, examined the scope of Rules 27 & 33 of the Trademark Rules *viz-a-viz* Rule 36 of the said Rules and came to the conclusion that the contravention of Rule 27 was remedied and insofar as the contravention of Rule 33 is concerned, the learned Single Judge held that, in the absence of any consequences being provided under the said Rule and taking into consideration the examination of the matter on merits as regards the prior user of the Trademark in question did not oblige to consider the contravention of Rule 33 as worth granting relief in favour of the appellant.



5. We have heard Mr.Satish Parasaran, learned Senior Counsel, Mr.Debnath Gosh, learned Senior Counsel for Mr.Gautam Ray, learned counsel for the appellant and Mr.Rudraman Bhattacharya, learned Senior Counsel for Mr.Atish Ghosh, learned counsel for the respondents.

6. Though a preliminary objection is raised by learned Senior Counsel appearing for the respondent No.1 on the maintainability of the Letter Patent Appeal in the light of the provisions contained under Section 13 of Commercial Courts Act 2015 and also advanced arguments at length, the same was also responded by the learned Senior Counsel appearing for the appellant by placing reliance on a decision of learned Division Bench of Delhi High Court in the case of *VR holdings Vs. Hero Invest Corporation Limited and another* reported in *(2023) SCC online Delhi 473*, the said issue of maintainability does not detain us much as the very same issue has cropped up in certain other appeals filed against the orders passed by this Court in Commercial Division and the same was considered by us in L.P.A.SR.No.179560 of 2025 and by order dated 26.11.2025, we have held that the restriction against an Intra-court appeal contemplated under Section 13 of the Commercial Courts Act, 2015 will not apply to the decisions rendered by this Court in exercise of the jurisdiction conferred under a special



statute especially in Intellectual Property Division such as the matters arising out of the Trademarks Act, Arbitration and Conciliation Act, 1996, etc and the said restriction under Section 13 against an intra-court appeal is applicable only to the decisions rendered in exercise of the original jurisdiction conferred on this Court under the provisions of the Civil Procedure Code, while agreeing with the reasoning assigned by the Delhi High Court in VR holdings case.

7. For better appreciation, the relevant paragraph of the said order dated 26.11.2025 passed by us is extracted hereunder:

*“4. The Learned Counsel appearing for the appellant submitted that in **V.R.Holdings Pvt Ltd vs. Hero Investcorp Limited and another**, reported in **2023 SCC Online Del 4673**, has held that the embargo under Section 13(1A) of Commercial Courts Act applies only to orders passed in suits filed under the Code of Civil Procedure and it does not apply to orders passed under special Statute, when jurisdiction is assumed by the Court and conferred under statute.*

*5. He submitted that the order of the Delhi High Court referred above was confirmed by the Hon'ble Supreme Court in the Special Leave Petition (Civil) Diary Nos.46199 of 2023, preferred by **Hero Investcorp Limited vs. V.R.Holdings Pvt Ltd**. While dismissing the Special Leave Petition, the Supreme Court granted liberty to the parties to raise all objections after the appeal before the High Court is finally disposed. The order on an application for rectification under the Trademarks Act was passed by the Learned Single Judge under the Intellectual Property Division and not under the Commercial Courts Division.*



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Therefore, the order passed by the Learned Single Judge in (T.O.P.(TM).No.32 of 2023 is appealable, being a final order. Hence, the appeal under Clause 15 of Letters Patent is maintainable.

6. We are in total agreement with the above submission. The order which is final in nature and arising out of statute upon which the High Court has assumed jurisdiction in view of the Tribunals Reforms Act under which the IPAB was abolished, the prohibition under Section 13 (1A) of the Commercial Act, shall not stand in the way. The appellant has a right to challenge the order passed by the Learned Single Judge through an intra-court appeal by invoking the powers under Clause 15 of the Letters Patent.”

In the light of the above, we have no hesitation to hold that the Letter Patent Appeals on hand are very much maintainable under Clause 15 of the Letter Patent.

8. Then, coming to the merits of the matter, learned Senior Counsels appearing for the appellant contended that the impugned registration of trademark of the respondent No.1 in Telugu and Tamil languages was obtained by playing fraud on the Registrar of trademarks and also in utter violation of the mandatory provision contained in the Trade Marks Act, 1999 and the Rules made thereunder. While elaborating their submissions, it is contended that in terms of Rule 27 of the Trademarks Rules, 2002 (hereinafter referred to 'Rules, 2002'), which were applicable to the registration in question, an application to register a trademark shall contain a statement of the period during which, and the person by whom it has been used in respect



of the goods or services mentioned in the application. But in the instant case, though the respondent No.1, claimed to have been using the trademark in question since the year 1976, has not furnished any particulars as required under Rule 27 of Rules 2002, which is a mandatory requirement, as is evident from the application submitted by the respondent No.1, seeking registration of the trademark.

9. It is also further contended on behalf of the appellant that the affidavit, dated 30.11.2007 that is stated to have been filed testifying to such user along with exhibits was also not placed in proper shape before the Registrar of Trademarks before the registration of trademark in question. It is also further contended that the said affidavit alleged to have been filed is also bereft of particulars. It is also further contended that the trademark in question are registered in Telugu and Tamil languages and therefore, the application is required to be in compliance with Rule 33 of the Rules 2002. Therefore, it is obligatory on the part of the respondent No.1 to file a sufficient transliteration and translation of the word in scripts in the language other than Hindi or English and it should also state the language to which the word belongs to. But according to learned Senior Counsels, the same is not complied with by the respondent No.1. According to them, it is only because



of the said omission or failure on the part of the respondent No.1, the application that was advertised in the Journal was only advertised in the Telugu and Tamil script without any transliteration and translation, thereby preventing the appellant from noticing the said advertisement and deprived the appellant an opportunity of raising notice of opposition for the proposed registration of the trademarks.

10. It is also further contended that the theory of acquiring right over the trademark “TOOFAN” by way of assignment from its previous user namely 'Sunlight Electricals' under an assignment deed dated 30.03.2006, etc is an afterthought and no such plea has been taken by the respondent No.1 in the counter affidavit originally filed in the rectification proceedings before IPAB and on the other hand, the respondent No.1 claimed user of the true name “TOOFAN” only from the year 2006, but in the amended counter affidavit filed before the IPAB, the respondent No.1 has taken a diametrically opposite stand which is not permissible under law. They also placed reliance on the various decisions in the cases of *Hardie Trading Ltd. And another Vs. Addisons Paint & Chemicals Ltd* reported in (2003) 11 Supreme Court Cases 92, *T.G.Balaji chettiar Vs Hindustan Lever Ltd. Bombay* reported in

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AIR 1967 MADRAS 148, in support of their contentions. Thus, they

contended that the non-compliance of Rule 33 is fatal and therefore, the

impugned registration of trademarks are bound to be rectified and cancelled.

11. On the other hand, Mr.Rudraman Bhattacharya, learned Senior Counsel appearing for the respondent No.1 contended that the contentions raised on behalf of the appellant basing on the alleged violation of Rule 27 is totally baseless and factually incorrect. According to him, an affidavit as required under Rule 27 was filed before the Registrar of Trademarks before the registration of the trademark in question along with necessary enclosures and it is only on examining the same, the registration of trademark has taken place. He also further contended that even if there is any non-compliance with the Rule 27, the same is not fatal and the same can be rectified at later point of time. He further contended that the contention alleging violation of Rule 33 has lost its significance, as the claim of the appellant was considered by the learned Single Judge basing upon the material placed before him and decided the matter on merits and therefore, the violation of Rule 33 if any is of no consequence at this stage. Though the learned Senior Counsel advanced arguments by placing reliance on the litigation that is pending in Calcutta in C.S.No.133 of 2010 etc, we do not deem the same relevant for



disposal of this appeals before us. Therefore, we refrain from referring to any of the arguments advanced in that regard.

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12. The provisions contained in the Trade Marks Act, 1999 and the Rules made thereunder provide for a complete procedure in the matter of registration of trademark, that is from the stage of submission of application for registration of the trademark and the procedure that is required to be followed in the matter of processing the said application, rectification of defects in the application, acceptance of the said application for advertisement, consideration of the objections/notice of opposition, etc. If an application is advertised and no opposition is received within the stipulated time, the registration of trademark would follow automatically. The purpose of advertising an application is to let know the general public about the proposed registration of the trademark and to afford an opportunity to one and all to make an objection in case if the proposed trademark is likely to infringe or violate the existing intellectual property rights of anyone. Therefore, it is necessary that the advertisement of the application before registration is with a view to bring it to the notice of the general public about the proposed registration. India is the country which has multi-linguistic culture. In all 22 languages are recognised as official languages in India under Schedule-VIII



of the Constitution of India. The registration of Trade Mark can be in any of the languages. For that reason only Rule 33 requires for providing transliteration and translation of the proposed trademark containing word or words if the same is in the scripts other than Hindi or English. In view of the same, the Rule 33 was incorporated into Rules 2002 requiring any application for registration of trademark containing a word or words in scripts other than Hindi or English to endorse on the said application form, a sufficient transliteration and translation to the satisfaction of the Registrar of each such word in Hindi or English while stating as to the language to which the word or words belong. For the sake of convenience, the said Rule 33 of Rules, 2002 is extracted:

“33. Transliteration and translation – Where a trade mark contains a word or words in scripts other than Hindi or English, there shall be endorsed on the application form and the additional representations thereof, a sufficient transliteration and translation to the satisfaction of the Registrar of each such word in English or in Hindi and every such endorsement shall state the language to which the word belongs and shall be signed by the applicant or his agent.”

13. The purpose of this Rule is to make the advertisement contemplated under Rule 43 of Rules 2002 to be meaningful and to serve the purpose of the said advertisement. If the advertisement issued without affording an opportunity to the general public to understand the contents of



the advertisement, the very purpose of advertisement is lost. Admittedly, in the instant case, the respondent No.1 has not complied with the requirement of Rule 33 of Rules, 2002 while submitting its application for registration of trademark. When there is non-compliance of the requirement under Rule 33 of Rules, 2002 by the respondent No.1 thereby preventing the appellant and other general public from raising their opposition for the proposed registration, especially in the context of the fact that the appellant herein is already having registration of trademark “TOOFAN” vide its registration No.605175 under Class 11 as early as in the year 1993, the same cannot be said to be a procedural aspect. By such omission or failure on the part of the respondent No.1 or the Registrar, the valuable right of the appellant is taken away. When admittedly the appellant is having registration of trademark “TOOFAN”, depriving the appellant to oppose the proposed registration of very same trademark indifferent languages in view of non-compliance with the requirement under Rule 33 is liable to be declared as the one in violation of the principles of natural justice, which also goes to the root of the matter. In other words, in the absence of compliance with the requirement under Rule 33 advertising the application of Respondent No.1 is no advertisement in the eye of law much less under Rule 43.



14. One of the factor which persuaded us to come to such a conclusion is that, when one Mr.Lal Chand Jain, partner of M/s.Rajendra Electrical Corporation and proprietor of 'Aman Marketing Company' made an attempt to register the trademark “TOOFAN” vide application Nos. 657635 to 657637, the same was opposed by the appellant herein and successfully got the said registration cancelled by filing an appeal before the IPAB vide order dated 28.01.2010. Whether the appellant would be successful in its opposition, if allowed to be made, or not, in the facts of the case on hand is totally a different aspect. But affording such an opportunity is a statutory requirement, which is lacking in the instant case only because of non-compliance with the provisions of the Act and Rules. In our considered view, the requirement under Rule 33 of Rules, 2002 is a mandatory, and any application received by the Registrar of Trademarks is bound to be rejected for non-compliance with the requirement under Rule 33 and accepting any such application without compliance with the requirement under Rule 33 and allowing the same to reach the stage of advertisement under Rule 43 is nothing but giving a go-bye to mandate of the statute. Thus, it is evident that there is apparent failure on the part of the respondent No.1 as well as on the part of the Registrar of trademarks in ensuring the proper compliance with the statutory requirement.



15. The learned Single Judge, after having accepted that the respondent No.1 has not complied with the requirement of Rule 33 of Rules 2002, erroneously came to the conclusion that, for want of providing any consequence for contravention of the said Rule 33, the non-compliance with the said Rule is of no consequence, is totally erroneous. If such a notion or such interpretation is allowed, the same would defeat the very purpose of providing a procedure under a statute and the Rules made thereunder, thereby frustrating the checks and balances provided in matter of process of registration of a trademark. It is by now well settled that, when an act is to be done in a particular manner under a statute then the act is to be performed only in the manner provided under the statute or not at all. In other words, any other mode of doing such an act is forbidden by the statute.

16. The learned Single Judge has lost sight of the settled legal position and arrived at an erroneous conclusion. The learned Single Judge appears to have been carried away on appreciation of various materials that is placed before him on the aspect of alleged prior user of the trademark “THUFAN” by the respondent No.1 and its predecessor. But, we have our own reservation with regard to the manner in which the learned Single Judge



appreciated the matter on merits especially Ex.C1 to Ex.C73, Ex.E2 to Ex.E37, Ex.F2 to Ex.F17, etc and the deed of assignment dated 30.03.2006.

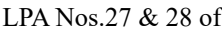
As informed to us all the documents that were placed before the learned Single Judge were only the photocopies and no originals were placed before the learned Single Judge nor any oral evidence is adduced. The genuineness of the said documents including the deed of assignment dated 30.03.2006 was seriously disputed by the appellant by filing its reply. When there is a serious dispute about the correctness or genuineness of the documents that are placed before the learned Single Judge and in the absence of establishing the said documents in accordance with law, the reliance placed on those documents on their face value is undoubtedly an erroneous approach to the matter. When admittedly there is a violation of Rule 33 of the Rules, ignoring the same on the ground that the case of the respondent No.1, as to prior user, is established that to basing upon the disputed documents cannot be accepted.

17. Then, coming to the contentions raised on behalf of the appellant against the Deed of assignment dated 30.03.2006 and the affidavit dated 30.11.2007 are concerned, we have our own reservations on those documents. When it is the specific case of the respondent No.1 that the 'Sunlight Electricals' was originally belonging to one Mr.Devi Chand Jain as a



proprietary concern, as to how and when the same became partnership firm consisting of three partners who said to have executed the deed of assignment is a matter to be examined. Further, a perusal of the said Deed of assignment which is said to be having six pages, does not bare signatures of the assignors or assignee in the first five pages and all the signatures are only in the sixth page where there are no contents of the assignment deed. When this document was seriously disputed by the appellant, unless the same was established in accordance with law, any reliance placed on such a document to ignore the non-compliance of a statutory Rule as trivial and having no consequence is hard to accept.

18. So also the affidavit dated 30.11.2007 said to have been filed before the Registrar which is also seriously disputed by the appellant also creates a *prima facie* doubt on its genuineness in the context of the fact that the stamp paper on which the said affidavit was executed was dated 01.04.2004 and whereas the said affidavit was signed on 30.11.2007. It is not that we are disbelieving either the Deed of assignment or the Affidavit referred to above. But, we are only concerned with the manner in which the learned Single Judge considered the said documents when there is a serious dispute raised on the genuineness or correctness of the said documents.



20. Accordingly, we hereby set aside the common order passed by the learned Single Judge and cancel the registration of trademark made in favour of the Respondent No.1 vide Application Nos.1505280 & 1506140 in Clause No.11 for the Trademark, “THUFAN” in 'Telugu' and 'Tamil' languages. Consequently, the Application Nos.1505280 & 1506140 shall stand restored on to the file of the Respondent No.2. The Respondent No.1 is granted liberty to comply with the requirement of Rule 33 by providing necessary transliteration and translation within a period of 30 days from the date of receipt of a copy of this order. In case, if the Respondent No.1 choose to comply with Rule 33 within the time stipulated above, the Respondent No.2 can proceed further for processing the said applications, in accordance with law. Failure on the part of the Respondent No.1 to comply with the requirement contemplated under Rule 33 within the time stipulated above, shall be treated as abandoning the application in question.



21. Accordingly, both the appeals are allowed. No costs. Connected miscellaneous petitions, if any, shall stand closed.

(Dr.G.J.,J.) (M.S.K.,J.)
12.12.2025

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

Dr.G.JAYACHANDRAN, J.
and

MUMMINENI SUDHEER KUMAR, J.

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Pre-Delivery Order made in
LPA.Nos.27 & 28 of 2024

12.12.2025