



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 22.04.2025

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

CMA(TM)IPD/11/2023

Future Lifestyle Fashion Ltd,
Represented by its Resolution Professional
Mr.Ravi Setha
KPMG Restructuring Service
LLP, Building No.10, Tower C, 8th Floor,
DLF Cyber City, Phase-II, Gurgaon,
Haryana-122 002..

... Appellant

(Cause title accepted vide Court Order
dated 08.09.2023 made in CMP No.20306/
2023)

-VS-

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

2. M/s.Chandana Brothers Multi Complex Private Ltd
D.No.29-2-3, Opp Judge Court, Jail Road,
Vishakhapatnam-530 020, Andhra Pradesh.

... Respondents

PRAYER: Appeal (Trade Marks) is filed under Section 91 of the Trade
Marks Act, 1999. pleased (a) to set-aside the Order dated 20th April 2023



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passed by the Respondent No.1 in Opposition No.755028 against application No.1749295 in class – 35 for the mark 'CMR Central'; and (b) pass such other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.

For Appellant : Ms.T.Hemalatha
Arjun Makuny
Dhupad Vaghani

For Respondents : Ms.P.J.Anitha , CGSC for R1
Mr.T. Sai Krishnan
Mr.Tarang K. Sancheli for R2

J U D G M E N T

This appeal is directed against order dated 20.04.2023 rejecting opposition No.755028 and allowing application No.1749295 for registration of the trade mark CMR CENTRAL. The second respondent herein applied for registration of the above mentioned trade mark in class 35 in respect of advertising and shopping complex. The application was filed asserting use since 01.10.2008.



WEB COPY 2. Upon noticing the advertisement published in Trade Marks Journal

No.1427, the appellant filed notice of opposition on 27.01.2010. The second respondent filed counter statement dated 04.05.2010. After both parties adduced evidence in support of the opposition and application, respectively, the order impugned herein was issued on 20.04.2023.

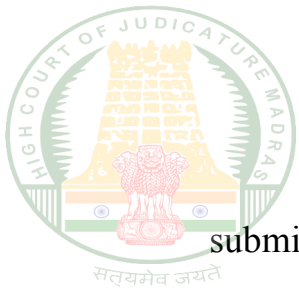
3. Learned counsel for the appellant invited my attention to the impugned order and submitted that the first respondent disregarded the evidence placed on record by the appellant on the ground that M/s. Central Retail Corporation Ltd., Thailand, had filed rectification applications before the Registrar of Trade Marks, Mumbai. She submitted that the appellant's predecessor-in-interest, Pantaloon Retail (India) Limited, adopted and used the trade marks containing the element 'CENTRAL' along with the name of the city wherein the relevant mall is established since early 2004. Upon the amalgamation of the appellant's predecessor-in-interest with the appellant, she further submitted that the appellant filed Form TM-M before the Registrar of Trade Marks to amend the trade mark application so as to



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reflect the name of the successor-in-interest. By referring to the evidence placed on record before the Registrar of Trade Marks, learned counsel submitted that the appellant had provided evidence of the registration of at least 37 trade marks, each of which contains the prominent feature 'CENTRAL'. She also referred to the certificate issued by Chartered Accountants with regard to the sales turnover from the provision of services under the trade mark containing the element 'CENTRAL'. Since such evidence was not taken into consideration, learned counsel submits that interference with the impugned order is warranted.

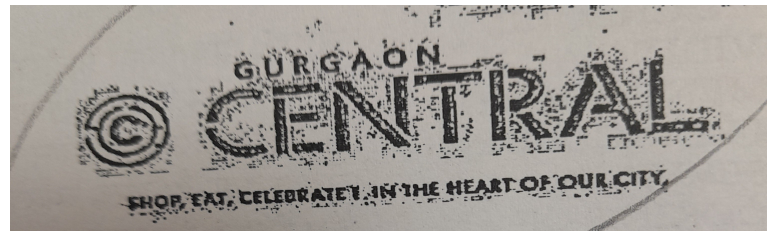
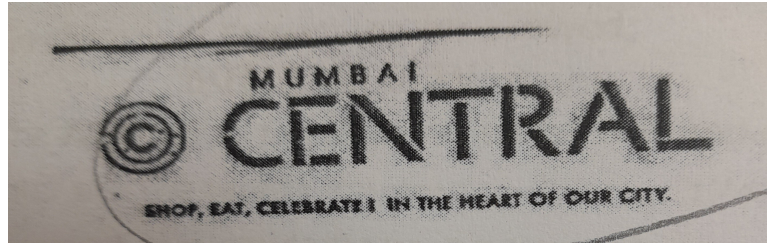
4. In response to these contentions, learned counsel for the second respondent submits that the trade mark of the second respondent is 'CMR CENTRAL' and that the acronym 'CMR' was derived from the initials of the promoter of the second respondent, Chandana Mohan Rao. Upon accepting the explanation of the second respondent, learned counsel submits that the Registrar of Trade Marks recorded the finding that the use of the acronym CMR in the trade mark of the second respondent eliminates the possibility of deceptive similarity. As regards the element 'CENTRAL', learned counsel



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submits that it is a word in common use and that no person is entitled to claim exclusivity in respect thereof. In support of this contention, learned counsel referred to and relied upon the judgment of the Delhi High Court in *Institute of Directors v. Worldevcorp Technology and Business Solutions Pvt. Ltd. and Others*, 2023 SCC OnLine Del 7841, particularly paragraphs 28 to 34 thereof. Learned counsel further submits that the appellant failed to establish secondary meaning in respect of the element 'CENTRAL' and, therefore, no interference is called for with regard to the finding in such regard by the Registrar of Trade Marks.

5. The first aspect to be examined is with regard to the evidence placed on record by the contesting parties. The appellant has placed on record advertisements published in the Trade Mark Journals pursuant to applications by Pantaloon Retail (India) Limited. These advertisements relate to device marks such as



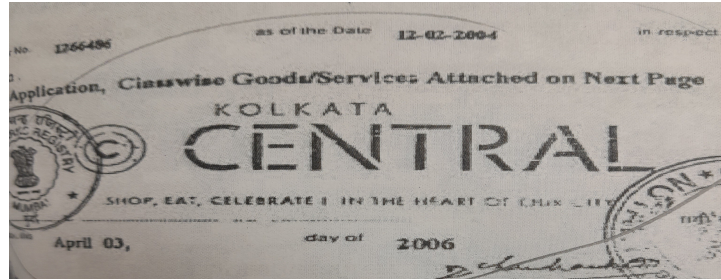
It is noticeable from the advertisements that the applications were lodged on 12.02.2004 on 'proposed to be used' basis. Each device mark contains the element 'CENTRAL' with the prefix of the name of the city wherein the relevant mall is situated.

6. Also on record is a certificate issued by Shambhu Gupta & Co., Chartered Accountants, on 05.02.2010. This certificate contains the net sales figures of retail stores under the name and style of 'CENTRAL' from financial year 2003-04 to financial year 2008-09. Articles in newspapers and details of advertisements are also available on record. These indicate



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that advertisements were published from about 2004 onwards. The registration certificate issued in the name of Pantaloon Retail (India) Limited under trade mark No.126486 in respect of the mark



is also on record. The certificate is with effect from 12.02.2004. In addition, a list of about 37 marks containing the element 'CENTRAL' have been placed on record by the appellant.

7. The Registrar of Trade Marks noticed that the Central Retail Corporation Limited filed rectification applications in respect of about 8 registrations of the appellant and, consequently, recorded the following findings in respect of the lack of secondary meaning:

“Moreover, since all the registrations and applications of the Opponent are contested by M/s Central Retail Corporation Ltd., Thailand, the question of claim of proprietary right over the



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said mark by the opponent when he is not the original owner of the mark CENTRAL, the claim of opponent that their mark has acquired secondary meaning by way of its extensive and long use cannot be acceded to and at the same he cannot have any locus standi to file this opposition when the marks as a whole are different and their adoption of the mark is in question. Therefore, the objection raised under Sections 9, 11, 12 and 18 of the Act is not considered as appropriate.”

From the above extract, it follows that the evidence placed on record by the appellant with regard to use of the trade marks from 2004, including by way of sales turnover and advertising, has been brushed aside merely on account of the rectification applications filed by Central Retail Corporation Limited. Such an approach cannot be countenanced when the rectification applications have not been adjudicated.

8. The Registrar of Trade Marks has also considered the explanation of the second respondent that the acronym CMR was derived from the name



of the promoter of the second respondent, Chandana Mohan Rao. This conclusion is unexceptionable. Nonetheless, a comparison is required to be made between the two marks as a whole to decide whether there is likelihood of deception or confusion in the mind of the public. While undertaking such comparison, it is pertinent to bear in mind the goods or services in relation to which the respective marks are applied. In this case, it appears that both the appellant and the second respondent applied their respective marks to similar or identical services.

9. In the impugned order, in relevant part, the following conclusion has been recorded in this respect:

“Further, both the opponent and applicant are using the mark in respect of running shopping mall and providing services under the mark in different parts of the country and hence, the likelihood of deception and/or confusion would be very less as far as the awareness of the general public is concerned. Further, the Applicant's mark is known from the acronym of their Chief Promoter Chandana Mohan Rao and hence, the



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*question of deceptive similarity raised by the
opponent will be eliminated from the acronym
“CMR” of the Applicant....”*

While recording the above conclusion, it appears that the Registrar of Trade Marks has not taken into consideration all relevant factors, such as the places wherein the appellant had established shopping malls.

10. The situation on the ground has also undergone significant changes after the opposition was filed by the appellant. In particular, the appellant is currently under CIRP and it is unclear from the materials on record as to whether the relevant marks are being used as on date by the appellant. The second respondent applied and obtained registration by asserting use since 01.10.2008. In these circumstances, it may also be necessary to examine whether there exist special circumstances justifying registration in favour of the second respondent under Section 12 of the Trade Marks Act, 1999 subject to conditions or limitations, if required. For all these reasons, reconsideration is warranted.

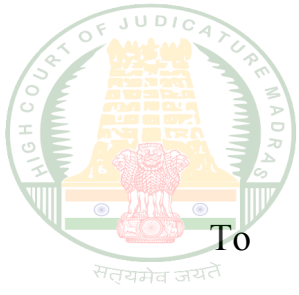


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11. Therefore, the impugned order dated 20.04.2023 is set aside and the matter is remanded for reconsideration. After providing a reasonable opportunity to the contesting parties, a fresh order shall be issued by the first respondent within a period of four months from the date of receipt of a copy of this order. Any action for cancellation of the certificate of registration shall await the outcome of the remanded proceedings and abide by the same. For the avoidance of doubt, it is clarified that no opinion has been expressed on the merits of the application or opposition. There shall be no order as to costs.

22.04.2025

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
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To

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



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SENTHILKUMAR RAMAMOORTHY,J

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