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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **28.10.2025**

CORAM

THE HON'BLE MR. JUSTICE N. SENTHILKUMAR

(T) CMA (TM) Nos.196 of 2023 & 2 of 2024

Mohanlal U.Jain,
Trading As
M/s.Master Marketing,
rep. by Ashwin Kumar Jain .. Appellant in both cases

-vs-

1.M/s.LKB Engineering Pvt. Ltd.,
GI-118, 1st Floor,
Mayapuri Indl Area,
Phase-II,
New Delhi – 110 064.

2.The Trade Marks Registry,
The Office of the Trade Mark Registry,
Chennai. .. Respondents in both cases

Prayer in both cases: These Transfer Civil Miscellaneous Appeals (Trademarks) under Section 91 read with 92 of the Trade Marks Act, 1999, praying that (i) the present appeals and consequently the opposition Nos.900958 & 902984 in Trade Mark Application Nos.2835978 & 2896138 may be allowed; (ii) the opposition Nos.900958 & 902984 in Trade Mark Application Nos.2835978 & 2896138 may be refused; and (iii) the appellant may be provided any opportunity to file their counter statement.

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For appellant in both cases : Mr.Arun C.Mohan
for M/s.Holla Associates

For respondents in both cases : Mr.D.Muthukumar for
M/s.Paul & Paul for R1

Mr.A.R.Sakthivel,
SPCGSC for R2

COMMON JUDGMENT

These appeals have been filed, challenging the impugned orders dated 15.03.2018 and 20.03.2018 passed by the second respondent, abandoning Application Nos.2835978 & 2896138 seeking registration of trademark Rallison APPLIANCES in Class 21 & Rallisonappliances in Class 7.

2.The brief facts of the case are as follows:

The appellant has been using the Trade Mark 'RALLISON' for goods falling under Class 21 and Class 7 since 06.04.2002 and 03.04.2002 respectively. In this regard, the appellant made applications seeking registration of the said Trade Mark under Application Nos.2835978 & 2896138 with user claim from 06.04.2002 and 03.04.2002. On account of the long usage, the Trade Mark 'RALLISON' has become distinctive with the appellant. The above applications came to be advertised on 22.05.2017 and 05.06.2017 in Trade mark Journal Nos.1798 and 1800 respectively. The

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said mark came to be opposed by the opponent/respondent on 21.09.2017 and 05.10.2017 respectively.

3.Aggrieved by the findings of the second respondent through which the applications seeking registration of trademark Rallison APPLIANCES in Class 21 & Rallisonappliances in Class 7 respectively have been abandoned, these appeals have been filed.

4.Learned counsel for the appellant would submit that though the appellant's Application Nos.2835978 & 2896138 have been filed for registration and their agent M/s.H.P. Associates, Mumbai has been nominated for pursuing those applications, the Trade Mark Registry, after receiving the opposition filed by the respondent, has opposed the above applications. Learned counsel for the appellant contends that the agent has issued a communication to the Registry of Trade Marks on 07.06.2016, wherein an email id has been given as *tmharshad@gmail.com.* According to the appellant, the copy of the opposition said to have been served on the appellant, had not, infact been served on them as contemplated under Section 21(2) of the Trade Marks Act, 1999 and in view of such failure to

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serve the copy of the opposition, the appellant could not file their counter. Therefore, the learned counsel for the appellant submits that their applications cannot be declared as abandoned without giving due opportunity to the appellant and he prays for appropriate orders.

5.Per contra, the learned counsel for the first respondent submits that since the Trade Mark Registry vide email dated 08.11.2017 has served a copy of the opposition to the agent of the appellant and the respondent herein as contemplated under Section 21(2) of the Act, the submission made by the learned counsel for the appellant that there was no communication received with regard to the opposition cannot be accepted and therefore, the order of abandonment passed by the second respondent is legally tenable. In support of his contention, he pointed out column No.2 in page No.3 of the typed set filed by the first respondent, wherein the communication regarding Application No.2896138 was sent on 08.11.2017 and the email records also indicate that such correspondent exists. Learned counsel for the first respondent relies upon a decision of the Hon'ble Supreme Court in the case of *Dalip Singh vs. State of Uttar Pradesh and others* reported in (2010) 2 SCC page 114, wherein in paragraph 1, 2 and 10 it has been held as under:

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'1.For many centuries, Indian society cherished two basic values of life i.e., `Satya' (truth) and `Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2.In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

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10. In K.D. Sharma v. Steel Authority of India Ltd. and others (2008) 12 SCC 481, the court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must come with 5 clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in G. Jayshree and others v. Bhagwandas S. Patel and others (2009) 3 SCC 141.'

6.It is not in dispute that the applications have been made by the appellant on 03.11.2014 nominating their agent M/s.H.P. Associates, Mumbai. An opposition was taken out by the first respondent in the trade mark registry, which finds place at page Nos.18 and 19 of the typed sets filed by the appellant respectively. There is no proof to show that the said opposition was served on the appellant, which is a mandatory requirement under Section 21(2) of the Trade Marks Act. Though the learned counsel for

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the first respondent has shown the email/communication, the registry has not come forward to show that the notice has been served on the appellant. Therefore, in the absence of contrary proof by the second respondent/Trade Mark Registry to show that the said notice was served on the appellant, this Court cannot come to the conclusion that the notice has been served on the appellant in the manner known to law.

7.In view of the same, the appellant has made out a case that a copy of the opposition has not been served on the appellant. Therefore, these appeals are allowed and the impugned orders dated 15.03.2018 and 20.03.2018 passed by the second respondent, abandoning Application Nos.2835978 & 2896138 seeking registration of trademark Rallison APPLIANCES in Class 21 & Rallisonappliances in Class 7 are set aside. After giving a fresh opportunity to the appellant by serving a copy of the opposition filed by the first respondent, the second respondent shall pass orders within a period of 12 weeks from the date of receipt of a copy of this order. No costs.

28.10.2025

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Index : Yes
Neutral Citation Case : Yes

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N. SENTHILKUMAR,J.

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To

The Trade Marks Registry,
The Office of the Trade Mark Registry,
Chennai.

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