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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2025

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

A.No.6002 of 2024
in C.S.(Comm.Div.) No.203 of 2024

Sri Narasu's Coffee Company Private Limited
Represented by its Managing Director
P.Sivananthan
Having its Registered Office at
No.16, Court Road,
Johnsonpet, Salem 636 007.
And Having its Branch Office in Chennai at
No.4, South Mada Street, Saha's Complex,
Near Theppakulam, Mylapore,
Chennai 600 004.

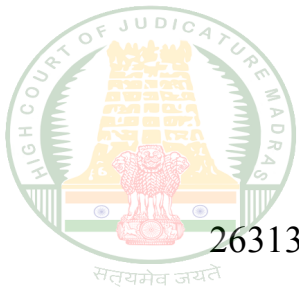
... Applicant

-VS-

S Sudhakar
No.84, M.C.Road, Old Washermenpet,
Chennai 600 021 and 4 Others

... Respondents

PRAYER: This application is filed seeking to frame an issue of invalidity registrations being under number 595393, 1176049, 1222314, 1359359, 1359360, 1463588, 2631319, 2631322, 2631325, 2631326, 3075527,



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2631320 and permit the Applicant / Defendant to move a necessary application challenging the said marks.

For Applicant : Ms.S.Suba Shiny

For Respondents : Mr.S.Kamalesh
for M/s.Rahul Balaji

ORDER

By this application, the defendant seeks permission to move applications to challenge the registrations in respect of about 12 trade marks of the plaintiff.

2. Learned senior counsel for the defendant submits that the defendant qualifies as a person aggrieved since the suit for infringement and passing off has been lodged against the defendant by the plaintiff. He further submits that the plaintiff has obtained registrations in respect of a word in common usage in the Tamil language and that on that basis, the plaintiff is endeavouring to restrain legitimate use of such word by others, including the defendant.



WEB COPY 3. In response, learned counsel for the plaintiff submits that the defendant has to establish that it is a person aggrieved in relation to each trade mark registration. By relying upon the judgment of the Supreme Court in *Hardie Trading Ltd. and another v. Addisions Paint & Chemicals Ltd.*, 2003(11) SCC 92, particularly paragraphs 32 and 33 thereof, learned counsel submits that the defendant would qualify as a person aggrieved only if the defendant establishes that it is in the same trade. Given the nature of business undertaken by the defendant by using the mark UDHAYAM, learned counsel submits that the defendant is not entitled to prosecute rectification petitions.

4. The undisputed position is that the plaintiff has sued the defendant for infringement and passing off by relying upon the registrations forming the subject of this application. In view of the judgment of the Hon'ble Supreme Court in *Patel Field Marshal Agencies v. PM Diesels Ltd.* AIR 2017 SCC 1388, it is necessary to request the civil court to consider the validity of registration of the relevant trade marks and frame an issue in



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relation thereto for purposes of filing rectification petitions after a civil action for infringement is filed. The present application should be viewed in that context. On perusal of the written statement, it is clear that the defendant has impugned the validity of registration *inter alia* for reasons set out in paragraph 2 above. In these facts and circumstances, a case is made out to frame an issue on the validity of the registration. As a corollary, the following issue is framed:

“Whether the registrations of TM Nos.595393, 1176049, 1222314, 1359359, 1359360, 1463588, 2631319, 2631322, 2631325, 2631326, 3075527 and 2631320, are valid?”

5. Therefore, by leaving open the question as to whether the defendant qualifies as a person aggrieved in relation to each impugned registration for adjudication in the respective rectification petition, this application is allowed.

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SENTHILKUMAR RAMAMOORTHY,J

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