WEB COPY

Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-11-2026

CORAM

THE HON'BLE MR.JUSTICE P.B. BALAJI

(T)CMA(TM) No. 34, 35, 36, 37, 41, 42, 43, 49, 122, 123, 124 and 125 of 2023

CNR: {HCMA010875782023}

Shalimar Chemical Works Limited
Alipore Road, Kolkata - 700 027.

..Appellant(s)

Vs

1. Shalimar Agarbatti Company,
   Shalimar House,
   Post Box No. 2114, 32 and 33,
   3rd Cross, Sriramapuram,
   Bangalore – 560 021.

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

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

..Respondent(s)

Original Appeal filed under Section 91 of the Trade Marks Act, 1999, seeking an order admitting the instant Appeal against the orders dated 05.06.2013 passed by the Respondent No. 2 in respect of Registered Trade Mark No. 886634 in Class 03, in the name of the Respondent No. 1, Sought to be rectified under Rectification No. MAS 259775 filed by the Appellant. To be rectified under Rectification No. MAS 259775 filed by the Appellant in the same be set aside. The entire records of the proceedings in respect of the

https://www.mhc.tn.gov.in/judis

WEB COPY

Registered Trade Mark No. 886634 in Class 03 in the name of the Respondent No. 1 and the all relevant documents relating to the rectification proceeding being rectification Nos. MAS 259775 initiated by the present Appellant.

For Appellant(s): Mr.Kavach Kashyap,
for Mr. J. Arul Prakasam
M/s. Trade Mark Registration Bureau

For Respondent(s): Mr. Pawan Jhabak,
for Mr. Rakesh Prabhu for R1
Mr. M. Karthikeyan, SPC for R2 & R3

COMMON JUDGMENT

These appeals have been preferred challenging the orders passed by the second respondent in respect of registered trademarks in Class 03 in favour of the first respondent.

2. Heard, Mr. Kavach Kashyap, for Mr.J.Arul Prakasam, learned counsel for the appellant in all these matters and Mr.Pawan Jhabak, for Mr.Rakesh Prabhu, learned counsel for the first respondent, Mr.Karthikeyan for the Registry in some of the appeals and Mr. C. Kulanthaivel for the Registry in some of the other appeals.

3. The learned counsel for the appellant, at the outset, would state that the appeals had been originally filed before the IPAB and pending the appeals, consequent to the abolition of the IPAB, the matter stood transferred to the file of this Court.

https://www.mhc.tn.gov.in/judis

WEB COPY

4. Taking me through the impugned orders, the learned counsel for the appellant would contend that based on selective documents alone, orders came to be passed in all the twelve appeals without considering the merits and demerits of the individual appeals in a proper perspective. He would further state that the documents with regard to user have also not been analysed in a judicious manner and therefore, it is a fit case where the matters have to be necessarily remitted to the Registry for fresh consideration.

4.1. The learned counsel would also contend that no prejudice would be caused to the first respondent if the appeals are remitted and directions are issued for expeditious disposal of the matters post-remand.

5. Per contra, Mr.Pawan Jhabak, learned counsel appearing for the contesting first respondent in all these appeals, would submit that the documents are very well available before the Registry and it is only in the typed set that has been filed before this Court that certain relevant documents have been omitted and therefore, the matters need not be remitted and can very well be argued and decided before this Court, which would avoid further delay in the matters.

6. I have carefully considered the submissions advanced on either side with specific reference to the request for remand of the appeals to the Registry.

https://www.mhc.tn.gov.in/judis

WEB COPY

7. As rightly contended by the learned counsel for the appellant, though documents were available with the Registry, while passing the impugned orders as against which the present appeals have been preferred, I find no specific reference or discussion with regard to the individual facts of each case. The entire order is styled more or less a common order passed in all the appeals and it is referring to selective documents alone. Therefore, clearly there is no proper application of mind and as rightly contended, the date of user would be the most relevant and significant factor that will have to be decided in the present appeals.

8. In fact, I had requested Mr.Pawan Jhabak, learned counsel appearing for the first respondent who enjoys the registered trademark in its name, to get instructions whether the first respondent would be willing to agree for the appeals being remitted to the Registry for fresh consideration and today, on instructions by Mr.Pawan Jhabak, learned counsel appearing for the first respondent, fairly concedes to the request of the appellant's counsel for remitting the appeals to the Registry for fresh consideration. However, he only makes a request for permission to lead additional evidence, if necessary, in the individual appeals, since the entire case of the parties hinges on the actual date of the first user of the mark.

https://www.mhc.tn.gov.in/judis

WEB COPY

9. The learned counsel for the appellant would however state that the first respondent should not be permitted to enlarge the scope of the opposition applications filed by the appellant by filing additional documents.

10. I have carefully taken into account the relevant documents in this regard.

11. As rightly pointed out, it is not in dispute by both counsel that the Registry will have to decide the date of user, which will ultimately clinch the issue either in favour of the petitioner / appellant or the first respondent and no doubt, documents have been filed before the Registry on either side.

12. However, I find from the impugned orders that there is no reference to any such documents with specific reference to the date of user that has been claimed by the appellant as well as the first respondent. It is needless to state that the records which are already available with the Registry shall be independently assessed and looked into by the Registrar before passing any final orders and even otherwise, I do not see any serious prejudice being caused to either the appellant or the first respondent, if the parties are permitted to lead additional evidence, as they may be adviced, to establish the date of use. The documents shall be received by the Registry subject to proof and relevancy and both the appellant as well as the first respondent shall be permitted to file

https://www.mhc.tn.gov.in/judis

WEB COPY

additional documents touching the respective claims of use of the impugned mark, if already not available with the Registry and after giving a fair opportunity of hearing to both parties, the Deputy Registrar of Trademarks shall consider the case of the appellant's opposition individually as to each of the registered trademarks which have been opposed by the appellant and challenging the registration granted to the first respondent and pass independent orders, which shall avoid confusion, which has in fact resulted in the matters being remitted today.

13. The learned counsel for the appellant has also relied on the decision of the Delhi High Court in ***Karan Rathore v. Registrar of Trade Marks and Another***, where the Delhi High Court relied upon the decisions of the Bombay High Court with regard to the objective test to be followed for similarity of description of goods and services.

14. In any event, considering that I am only remitting the matters to the Deputy Registrar of Trade Marks, I do not deem it necessary to apply the principles laid down by the Delhi High Court to the facts of the present cases. It is suffice to state that it shall be open to both parties to make their respective submissions before the Deputy Registrar of Trade Marks and after consideration of the existing documents, the grounds of appeal, the arguments advanced on either side and also additional documents, if any, filed on either side, the Deputy

https://www.mhc.tn.gov.in/judis

WEB COPY

Registrar of Trademarks shall pass final independent orders in all the appeals within a period of six months from the date of receipt of a copy of this order being made available to the Deputy Registrar of Trade Marks.

15. In the result, these appeals are allowed. No costs.

17-11-2026

Neutral Citation: Yes/No
AT

Note: Registry is directed to incorporate cause title for all the cases and issue order copy.

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

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

https://www.mhc.tn.gov.in/judis

WEB COPY

P.B.BALAJI, J.

AT

(T)CMA(TM) No. 34, 35, 36, 37, 41, 42,
43, 49, 122, 123, 124 and 125 of 2023

17-11-2026

https://www.mhc.tn.gov.in/judis